

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-41140  
Summary Calendar

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JOSE RODRIGUEZ CRUZ,

Plaintiff-Appellant,

versus

PETER GONZALEZ CRUZ; JAVIER V. LOPEZ;  
THOMAS CURRI; JOAN HIGGINS,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
UDC No. L-96-CV-21  
- - - - -

March 18, 1998

Before JONES, SMITH, and STEWART, Circuit Judges.

PER CURIAM:\*

Texas state prisoner Jose Rodriguez Cruz, no. 681066, has filed a motion to supplement the record on appeal and to suspend the briefing notice.

The district court dismissed with prejudice Cruz's federal civil action brought pursuant to Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971). The district court correctly found Cruz's complaints regarding cruel and unusual punishment to be

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

barred by the relevant statute of limitations. See Gartrell v. Gaylor, 981 F.2d 254, 256-57 (5th Cir. 1993); Spina v. Aaron, 821 F.2d 1126, 1128-29 (5th Cir. 1987). The district court also construed Cruz's claim that he was held for two and a half years in the custody of the Immigration and Naturalization Services as a habeas claim challenging the constitutionality of the detention procedures of 8 C.F.R. § 212.12. The district court did not err by denying the claim as lacking in merit. See Gisbert v. U.S. Attorney General, 988 F.2d 1437, 1446-48 (5th Cir. 1993). Finally, the district court did not err by denying Cruz's request for relief from future INS custody following his release from Texas state custody as not presenting a live case or controversy. See Bailey v. Southerland, 821 F.2d 277, 279 (5th Cir. 1987).

Because there is no meritorious issue that Cruz could raise regarding the district court's dismissal with prejudice of his action, Cruz's appeal is DISMISSED as frivolous. See 5th Cir. R. 42.2. His motion is DENIED as unnecessary.

We caution Cruz that any additional frivolous appeals filed by him or on his behalf will invite the imposition of sanctions. To avoid sanctions, Cruz is further cautioned to review any pending appeals to ensure that they do not raise arguments that are frivolous.

APPEAL DISMISSED; MOTION DENIED; SANCTION WARNING ISSUED.