

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-1180

JOSE RAMON ALMONTE,

Petitioner,

v.

ERIC H. HOLDER, JR., Attorney General,

Respondent.

On Petition for Review of an Order of the Board of Immigration Appeals.

Submitted: April 29, 2010

Decided: May 25, 2010

Before NIEMEYER, KING, and DAVIS, Circuit Judges.

Dismissed in part; affirmed in part by unpublished per curiam opinion.

Jose Ramon Almonte, Petitioner Pro Se. Ada Elsie Bosque, Yamileth G. HandUber, William Charles Peachey, Tyrone Sojourner, Office of Immigration Litigation, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondent.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jose Ramon Almonte filed a combined notice of appeal from the district court order denying his motion for reconsideration and a petition for review. The Attorney General moves to dismiss the petition for review for lack of a final order. Because there does not appear to be a final removal order, we grant the motion.

We also note, in the same combined filing, Almonte did seek to appeal from the district court order denying his second motion for reconsideration from the order denying his "Motion To Verify Legal Status As U.S. National of United States". The district court denied the motion because it found it did not have the authority to grant the requested relief. Although not cited by Almonte, we liberally construe his motion to verify as being filed under 8 U.S.C. § 1503(a) (2006) because Almonte claimed he was being denied certain rights and privileges while incarcerated because prison officials considered him an alien and not a United States national and transferred him to a facility for deportable aliens.

Under 8 U.S.C. § 1503(a), titled "Denial Of Rights And Privileges As National":

If any person who is within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the

United States, such person may institute an action under the provisions of section 2201 of Title 28 against the head of such department or independent agency for a judgment declaring him to be a national of the United States, except that no such action may be instituted in any case if the issue of such person's status as a national of the United States (1) arose by reason of, or in connection with any removal proceeding under the provisions of this chapter or any other act, or (2) is in issue in any such removal proceeding. An action under this subsection may be instituted only within five years after the final administrative denial of such right or privilege and shall be filed in the district court of the United States for the district in which such person resides or claims a residence, and jurisdiction over such officials in such cases is conferred upon those courts.

While the district court may not have considered its authority under 8 U.S.C. § 1503(a), we will affirm on reasons that appear in the record. Because Almonte claims to be in removal proceedings, a district court does not have jurisdiction to consider whether he is a national for purposes of relief under § 1503. Furthermore, Almonte filed his motion in the wrong court as jurisdiction is vested in the court in the district in which he resides. In addition, Almonte failed to claim he exhausted administrative remedies with respect to his claim for certain rights and privileges.

Accordingly, we grant the motion to dismiss the petition for review for lack of a final order of removal. We also affirm the district court's order denying the motion for reconsideration. We grant Almonte's motion to proceed on appeal

in forma pauperis. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED IN PART;
AFFIRMED IN PART