

1
2 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE

4 ANTOLIN ANDREW MARKS,

5 Petitioner,

6 v.

7 ERIC HOLDER, JR.,

8 Respondent.

NO. C07-1608MJP

ORDER ON MOTION TO REOPEN

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10 The above-entitled Court, having received and reviewed

- 11 1. Motion for Reopening This Matter Based Upon New Ninth Circuit Finding (Dkt. No. 38)
12 2. Motion for Judicial Notice (Dkt. No. 39)

13 and all attached declarations and exhibits, makes the following ruling:

14 IT IS ORDERED that the motion to reopen the case is DENIED.

15 Petitioner brings before this Court Ninth Circuit authority which he claims “calls into question”
16 the Court’s rationale in dismissing his habeas corpus petition on December 21, 2007 (Dkt. No. 9). He
17 cites Flores-Torres v. Mukasey, 548 F.3d 708 (9th Cir. 2008) for the proposition that district courts
18 have jurisdiction to consider citizenship questions of persons subjected to removal proceedings. The
19 problem with Petitioner’s legal authority is that the holding of the Flores-Torres case is specifically
20 applicable to persons who are the subject of ongoing removal proceedings (persons who are
21 challenging detention orders prior to conclusion of removal proceedings).

22 Mr. Marks’ case is distinguishable in that he was the subject of a final removal order (i.e., his
23 removal proceedings had been concluded unfavorably to him) at the time of his habeas petition.
24 Section 1252 of the Immigration and Nationality Act, as amended by the REAL ID Act, Pub.L. No.
25 109-13, Div. B, 199 Stat. § 231 (2005), makes it clear that, once a petitioner is the subject of an order

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1 of removal, appellate jurisdiction regarding that order rests solely with the Court of Appeals. It is
2 correct that, if the appellate court determines that there is a genuine issue of fact about a petitioner's
3 nationality, that court shall refer the question to the district court in which the petitioner resides "for a
4 decision on that claim as if an action had been brought in the district court under section 2201 of Title
5 28" (8 U.S.C. § 1252(b)(5)(B)), but there has been no referral from the Ninth Circuit of a question
6 involving Petitioner's nationality, and the Court's previous finding of "no jurisdiction" stands.

7 Furthermore, from all appearances this Court's previous ruling is on appeal by Petitioner to the
8 Ninth Circuit currently, which further divests this Court of jurisdiction to hear, much less rule upon,
9 any legal or factual issue in this matter.

10 Petitioner's motion to reopen his case is therefore DENIED.

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12 Dated: September _15___, 2009

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15 Marsha J. Pechman
16 U.S. District Judge