

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

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

RAUL GONZALEZ AND GRACIELA
GONZALEZ VARGAS,

No. C 11-1584 JSW

ORDER OF DISMISSAL

Petitioners,

v.

ERIC HOLDER, ET AL.,

Respondents

On March 31, 2011, Petitioners Raul Gonzalez and Graciela Gonzalez Vargas filed a petition for writ of habeas corpus and emergency request for stay of deportation. Petitioners represent that a final order of removal has been issued against them and are in the constructive custody of Immigration & Custom Enforcement (“ICE”). (Petition ¶ 4.) Petitioners represent that their appeals to the Board of Immigration Appeals (“BIA”) and the Ninth Circuit were denied and that ICE served them with notices to depart by no later than April 1, 2011. (*Id.* ¶ 13.)

Petitioners further represent that they filed a motion to reopen removal proceedings with the Board of Immigration Appeals (“BIA”) in January 2011 and the BIA has not yet ruled on the motion to reopen. (*Id.* ¶¶ 3, 14.) Petitioners also represent that the BIA has denied their motion for stay of deportation. (*Id.* ¶ 14.)

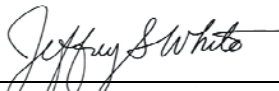
1 Petitioners seek habeas relief and an immediate stay of deportation. Petitioners contend that
2 “waiting for the BIA’s decision would prejudice Petitioner because the indefinite timeframe for
3 administrative action would cause unreasonable delay.” (*Id.* ¶ 12.) The Ninth Circuit has
4 recognized that “the REAL ID Act expressly eliminated habeas review over all final orders of
5 removal, but restored to the appellate courts jurisdiction over ‘constitutional claims or questions of
6 law’ in all cases - criminal and non-criminal.” *Singh v. Gonzales*, 499 F.3d 969, 977 (9th Cir. 2007)
7 (citing 8 U.S.C. § 1252(a)(2)(D)). The REAL ID Act’s purpose of eliminating district court review
8 of removal orders was to “effectively limit all aliens to one bite of the apple with regard to
9 challenging an order of removal.” *Id.* (quoting *Bonhometre v. Gonzales*, 414 F.3d 442, 446 (3d
10 Cir.2005)). The REAL ID Act does not, however, preclude habeas review over challenges to
11 detention that are independent of challenges to removal orders. *Casas-Castrillon v. Department of*
12 *Homeland Sec.*, 535 F.3d 942, 946 (9th Cir. 2008).

15 Petitioners’ request for relief “directly implicate[s] the order of removal.” *Nnadika v.*
16 *Attorney General of U.S.*, 484 F.3d 626, 632 (3d Cir. 2007). The Court determines that it lacks
17 jurisdiction over the petition and request for stay. *Singh*, 499 F.3d at 977. The petition is therefore
18 dismissed for lack of jurisdiction.
19

20 The Clerk shall close the file.

22 **IT IS SO ORDERED.**

23
24 Dated: March 31, 2011

25 
26 _____
27 JEFFREY S. WHITE
28 UNITED STATES DISTRICT JUDGE

United States District Court
For the Northern District of California

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