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E-Filed 9/21/05

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BABITA KAUR,

Petitioner,

v.

MICHAEL CHERTOFF, Secretary, Department of
Homeland Security, et al.,

Respondents.

Case Number C 05-3660-JF

ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS

[Doc. No. 1]

Petitioner Babita Kaur (“Kaur”), a native and citizen of India, alleges the following: she was ordered removed by an Immigration Judge in January 2004 after failing to appear at a scheduled hearing on her claim for asylum, withholding of removal and relief under the Convention Against Torture. Kaur filed a motion to reopen, which was denied on August 31, 2004. Kaur then filed an appeal with the Board of Immigration Appeals (“BIA”); the appeal currently is pending. However, she failed to request a stay of removal pending disposition of her administrative appeal, and as a result was taken into custody by Respondents. On August 25, 2005, Kaur filed an emergency motion to stay removal with the BIA. That motion is pending.

On September 12, 2005, Kaur filed the instant petition for writ of habeas corpus asserting

1 that her detention by Respondents constitutes a denial of due process as guaranteed by the Fifth
2 Amendment. Specifically, she asserts that Respondents' decision to detain her was unlawful
3 because she has a meritorious appeal pending before the BIA and because her current pregnancy
4 has been deemed high risk. She also requests that this Court order her released from detention as
5 a matter of discretion.

6 Kaur has not cited, and the Court has not discovered, any authority demonstrating that
7 this Court has subject matter jurisdiction to consider the propriety of Respondents' decision to
8 detain Kaur. Moreover, on September 21, 2005, counsel for Respondents informed Court staff
9 that Respondents have agreed to release Kaur with electronic monitoring. Accordingly, even if
10 the Court did have jurisdiction to consider it, the petition appears to be moot. For these reasons,
11 the petition is hereby DENIED.¹

12 IT IS SO ORDERED.

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15 DATED: 9/21/05

16 /s/ electronic signature authorized

17 JEREMY FOGEL
18 United States District Judge
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26 _____
27 ¹ Counsel for Respondents indicated that Kaur likely would be removed from the United
28 States next week. Kaur's petition does not challenge her removal and likely could not in light of
the recently enacted Real ID Act, Pub. L. No. 109-13, 119 Stat. 231 (May 11, 2005).

1 Copies of Order served on:
2

3 Counsel for Petitioner:

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