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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOAQUIN BANALES,)	
)	
Petitioner,)	No. C 05-4652 CRB (PR)
)	
vs.)	ORDER OF DISMISSAL
)	
DON HORSLEY, Sheriff,)	
)	
Respondent.)	
_____)	

Joaquin Banales is a pretrial detainee at the San Mateo County Jail facing state criminal drug charges. He is also an alien subject to an INS hold or detainer on his release from state custody.


Banales has filed a petition for a writ of habeas corpus seeking to have the INS set bail and permit him to stay in the United States pending any deportation proceedings.

The petition is construed as a petition for a writ of habeas corpus under 28 U.S.C. § 2241 and is DISMISSED without prejudice because it is premature. See Garcia v. Taylor, 40 F.3d 299, 303 (9th Cir. 1994) (hold or detainer letter alone does not sufficiently place an alien in INS custody to make habeas corpus available).

The clerk shall close the file and terminate all pending motions as moot.

SO ORDERED.

DATED: November 23, 2005



 CHARLES R. BREYER
 United States District Judge

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