

Chief District Judge David G. Estudillo

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LILIA ALVARADO,

Petitioner,

v.

LAURA HERMOSILLO, *et al.*,

Respondents.

Case No. 2:25-cv-02374-DGE

FEDERAL RESPONDENTS'¹ RETURN

Noted for Consideration:
January 29, 2026

I. INTRODUCTION

This Court should deny Petitioner Lilia Alvarado's petition for a writ of habeas corpus. Dkt. No. 1 ("Pet." or "Petition"). Petitioner has been subject to an *in absentia* removal order since 1996. U.S. Immigration and Customs Enforcement ("ICE") detained Petitioner in September 2025 pursuant to 8 U.S.C. § 1231(a) for the purposes of her removal to Mexico. That same month, Petitioner filed a motion to reopen her removal proceedings with the Board of Immigration Appeals ("BIA"). This motion is still pending. Petitioner asks this Court to stay her removal pending her motion to reopen her removal proceedings. However, this Court lacks jurisdiction to

¹ Respondent Bruce Scott is not a federal employee and is not represented by undersigned counsel.

1 review ICE's decision to execute Petitioner's removal order. *Rauda v. Jennings*, 55 F.4th 773,
2 778 (9th Cir. 2022) (holding Section 1252(g) barred plaintiff's claim seeking a temporary stay of
3 removal while he pursued a motion to reopen his immigration proceedings). Even if removed,
4 Petitioner may continue to litigate her motion to reopen from Mexico. *Id.*, at 781. To the extent
5 that Petitioner challenges her removal order, the appropriate forum to raise that claim is through
6 the administrative process or the Ninth Circuit – not this Court. 8 U.S.C. §§ 1252(b)(9), (a)(5),
7 (g).

8 Petitioner further claims that he is being denied a reasonable fear interview prior to
9 removal. But ICE has contacted U.S. Citizenship and Immigration Services ("USCIS") to arrange
10 a reasonable fear interview. Thus, this claim is moot. *Feldman v. Bomar*, 518 F.3d 637, 642 (9th
11 Cir. 2008).

12 II. FACTUAL BACKGROUND

13 Petitioner is a native and citizen of Mexico who entered the United States without
14 inspection or parole. Lambert Decl., [REDACTED]. In 1996, Petitioner was served with an
15 Order to Show Cause, placing her into removal proceedings. Lambert Decl., [REDACTED]
16 Cause. On August 19, 1996, an immigration judge ordered Petitioner removed *in absentia*.
17 Lambert Decl., [REDACTED].

18 In 2020, USCIS approved the Form I-130, Petition for Alien Relative, filed on Petitioner's
19 behalf by her daughter. Dkt. No. 1-3. USCIS denied Petitioner's Form I-485, Application to
20 Register Permanent Resident or Adjust Status, based on lack of jurisdiction due to her removal
21 order. Lambert Decl., [REDACTED].

22 ICE denied Petitioner's request for stay of removal in August 2025. Lambert Decl., [REDACTED]
23 [REDACTED]. On September 5, 2025, ICE detained Petitioner when she appeared at the Yakima
24

1 ICE office. Lambert Decl., Ex. A. She is detained at the Northwest ICE Processing Center pending
2 her removal.

3 Petitioner has informed ICE that she fears removal to Mexico. Soraghan Decl., ¶ 6.
4 Petitioner's counsel has contacted ICE about a reasonable fear interview. *Id.*, ¶¶ 7, 10. Initially,
5 USCIS informed ICE that Petitioner could not be referred for a fear interview until after the BIA
6 decided her pending motion to reopen. *Id.*, ¶ 11. But after reviewing the procedural history of the
7 case, USCIS stated that it would have jurisdiction over a credible fear referral and interview. *Id.*,
8 ¶ 14. On December 29, 2025, ICE contacted USCIS for Petitioner's reasonable fear interview.
9 *Id.*, ¶ 15.

10 III. LEGAL STANDARD

11 "The district courts of the United States ... are courts of limited jurisdiction. They possess
12 only that power authorized by Constitution and statute." *Exxon Mobil Corp. v. Allopah Servs.,*
13 *Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been
14 tightly regulated by statute, from the Judiciary Act of 1789 to the present day." *Dep't of Homeland*
15 *Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n. 20 (2020). Title 28 U.S.C. § 2241 provides district
16 courts with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas corpus, the
17 burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws,
18 or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943,
19 969 n.16 (9th Cir. 2004).

20 IV. ARGUMENT

21 A. Petitioner is lawfully detained pending his removal.

22 The Immigration and Nationality Act ("INA") governs the detention and release of
23 noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594
24 U.S. 523, 527 (2021). The general detention periods are generally referred to as "pre-order"

(meaning before the entry of a final order of removal) and, relevant here, “post-order” (meaning after the entry of a final order of removal). *Compare* 8 U.S.C. § 1226 (authorizing pre-order detention) *with* § 1231(a) (authorizing post-order detention).

When a final order of removal has been entered, a noncitizen enters a 90-day “removal period.” 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security “shall remove the [noncitizen] from the United States.” *Id.* To ensure a noncitizen’s presence for removal and to protect the community from noncitizens who may present a danger, Congress has mandated detention while removal is being effectuated. 8 U.S.C. § 1231(a)(2). During the removal period, ICE² is charged with attempting to effect removal of a noncitizen from the United States. 8 U.S.C. § 1231(a)(1).

Section 1231(a)(6) authorizes ICE to continue detention of noncitizens after the expiration of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention and does not place any temporal limit on the length of detention under that provision. 8 U.S.C. § 1231(a)(6). Although there is no statutory time limit on detention pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be detained only “for a period reasonably necessary to bring about that [noncitizen’s] removal from the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). The Supreme Court has further identified six months as a presumptively reasonable time to bring about a noncitizen’s removal. *Id.*, at 701.

Petitioner is subject to a final *in absentia* order of removal. In the Ninth Circuit, removal orders issued *in absentia* become final upon the earlier of (i) the 180-day period to file a motion to reopen expires, or (ii), the BIA affirms the order. *Cui v. Garland*, 13 F.4th 991, 996 (9th Cir. 2021). Petitioner asserts that she filed a motion to reopen with the BIA in September. Dkt. No.

² Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security’s authority to execute removal orders.

1 1-4. But her *in absentia* removal order remains operative unless her proceedings are reopened and
2 the removal order terminated.

3 Thus, her detention is lawful pursuant to 8 U.S.C. § 1231(a).

4 **B. This Court lacks subject-matter jurisdiction over Petitioner's claims.**

5 The INA bars review of Petitioner's claims concerning her removal and removal order. 8
6 U.S.C. § 1252(g). Petitioner asks this Court to enjoin her removal from the United States while
7 she seeks to reopen his removal proceedings. This claim directly arises from the government's
8 decision to execute her removal order. Congress has spoken clearly, emphatically, and repeatedly,
9 providing that "no court" has jurisdiction over "any cause or claim" arising from the execution of
10 removal orders, "notwithstanding any other provision of law," whether "statutory or nonstatutory,"
11 including habeas, mandamus, or the All Writs Act. 8 U.S.C. § 1252(g).

12 In the exercise of its constitutional power to define federal court jurisdiction, in 1996,
13 Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"),
14 which repealed the existing scheme for judicial review of final orders of deportation and replaced
15 it with a more restrictive scheme. *See Reno v. American-Arab Anti-Discrimination Committee*
16 (*"AADC"*), 525 U.S. 471, 474 (1999). Among the IIRIRA amendments to the INA, Congress
17 provided in the newly-enacted Section 1252(g) that:

18 Except as provided in this section and notwithstanding any other provision of law,
19 no court shall have jurisdiction to hear any cause or claim by or on behalf of any
20 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 Act.

21 8 U.S.C. § 1252(g) (1996). In the 2005 REAL ID Act, Congress amended Section 1252(g) to
22 clarify that the statute's proscription against jurisdiction does in fact apply to habeas and
23 mandamus actions. *See* REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 310-11

1 (amending 8 U.S.C. § 1252(g)). As amended by the REAL ID Act, Section 1252(g), now provides
2 that:

3 Except as provided in this section and notwithstanding any other provision of law,
4 (*statutory or nonstatutory*), including section 2241 of Title 28, or any other habeas
5 corpus provision, and sections 1361 and 1651 of such title, no court shall have
6 jurisdiction to hear any cause or claim by or on behalf of any alien arising from the
7 decision or action by the Attorney General to commence proceedings, adjudicate
8 cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g) (2017) (emphasis added).

9 In *AADC*, the Supreme Court held that Section 1252(g) precludes judicial review of three
10 discrete actions that DHS may take: the “‘decision or action’ to ‘commence proceedings,
11 *adjudicate* cases, or *execute* removal orders.’” 525 U.S. at 482 (original emphasis). With a valid
12 order of removal, any request for this Court to enjoin Petitioner’s removal falls directly within one
13 of the discrete actions precluded from judicial review.

14 Numerous courts of appeals, including the Ninth Circuit, have consistently held that claims
15 seeking a stay of removal – even temporarily to assert other claims to relief – are barred by Section
16 1252(g). See *Rauda*, 55 F.4th at 778; *Camarena v. Dir., ICE*, 988 F.3d 1268, 1274 (11th Cir.
17 2021) (“[W]e do not have jurisdiction to consider ‘any’ cause or claim brought by an alien arising
18 from the government’s decision to execute a removal order. If we held otherwise, any petitioner
19 could frame his or her claim as an attack on the government’s authority to execute a removal order
20 rather than its execution of a removal order.”); *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir.
21 2021) (rejecting plaintiff’s argument that jurisdiction remained because petitioner was challenging
22 DHS’s “legal authority” as opposed to its “discretionary decisions”); *Tazu v. Att’y Gen. U.S.*, 975
23 F.3d 292, 297 (3d Cir. 2020) (observing that “the discretion to decide whether to execute a removal
24 order includes the discretion to decide when to do it” and that “[b]oth are covered by the statute”) (emphasis in original); *Hamama v. Adducci*, 912 F.3d 869, 874-77 (6th Cir. 2018) (vacating district

1 court's injunction staying removal, concluding that Section 1252(g) stripped district court of
2 jurisdiction over removal-based claims and remanding with instructions to dismiss those claims);
3 *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (Section 1252(g) applies to constitutional
4 claims arising from the execution of a final order of removal, and language barring "any cause or
5 claim" made it "unnecessary for Congress to enumerate every possible cause or claim").

6 Section 1252(g)'s jurisdiction stripping provision does not violate the Suspension Clause
7 here. Petitioner is not seeking habeas relief for unlawful detention; she seeks to remain in the
8 United States. Thus, her claims are outside the scope of habeas relief. *Thuraissigiam*, 591 U.S. at
9 118. Petitioner "is not using habeas in anything like the traditional sense, and therefore, as the
10 Supreme Court held in *Thuraissigiam*, the relevant statute limiting habeas review does not violate
11 the Suspension Clause." *Rauda*, 55 F.4th at 780.

12 Even if Section 1252(g) did not bar review, Sections 1252(a)(5) and 1252(b)(9) strip this
13 Court of jurisdiction over claims challenging Petitioner's removal order. By law, "the sole and
14 exclusive means for judicial review of an order of removal" is a "petition for review filed with an
15 appropriate court of appeals," that is, "the court of appeals for the judicial circuit in which the
16 immigration judge completed the proceedings." 8 U.S.C. §§ 1252(a)(5), (b)(2). The statute
17 explicitly excludes review via "section 2241 of Title 28, or any other habeas corpus provision." 8
18 U.S.C. § 1252(a)(5). Section 1252(b)(9) then eliminates this Court's jurisdiction over Petitioner's
19 claims by channeling "all questions of law and fact, including interpretation and application of
20 constitutional and statutory provisions, arising from any action taken or proceeding brought to
21 remove an alien" to the courts of appeals. 8 U.S.C. § 1252(b)(9). Again, the law is clear that "no
22 court shall have jurisdiction, by habeas corpus" or other means. *Id.*

23 While claims "collateral to, or independent of" the removal process are still subject to
24 habeas review, "[w]hen a claim by an alien, however it is framed, challenges the procedure and

1 substance of an agency determination that is ‘inextricably linked’ to the order of removal, it is
2 prohibited by section 1252(a)(5).” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016). It is
3 not possible to meaningfully divorce the issues presented here, which all center on Petitioner’s
4 challenge to the removal order and the availability of any applications for relief from removal,
5 from the removal proceeding itself. And while this leaves this Court without jurisdiction, it does
6 not leave Petitioner without an opportunity for redress. It only means that Congress intended such
7 concerns to flow directly to the appropriate administrative body or court of appeals. Thus, there
8 are at least two other tribunals –the BIA and the Court of Appeals – that have the potential to
9 address the issues Petitioner raises here. Litigation before this Court, and before the issues have
10 been addressed in the natural course of administrative and appellate litigation, would be precisely
11 the sort of “piecemeal” adjudication Congress sought to avoid when it removed such issues from
12 the district courts’ jurisdiction. *Aguilar v. U.S. Immigr. & Cust. Enf.*, 510 F.3d 1, 9 (1st Cir. 2007)
13 (“Such claim-splitting – pursuing selected arguments in the district court and leaving others for
14 adjudication in the immigration court – heralds an obvious loss of efficiency and bifurcation of
15 review mechanisms”) (citing *H.R. Rep* No. 109-72, at 174, reprinted in 2005 U.S.C.C.A.N. at 299).

16 Petitioner’s claims constitute a direct challenge to part of the process by which her
17 removability will be determined and thus must proceed through the administrative process and, if
18 a challenge to that process still exists, such a claim must be heard by the Ninth Circuit Court of
19 Appeals. *Olivera-Julio v. Asher*, No. C14-1312-RSM, 2014 WL 6387351, at *3 (W.D. Wash.
20 Nov. 14, 2014) (finding no jurisdiction to consider the petitioner’s claims concerning staying his
21 removal so that he can seek reconsideration of his *in absentia* removal order “because they directly
22 implicate the validity and execution of his removal order”).

23 V. CONCLUSION

24 For these reasons, this Court should deny the Petition

1 DATED this 30th day of December, 2025.

2 Respectfully submitted,

3 CHARLES NEIL FLOYD
4 United States Attorney

s/ Michelle R. Lambert

5 MICHELLE R. LAMBERT, NYS #4666657
6 Assistant United States Attorney
7 United States Attorney's Office
8 Western District of Washington
9 1201 Pacific Ave., Ste. 700
Tacoma, WA 98402
Phone: (253) 428-3824
Fax: (253) 428-3826
Email: michelle.lambert@usdoj.gov

10 *Attorneys for Federal Respondents*

11 *I certify that this memorandum contains 2,374*
12 *words, in compliance with the Local Civil Rules.*