

September 9, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40645
Summary Calendar

MANUEL RAUL REYO PENA GARCIA MONTERO,
also known as Reyes Pena,

Petitioner-Appellant,

versus

GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:04-CV-120

Before EMILIO M. GARZA, DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:*

Manuel Raul Reyo Pena Garcia Montero (Montero), federal prisoner # 09794-000, appeals from the district court's dismissal of his 28 U.S.C. § 2241 petition as frivolous. Specifically, the district court determined that Montero's arguments concerning President Bush's legitimacy and constitutional authority did not relate to the manner in which Montero's sentence was being carried out or to the determination of its duration.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Because Montero is not incarcerated in Texas, the district court lacked jurisdiction to entertain his petition pursuant to 28 U.S.C. § 2241. Lee v. Wetzel, 244 F.3d 370, 373-75 (5th Cir. 2001) (ruling that "the district of incarceration is the only district that has jurisdiction to entertain a defendant's § 2241 petition"). Accordingly, the judgment of the district court is VACATED and the case is REMANDED with instructions to DISMISS Montero's 28 U.S.C. § 2241 petition without prejudice for lack of jurisdiction.

VACATED AND REMANDED with instructions.