United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MIGUEL DIAZ-ORDAZ and BERTHA ROMERO-HERRERA,

Petitioners,

v.

ALBERTO R. GONZALES,

Respondent.

NO. C05-2269 TEH

ORDER GRANTING WRIT OF HABEAS CORPUS

On December 19, 2002, Petitioners Miguel Diaz-Ordaz and Bertha Romero-Herrera petitioned the United States Court of Appeals for the Ninth Circuit to review a November 21, 2002 decision of the Board of Immigration Appeals ("BIA"). On June 1, 2005, the Ninth Circuit held that the BIA acted *ultra vires* in issuing an order of removal. Thus, the court found that no valid final order of removal existed, and the court therefore lacked jurisdiction over the petition for review. In the interests of justice, however, the court treated the petition for review as a petition for writ of habeas corpus under 28 U.S.C. § 2241 and transferred the petition to this Court. The Ninth Circuit instructed that, upon transfer, "the district court should remand to the agency for further proceedings."

Accordingly, with good cause appearing, this Court GRANTS the petition for writ of habeas corpus. The BIA is instructed to rescind Petitioners' removal order and remand the matter to the Immigration Judge for further proceedings. The Clerk shall close the file.

IT IS SO ORDERED.

DATED 06/08/05

/s/
THELTON E. HENDERSON, JUDGE
UNITED STATES DISTRICT COURT

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