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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

Hilario Guadalupe-Salazar,

NO. C 10-01173 JW

Petitioner,

**ORDER TRANSFERRING CASE FOR  
IMPROPER VENUE**

v.

Janet Napolitano, et al.,

Respondents.

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Presently before the Court is Hilario Guadalupe-Salazar's ("Petitioner") Petition for Issuance of Writ of Habeas Corpus and Writ of Mandamus. (hereafter, "Petition," Docket Item No. 1.) On May 4, 2010, the Court issued an Order to Show Cause requesting the parties to address whether jurisdiction and venue are proper in this Court. (hereafter, "May 4, 2010 Order," Docket Item No. 4.)

**A. Background**

On August 25, 2008, Petitioner was detained by the Department of Homeland Security ("DHS") in an immigration raid on Howard Industries in Laurel, Mississippi. (Petition ¶ 7.) After the raid, Petitioner was placed in removal proceedings and enrolled in the Intensive Supervisory Appearance Program. (Id. ¶ 8.) Petitioner retained Mr. Prasad as pro bono counsel for his removal proceedings. (Id. ¶ 9.) Petitioner and Mr. Prasad were scheduled to attend a hearing for the removal proceedings on March 23, 2010. (Id.) On January 2, 2010, Petitioner was arrested after the driver of the car in which he was a passenger was arrested for driving without a license. (Id. ¶ 10.) On January 6, 2010, Petitioner was brought to a DHS facility in Gulfport, Mississippi, where he told the

1 officers that he had already been processed by the DHS and had an upcoming court date. (Id. ¶ 12.)  
2 DHS officers asked Petitioner questions and had him sign documents. (Id. ¶ 14.) On January 21,  
3 2010, Petitioner was placed in handcuffs and leg shackles and transported to Matamoros, Mexico.  
4 (Id. ¶ 17.) Currently, Petitioner is in Oaxaca, Mexico. (Id. ¶ 18.) On March 19, 2010, this Petition  
5 was filed by Mr. Prasad on behalf of Petitioner. (See Docket Item No. 1.)

6 **B. Jurisdiction**

7 The Court’s May 4, 2010 Order requested that the parties address whether the REAL ID Act  
8 stripped this Court of jurisdiction because it was unclear whether Petitioner’s deportation was the  
9 result of a final deportation order.

10 The REAL ID Act stripped district courts of habeas jurisdiction over final orders of  
11 deportation or removal, and vested jurisdiction to review such orders exclusively in the courts of  
12 appeals. See 8 U.S.C. § 1252(a)(5). The Act made the circuit courts the “sole” judicial body able to  
13 review challenges to final orders of deportation, exclusion, or removal. See Alvarez-Barajas v.  
14 Gonzales, 418 F.3d 1050, 1052 (9th Cir. 2005). However, the Act’s jurisdiction-stripping provision  
15 “does not apply to federal habeas corpus petitions that do not involve final orders of removal.”  
16 Nadarajah v. Gonzales, 443 F.3d 1069, 1075 (9th Cir. 2006). “Therefore, in cases that do not  
17 involve a final order of removal, federal habeas corpus jurisdiction remains in the district court, and  
18 on appeal . . . pursuant to 28 U.S.C. § 2241.”

19 Here, the parties agree that Petitioner’s deportation was not the result of a final deportation  
20 order.<sup>1</sup> Thus, the Court finds that the REAL ID Act does not preclude the Court from exercising  
21 jurisdiction.

22 **C. Venue**

23 At issue is whether this district is a proper venue for the Petition.  
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26 <sup>1</sup> (Response to Show Cause Order at 2, hereafter, “Response,” Docket Item No. 5; Reply to  
27 Petitioner’s Show Cause Order at 2, hereafter, “Reply,” Docket Item No. 6.)



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**THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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Edward A. Olsen edward.olsen@usdoj.gov  
Lana Vahab lana.vahab@usdoj.gov

**Dated: June 30, 2010**

**Richard W. Wieking, Clerk**

By:           /s/ JW Chambers            
**Elizabeth Garcia**  
**Courtroom Deputy**