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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DANIEL A. ULLOA-GONZALEZ,)	1:11-cv-00003-SMS-HC
)	
Petitioner,)	ORDER DISMISSING THE PETITION AS
)	UNRIPE AND DIRECTING THE CLERK TO
)	CLOSE THE ACTION (Doc. 1)
v.)	
)	
ERIC HOLDER, et al.,)	
)	
Respondents.)	
)	
)	

Petitioner is a federal detainee proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Pursuant to 28 U.S.C. § 636(c)(1), Petitioner has consented to the jurisdiction of the United States Magistrate Judge to conduct all further proceedings in the case, including the entry of final judgment, by manifesting consent in a signed writing filed by Petitioner on January 3, 2011 (doc. 3). Pending before the Court is the petition, which was filed on January 3, 2011.

I. Screening the Petition

The Rules Governing Section 2254 Cases in the United States District Courts (Habeas Rules) are appropriately applied to proceedings undertaken pursuant to 28 U.S.C. § 2241. Habeas Rule

1 1(b). Habeas Rule 4 requires the Court to make a preliminary
2 review of each petition for writ of habeas corpus. The Court
3 must summarily dismiss a petition "[i]f it plainly appears from
4 the petition and any attached exhibits that the petitioner is not
5 entitled to relief in the district court...." Habeas Rule 4;
6 O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990); see also
7 Hendricks v. Vasquez, 908 F.2d 490 (9th Cir. 1990). Habeas Rule
8 2(c) requires that a petition 1) specify all grounds of relief
9 available to the Petitioner; 2) state the facts supporting each
10 ground; and 3) state the relief requested. Notice pleading is
11 not sufficient; rather, the petition must state facts that point
12 to a real possibility of constitutional error. Rule 4, Advisory
13 Committee Notes, 1976 Adoption; O'Bremski v. Maass, 915 F.2d at
14 420 (quoting Blackledge v. Allison, 431 U.S. 63, 75 n. 7 (1977)).
15 Allegations in a petition that are vague, conclusory, or palpably
16 incredible are subject to summary dismissal. Hendricks v.
17 Vasquez, 908 F.2d 490, 491 (9th Cir. 1990).

18 Further, the Court may dismiss a petition for writ of habeas
19 corpus either on its own motion under Habeas Rule 4, pursuant to
20 the respondent's motion to dismiss, or after an answer to the
21 petition has been filed. Advisory Committee Notes to Habeas Rule
22 8, 1976 Adoption; see, Herbst v. Cook, 260 F.3d 1039, 1042-43
23 (9th Cir. 2001).

24 Here, Petitioner, an alien from Nicaragua, alleges that he
25 is being detained by the Immigration and Naturalization Service
26 (INS) at the Kern County Jail pursuant to an order of a United
27 States Immigration Judge dated August 18, 2010, directing that
28 Petitioner be removed from the United States due to his having

1 suffered a criminal conviction. (Pet. 2-3, 7.) Petitioner
2 argues that his detention for slightly over four months is
3 unreasonable, exceeds Respondents' statutory authority,
4 constitutes punishment, and violates Petitioner's substantive and
5 procedural due process rights under the Fifth Amendment. (Pet.
6 3-4.) Petitioner prays that the Court order the INS to release
7 Petitioner from its custody under reasonable conditions of
8 supervision. (Pet. 5.)

9 An alien who has entered the United States may not be
10 detained without due process of law. Zadvydas v. Davis, 533 U.S.
11 678, 693-94 (2001). When an alien has been ordered removed from
12 the United States, the alien may be detained for a period
13 reasonably necessary to secure removal; continued detention is
14 statutorily permitted until removal is no longer reasonably
15 foreseeable. Zadvydas, 533 U.S. at 699. Thereafter, continued
16 detention is unreasonable and unauthorized, and the alien may be
17 released upon conditions of supervision that are appropriate in
18 the circumstances. Id.

19 Detention for six months after removal is ordered is
20 presumptively reasonable; thereafter, if the alien provides good
21 reason to believe that there is no significant likelihood of
22 removal in the reasonably foreseeable future, the government must
23 respond with evidence sufficient to rebut that showing.
24 Zadvydas, 533 U.S. 678, 701.

25 Because the presumptively reasonable, six-month period of
26 detention has not yet expired, Petitioner's claim is not ripe.
27 Therefore, the petition should be dismissed without prejudice to
28 refiling it if Petitioner's detention pending removal exceeds six

1 months.

2 II. Disposition

3 Accordingly, it is ORDERED that:

4 1) The petition is DISMISSED without prejudice to refiling
5 if Petitioner's detention pending removal exceeds six months; and

6 2) The Clerk is DIRECTED to close this action because this
7 order terminates it in its entirety.

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9 IT IS SO ORDERED.

10 **Dated:** January 5, 2011

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

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