

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court

For the Northern District of California

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

GREGORIO PASCUAL MARTINEZ
ZALDIVAR,

No. C 06-07683 JSW

Petitioner,

v.

ORDER DISMISSING PETITION

MICHAEL CHERTOFF, et al.,

Respondents.

On December 14, 2006, Petitioner Gregorio Pascual Martinez Zaldivar (“Petitioner”) filed a petition for writ of habeas corpus, or in the alternative, order to show cause, and motion for emergency stay of execution and application for a temporary restraining order. Petitioner seeks an order staying his detention and removal to Mexico pursuant to the order of removal issued by the Board of Immigration Appeals.

“The REAL ID Act, Pub.L. No. 109-13, Div. B., 119 Stat. 231 (May 11, 2005), which became effective on May 11, 2005, eliminated district court habeas corpus jurisdiction over orders of removal and vested jurisdiction to review such orders exclusively in the courts of appeals.” *Puri v. Gonzales*, 464 F.3d 1038, 1041 (9th Cir. 2006). Section 106(a) of the REAL ID Act amended section 242 of the Immigration and Nationality Act, 8 U.S.C. § 1252 to provide that:

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

review of an order of removal entered or issued under any provision of this Act, except as provided in subsection (e).

8 U.S.C. § 1252(a)(5). Petitioner’s only means for judicial review of his removal order is a petition for review in Ninth Circuit. *See Puri*, 464 F.3d at 1041. Because this habeas petition was filed after the REAL ID Act became effective, this Court is without jurisdiction to hear this matter. Accordingly, the Court hereby DISMISSES the habeas petition. *See id.* (affirming district court’s dismissal of habeas petition for lack of jurisdiction).

IT IS SO ORDERED.

Dated: December 15, 2006



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

United States District Court

For the Northern District of California