

SEP 01 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TODD GIFFEN,

Petitioner - Appellant,

v.

BARACK OBAMA, President; et al.,

Respondents - Appellees.

No. 15-15125

D.C. No. 1:14-cv-01280-LJO

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, District Judge, Presiding

Submitted August 25, 2015**

Before: McKEOWN, CLIFTON, and HURWITZ, Circuit Judges.

Todd Giffen appeals pro se from the district court's judgment dismissing his 28 U.S.C. § 2241 habeas corpus petition as frivolous. We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand with instructions to dismiss the petition for lack of jurisdiction.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Giffen contends that the government has subjected him to civil rights violations, illegal searches and surveillance, and other abuses, including irradiation and electronic warfare. A federal court only has jurisdiction under section 2241 to grant a writ of habeas corpus to a person “in custody” when his writ is filed. *See* 28 U.S.C. § 2241(c); *Maleng v. Cook*, 490 U.S. 488, 490-91 (1989). The state court record shows that, at the time Giffen filed his petition, he was not “in custody” because he was not incarcerated, placed on supervised release, or subject to a restraint not shared by the public generally. *See Jones v. Cunningham*, 371 U.S. 236, 239-40, 243 (1963). Giffen’s allegations of wrongdoing are unsupported by the record and insufficient to meet section 2241’s custody requirement.

Because Giffen was not “in custody,” the district court did not have jurisdiction over his petition. *See Maleng*, 490 U.S. at 490. We therefore vacate the judgment and remand with instructions to the district court to dismiss Giffen’s habeas petition for lack of jurisdiction.

VACATED and REMANDED with directions.