

Filed 4/5/96

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

USMAN SHEHU SULE,

Petitioner - Appellant,

v.

B. R. STORY, IMMIGRATION &
NATURALIZATION SERVICE,

Respondents - Appellees.

No. 95-1494

D. Colorado

(D.C. No. 95-K-2351)

ORDER AND JUDGMENT*

Before **ANDERSON, BARRETT, and LOGAN**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument.

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Usman Shehu Sule filed this in forma pauperis pro se petition for a writ of habeas corpus. He seeks release from custody, a writ of mandamus, and preliminary injunction against the Immigration and Naturalization Service (“INS”) pursuant to 28 U.S.C. §§ 2241 and 1361. The district court dismissed the petition for lack of jurisdiction, finding that Sule was not in INS custody. Sule appeals, contending that the district court erred in finding it lacked jurisdiction, and in failing to address the due process and equal protection issues he raised. We affirm.

The facts¹ and applicable law are fully set forth in the Recommendation of the magistrate judge which the district court adopted. R. Vol. I, Tab 10. Having conducted a de novo review of the legal conclusions, we affirm the dismissal for lack of jurisdiction for substantially the same reasons.

Additionally, as the magistrate judge noted, no final order of deportation has issued, nor has any hearing thereon been scheduled. Accordingly, any alleged violation of constitutional due process and equal protection is both premature and speculative. See McDonald v. New Mexico Parole Bd., 955 F.2d 631, 633-35 (10th Cir. 1991), cert. denied, 504 U.S. 920 (1992). AFFIRMED.

ENTERED FOR THE COURT

Stephen H. Anderson
Circuit Judge

¹Sule disputes one of the recited facts -- that he entered the country in 1990. However, this disputed fact is irrelevant to the jurisdictional determination.

