



1           On March 1, 1993, however, petitioner was granted Lawful Permanent Resident  
2 status based on his amnesty application and issued a green card. On September 5,  
3 1995, petitioner attempted to enter the United States at the border inspection station at  
4 Nogales, Arizona. He was paroled into the United States pending a determination of  
5 whether or not he was eligible for lawful admission. He was ultimately deported again  
6 on December 5, 1997, on the basis that he had been previously deported. Petitioner  
7 was subsequently located again in Las Vegas, Nevada in 2012 and the prior deport  
8 order was reinstated on October 15, 2012.

9           The present federal habeas petition is brought under 28 U.S.C. § 2241  
10 exclusively against federal officials, including the United States Attorney General, the  
11 Secretary of the Department of Homeland Security, and two subordinate federal  
12 officials.

13           Petitioner challenges the current deportation order, arguing that the June 19,  
14 1990, deportation order was obtained unlawfully and therefore reliance upon the  
15 defective deportation order for reinstatement constitutes a “gross miscarriage of justice.”  
16 He seeks “a Stay of Deportation Order pending the outcome of the instant petition” (dkt.  
17 no. 1 at 20).

18           Pursuant to the REAL ID Act, 8 U.S.C. § 1252(a)(5) and (b), a federal district  
19 court does not have jurisdiction over a habeas petition seeking to challenge a removal  
20 order. *See, e.g., Flores-Torres v. Mukasey*, 548 F.3d 708, 710-11 (9th Cir. 2008); *lasu*  
21 *v. Smith*, 511 F.3d 881 (9th Cir. 2007). The exclusive method for obtaining judicial  
22 review of a final order of removal is through filing a petition for review in the Court of  
23 Appeals. *Id.* Because petitioner filed the present petition after the May 11, 2005,  
24 effective date of the above-cited jurisdictional provision, dismissal of the petition rather  
25 than transfer to the Court of Appeals is required where jurisdiction in the district court is  
26 absent. *E.g., lasu*, 511 F.3d at 884 & 893.

27           Petitioner alleges that he has been deprived of his right to Due Process of Law,  
28 but in truth he seeks judicial review of the removal order. Here, the *relief* sought is an

1 order from the district court under § 2241 declaring that federal immigration officials may  
2 not lawfully remove petitioner from the United States and further staying the order  
3 pending such a determination. The district court does not have jurisdiction to grant such  
4 relief. The petition shall therefore be dismissed without prejudice for lack of jurisdiction.

5 IT IS THEREFORE ORDERED that the petition shall be DISMISSED without  
6 prejudice for lack of jurisdiction over the subject matter.

7 IT IS FURTHER ORDERED that petitioner's emergency motion for stay of  
8 deportation (dkt. no. 2) is DENIED.

9 IT IS FURTHER ORDERED that, to the extent that a certificate of appealability is  
10 required in this procedural context, a certificate of appealability is DENIED. Jurists of  
11 reason would not find the district court's dismissal of the petition for lack of jurisdiction  
12 over the subject matter to be debatable or incorrect.

13 IT IS FURTHER ORDERED, pursuant to Rules 1(b) and 4 of the Rules  
14 Governing Section 2254 Cases, that the Clerk of Court shall serve a copy of the petition  
15 and this order upon respondents: (1) by having the United States Marshal, by the close  
16 of business on the date that this order is entered, deliver same to the United States  
17 Attorney for the District of Nevada or to the person designated thereby for acceptance  
18 of service; (2) by certified mail upon the Hon. Eric Holder, Attorney General of the  
19 United States, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001; and (3) by  
20 certified mail upon the Hon. Janet Napolitano, Secretary, United States Department of  
21 Homeland Security, Washington, D.C. 20528.

22 IT IS FURTHER ORDERED that counsel for respondents shall enter a notice of  
23 appearance, only, within ten (10) days of entry of this order. Thereafter, no response is  
24 required from respondents herein other than to respond to any orders by a reviewing  
25 court should an appeal be taken.

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IT IS FURTHER ORDERED that the Clerk of Court shall enter final judgment accordingly, in favor of respondents and against petitioner, dismissing this action without prejudice for lack of jurisdiction over the subject matter.

DATED THIS 8<sup>th</sup> day of July 2013.

  
MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE