


**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

MUHAMMAD ZAHID CHAUDHRY,  
Petitioner,

v.

PAMELA BONDI,  
Attorney General,  
Respondent.

Nos. 20-70877 & 21-1160

Agency No. 

\*DETAINED\*

**RESPONDENT'S OPPOSITION  
TO PETITIONER'S  
EMERGENCY MOTION FOR  
RELEASE PENDING DECISION**

Respondent, through undersigned counsel, opposes Petitioner Muhammad Zahid Chaudhry's emergency motion for release from custody pending decision on appeal. *See* ECF 95 ("Mot.").<sup>1</sup>

**ARGUMENT**

**The Court should deny Chaudhry's emergency motion for release pending decision on appeal because it is without jurisdiction to order Chaudhry's release.**

This Court should deny Chaudhry's emergency motion for release from custody pending appeal because it does not have authority to order his release. *See* ECF 95. The Immigration and Nationality Act ("INA") limits the Court's review to the adjudication of Chaudhry's challenge to his final order of removal. *See* 8 U.S.C.

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<sup>1</sup> All docket citations are to case number 20-70877 unless otherwise indicated.

§ 1252(a)(1). Consistent with the INA, this Court has repeatedly recognized that detention challenges should be brought in federal district court through a petition for writ of habeas corpus under 28 U.S.C. § 2241. *See, e.g., Singh v. Holder*, 638 F.3d 1196, 1211 (9th Cir. 2011) (“We must be careful to maintain the distinction Congress made in the REAL ID Act between those challenges that must be directed to the court of appeals in a petition for review and those that must be retained in and decided by the district court, so as not to unduly circumscribe district courts’ habeas jurisdiction.”). Accordingly, challenges to an alien’s detention must be raised in a habeas petition under 28 U.S.C. § 2241, and not as part of a petition for review.

By statute, this Court’s jurisdiction in immigration cases is limited to review of “final orders of removal.” 8 U.S.C. § 1252(a)(1); *see Alcala v. Holder*, 563 F.3d 1009, 1013 (9th Cir. 2009) (“The carefully crafted congressional scheme governing review of decisions of the [Board] limits this court’s jurisdiction to the review of final orders of removal.”); *see also Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978) (“The limits upon federal jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded.”). This Court’s jurisdiction on a petition for review does not extend to matters of custody, to granting release on recognizance or bond, or to ordering a bond hearing. *See Aguilar-Ramos v. Holder*, 594 F.3d 701, 704 n.3 (9th Cir. 2010); *see also Singh*, 638 F.3d at 1211; *Joseph v. Holder*, 600 F.3d 1235, 1241 (9th Cir. 2010) (stating

that a bond hearing is a “distinctly separate proceeding[]” from a removal hearing); *Cole v. Holder*, 659 F.3d 762, 769, n.7 (9th Cir. 2011) (“encourag[ing]” petitioner “to challenge his detention by filing a habeas petition”). In *Aguilar-Ramos*, this Court accordingly rejected a petitioner’s request to order a bond hearing, explaining that it was “not convinced” that it has “authority to *sua sponte* release ... or to order a bond hearing in a petition for review.” 594 F.3d at 704 n.3. The Court instead encouraged the alien to challenge his detention “by filing a habeas petition pursuant to 28 U.S.C. § 2241 or by requesting a bond hearing” from an immigration judge. *Id.* 212-857-8572

The Court also does not have authority under the All Writs Act (“AWA”) to order release. The AWA only allows federal courts to “issue all writs necessary or appropriate *in aid of* their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a) (emphasis added). As this language makes clear, the AWA confines courts “to issuing process ‘in aid of’ [their] *existing* statutory jurisdiction; the Act does not enlarge that jurisdiction.” *Clinton v. Goldsmith*, 526 U.S. 529, 534-35 (1999) (emphasis added); *see also Jackson v. Vasquez*, 1 F.3d 885, 889 (9th Cir. 1993) (“An order is not authorized under the [AWA] unless it is designed to preserve jurisdiction that the court has acquired from some other independent source in law.”). The Court’s release order would not “aid” its limited jurisdiction to adjudicate Chaudhry’s consolidated petitions. The Court

thus lacks authority to order release under 28 U.S.C. § 1651(a) because the order is contrary to the Court's limited jurisdiction in adjudicating petitions for review under 8 U.S.C. § 1252. And Chaudhry's detention status has no bearing on the Court's authority to resolve the issues raised in the current consolidated petitions. Consequently, an order directing release cannot be in aid of its authority under the INA. *See Pennsylvania Bureau of Correction v. U.S. Marshals Serv.*, 474 U.S. 34, 43 (1985) ("Where a statute specifically addresses the particular issue at hand, it is that authority, and not the [AWA], that is controlling," and the AWA "does not authorize [courts] to issue ad hoc writs whenever compliance with statutory procedures appears inconvenient or less appropriate.").

Moreover, relief under the AWA is inappropriate when the moving party has an adequate alternative remedy, *Clinton*, 526 U.S. at 537-38, which Chaudhry has here. This Court has repeatedly stressed that the proper avenue for challenging an alien's detention is through a habeas petition. *See, e.g., Singh*, 638 F.3d at 1211 (re-iterating the "general rule" that "aliens may continue to bring collateral legal challenges to the Attorney General's detention authority through a petition for habeas corpus") (cleaned up); *Lopez-Marroquin v. Barr*, 955 F.3d 759, 759-60 (9th Cir. 2020) (recognizing that district courts retain jurisdiction under 28 U.S.C. § 2241 to consider habeas challenges to immigration detention that are sufficiently independent of the merits of the removal order, construing the alien's motion as a

petition for a writ of habeas corpus, and transferring it to the Southern District of California). Chaudhry should have pursued—and may still pursue—habeas relief, if he wishes to challenge his detention.

In *Lopez-Marroquin*, because district courts retain jurisdiction under 28 U.S.C. § 2241 to consider habeas challenges to immigration detention that are sufficiently independent of the merits of the removal order, this Court construed Lopez-Marroquin’s emergency motion to remand pursuant to the All Writs Act as a petition for a writ of habeas corpus, and transferred it to the Southern District of California. 955 F.3d at 759-60. But *Lopez-Marroquin* is distinguishable in two regards.

First, unlike Lopez-Marroquin, Chaudhry flatly asserts that “[f]iling a habeas petition would be duplicative and contrary to judicial economy,” and claims that this Court has “[e]xclusive jurisdiction over challenges to final removal orders and related detention.” Mot. at 16. *But see Lopez-Marroquin*, 955 F.3d at 762 (Callahan, J., dissenting) (noting that alien suggested in the reply brief that this Court construe his motion as a habeas petition and transfer it to the district court, which the majority had the authority to do). Because Chaudhry is thus asking this Court to order his release—even though this Court’s jurisdiction is limited under 8 U.S.C. § 1252(a)(1)—this Court does not have authority to order his release, and nothing in the INA extends that authority.

Second, because Chaudhry’s claim is not at “the core of habeas corpus,” it should not be construed as a habeas petition. *Pinson v. Carvajal*, 69 F.4th 1059, 1069 (9th Cir. 2023), *cert. denied sub nom. Sands v. Bradley*, 144 S. Ct. 1382 (2024). This Court’s decision in *Pinson v. Carvajal* solidified the rule that a habeas claim is one challenging the fact of confinement, rather than the conditions of confinement. 69 F.4th at 1072-73. There, two inmates sought habeas relief, arguing that the conditions of their incarceration during the COVID-19 pandemic violated the Eighth Amendment. *Id.* at 1062. This Court rejected claimant Sands’ argument that only habeas relief could ameliorate the harm inflicted on him by the Government’s ongoing failure to sufficiently treat his underlying illnesses and protect him from exposure to the coronavirus. *Id.* at 1063, 1065-66, 1075. In so doing, the Court affirmed the district court’s dismissal of Sands’ habeas petition for lack of jurisdiction, delineating that “the relevant question is whether, based on the allegations in the petition, release is *legally required* irrespective of the relief requested.” *Id.* at 1072. In dismissing the petition, this Court concluded that Sands challenged only the conditions of his confinement and not the underlying legal basis for that confinement, and therefore his claim was “outside the core of habeas.” *Id.* at 1073. Consequently, pursuant to *Pinson*, an individual’s claim is at “the core of habeas corpus” if it “(1) goes directly to the constitutionality of the physical confinement itself and (2) seeks either immediate release from that confinement or

the shortening of its duration.” *Id.* at 1069 (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973)) (cleaned up); *see also Doe v. Garland*, 109 F.4th 1188, 1194 (9th Cir. 2024) (reiterating *Pinson*’s holding).

Here, Chaudhry’s emergency motion appears to challenge only the conditions of his confinement, and not the legality of his detention. *See, e.g.*, Mot. at 2 (“Mr. Chaudhry’s detention has cut him off from critical, authorized medical care for **thyroid eye disease (TED)**”), 9 (“Every day of continued detention worsens his condition and increases the risk of irreversible blindness.”). Nowhere in the emergency motion does Chaudhry argue that the Department of Homeland Security lacks authority to detain him, or that his detention is otherwise unlawful. *See generally* Mot. The fact that Chaudhry is seeking immediate release is insufficient to invoke habeas jurisdiction. *See Pinson*, 69 F.4th at 1072-73 (“[A] successful claim sounding in habeas necessarily results in release, but a claim seeking release does not necessarily sound in habeas.”). Rather, Chaudhry must show that his detention is without legal authorization, but he has not alleged, let alone argued, that his detention is unlawful. *See id.* at 1070; *see, e.g., Luedtke v. Ciolli*, No. 21-15670, 2023 WL 6060605, at \*1 (9th Cir. Sept. 18, 2023) (unpub.) (affirming dismissal of a habeas petition where the claimant’s allegations were that his medical conditions require his immediate release from confinement).

Indeed, Chaudhry makes no attempt to challenge “the legality or duration of confinement,” *Pinson*, 69 F.4th at 1065; instead, he requests release based on alleged delayed or inadequate medical treatment, *see* Mot. at 9-10. His claim is thus “a garden-variety Eighth Amendment claim based on the deliberate failure to deliver adequate medical care, which is a standard civil rights claim.” *Pinson*, 69 F.4th at 1073 (citing *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 78 (2001) (Stevens, J., dissenting) (explaining that Eighth Amendment claims based on inadequate medical care “fall[] in the heartland of substantive *Bivens* claims”); *Estelle v. Gamble*, 429 U.S. 97, 105 (1976) (“Regardless of how evidenced, deliberate indifference to a prisoner’s serious illness or injury states a cause of action under § 1983.”)); *see Cutsinger v. Ducharme*, 944 F.2d 908 (9th Cir. 1991) (“A challenge to conditions of confinement should be presented in a section 1983 lawsuit rather than in a habeas corpus petition.”) (citing *Crawford v. Bell*, 599 F.2d 890, 891–92 (9th Cir. 1979). Although the Supreme Court has left open the question of whether there are circumstances when a challenge to the conditions of confinement is properly brought in a habeas petition, Chaudhry’s claim ultimately “neither goes to the fact of [his] confinement nor would require immediate release if successful,” so “it is outside the core of habeas.” *Pinson*, 69 F.4th at 1073; *see Ziglar v. Abbasi*, 582 U.S. 120, 144-45 (2017) (“[W]e leave to another day the question of the propriety of using a writ of habeas corpus to obtain review of the conditions of confinement, as distinct

from the fact or length of confinement.”) (quoting *Bell v. Wolfish*, 441 U.S. 520, 526, n.6 (1979)); see, e.g., *Dinkins v. United States*, No. 22-56089, 2024 WL 1253789, at \*1 (9th Cir. Mar. 25, 2024) (unpub.) (applying *Pinson* and concluding that an incarcerated petitioner cannot challenge the conditions of his confinement through a habeas petition filed under 28 U.S.C. § 2241); *Grigsby v. Gutierrez*, No. 22-16734, 2024 WL 811024, at \*1 (9th Cir. Feb. 27, 2024) (unpub.) (same). This Court should thus deny the emergency motion, instead of construing it as a habeas petition.

In short, given the limits on this Court’s jurisdiction—as recognized in this Court’s binding precedential decisions—the Court is limited to addressing the issues raised in these consolidated petitions for review and should allow the Secretary of the Department of Homeland Security to address any detention issues. In the event that Chaudhry is not satisfied with the outcome of the administrative process, his challenge may be resolved through a habeas petition filed in his district of confinement. See *Aguilar-Ramos*, 594 F.3d at 704 n.3; see also *Rumsfeld v. Padilla*, 542 U.S. 425, 443 (2004) (“The plain language of the habeas statute ... confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement.”). And Chaudhry’s claim relating to his conditions of confinement may be resolved through a civil rights action. See *Pinson*, 69 F.4th at 1073.

**CONCLUSION**

The Court should accordingly deny Chaudhry's emergency motion for release.

Respectfully submitted,

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November 20, 2025

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**CERTIFICATE OF COMPLIANCE**

Under Federal Rule of Appellate Procedure 27(d) and Ninth Circuit Rule 27-1, I certify that the text of the foregoing is in double spaced, proportionally spaced 14-point Times New Roman type, and contains 2120 words.


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**CERTIFICATE OF SERVICE**

I certify that on November 20, 2025, I filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate ACMS system. Petitioner is not a registered ACMS user and will instead be served by United States mail at the following addresses:

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