

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FELIX MONEGRO-NUNEZ,	:	CIVIL ACTION
Petitioner	:	
	:	
v.	:	NO. 06-1466
	:	
ALBERTO R. GONZALES,	:	
Attorney General, et al.	:	
Respondents.	:	

MEMORANDUM AND ORDER

STENGEL, J.

APRIL 26, 2006

Petitioner is a national of the Dominican Republic. He entered the United States without inspection on approximately November 7, 1991. He was initially detained, and released on bond shortly thereafter. Petitioner failed to appear at his immigration hearing held on January 30, 1992 in New York City. A deportation order was therefore entered *in absentia*.

On February 23, 2001, Petitioner married Dulce M. Monegro, a United States citizen. He then filed an I-212 Application for Permission to Reapply for Admission Into the United States After Deportation or Removal, as well as an I-130/I-485 Application to Adjust Status. The outcome of those petitions is unclear from the pleadings. In any event, it appears that a second I-130 was filed on behalf of Petitioner on July 28, 2005, in Vermont. A hearing was scheduled in Immigration Court in Philadelphia for March 28, 2006, which Petitioner and his wife attended. At this hearing, Petitioner was detained by United States Immigration and Customs Enforcement. He has been in custody since then.

On April 3, 2006, Petitioner moved the New York Immigration Court to re-open his case and stay his removal. That motion has been provisionally granted, and Petitioner's removal has been temporarily stayed. On April 6, 2006, Petitioner filed the instant Petition for Habeas Corpus in the Eastern District of Pennsylvania, challenging the constitutionality of his detainment. For the reasons discussed below, I find that this court does not have jurisdiction over this claim and I will therefore deny the Petition without prejudice.

The REAL ID Act of 2005 provides that "[n]otwithstanding any other provision of law . . . or any other habeas corpus provision, . . . a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal." 8 U.S.C. § 1252(e).

Petitioner acknowledges this statute, but goes on to argue that because he challenges the constitutionality of his detention, rather than a final order of deportation, that jurisdiction properly lies with the District Court. I disagree.

The REAL ID Act provides that sole jurisdiction over challenges to an order of removal is vested in the courts of appeal. 8 U.S.C. § 1252(e) Further, the statute establishes that no court shall have jurisdiction where a petitioner challenges the Attorney General's decision to, *inter alia*, "execute removal orders." *See* 8 U.S.C. § 1252(g); *see also Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 478 (1999). It is undisputed that Petitioner is in detention pursuant to an order of removal filed by the

Immigration Court in New York on January 30, 1992. Therefore, his challenge to that detention is a challenge to the execution of an order of removal, not an independent constitutional claim. The substantive claims raised by Petitioner - i.e. whether the order should have been filed, or whether Petitioner was notified of the hearing at which the order was issued - are collateral issues appropriate for the immigration court to consider. *See, e.g. Ishak v. Gonzalez*, 422 F.3d 22, 29 (1st Cir. 2005) They are, however, immaterial for this court's subject matter jurisdiction analysis.

Because I find that Petitioner's habeas petition substantively challenges the execution of an order of removal, I find that this court does not have jurisdiction over his claim. I will therefore grant the Motion to Dismiss. An appropriate Order follows.

ORDER

AND NOW, this 26th day of April, 2006, upon consideration of Respondents' Motion to Dismiss the Petition for Habeas Corpus Relief, and after conference with counsel, it is hereby **ORDERED** that the Motion is **GRANTED**.

The clerk of court is directed to close this case for statistical purposes.

BY THE COURT:

 /s/ Lawrence F. Stengel
LAWRENCE F. STENGEL, J.