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United States District Court

For the Northern District of California

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

STIVAN SINGH,

Petitioner,

No. C 06-01842 JSW

v.

ALBERTO R. GONZALEZ, Attorney General
of the United States and MICHAEL
CHERTOFF, Secretary for the Department of
Homeland Security,

ORDER TO SHOW CAUSE

Respondents.

Petitioner Stivan Singh (“Singh”), who is in custody for the purposes of habeas corpus relief because he is in custody of the Bureau of Immigration and Customs Enforcement, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241.¹

BACKGROUND

Singh is a native and citizen of India, who entered the United States on April 25, 1998. (Pet., ¶ 8.) The government later instituted removal proceedings. In removal proceedings, Singh admitted the factual allegations, and applied for asylum restriction on removal. (*Id.*, ¶¶ 9-10.) An Immigration Judge denied all forms of relief requested on April 16, 2001, a decision petitioner appealed to the Board of Immigration Appeals (“BIA”). The BIA affirmed the IJ’s decision on December 23, 2002 without opinion. (*Id.*, ¶¶ 11-12.) Singh filed a petition for

¹ Singh also appears to seek mandamus relief and relief under the Declaratory Judgment Act and All Writs Act.

1 review with the Ninth Circuit on January 21, 2003, which was dismissed for lack of jurisdiction
2 on April 27, 2004. (*Id.*, ¶ 13.)

3 On March 2, 2005, Singh filed a petition for habeas corpus and request for a temporary
4 restraining order challenging his removal with this Court. (*Id.*, ¶ 14.) On March 3, 2005, Singh
5 filed a motion to reopen with the BIA. (*Id.*, ¶ 15.) The motion to reopen was denied on April
6 18, 2005, and Singh sought review with the Ninth Circuit. That appeal is still pending. (*Id.*, ¶¶
7 16-18.)

8 Singh has been detained in Respondents' custody for more than six months, following
9 the BIA's review and denial of the motion to reopen. (*Id.*, ¶ 23.) Singh has requested that he be
10 released pending a decision on his appeal but that request has been denied. (*Id.*, ¶¶ 24-26.)

11 DISCUSSION

12 A. Legal Standard.

13 This Court may entertain a petition for habeas corpus on behalf of a person "in custody
14 under or by color of the authority of the United States." 28 U.S.C. § 2241(c)(1). The Court
15 "shall forthwith award the writ or issue an order directing the respondent to show cause why the
16 writ should not be granted, unless it appears from the application that the applicant or person
17 detained is not entitled thereto." 28 U.S.C. § 2243.

18 B. Singh's Legal Claim.

19 Singh seeks federal habeas corpus relief and contends that Respondents have interpreted
20 8 U.S.C. § 1231(a)(6) to permit them to detain him indefinitely and that this indefinite detention
21 has unlawfully restrained him of his liberty in violation of the Due Process Clause of the Fifth
22 Amendment to the United States Constitution. Liberally construed, the claims appear colorable
23 under 28 U.S.C. § 2241 and merit an answer from respondents.

24 CONCLUSION

25 For the foregoing reasons and for good cause shown:

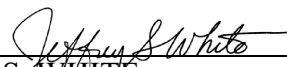
26 1. Singh shall serve a copy of this Order, the petition, and all attachments thereto
27 upon Respondents no later than March 20, 2006. Singh shall file a proof of service with the
28 Court by March 24, 2006.

1 2. Respondents shall file with the Court and serve on Singh, no later than April 20,
2 2006, an answer showing why a writ of habeas corpus should not be issued. If applicable,
3 Respondents shall file with the answer and serve on Singh a copy of all portions of the
4 administrative record that are relevant to a determination of the issues presented by the petition.

5 3. If Singh wishes to respond to the answer, he shall do so by filing a traverse with
6 the Court and serving it on Respondents within 30 days of his receipt of the answer.

7 **IT IS SO ORDERED.**

8
9 Dated: March 13, 2006



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

United States District Court

For the Northern District of California

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