

APR 13 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAFAEL DOMINGO ESMERIO, a.k.a.
Rafael Esmerio-Domingo,

Petitioner - Appellant,

v.

ERIC H. HOLDER, Jr., Attorney General;
et al.,

Respondents - Appellees.

No. 07-35162

D.C. No. CV-06-00411-RSL

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Robert S. Lasnik, Chief District Judge, Presiding

Submitted April 5, 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

Rafael Domingo Esmerio, a native and citizen of the Philippines, appeals pro se from the district court's order dismissing his petition for a writ of habeas corpus.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We have jurisdiction under 28 U.S.C. §§ 1291 and 2253(a). We review de novo, *Puri v. Gonzales*, 464 F.3d 1038, 1040 (9th Cir. 2006), and we affirm.

The district court properly concluded it lacked subject matter jurisdiction. *See* REAL ID Act of 2005, Pub.L. 109-13, § 106(c), 119 Stat. 231, 311 (2005). Esmerio cannot challenge his underlying removal order via review of his habeas petition. *See* 8 U.S.C. § 1252(a)(5).

AFFIRMED.