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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARLON GARCIA LOPEZ,  
Petitioner,  
v.  
DEPARTMENT OF HOMELAND  
SECURITY, et al.  
Respondents.

Case No. CV 10-7929 AG(JC)  
ORDER DISMISSING PETITION  
CHALLENGING DENIAL OF STAY  
OF DEPORTATION ORDER  
WITHOUT PREJUDICE

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On October 21, 2010, Marlon Garcia Lopez (“petitioner”) filed a Petition for Writ Habeas Corpus by a Person in Federal Custody (“Petition”) in this Court in which he raises a single claim: An Immigration Judge abused her discretion in denying petitioner’s motion to stay a February 27, 1996 deportation order which was issued in petitioner’s absence (“Motion to Stay”). (Petition at 3). The Petition also asserts that a removal order was issued on April 28, 1997. (Petition at 2). Petitioner apparently filed the Motion to Stay in the Immigration Court in conjunction with a Motion to Reopen which petitioner filed this month.<sup>1</sup> (Petition at 3).

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<sup>1</sup>The Petition appears to refer to a more precise date of filing but the date is illegible. (Petition at 3). Although petitioner does not expressly so state, the Court infers that the Motion to Reopen remains pending as petitioner does not appear to challenge any ruling by the Immigration Judge on the Motion to Reopen. (Petition at 3).

1 As this Court is without jurisdiction to consider petitioner’s challenge to the  
2 Immigration Judge’s denial of petitioner’s Motion to Stay, the Petition is dismissed  
3 without prejudice.

4 On May 11, 2005, Congress enacted the REAL ID Act (the “Act”) which  
5 stripped district courts of habeas jurisdiction over final orders of deportation or  
6 removal, and vested jurisdiction to review such orders exclusively in the courts of  
7 appeals. See 8 U.S.C. § 1252(a)(5). Specifically, Section 1252(a)(5) provides:

8 Notwithstanding any other provision of law (statutory or  
9 nonstatutory), including section 2241 of Title 28, or any other habeas  
10 corpus provision, and sections 1361 and 1651 of such title, a petition  
11 for review filed with an appropriate court of appeals in accordance  
12 with this section shall be the sole and exclusive means for judicial  
13 review of an order of removal entered or issued under any provision  
14 of this chapter, except as provided in subsection (e) of this section.  
15 For purposes of this chapter, in every provision that limits or  
16 eliminates judicial review or jurisdiction to review, the terms “judicial  
17 review” and “jurisdiction to review” include habeas corpus review  
18 pursuant to section 2241 of Title 28, or any other habeas corpus  
19 provision, sections 1361 and 1651 of such title, and review pursuant  
20 to any other provision of law (statutory or nonstatutory).

21 Further, Subsection (b)(9) of Section 1252 provides:

22 Judicial review of all questions of law and fact, including  
23 interpretation and application of constitutional and statutory  
24 provisions, arising from any action taken or proceeding brought to  
25 remove an alien from the United States under this subchapter shall be  
26 available only in judicial review of a final order under this section.  
27 Except as otherwise provided in this section, no court shall have  
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1 jurisdiction, by habeas corpus under section 2241 of Title 28, or any  
2 other habeas corpus provision, by section 1361 or 1651 of such title,  
3 or by any other provision of law (statutory or nonstatutory), to review  
4 such an order or such questions of law or fact.

5 The Act made the circuit courts the “sole” judicial body able to review  
6 challenges to final orders of deportation, exclusion, or removal. See  
7 Alvarez-Barajas v. Gonzales, 418 F.3d 1050, 1052 (9th Cir. 2005). However, the  
8 Act’s jurisdiction-stripping provision “does not apply to federal habeas corpus  
9 petitions that do not involve final orders of removal.” Nadarajah v. Gonzales, 443  
10 F.3d 1069, 1075 (9th Cir. 2006). “Therefore, in cases that do not involve a final  
11 order of removal, federal habeas corpus jurisdiction remains in the district court,  
12 and on appeal . . . pursuant to 28 U.S.C. § 2241.” Id. at 1076.

13 In this case, petitioner challenges the Immigration Judge’s denial of a stay of  
14 execution of the removal order and appears to seek a stay of deportation.  
15 However, this Court lacks jurisdiction over such a challenge because the request to  
16 halt the execution of such a final order of removal “arise[s] from” an “action” or a  
17 “proceeding” brought in connection with petitioner’s removal (8 U.S.C.  
18 § 1252(b)(9)), or from “the decision or action” to “execute removal orders against”  
19 petitioner (8 U.S.C. § 1252(g)). See, e.g., De Leon v. Napolitano, 2009 WL  
20 4823358, \*2-\*3 (N.D. Cal. Dec. 10, 2009) (district court without jurisdiction to  
21 issue order staying execution of removal order); Puamau v. Still, 2005 WL  
22 2988733, \*2 (N.D. Cal. Nov. 7, 2005) (district court lacks jurisdiction to review  
23 petitioner’s request for stay of deportation). Under these circumstances, it appears  
24 that the Act vests exclusive jurisdiction in the Ninth Circuit Court of Appeals. See  
25 8 U.S.C. §§ 1252(a)(5), (b)(2).

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1 In sum, this Court finds that it does not have jurisdiction to entertain the  
2 Petition. Accordingly, the Petition is dismissed without prejudice for lack of  
3 jurisdiction.

4 IT IS SO ORDERED.

5 DATED: October 21, 2010

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8 HONORABLE ANDREW J. GUILFORD  
9 UNITED STATES DISTRICT JUDGE

10 Presented by

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13 \_\_\_\_\_ /s/ \_\_\_\_\_

14 Honorable Jacqueline Chooljian  
15 UNITED STATES MAGISTRATE JUDGE  
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