United States District Court
Western District of Texas
El Paso Division

Leonel Navarro Rodriguez
Petitioner,

v.

U.S. Attorney General Pamela Bondi, *et al.*,
Respondents.

No. 3:25-CV-00420-LS

Response to Motion to Vacate Final Order of Removal

Petitioner, *pro se* and living outside the United States, filed his motion to vacate his final order of removal pursuant to Fed. R. Civ. Pro. 60(b)(1), (b)(4), and (b)(6), seeking declaratory relief, and termination of removal proceedings. ECF No. 1-1. The Court ordered Respondents to show cause by October 27, 2025, why this Court should not grant the relief[1] Petitioner seeks by filing an answer or other responsive pleading. ECF No. 8.

Petitioner seeks relief from this Court that is not available to him: a vacatur of his final order of removal. 8 U.S.C. § 1252(a)(5); *see also Rosales v. Bureau of ICE*, 426 F.3d 733, 735–36 (5th Cir. 2005). Though styled as a motion seeking relief from a judgment under Rule 60 of the Federal Rules of Civil Procedure, Petitioner seeks relief from the removal order itself, and is in substance, attacking the removal order. The INA precludes judicial review over this type of claim. *See also* 8 U.S.C. § 1252(g). Such relief can be sought only in the court of appeals through a properly filed petition for review. 8 U.S.C. § 1252(a)(5). Petitioner, however, waived his opportunity to seek judicial review and accepted a final order of removal. As such, this Court should deny Petitioner's claims for relief.

[1] Notably, the Order refers to Petitioner's filing as a request for relief under habeas, but nowhere in his pleadings does Petitioner request habeas relief or cite the habeas statute. *Id.* Indeed, as Petitioner is not in custody or even inside the United States, habeas corpus relief would provide him no remedy. *See* 28 U.S.C. § 2241.

A. Facts

Petitioner is a citizen of Mexico and former lawful permanent resident of the United States. ECF No. 1-8 at 8. After his 2021 conviction for conspiracy to import more than 50 grams of methamphetamine, he was placed in removal proceedings and charged as a person admitted to the United States subsequently convicted of an aggravated felony. ECF Nos. 1-8 at 8–11, 35–42; INA §§ 237(a)(2)(A)(iii); 8 U.S.C. § 1227(a)(2)(A)(iii). On December 12, 2023, an immigration judge denied Petitioner's application for deferral of removal under the Convention Against Torture and ordered Petitioner removed to Brazil, at Petitioner's designation, or in the alternative, to Mexico. ECF No. 1-8 at 162–64. On May 31, 2024, the Board of Immigration Appeals (Board) sustained Petitioner's appeal and remanded to the immigration judge. ECF No. 1-8 at 193–95. Upon remand, Petitioner withdrew all applications for relief and was ordered removed from the United States, making the order final upon issuance. ECF No. 1-8 at 232, 235. He was physically removed on September 20, 2024, ECF No. 1-8 at 238.

B. Argument

This Court lacks jurisdiction under the REAL ID Act of 2005 to review a final order of removal. 8 U.S.C. § 1252(a)(5); *see also Rosales*, 426 F.3d at 735–36. A petition for review filed with an appropriate court of appeals… [is] the sole and exclusive means for judicial review of an order of removal…" 8 U.S.C. § 1252(a)(5); *see also Amaya v U.S. Immigration and Customs Enforcement*, 383 F. App'x. 419, 420, 2010 WL 2546069 at *1 (5th Cir. 2010) (dismissing the appeal of a denial of a Rule 60(b)(4) motion, which essentially was an attack on the removal order.)

Additionally, this Court cannot review Petitioner's enumerated challenges, as, "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute

removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). Section 1252(g) applies, "to three discrete actions that the Attorney General may take: [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original).

In his pleadings Petitioner challenges multiple aspects of his immigration case, such as whether the Notice to Appear (NTA) vested jurisdiction with the immigration court, whether ICE met its burden in establishing Petitioner was convicted of an aggravated felony, and whether the immigration judge appropriately ruled on various evidentiary matters. ECF No. 1-1 at 12–20. Petitioner may obtain judicial review of these challenges; however, a court of appeals is the only court that may exercise such judicial review. *Morales v. Thaler*, No. EP–12–CV–409–PRM, 2013 WL 8476168 (W.D. Tex. July 1, 2013) (declining to review Morales's challenges to his removal order through a R. 60(b) motion). Petitioner's motion should be denied.

Even if this Court were to give Petitioner the benefit of the doubt due to his *pro se* status and consider this claim to be properly lodged under the habeas statute, Petitioner does not satisfy the "in custody" requirement for a writ of habeas corpus. A petitioner who has already been removed from the U.S. at the time a petition is filed is "not subject to restraints not shared by the public generally that significantly confine and restrain freedom. [Such a petitioner] is subject to no greater restrain than any other non-citizen living outside American borders." *Villela v. Hinojosa*, 730 F.Supp.2d 624 (W.D. Tex. El Paso 2010) (citing *Kumarasamy v Att'y Gen. of the United States*, 453 F.3d 169, 173 (3d Cir. 2006); *see e.g. Zolicoffer v. United States*, 315 F.3d 538, 540 (5th Cir. 2003); *Rosales*, 426 F.3d at 733. Petitioner's motion, even if it rests in habeas, should be denied as a matter of law.

C. Conclusion

This Court should deny Petitioner's motion as § 1252(a)(5) vests judicial review of any final order of removal with the Court of Appeals, not the District Court. Respondents respectfully request this Court deny Petitioner's motion and dismiss this case in its entirety without further review.

Respectfully submitted,

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Certificate of Service

On October 27, 2025, I caused a copy of this filing to be served by mail on Petitioner, *pro se*, at the following address:

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/s/ Anne Marie Cordova
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