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

JULIO ALEXANDER GUZMAN-  
VASQUEZ,

Petitioner,

v.

ERIC HOLDER, JR., et al.,

Respondents.

Case No. 14-cv-01421-BAS(BLM)

**ORDER:**

- (1) GRANTING *IN FORMA PAUPERIS* APPLICATION;  
AND**
- (2) DISMISSING PETITION  
FOR WRIT OF HABEAS  
CORPUS WITHOUT  
PREJUDICE**

Petitioner, a detainee in the custody of the Department of Homeland Security, Bureau of Immigration and Customs Enforcement, proceeding *pro se*, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 (“Petition”). Petitioner filed his Petition on June 10, 2014, contemporaneously with motions for leave to proceed *in forma pauperis* and for a stay of removal. (ECF Nos. 1 (“Pet.”), 2-3.) On June 11, 2014, the Court denied Petitioner’s request to proceed *in forma pauperis* and dismissed the case without prejudice. (ECF No. 4.) On June 20, 2014, Petitioner filed a new *in forma pauperis* application. (ECF No. 5.) For the reasons set forth below, the Court **GRANTS** Petitioner’s application to proceed *in forma pauperis*, and **DISMISSES** the Petition without prejudice.

1 **I. BACKGROUND**

2 Petitioner is a citizen of Guatemala and was previously a legal permanent  
3 resident of the United States. (Pet. at ¶ 17.) Pursuant to the Immigration and  
4 Nationality Act (“INA”), 8 U.S.C. § 237(a)(2)(A)(iii), Petitioner was ordered  
5 removed as an alien convicted of an aggravated felony. (*Id.* at ¶¶ 17-18.) Petitioner  
6 waived appeal and was deported. (*Id.* at ¶ 18.) Petitioner reentered the United  
7 States after deportation and was arrested and charged with illegal re-entry. (*Id.* at ¶  
8 19.) Petitioner sought to reopen removal proceedings in the Immigration Court, but  
9 his motion was denied. (*Id.*) Petitioner’s appeal of the denial to the Board of  
10 Immigration Appeals was dismissed. (*Id.* at ¶ 20.) Petitioner’s Ninth Circuit  
11 appeal is currently pending. (*Id.*) Before this Court, Petitioner seeks restoration of  
12 his status as a lawful permanent resident and cancellation of removal.

13 **II. MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

14 On June 20, 2014, Petitioner filed a request to proceed *in forma pauperis*  
15 which reflects that he has no funds in his trust account at the facility in which he is  
16 presently confined. (ECF No. 5.) Petitioner cannot afford the \$5.00 filing fee.  
17 Thus, the Court grants Petitioner’s application to proceed *in forma pauperis*.

18 **III. DISMISSAL FOR LACK OF SUBJECT MATTER JURISDICTION**

19 Federal courts are courts of limited jurisdiction. “Without jurisdiction the  
20 court cannot proceed at all in any cause.” *Steel Co. v. Citizens for a Better*  
21 *Environment*, 523 U.S. 83, 94 (1998) (citation omitted). Accordingly, federal  
22 courts are under a continuing duty to confirm their jurisdictional power and are  
23 even “obliged to inquire sua sponte whenever a doubt arises as to the existence of  
24 [its] jurisdiction.” *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274,  
25 278 (1977).

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1 This Court lacks subject matter jurisdiction over the Petition. Title 8, section  
2 1252, provides as follows:

3 ...no court shall have jurisdiction to hear any cause or claim by or on  
4 behalf of any alien arising from the decision or action by the Attorney  
5 General to commence proceedings, adjudicate cases, or execute  
removal orders against any alien under this Act.

6 8 U.S.C. § 1252(g). This provision was created to “eliminate[] district court habeas  
7 corpus jurisdiction over orders of removal and vest[] jurisdiction to review such  
8 orders exclusively in the courts of appeals.” *Puri v. Gonzales*, 464 F.3d 1038, 1041  
9 (9th Cir. 2006) (citing *Martinez-Rosas v. Gonzales*, 424 F.3d 926, 928-929 (9th Cir.  
10 2005)). “[A] petition for review filed with an appropriate court of appeals . . . shall  
11 be the sole and exclusive means for judicial review of an order of removal.” 8  
12 U.S.C. § 1252(a)(5); *see also Lin v. Gonzales*, 473 F.3d 979, 981 n. 1 (9th Cir.  
13 2007) (citing *Azarte v. Ashcroft*, 394 F.3d 1278, 1281 (9th Cir. 2005) (“The denial  
14 of a motion to reopen falls within our jurisdiction over final orders of removal (not  
15 issued *in absentia*) under 8 U.S.C. § 1252(a)(1), provided that the denial has been  
16 separately appealed.”)); *Sarmadi v. INS*, 121 F.3d 1319, 1321-22 (9th Cir. 1997).  
17 Petitioner’s remedy is to file a petition for review in the United States Court of  
18 Appeals for the Ninth Circuit, which he has already done. *See* Pet. at ¶ 20; Case  
19 No. 14-70488.<sup>1</sup>

#### 20 **IV. CONCLUSION & ORDER**

21 Accordingly, the Court **GRANTS** Petitioner’s application to proceed *in*  
22 *forma pauperis*. The Clerk of the Court shall file the Petition for Writ of Habeas  
23 Corpus without prepayment of the filing fee.

24 However, based on the lack of subject matter jurisdiction, the Court  
25 **DISMISSES** the Petition without prejudice. The Clerk of Court shall enter  
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27 <sup>1</sup> *See Guzman-Vazquez v. Holder*, Case No. 14-cv-1471-MMA(BLM) (S.D.  
28 Cal.) (dismissing substantially similar petition filed by Petitioner seeking the same  
relief *sua sponte* for lack of subject matter jurisdiction).


1 judgment accordingly.

2 **IT IS SO ORDERED.**

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4 **DATED: June 25, 2014**

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**Hon. Cynthia Bashant**  
**United States District Judge**

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