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

GREGORIO PASCUAL MARTINEZ  
ZALDIVAR,

Petitioner,

v.

MICHAEL CHERTOFF, et al.,

Respondents.

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No. C 06-07683 JSW

**ORDER DENYING MOTION FOR  
STAY PENDING APPEAL**

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. On December 15, this Court issued an order dismissing the petition for lack of jurisdiction. Later that same day, Petitioner filed a notice of appeal, appealing this Court’s dismissal to the Ninth Circuit.

On December 17, 2006, Petitioner filed a motion for an emergency stay of execution and application for temporary stay pending ruling of appeal. For the same reasons stated in the order dismissing this petition, this Court lacks jurisdiction to enter a stay. In addition, the Petitioner’s filing of a notice of appeal divested this Court of any jurisdiction. *See McClatchy Newspapers v. Central Valley Typographical Union No. 46, Intern. Typographical Union 686, F.2d 731, 734*

1 (9th Cir. 1982) (“The filing of a notice of appeal generally divests the district court of  
2 jurisdiction over the matters appealed.”)

3 **IT IS SO ORDERED.**

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5 Dated: December 18, 2006

  
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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE

United States District Court

For the Northern District of California

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