

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

January 18, 2006

Elisabeth A. Shumaker
Clerk of Court

OSCAR FEDERICO INFANZON,

Petitioner-Appellant,

v.

MICHAEL COMFORT, Acting
District Director, Immigration and
Naturalization Service, Denver
District, Executive Office for
Immigration Review,

Respondent-Appellee.

No. 04-1395
(District of Colorado)
(D.C. No. 03-M-102)

ORDER AND JUDGMENT*

Before **BRISCOE, LUCERO** and **MURPHY**, Circuit Judges.

After examining the briefs and the appellate record, this court has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). Accordingly, the case is 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*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata and collateral estoppel.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.

Appellant, Oscar Infanzon filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 in the United States District Court for the District of Colorado. In the application, Infanzon asked the district court to stay his removal to Peru until he could pursue a motion to reopen his removal proceedings with the Board of Immigration Appeals (“BIA”). The district court granted Infanzon the relief he sought. Infanzon filed his Motion to Reopen with the BIA on January 24, 2003 and the BIA denied the motion on May 29, 2003. Infanzon filed a petition for review in this court together with a motion seeking a stay of removal while his petition was pending. We denied the motion seeking a stay of removal on October 29, 2003. ¹

On September 21, 2004, the district court vacated its stay of removal and dismissed Infanzon’s § 2241 petition on the ground that this court had exclusive jurisdiction. Infanzon filed this appeal. Because we agree with the district court that it lacked jurisdiction to grant or deny Infanzon a stay of removal while his

¹This court also denied Infanzon’s petition for review. *Infanzon v. Ashcroft*, 386 F.3d 1359, 1363-65 (10th Cir. 2004)

petition for review was pending in this court, we **affirm** the district court's order dismissing Infanzon's § 2241 petition.

ENTERED FOR THE COURT

Michael R. Murphy
Circuit Judge