

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-30805
Summary Calendar

GERARDO A. URREGO,

Plaintiff-Appellant,

versus

JANET RENO; DORIS MEISSNER,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 96-CV-1328
- - - - -

December 11, 1996

Before SMITH, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Gerardo A. Urrego, prisoner #61191-079, appeals the district court's denial of his petition for a writ of mandamus, pursuant to 28 U.S.C. § 1361. Urrego contends that 8 U.S.C. § 1252(h)(1) requires the Attorney General to deport him prior to the execution of his 292-month sentence.

As the district court determined, the statute authorizes the Attorney General to act. Urrego has failed to demonstrate that

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

the Attorney General has a clear duty to act and thus he is not entitled to mandamus relief. Smith v. North La. Medical Review Ass'n, 735 F.2d 168, 172 (5th Cir. 1984). Urrego has abandoned his claim under the Administrative Procedures Act by failing to assert it on appeal. See Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987). Accordingly, Urrego's appeal is dismissed as frivolous. See 5th Cir. R. 42.2.

APPEAL DISMISSED.