

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ANTHONY B. OLOPADE,)
)
v.) Civil Action No. 13-1063
)
) Chief Magistrate Judge Lisa Pupo Lenihan
)
ERIC HOLDER, JR., *U.S. Attorney*)
General and JANET NAPOLITANO,)
Secretary, U.S. Dept. of Homeland)
Security (DHS),)

ORDER

Petitioner has submitted for filing a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, or in the alternative, a Motion for Declaratory Judgment pursuant to 8 U.S.C. § 1503. Petitioner seeks an order from this Court declaring him a United States Citizen. He has not paid the filing fee or submitted a Motion for Leave to Proceed *in forma pauperis*.

This action cannot be brought under the habeas statute 28 U.S.C. § 2241 because Petitioner is not seeking release from his custody. The writ of habeas corpus is only available to individuals who are in custody and seeking relief in the form of release from their custody. Petitioner is not seeking such relief. As such, the Court lacks jurisdiction to grant Petitioner the relief he is seeking pursuant to 28 U.S.C. § 2241.

To the extent Petitioner may be entitled to relief pursuant to 8 U.S.C. § 1503, the Clerk of Court is directed to redocket this action as an Immigration matter under the 465 Nature of Suit code and 28:2201 Cause of Action code. Petitioner shall have twenty-one (21) days from the date

of this Order to pay the \$350.00 filing fee for this civil action, plus an administrative fee of \$50.00, or otherwise move to proceed *in forma pauperis* under 28 U.S.C. § 1915 if he is unable to pay. If he fails to do either within the time allowed then the Court will close this case.

AND NOW, this 23rd day of July 2013,

IT IS HEREBY ORDERED that Petitioner's filing shall be construed as a Complaint seeking declaratory relief under 8 U.S.C. § 1503, and not as a habeas corpus petition under 28 U.S.C. § 2241.

IT IS FURTHER ORDERED that the Clerk of Court redocket this action under the 465 Nature of Suit code and 28:2201 Cause of Action code.

IT IS FURTHER ORDERED that Petitioner pay the filing fee or submit a Motion for Leave to Proceed *in forma pauperis* within twenty-one (21) days of the date of this Order. If he fails to do so within the time allowed then the Court will close this case.

/s/ Lisa Pupo Lenihan
Lisa Pupo Lenihan
United States Magistrate Judge

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