

United States District Court
Western District of Texas
El Paso Division

Christopher Sambissa,
and Darla Palacio Sambissa,
Petitioners,

v.

No. 3:25-CV-00237-DCG

Kristi Noem, in her official capacity as
Secretary, U.S. Department of Homeland
Security *et al*,
Respondents.

**Supplemental Response in Opposition to
Petitioner's Writ of Habeas Corpus Petition**

In response to this Court's Order dated September 5, 2025, directing supplemental briefing by September 22, 2025, *see* ECF No. 28, Respondents provide the following:

A. 8 U.S.C. § 1252(g) Strips the Court of Jurisdiction to Provide the Relief Sought.

Section 1252(g)¹ precludes review of Petitioner's claims because she directly challenges ICE's decision to execute an administratively final order of removal under the Visa Waiver Program (VWP). "Judicial review in the removal context is heavily circumscribed by 8 U.S.C. § 1252." *Duron v. Johnson*, 894 F.3d 644, 646 (5th Cir. 2018). Except as provided in § 1252, courts "cannot entertain challenges to the enumerated executive branch decisions or actions." *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021).

Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of an alien arising from the decision or

¹ Respondents' citation to 8 U.S.C. § 1252(f)(1) in ECF No. 24 at 4 was intended only as a supporting reference in a string cite of authority finding no jurisdiction to enjoin or otherwise stay an order of removal. Respondents agree that courts have typically limited the scope of § 1252(f)(1) to class actions.

action by the Attorney General to [1] commence proceedings, [2] adjudicate cases, or [3] *execute removal orders* against any alien under this chapter.” 8 U.S.C. § 1252(g) (emphasis added); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999).

As this Court recognizes, this jurisdictional bar has been applied in the Western District of Texas and in the Fifth Circuit multiple times. *See* ECF No. 28 at 5 n.18.; *see also Leger v. Young*, 464 F. App’x 352, 353, 2012 WL 874560 at *1 (5th Cir. 2012) (citing *Humphries v. Various Fed. USINS Emps.*, 164 F.3d 936, 943 (5th Cir. 1999); *Idokogi v. Ashcroft*, 66 F. App’x. 526, 2003 WL 21018263 (5th Cir. 2003) (per curiam); *Fabuluje v. Immigration and Naturalization Agency*, 244 F.3d 133 (5th Cir. 2000); *Olya v. Garite*, EP-25-CV-00083-DCG, 2025 WL 890180 at *1 (W.D. Tex. Mar. 19, 2025) (citing *Moreira v. Mukasey*, 509 F.3d 709, 712 (5th Cir. 2007)).

These cases, along with the decisions this Court independently collected, support the government’s position that this Court lacks jurisdiction to provide the relief Petitioner seeks. Of the cases cited in this Court’s order, ECF No. 28 at 5, n. 18, only one involved a VWP entrant, but it is directly on point. *See Ba v. Holder*, No. 09-14645, 2009 WL 5171793 (E.D. Mich. Dec. 24, 2009). Like Mr. Sambissa, *Ba*, a VWP entrant who had overstayed his period of admission, asked the district court to enjoin his removal order during the district court litigation so that he could seek relief of his denied adjustment of status application without facing imminent removal. *Id.* at *2–3. The court, finding no jurisdiction, reasoned that “8 U.S.C. § 1252, *et seq.*, significantly narrowed the scope of judicial review [of] orders in immigration cases and *essentially stripped* district courts of jurisdiction over such cases.” *Id.* at 2.

The remaining cases this Court cites, despite not involving a VWP entrant, are nonetheless persuasive, because the plaintiffs in those cases sought the same relief: an order enjoining removal during the pendency of another matter. *See* ECF No. 28 at 5, n. 18. In *Star v. Sec’y of U.S. Dep’t*

of Homeland Sec., 4:19-CV-0053, 2021 WL 2908668 (W.D. Tex. Apr. 12, 2021), the petitioner was a lawful permanent resident who had been denied naturalization and served with an immigration detainer while serving a federal criminal sentence. *Id.* Star sought a preliminary injunction to prevent his removal while he pursued naturalization. *Id.* The Court found that § 1252(g) deprived the court of jurisdiction to stay or enjoin removal. *Id.*

In a different context, plaintiff siblings claiming U.S. citizenship through derivation or acquisition sought an order enjoining their removal while they pursued relief in the district court. *Flores v Hartnett*, No. 3:20-CV-00140, 2021 WL 196685 (W.D. Tex. Jan 19, 2021), *aff'd*, No. 21–50139, 2022 WL 101978 (5th Cir. Jan 10, 2022). The district court denied their request, citing § 1252(g). *Id.* The Fifth Circuit affirmed. *Id.*

Given the plethora of decisions finding consistently that § 1252(g) strips courts of jurisdiction to enjoin the government’s execution of a final order of removal, this Court should find the same. Section 1252(g) deprives this Court of providing Petitioner the relief she seeks, even if that relief is sought only for a limited time pending a final ruling on the Petition for Writ of Habeas Corpus.

B. To the Extent Petitioner Challenges the Constitutionality of Mr. Sambissa’s Removal Order, such a Claim Must Be Filed with the Circuit Courts of Appeals.

Even if Petitioner raises a colorable claim here regarding the constitutionality of Mr. Sambissa’s VWP removal order and his resulting decision, that claim must be brought in the circuit court in a petition for review. *See, e.g.*, 8 U.S.C. § 1252(a)(2)(D). The habeas petition in this case fails to allege any facial or as-applied challenge to the constitutionality of Mr. Sambissa’s final order of removal under the VWP. *See* ECF No. 1 ¶ 12. Indeed, Petitioner did not acknowledge the VWP or challenge any aspect of Mr. Sambissa’s removal process under the VWP until she filed her reply to Respondents’ opposition. *See* ECF No. 23 at 3–4. Even if Petitioner had otherwise

properly stated a constitutional challenge to the VWP, this Court lacks jurisdiction to review it, as it must be properly funneled to the Fifth Circuit. *See* 8 U.S.C. § 1252(b)(9).

Under § 1252(b)(9), “judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States” is only proper before the appropriate federal court of appeals in the form of a petition for review of a final removal order. *See Reno v. AAADC*, 525 U.S. at 483. Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of all [claims arising from deportation proceedings]” to a court of appeals in the first instance. *Id.*; *see also El Gamal v. Noem*, --- F.Supp.3d---, 2025 WL 1857593 at *5 (W.D. Tex. July 2, 2025) (collecting cases and finding that any challenge to ICE’s initial decision to detain the alien during removal proceedings is protected from judicial review in district court, because the alien must appeal any order of removal to the BIA and ultimately petition for judicial review of any relevant constitutional claims by the court of appeals); *Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)).

Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings:

Notwithstanding any other provision of law (statutory or nonstatutory), . . . 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 entered or issued under any provision of this chapter, except as provided in subsection (e) [concerning aliens not admitted to the United States].

8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that any issue—whether legal or factual—arising from any removal-related activity can be reviewed only through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *see id.* at 1035 (“§§ 1252(a)(5) and [(b)(9)] channel review of all claims,

including policies-and-practices challenges . . . whenever they ‘arise from’ removal proceedings”); accord *Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when the action is “unrelated to any removal action or proceeding” is it within the district court’s jurisdiction); cf. *Xiao Ji Chen v. U.S. Dep’t of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a “primary effect” of the REAL ID Act is to “limit all aliens to one bite of the apple” (internal quotation marks omitted)).

Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, § 1252(a)(2)(D) provides that “[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.” See also *Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) (“[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]”). The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and “receive their day in court.” *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); see also *Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns” by permitting judicial review of “nondiscretionary” BIA determinations and “all constitutional claims or questions of law.”). These provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. See *Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the “decision to detain [an alien] in the first place or to seek removal[.]”).

Here, Petitioner challenges in district court the government’s decision to detain him for the purpose of executing his removal order under the statutes governing the Visa Waiver Program. These actions, however, were taken specifically for the purpose of removing him from the United

States, and therefore, they must be challenged only in the court of appeals. *See* 8 U.S.C. § 1252(b)(9); *see also, e.g., Jennings*, 583 U.S. at 294–95.

Indeed, ICE gave Mr. Sambissa an opportunity to contest the VWP removal order within 48 hours of its issuance, but Mr. Sambissa declined to do so. *See* ECF No. 3 at 2–3. Had he taken that opportunity, he could have sought review through the Fifth Circuit. *See, e.g., Patel v. Barr*, No. CV–20–00229–PHX–DLR (DMF), 2022 WL 12688142 at *14–15 (D. Ariz. Sept. 9, 2020) (analyzing *Thuraissigiam*’s impact on the habeas claim of a VWP entrant). Refusing to sign the acknowledgment of service or otherwise waiving the right to contest that removal order does not restore jurisdiction in the district court under § 1252.

Indeed, the fact that Petitioner is challenging Mr. Sambissa’s initial detention here is enough to trigger § 1252(b)(9) because “detention is an ‘action taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. 318, 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). In other words, to the extent that Petitioner challenges the legality of the final order of removal under the VWP and resulting detention, those claims are properly raised only through the appropriate federal court of appeals. *See* 8 U.S.C. § 1252(b)(9); *see also* ECF No. 24 at 6 n. 4. Mr. Sambissa is lawfully detained with a final order of removal issued under the VWP, and this Court lacks jurisdiction to stay his removal order. *See* INA § 217, 8 U.S.C. § 1187.

C. The Suspension Clause Does Not Salvage Petitioner’s Claim.

In the supplemental brief, Petitioner argues that the jurisdiction-stripping authority of 8 U.S.C. §1252 would violate the Suspension Clause of the Constitution. *See* ECF No. 32 at 3–4. The Supreme Court in *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), however, addressed this exact argument in the context of an arriving alien seeking asylum and found no such violation:

... neither respondent nor his *amici* have shown that the writ of habeas corpus was understood at the time of the adoption of the Constitution to permit a petitioner to claim the right to enter or remain in a country or to obtain administrative review potentially leading to that result. The writ simply provided a means of contesting the lawfulness of restraint and securing release.

Id. at 117. There is a key distinction between the relief provided via habeas and the “collateral consequences of that relief.” *Id.* As the Supreme Court aptly noted, “release may enable a qualified surgeon to operate on a patient; a licensed architect may have the opportunity to design a bridge; and a qualified pilot may be able to fly a passenger jet.” *Id.* By contrast, “a writ of habeas could not be used to compel an applicant to be afforded those opportunities or as a means to obtain a license as a surgeon, architect, or pilot.” *Id.*

In other words, the only relief available to Mr. Sambissa via the Great Writ is that of release. Just as in *Thuraissigiam*, “without a change in status, he would remain subject to arrest, detention, and removal.” 591 U.S. at 118–119. Relief under habeas, therefore, provides no collateral relief or benefits to Mr. Sambissa, nor would it provide him with any permission to remain in the United States. Even if released, Mr. Sambissa remains subject to an administratively final order of removal; release alone does not render him eligible to remain in the United States:

...Petitioner has not shown that Mr. Sambissa is entitled to the issuance of an NTA, judicial review of his order of removal, the right to remain in the United States without lawful status, or the right to lawfully return to the United States within ten years of the execution of this removal order, despite his marriage to a United States citizen.

See ECF No. 24 at 5. The Suspension Clause, therefore, does not support Petitioner’s ultimate request for relief or salvage judicial review of this claim. *See also Patel v. Barr*, 2022 WL 12688142 at *13–15.

D. Conclusion

Petitioner's claims should be denied in their entirety. Mr. Sambissa is lawfully detained with a final order of removal, and this Court lacks jurisdiction to provide him the relief he is seeking.

Respectfully submitted,

Justin R. Simmons
United States Attorney

By: /s/ Lacy L. McAndrew

Lacy L. McAndrew
Assistant United States Attorney
Florida Bar No. 45507
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
(210) 384-7325 (phone)
(210) 384-7312 (fax)
lacy.mcandrew@usdoj.gov

Attorneys for Respondents

Certificate of Service

I certify that on September 22, 2025, I caused a copy of Respondents' Supplemental Brief to be mailed to Petitioners (*pro se*) at the following address:

Christopher Sambissa
ICE Processing Center
8915 Montana Ave
El Paso, TX 79925
PRO SE

Darla Palacio Sambissa



PRO SE

**Courtesy copy also sent by email to Mrs. Sambissa, by request.*

/s/ Lacy L. McAndrew
Lacy L. McAndrew
Assistant United States Attorney