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10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

13 FERNANDO MORENO MENDEZ and MARIA
 DEL CARMEN MORENO GOMEZ,

14 Petitioners,

15 v.

16 JANET NAPOLITANO, Secretary,
 17 Department of Homeland Security;
 TIMOTHY AIKEN, Field Office Director,
 18 Immigration and Customs Enforcement;
 and ERIC HOLDER, JR., Attorney General
 19 of the United States,

20 Respondents.

) No. C 10-2471 TEH

) **STIPULATION TO HOLD CASE IN**
) **ABEYANCE; AND ~~PROPOSED~~ ORDER**

21 _____
 22 Petitioners, by and through their attorney of record, and Respondents, by and through their
 23 attorneys of record, hereby stipulate, subject to approval of the Court, to vacate the June 21, 2010
 24 hearing on the motion for a stay of removal and to hold this case in abeyance for sixty days in light
 25 of the following:¹

26 _____
 27 ¹Habeas petitions filed in *Hernandez Perales v. Napolitano*, et al., C 09-6028, before the
 28 Honorable Susan Illston and Garcia v. Chertoff, et al, C 08-5729, before the Honorable Jeremy
 Fogel, are currently held in abeyance for the same reasons.

1 (1) Petitioners filed a motion for a temporary restraining order, a motion for a stay of removal
2 and this habeas petition on June 4, 2010, alleging that they had received ineffective assistance of
3 counsel from three of their former attorneys after the issuance of final administrative orders by the
4 Board of Immigration Appeals (BIA).

5 (2) Respondents are prepared to file a motion to dismiss the habeas petition because Petitioners
6 have not exhausted their administrative remedies.

7 (3) In *Pal Singh v. Napolitano*, Appeal No. 07-16988, the parties expect the United States
8 Court of Appeals for the Ninth Circuit to resolve the issues of whether the BIA has jurisdiction
9 over and whether a district court may properly require exhaustion of administrative remedies, if
10 any, in cases where, as here, the alleged ineffective assistance of counsel occurred after the entry
11 of the alien's final removal order and where, as here, the petitioners seek only re-issuance of the
12 BIA's order or orders under the holding in *Singh v. Gonzales*, 499 F.3d 969 (9th Cir. 2007).

13 (4) The Ninth Circuit held oral argument in *Pal Singh* on January 13, 2009, but has not yet
14 issued an opinion. On August 11, 2009, the Ninth Circuit issued the following order:

15 The case is remanded to the Board of Immigration Appeals for the limited purpose
16 of ruling upon whether the Board had jurisdiction to hear Singh's ineffective
17 assistance of counsel claims and what effect, if any, the Attorney General's recent
18 opinion in *In re Compean*, 25 I & N Dec. 1, 3 (A.G. 2009), has on this case. The
19 Board shall advise the court of any action or decision.

20 *Pal Singh v. Napolitano*, 577 F.3d 988 (9th Cir. 2009) (Order).

21 (5) On April 30, 2010, the BIA advised the Ninth Circuit that, *inter alia*, it might have had
22 jurisdiction to hear the applicant's ineffective assistance of counsel claim if it had been advanced
23 in a motion to reopen. *See Pal Singh*, No. 07-16988, dkt entry 43.

24 (6) The parties believe it would be prudent to await the Ninth Circuit's decision in *Pal Singh*
25 before filing any further briefing in the above-entitled matter and, accordingly, ask this Court to
26 vacate the June 21, 2010 hearing date of the motion for a stay and to hold this case in abeyance for
27 a period of sixty days.

28 ///

///

1 Date: June 8, 2010

Respectfully submitted,

2 JOSEPH P. RUSSONIELLO
United States Attorney

3
4 /s/
5 ILA C. DEISS
Assistant United States Attorney
Attorneys for Respondents

6
7 Date: June 8, 2010

8 /s/
9 JAMES TODD BENNETT
Attorney for Petitioner

10 ~~PROPOSED~~ ORDER

11 Pursuant to stipulation, IT IS SO ORDERED that:

12 (1) The June 21, 2010 hearing on the motion to stay removal is vacated;

13 (2) This case will be held in abeyance of period of sixty days;

14 (3) Respondents agree not to remove Petitioners until after the conclusion of these habeas
15 proceedings;

16 (4) If and when the United States Court of Appeals for the Ninth Circuit issues a decision
17 in *Pal Singh v. Napolitano*, Appeal No. 07-16988, the parties shall promptly notify the
Court;

18 (5) The parties shall submit a status report to this Court on July 9, 2010.

19 **IT IS FURTHER ORDERED** that the motion to stay is vacated as moot. Pursuant to the above,
20 Respondents shall not remove Petitioners while these habeas proceedings are pending.

21 Dated: 06/09, 2010

