

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

APR 08 2009

GREGORY C. LANGHAM
CLERK

Civil Action No. 09-cv-00293-BNB

DIEN T. NGO,

Applicant,

v.

J. M. WILNER, Warden, FCI Florence,

Respondent.

ORDER OF DISMISSAL

Applicant Dien T. Ngo is a federal prisoner in the custody of the United States Bureau of Prison at the Federal Correctional Institution in Florence, Colorado. Mr. Ngo has filed a *pro se* Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 challenging an immigration detainer filed against him by the Department of Homeland Security, Bureau of Immigration and Customs Enforcement (ICE). On February 24, 2009, Magistrate Judge Boyd N. Boland directed Mr. Ngo to show cause why the Application should not be denied because he is not in custody for the purposes of the immigration claims he is raising in this action. Mr. Ngo now has failed to file a Response within the time allowed.

The Court must construe the Application liberally because Mr. Ngo is representing himself. *See Ngo v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not act as a


pro se litigant's advocate. **See Hall**, 935 F.2d at 1110. For the reasons stated below, the Court will deny Application and dismiss the action.

Mr. Ngo is not challenging the validity of his current conviction and sentence. He seeks to have the ICE detainer against him removed because the ICE plans to deport him at the conclusion of his federal sentence. Pursuant to 28 U.S.C. § 2241(c), Mr. Ngo may raise his immigration claims against ICE in a § 2241 action only if he is in the custody of the ICE. The fact that ICE has issued a detainer is not sufficient by itself to satisfy the custody requirement. **See Galaviz-Medina v. Wooten**, 27 F.3d 487, 493 (10th Cir. 1994). Therefore, because Mr. Ngo fails to demonstrate that he is in ICE's custody the instant action must be dismissed. Accordingly, it is

ORDERED that the 28 U.S.C. § 2241 Application is denied and the action is dismissed.

DATED at Denver, Colorado, this 7 day of April, 2009.

BY THE COURT:


ZITA L. WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 09-cv-00293-BNB

Dien T. Ngo
Reg No. 34314-013
FCI - Florence
P.O. Box 6000
Florence, CO 81226-6000

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the above-named individuals on 4/8/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk