

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 09-1729

LUIS A DUTTON-MYRIE,
Appellant

v.

ATTORNEY GENERAL USA; WARDEN LACKAWANNA COUNTY PRISON

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil No. 09-cv-00117)
District Judge: Honorable A. Richard Caputo

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B)
or Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6

August 20, 2009

Before: SLOVITER, FUENTES AND JORDAN, Circuit Judges

(Opinion filed: September 4, 2009)

OPINION

PER CURIAM

Luis Dutton-Myrie appeals the District Court's dismissal of his petition for a writ

of habeas corpus.¹ The procedural history of this case and the details of Dutton-Myrie's claims are set forth in the District Court's thorough order and need not be discussed at length. Briefly, Dutton-Myrie sought to challenge an Immigration Judge's April 1998 removal order. The District Court dismissed the habeas petition for lack of jurisdiction, and Dutton-Myrie filed a timely notice of appeal.

We have jurisdiction under 28 U.S.C. § 1291. The District Court was correct that it lacked jurisdiction over Dutton-Myrie's petition. Except in circumstances not applicable here, a petition for review is the exclusive means of judicial review of an order of removal. Silva-Rengifo v. Attorney General, 473 F.3d 58, 62 (3d Cir. 2007); 8 U.S.C. § 1252(a)(5). Thus, Dutton-Myrie may not challenge his April 1998 order of removal via a habeas petition.

Summary action is appropriate if there is no substantial question presented in the appeal. See Third Circuit LAR 27.4. For the above reasons, as well as those set forth by the District Court, we will summarily affirm the District Court's order. See Third Circuit I.O.P. 10.6. Dutton-Myrie's motion for the appointment of counsel is denied.

¹ Dutton-Myrie did not state under which statute he was bringing his habeas petition; because he is in federal custody, we presume he intended to file the petition pursuant to 28 U.S.C. § 2241. Regardless of how the petition was filed, the District Court lacked jurisdiction over Dutton-Myrie's challenge of his removal order.