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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ARMANDO VERGARA CEBALLOS,  
A39-797-654  
  
Petitioner,  
  
vs.  
  
ALBERTO R. GONZALES, United States  
Attorney General, et al.,  
  
Respondent.

CASE NO. 07cv1723 BTM(CAB)  
  
**ORDER DENYING PETITION FOR  
WRIT OF HABEAS CORPUS  
WITHOUT PREJUDICE**

Petitioner has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Petitioner has been detained by the Bureau of Immigration and Customs Enforcement for over 2 months pending ongoing removal proceedings. Petitioner challenges his detention and removability on the ground that he is actually a United States citizen.

However, whether Petitioner is or is not a United States citizen is an issue to be determined in the first instance by the Immigration Judge. If the Immigration Judge finds that Petitioner is not a United States citizen and orders him removed, Petitioner can appeal his claim of nationality to the BIA and then the Ninth Circuit Court of Appeals. 8 U.S.C. § 1252(b)(5).

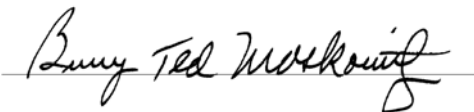
Petitioner has adequate remedies in connection with his claim of nationality and has not provided any reasons why he should be excused from exhausting these remedies. Therefore, the Court declines to hear Petitioner’s nationality claim.

1           Petitioner also argues that the length of his detention violates due process and asks  
2 the Court to order a hearing before the Immigration Judge. However, Petitioner's two or  
3 three month detention pending removal proceedings is not unreasonable.

4           Therefore, the Court **DENIES WITHOUT PREJUDICE** Petitioner's Petition for Writ of  
5 Habeas Corpus. The Clerk shall enter judgment accordingly.

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7 **IT IS SO ORDERED.**

8 DATED: September 4, 2007

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11 Honorable Barry Ted Moskowitz  
12 United States District Judge  
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