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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

NARINDER SINGH KHATKARH,

Petitioner,

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION,

Respondent.

No. 2:14-cv-00079-KJM-KJN P

ORDER

Earlier on the date this order is being filed, June 19, 2019, petitioner moved for an emergency order staying petitioner’s impending removal proceedings. ECF No. 55. Petitioner currently is detained by Immigration and Customs Enforcement (ICE) and has been subject to removal proceedings since serving a three-year state sentence. While petitioner is housed at Yuba County Jail he is in federal immigration custody, awaiting deportation “in a matter of days.” ECF No. 55-1 at ¶¶ 4–5. Petitioner contends this court can act on his request because, he says, he is exempt from the jurisdictional bar imposed on district courts by the REAL ID Act of 2005, 8 U.S.C. § 1252(a)(5), in that he seeks injunctive relief based on a collateral matter; that collateral matter is his underlying state conviction challenged by his pending habeas petition, and not based on any aspect of the removal proceedings themselves. ECF No. 55 at 5–9. As explained below, the court is not persuaded it has jurisdiction. The motion is DENIED.

1           A district court may stay proceedings in the exercise of its authority to “control the  
2 disposition of the causes on its docket with economy of time and effort for itself, for counsel, and  
3 for [the] litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248 (1936). A stay is discretionary and the  
4 “party requesting a stay bears the burden of showing that the circumstances justify an exercise of  
5 that discretion.” *Nken v. Holder*, 556 U.S. 418, 433-34 (2009). As petitioner notes, motions to  
6 stay are analogous to requests for preliminary injunctive relief, and the analysis is similar. *Id. at*  
7 426 (considering (1) likelihood of success on the merits, (2) likelihood of irreparable harm,  
8 (3) potential impairment to opposing party’s interest in the proceedings, and (4) public interest  
9 considerations). Here, the court does not reach these factors, because it does not have  
10 jurisdiction to provide the relief petitioner seeks.

11           Petitioner specifically “asks this court to temporarily stay [] removal  
12 [proceedings].” ECF No. 55 at 11. As noted, however, district courts generally are divested of  
13 jurisdiction over removal proceedings, with only narrow exceptions. 8 U.S.C. §§ 1252(a)(5) &  
14 1252(e). Petitioner does not rely on any exception set forth in the federal statute, however, but  
15 appears to rely solely on the fact of his federal habeas petition through which he seeks to vacate  
16 the prior state criminal conviction on which his removal is based. ECF No. 55 at 5–9. Even  
17 assuming without deciding that success on petitioner’s habeas petition would improve the posture  
18 of any case he has before immigration authorities, the court in this habeas matter brought against  
19 petitioner’s state custodian would have the power only to grant the writ directed to that custodian,  
20 if it ultimately decides the matter in petitioner’s favor. *Rumsfeld v. Padilla*, 542 U.S. 426, 435  
21 (2004) (proper respondent to a habeas petition is one who possesses “the power to produce the  
22 body of such party before the court or judge” (quoting *Wales v. Whitney*, 114 U.S. 564, 574  
23 (1885))). But it is not the state custodian’s action that petitioner seeks to stay in the instant  
24 motion; rather he seeks to stay action he says ICE will take shortly. Because ICE is not a party to  
25 this action, the court does not appear to have jurisdiction to issue an order directing ICE to take  
26 any particular action with respect to petitioner. *Cf. Illinois v. U.S. Dep’t of Health and Human*  
27 *Servs.*, 772 F.2d 329, 332 (7th Cir. 1985) (under circumstances not present here, federal  
28 preliminary injunction rule allows “that defendants may not nullify a decree by carrying out

1 prohibited acts through aiders and abettors, although they were not parties to the original  
2 proceeding.” (citation omitted); rule codifies “common-law rule allowing a non-party to be held  
3 in contempt for violating the terms of an injunction when a non-party is legally identified with the  
4 defendant or when the non-party aids or abets a violation of an injunction.” (citation omitted)).  
5 Even if ICE were a party, the court doubts it would have jurisdiction to act given the  
6 jurisdictional limits set by the REAL ID Act. Petitioner has not met his burden of demonstrating  
7 otherwise.


8           Although the court has certain powers authorized by the All Writs Act, *see* 28  
9 U.S.C. § 1651, the court has not issued any orders in this matter whose integrity must be  
10 protected by the issuance of the requested stay. *Nat’l Org. for the Reform of Marijuana Laws v.*  
11 *Mullen*, 828 F.2d 536, 544 (9th Cir. 1987) (recognized application of All Writs Act is “issuance  
12 of orders necessary to ensure the integrity of orders previously issued”) (citation omitted)).

13           The court’s decision here does not in any way revisit the court’s prior findings  
14 regarding the redressability of petitioner’s underlying habeas petition, which remains pending  
15 before the court. *See* ECF No. 48 (addressing respondent’s redressability arguments).

16           For these reasons, petitioner’s motion for emergency stay of removal proceedings  
17 is DENIED, without prejudice to refile in a new action in the proper court naming the proper  
18 respondent.

19           IT IS SO ORDERED.

20 DATED: June 19, 2019.

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UNITED STATES DISTRICT JUDGE