

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Civil No. 0:25-cv-04720-SRN-LIB

WALTER ACUNA CRUZ,

Petitioner,

v.

PETER B. BERG, *et al.*,

Respondents.

**FEDERAL RESPONDENTS'  
CONSOLIDATED OPPOSITION TO  
PETITIONER'S MOTION TO  
AMEND AND RESPONSE TO  
PETITION FOR  
WRIT OF HABEAS CORPUS**

Pursuant to the order entered on January 25, 2026, the Federal Respondents are filing a consolidated response to Petitioner Walter Acuna Cruz's Motion to Amend and the issues raised in Acuna Cruz's initial petition and amended petition. The Court should deny Acuna Cruz's motion to amend as futile and dismiss this case for lack of subject matter jurisdiction because it was filed in the wrong district. Failing dismissal on venue-related grounds, the Court should deny Acuna Cruz's petition because he is not entitled to *habeas* relief. Although Acuna Cruz is framing this case as a challenge to his "removability" rather than a direct challenge to the removal order himself, that claim is not cognizable in habeas. Furthermore, Congress has stripped federal district courts of jurisdiction to review challenges to removal orders. Acuna Cruz needs to present his claims to the immigration court, then to the Board of Immigration Appeals ("BIA"), and then to the Eighth Circuit.

**BACKGROUND**

The issues in Acuna Cruz's petition have been litigated before. The Federal Respondents therefore draw the following background facts from Acuna Cruz's prior habeas petitions (specifically, the filings and orders in those habeas actions). The Federal

Respondents will refer to Acuna Cruz's first habeas action—*Cruz v. Berg*, No. 25-cv-1915-PAM-LIB (D. Minn. filed April 30, 2025)—as “*Acuna Cruz I*,” and to his second habeas action—*Walter A. v. Berg*, No. 25-cv-4376-PJS-DLM (D. Minn. filed November 19, 2025)—as “*Acuna Cruz II*.” For the Court's convenience, the Federal Respondents are re-filing onto the docket in this case the two declarations and supporting exhibits that the government filed in *Acuna Cruz I*.

### **I. Acuna Cruz's Relevant Background and Criminal History**

Acuna Cruz is a citizen and national of Guatemala who entered the United States at an unknown time and location without inspection or parole. Declaration of Deportation Officer William J. Robinson (“Robinson Decl.”) ¶ 4.

On June 11, 2023, Acuna Cruz was arrested by the police officers in Sioux Falls, South Dakota and charged with a DWI, among other offenses. *Id.* ¶ 5; *see also* Declaration of Liles Repp (“Repp Decl.”), Ex. A, at 8. He pled guilty a few months later and was sentenced to 180 days jail. Robinson Decl. ¶ 5; Repp Decl. Ex. A, at 7. However, the state court suspended his sentence, imposing numerous conditions, including no further alcohol related traffic offenses and completion of the Alive at 25 Program. Robinson Decl. ¶ 5.

Less than six months later, on April 10, 2024, Acuna Cruz was arrested by the South Dakota Highway Patrol and charged with another alcohol-related driving offenses in a seven-count criminal complaint that included charges of DWI 2nd, Reckless Driving, and Speeding. Repp Decl. Ex. A, at 2-3. The criminal complaint alleged that Acuna Cruz was driving 100 miles per hour in a 65-mile-per-hour zone and failed to drive within his lane, *id.* at 3, all while having a blood alcohol concentration of 0.121%, *id.* at 5.

ICE agents encountered Acuna Cruz upon his release from custody at Minnehaha County Jail in South Dakota, in June 2024. Robinson Decl. ¶ 7. He was arrested pursuant to a Warrant for Arrest of Alien (I-200) and issued him a Notice to Appear (Form I-862), charging him under 212 (a)(6)(A)(i) of the Immigration and Nationality Act (“INA”) for being an alien present in the United States without being admitted or paroled, or who arrived at a time or place other than as designated by the Attorney General, thereby initiating Petitioner’s removal proceedings. Robinson Decl. ¶¶ 7-8; Repp Decl. Ex. B.

## **II. Acuna Cruz’s Removal Proceedings**

Although Acuna Cruz conceded the charges of inadmissibility against him in the Notice to Appear, Repp Decl. Ex. C at 1, his removal proceedings were—and continue to be—heavily litigated at the administrative level. Acuna Cruz has also submitted several applications for relief with United States Citizenship and Immigration Services (“USCIS”), including a Form I-589 application for an unaccompanied minor, an I-360 Special Immigrant Juvenile Status (“SIJS”) petition, and a T Visa Petition. Repp Decl. Ex. D.

Acuna Cruz filed a legal brief with his personal affidavit and therapy records attached on October 1, 2024, and shortly thereafter filed the first of four motions to terminate removal proceedings on October 7, 2024. The first motion to terminate was denied in a written order on October 9, 2024. Robinson Decl. ¶¶ 11-12; Repp Decl. Ex. C. Acuna Cruz filed a second motion to terminate that same day. Robinson Decl. ¶ 13.

On October 15, Acuna Cruz Petitioner filed a motion to withdraw and amend pleadings, to which the Department of Homeland Security (“DHS”) filed an opposition. *Id.* ¶ 14. The immigration judge denied Acuna Cruz’s motion on October 31, 2024. *Id.* ¶ 17.

On December 10, 2024, Acuna Cruz moved for a third time to terminate removal proceedings, asserting his purported eligibility for a T Visa and a SIJS. *Id.* ¶ 20. DHS objected, and the immigration judge denied the third Motion to Terminate Removal Proceedings on January 8, 2025. *Id.*

On February 19, 2025, Acuna Cruz filed a *fourth* motion to terminate. *Id.* ¶ 22. Following briefing that included an opposition, a response, and sur-reply, the immigration judge issued a written decision on February 21, 2025, *see* Repp Decl. Ex. D, terminating removal proceedings without prejudice. Robinson Decl. ¶ 23.

On March 4, 2025, DHS timely appealed the Decision to the Board of Immigration Appeals, arguing the immigration judge erred both legally and factually. *Id.*; Repp Decl. Ex. E. Pursuant to 8 C.F.R. § 1003.6(a), that appeal triggered an automatic stay of the execution of the immigration judge's Decision while the appeal was pending. The BIA issued a briefing order on March 19, 2025, after which both parties filed their appellate briefs. Robinson Decl. ¶ 25.

The BIA reversed the immigration judge and concluded that Acuna Cruz's removal proceedings should not have been terminated. Pet. at 23.<sup>1</sup> On remand, the immigration judge held an individual hearing for Acuna Cruz. Pet. at 23. After the hearing, the immigration judge denied Acuna Cruz's request for asylum on the merits, denied his

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<sup>1</sup> Acuna Cruz did not set out the allegations in his petition (or in his proposed amended petition) using "numbered paragraphs, each limited as far as practicable to a single set of circumstances." Fed. R. Civ. P. 10. Accordingly, the Federal Respondents will pincite to the petition by page number instead of paragraph. And because there are no substantive changes in the proposed amended petition, the Federal Respondents will cite to the initial petition in this consolidated response.

request for withholding of removal on the merits, and entered a final order of removal on October 14, 2025. Pet. at 24. That order became final a month later. Pet. at 24.

Acuna Cruz filed a motion to stay removal, raising the same arguments about deferred action and SIJS he asserts in this petition. Pet. at 24-25. His amended petition says that request is pending. Dkt. 24, at 25. Acuna Cruz also filed a motion to reopen removal proceedings with the immigration court, which was denied. Pet. at 25. Acuna Cruz appealed that decision to the BIA, and his appeal is pending. Pet. at 25.

As things stand now, Acuna Cruz has a final order of removal entered against him, and the Federal Respondents are ready to remove him from the country. He has an appeal pending with the BIA on the denial of his motion to reopen, but neither the immigration judge nor the BIA has ordered a stay of removal based on his arguments about deferred action and SIJS. Acuna Cruz has had extensive administrative review of those issues. And as explained below, the Eighth Circuit is where he needs to go to pursue any further judicial review. *See* 8 U.S.C. § 1252(b)(9).

### **III. Acuna Cruz's Prior Habeas Proceedings**

Acuna Cruz filed a habeas action in this Court on April 30, 2025. *See Acuna Cruz I*, Dkt. 1. In that action, Acuna Cruz alleged that he could not “be deported to his home country of Guatemala because he was granted protection under deferred action.” *Id.* ¶ 3. Acuna Cruz also emphasized that he had been “granted Special Immigrant Juvenile Status (SIJS) by [the] United States Citizenship and Immigration Services (USCIS).” *Id.* ¶ 14. And thus began Acuna Cruz's efforts to have a federal court declare him “unremovable” by virtue of his deferred action and SIJS. He expressly argued:

- “DHS itself has already declared, through USCIS, that Mr. Acuna Cruz is not subject to removal during the pendency of his deferred action.” *Id.* ¶ 18.
- “That removal is not merely paused, but legally barred, is critical. Even if the government were to prevail on appeal, it could not remove Mr. Acuna Cruz during the deferred action period without first overcoming a series of legal and regulatory hurdles. This eliminates any rational tether between detention and removal.” *Id.* ¶ 19.
- “His removal is not imminent. To the contrary, USCIS has granted him deferred action based on his SIJS approval, protecting him from removal for at least four years.” *Id.* ¶ 23.

Based on these allegations, Acuna Cruz alleged four grounds for habeas relief. But the two grounds relevant here were Acuna Cruz’s claim that his detention was unconstitutional because he could not ever be removed, *id.* ¶¶ 21-27, and his claim that ongoing detention violated agency regulations and the *Accardi* doctrine because he could not ever be removed, *id.* ¶¶ 28-34. Those are the same claims Acuna Cruz asserts in this case, although he spreads them out this time to specifically invoke the Suspension Clause, the APA, and the INA. Pet. at 41-43. The relief Acuna Cruz sought in his first habeas action included a declaration from this Court that his “continued detention is unconstitutional and unlawful, as it is not reasonably related to any valid purpose of immigration detention and violates the Fifth Amendment guarantee of due process.” *Id.* at 15.

Judge Magnuson denied Acuna Cruz’s petition. *See Acuna Cruz I*, Dkt. 13. As the order denying and dismissing the petition explained, Acuna Cruz’s arguments about deferred action and SIJS needed to be presented to the Eighth Circuit rather than to this Court. *Id.*, at 4-5. The order also noted that the two claims discussed above were barred by 8 U.S.C. § 1252(g). *Id.* at 5-6. Acuna Cruz asked for an extension of his appeal deadline,

Dkt. 15, which the Court granted, Dkt. 17. He then appealed to the Eighth Circuit but voluntarily withdrew the appeal on November 18, 2025. Dkt. 21.

A day later, Acuna Cruz kicked-off round two. *See Acuna Cruz II*, Dkt. 1. He filed a second habeas petition seeking “immediate release from his unlawful, unjustified, and inhumane detention.” *Id.* at 1. The petition in *Acuna Cruz II* raised the exact same issues and made almost identical arguments, except that Acuna Cruz had at that point received his final order of removal. *Id.* at 11. Once again relying on his deferred action and SIJS, Acuna Cruz asserted that “the government cannot remove Walter,” and accordingly “there is no significant likelihood of his removal in the future, [so] the Court should order Walter’s immediate release.” *Id.* at 22, 24. The petition advanced this argument through claims for violations of the INA, APA, and Fifth Amendment. *Id.* at 22-25.

But Acuna Cruz learned from his first habeas petition. He carefully alleged that his claims in *Acuna Cruz II* were not “seeking review of any discretionary decision of the Secretary of Homeland Security or the Attorney General, nor is he seeking this Court’s review of a final order of removal.” *Id.* at 2; *see also id.* at 4 (“Nothing in the INA deprives this Court of jurisdiction, including 8 U.S.C. §§ 1252(b)(9), (f)(1), or 1226(e).”). In other words, he brought *Acuna Cruz II* to resolve the question of whether arguments about deferred action and SIJS could be resolved in this Court notwithstanding the jurisdiction-stripping provisions that frequently prevent judicial review of these issues.

The government was never ordered to respond to the petition in *Acuna Cruz II*. Judge Schiltz screened the petition and denied it outright, observing that:

The gist of the habeas petition now before the Court is that Walter A. believes that he will eventually succeed in challenging the legality of his removal order and therefore the government will be unable to lawfully effect his removal. Leaning on *Zadvydas* and other similar cases, Walter A. argues that because his removal is not reasonably foreseeable, the government cannot continue detaining him.

*Acuna Cruz II*, Dkt. 10, at 2. Acuna Cruz immediately responded to the order with a motion for relief from judgement. Dkt. 11. That motion—and the Court’s order denying it—laid bare Acuna Cruz’s strategy of using habeas litigation in federal district court as a means of substantively challenging his removability. The Federal Respondents have nothing to add to this Court’s analysis, so they will simply repeat it verbatim:

This is a *habeas* action. As Walter A. himself acknowledges, a habeas action challenges “only the lawfulness of Petitioner’s continued *detention*,” ECF No. 11 at 1 (emphasis added)—not the lawfulness of a removal order or the execution of a removal order. If a habeas action is successful, the government is ordered to *release the petitioner from custody*. A habeas action does not result in the government being enjoined from removing the petitioner from the United States. Removal is a form of release from custody—and, again, the whole point of a habeas action is to win release from custody.

What Walter A. is trying to do in this habeas proceeding is to litigate the question of whether the government may execute the final removal order that has been entered against him. On its face, that question has nothing to do with the lawfulness of Walter A’s detention, but Walter A’s attorney has tried to make it relevant by arguing as follows: (1) Walter A. has been detained pursuant to the mandatory 90-day detention prescribed by 8 U.S.C. § 1231(a)(2). (2) *Zadvydas v. Davis*, 533 U.S. 678 (2001), applies to detentions under § 1231(a)(2). (3) *Zadvydas* requires release of someone detained under § 1231(a)(2)—notwithstanding the mandatory nature of the detention—if “there is no significant likelihood of removal in the reasonably foreseeable future.” 533 U.S. at 701. (4) The government cannot remove Walter A. “in the reasonably foreseeable future” because he has been granted Deferred Action on the basis of his Special Immigrant Juvenile (“SIJ”) status. (5) Therefore, *Zadvydas* requires that Walter A. be released from custody.

For reasons that the Court has explained, *Zadvydas* does not apply to the 90-day mandatory detention period under § 1231(a)(2), and therefore the rest of Walter A.’s argument is irrelevant.

*Id.* at 2-3 (original emphasis throughout).

At that point, Acuna Cruz resorted to emergency measures. He asked the Court for a “stay of removal,” ostensibly to preserve jurisdiction over the habeas action. *Acuna Cruz II*, Dkt. 15, at 2. The Court granted a brief stay to give Acuna Cruz “time to file [a] separate and distinct action” challenging the lawfulness of his removal but expressed “grave doubts that a federal court would have jurisdiction over any such action.” *Id.* at 3 (cleaned up) (citing 8 U.S.C. § 1252(g) and *Silva v. United States*, 866 F.3d 938, 940-41 (8th Cir. 2017)). The Court later extended the stay of removal at Acuna Cruz’s request. *Acuna Cruz II*, Dkt. 17.

#### **IV. Acuna Cruz’s Current Habeas Proceedings**

On December 19, 2025, Acuna Cruz filed his habeas petition in this case. But weeks before that filing, ICE had moved Acuna Cruz to the Port Isabel Service Processing Center, near Los Fresnos, Texas. *See* Pet. at 25 (noting his arrival “a few weeks ago”). He was detained in Texas when he filed the petition. Pet. at 17 (“He is detained at the Port Isabel Detention Center, Texas.”). And Acuna Cruz named the “Warden of Port Isabel Texas Detention Center” as a respondent in this case because he recognized that he needed to bring his petition against the person with immediate authority over detainees at Port Isabel. Pet. at 20.

Just as the petitions did in *Acuna Cruz I* and *Acuna Cruz II*, the petition in this case broadly argues that Acuna Cruz cannot be removed because of his deferred action and SIJS.

That much is made clear from Acuna Cruz's ultimate request for a declaration from this Court that his "removal violates the Immigration and Nationality Act, 8 U.S.C. § 1155; the Administrative Procedure Act § 553; the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); the Suspension Clause of Article 1 of the U.S. Constitution; and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution." Pet. at 44.

Because habeas petitions must be brought in the district of confinement, the Federal Respondents offered to stipulate to transfer the case to the Southern District of Texas. Acuna Cruz refused, necessitating a motion to dismiss or transfer. Dkt. 9. But ICE then transferred Acuna Cruz back to Minnesota on December 26, 2025, so Acuna Cruz sought leave to amend his petition and remove the Warden of Port Isabel Texas Detention Center as a respondent. Dkt. 22. The Court directed the Federal Respondents to file a consolidated response to the motion to amend and the issues in Acuna Cruz's petition. Dkt. 20.

### **ARGUMENT**

Acuna Cruz is not entitled to habeas relief. As an initial matter, the Federal Respondents maintain that dismissal is still appropriate because Acuna Cruz filed this petition in the wrong district. His return to Minnesota does not cure that defect. But even on the merits, Acuna Cruz's claims are not cognizable in habeas because he does not challenge the fact or duration of his confinement. And Congress has stripped this Court of jurisdiction to review Acuna Cruz's challenge to his removal order, no matter how he tries to recast the challenge as one addressing only "removability." The Federal Respondents will address these issues in turn.

## I. Wrong District

Acuna Cruz's recent return to Minnesota does not change the fact that this case was filed in the wrong district. The parties have already briefed this issue extensively, and the Federal Respondents respectfully reassert their arguments in support of dismissal. They will add just two further points here.

First, “[i]t has long been the case that the jurisdiction of the Court depends upon the state of things at the time of the action brought.” *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 570 (2004) (cleaned up). At the time *this* action was brought, Acuna Cruz had been in Texas for weeks. *See* Pet. at 25. His return to Minnesota does not change where he was detained at the time of filing, nor do his amendments change “the state of things” at the time of filing. As a recent decision from the Eighth Circuit explains, “the time-of-filing rule applies to changes to the ‘state of things,’ not to changes to the ‘*alleged* state of things.’” *Wullschleger v. Royal Canin U.S.A., Inc.*, 75 F.4th 918, 922 (8th Cir. 2023) (original emphasis) (cleaned up). The distinction is subtle: “[t]he ‘state of things,’ which is subject to the time-of-filing rule, refers to the actual facts on the ground.” *Id.* at 923. No matter what amendments Acuna Cruz makes to his petition, the facts on the ground at the time of filing were that he was detained in Texas. Those are the facts from which the Court determines if jurisdiction existed in Minnesota when the petition was filed.<sup>2</sup>

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<sup>2</sup> The rule for core habeas petitions is that “jurisdiction lies in only one district: the district of confinement.” *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). This case does not present any facts supporting an exception to that rule. Acuna Cruz does not—and cannot—claim that “the Government concealed [his] whereabouts from counsel, much less . . . that such concealment was the basis for habeas jurisdiction” in Minnesota. *Id.* at 449 n.17.

Consider if the transfer happened in reverse: Acuna Cruz was detained in Minnesota initially, filed a habeas petition here, and was then moved to Texas a few weeks later. The Federal Respondents would not argue—and this Court certainly would not hold—that the transfer *out* of Minnesota divests jurisdiction over a habeas action that was properly filed in this district. It is the same rule. Acuna Cruz’s transfer *into* Minnesota does not suddenly create jurisdiction that never existed over a petition that needed to be filed in Texas.

Second, there is an easy solution to this problem. Now that Acuna Cruz is back in Minnesota, he can and should file a new habeas action rather than trying to amend his earlier petition. The Federal Respondents’ undersigned counsel suggested as much to Acuna Cruz before the present motion to amend was filed. A new action would have removed any doubt as to jurisdiction. And although it may seem overly technical to require that this petition be formally dismissed rather than amended, jurisdictional technicalities are important because all federal courts “have an independent obligation to ensure the party asking [the court] to exercise jurisdiction has proved [the court has] jurisdiction to exercise.” *Reece v. Bank of N.Y. Mellon*, 760 F.3d 771, 777 (8th Cir. 2014).

Acuna Cruz’s move to Minnesota means that transferring this case no longer serves the interests of justice. *See* 28 U.S.C. § 1406(a). Thus, the Federal Respondents respectfully renew their request that the Court dismiss this case for lack of jurisdiction.<sup>3</sup>

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<sup>3</sup> Because Acuna Cruz’s proposed amended petition does not—and indeed, cannot—fix this jurisdiction problem, the Court should deny him leave to amend on futility grounds.

## II. Not a Cognizable Habeas Claim

In opposing the Federal Respondents' motion to dismiss or transfer, Acuna Cruz told this Court that his "petition does not challenge the fact, duration, or conditions of Petitioner's detention, nor does it seek release." Dkt. 14, at 5. If that is true, then Acuna Cruz has a different jurisdictional problem. Eighth Circuit law is clear that a habeas petition brought under 28 U.S.C. § 2241 must challenge the fact or duration of the petitioner's confinement. *See Spencer v. Haynes*, 774 F.3d 467 (8th Cir. 2014); *Kruger v. Erickson*, 77 F.3d 1071 (8th Cir. 1996). Because Acuna Cruz openly admits he is not making that type of challenge here, his claim is not cognizable in habeas. This is a separate and independent reason to dismiss Acuna Cruz's petition for lack of jurisdiction.

Acuna Cruz filed this case as a habeas action. He paid a \$5 filing fee (rather than the full civil filing fee), did not serve the federal government in accordance with Federal Rule of Civil Procedure 4(i), and introduced his pleadings by announcing that he was seeking a writ of habeas corpus. Pet. at 1. All of those are characteristics of a habeas action rather than a standard civil action. Nevertheless, the relief Acuna Cruz seeks is patently *not* habeas relief. He does not want a release from custody, and he disavows challenging his current detention. That makes Acuna Cruz's petition no different from countless habeas actions this Court has dismissed because the petitioners who filed them were not challenging the fact or duration of their confinement, including:

- *Faleide v. Eischen*, 2024 WL 5159313 (D. Minn. Nov. 13, 2024) (challenge to place of confinement not cognizable in habeas);

- *Sheng-Wen Cheng v. Rardin*, 2024 WL 1259484 (D. Minn. Jan. 2, 2024) (challenge to refusal to award time credits due to a final order of removal not cognizable in habeas).
- *Martinez v. Eischen*, 2023 WL 7389935 (D. Minn. Oct. 18, 2023) (challenge to calculation of recidivism risk level not cognizable in habeas).
- *Cottman v. Fikes*, 2023 WL 2482878 (D. Minn. Feb. 21, 2023) (challenge to custody classification not cognizable in habeas).
- *Johnson v. Birkholz*, 2022 WL 3135304 (D. Minn. Aug. 5, 2022) (challenge to eligibility for home confinement not cognizable in habeas); and
- *Mehighlovesky v. U.S. Dep’t of Homeland Sec.*, 2012 WL 6878901 (D. Minn. Dec. 7, 2012) (challenge to how ICE conducted arrest not cognizable in habeas).<sup>4</sup>

Acuna Cruz’s petition protests that habeas relief—rather than an APA lawsuit—is appropriate under these circumstances because he “is in physical custody and faces imminent removal, [making] habeas corpus remains the only mechanism capable of affording timely and effective relief from unlawful restraint.” Pet. at 5. But he cannot have it both ways. Either Acuna Cruz is seeking “relief from restraint,” in which case his habeas petition was filed in the wrong district and fails on the merits for the reasons this Court explained in *Acuna Cruz II*, or he is challenging unlawful agency conduct that simply is not cognizable in habeas. Acuna Cruz seems to have chosen the latter. The Court should honor that choice and dismiss this petition.

### **III. Jurisdiction-Stripping Statutes**

In addition to suffering from habeas-related jurisdictional issues, Acuna Cruz’s petition presents immigration-related claims that this Court cannot review. The claims in

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<sup>4</sup> For conciseness, the Federal Respondents are omitting citations to orders adopting reports and recommendations.

this case necessarily require interpreting and applying constitutional and statutory provisions in the context of reviewing Acuna Cruz's final order of removal. In substance, Acuna Cruz is alleging that the order is invalid because he cannot ever be removed while he has deferred action and SIJS. That is a naked attempt to circumvent the BIA appeal process and challenge his order of removal in federal district court. Congress has foreclosed such claims. *See* 8 U.S.C. § 1252(b)(9) and (g).

**A. Section 1252(b)(9)**

The process through which Acuna Cruze can seek review of how the immigration judge applied the INA and Constitution to his specific circumstances is the set forth in 8 U.S.C. § 1252. *See, e.g., Jama v. I.N.S.*, 329 F.3d 630, 632 (8th Cir. 2003), *aff'd sub nom. Jama v. ICE*, 543 U.S. 335 (2005) (the Eighth Circuit retains jurisdiction to “consider substantial constitutional challenges to the Immigration and Nationality Act.”). In passing the REAL ID Act, Congress called for a single path for judicial review of orders of removal: “a petition for review filed with an appropriate court of appeals.” 8 U.S.C. § 1252(a)(5). The REAL ID Act further provides that, “[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, ***arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter*** shall be available only in judicial review of a final order under this section.” *Id.* § 1252(b)(9) (emphasis added). Read together § 1252(b)(9) and § 1252(a)(5) express Congress's intent to channel and consolidate judicial review of all aspects of removal proceedings into a petition-for-review process in the courts of appeals. H.R. Conf. Rep. No. 109-72, at 174–75; *see also Flores v. Hartnett*, 2010 WL

3283491, at \*3 (D. Minn. Aug. 18, 2010) (highlighting that section 1252 “was designed to consolidate and channel review of all legal and factual questions, including constitutional and statutory challenges, that arise from the removal of aliens into the administrative process, with judicial review of those decisions vested exclusively in the courts of appeals”). In fact, “most claims that even relate to removal” are improper if brought before the district court. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (labeling section 1252(b)(9) an “unmistakable zipper clause,” and defining a zipper clause as “[a] clause that says ‘no judicial review in deportation cases unless this section provides judicial review.’”). This provision is dispositive.

As explained above, Acuna Cruz actively litigated this matter in immigration court and before the BIA. Those efforts continue to this day. But Acuna Cruz doubts he will succeed, *see* Pet. 4-5, and he is worried he did not make an adequate record to support judicial review in the Eighth Circuit, *see* Pet, at 4. Those concerns simply do not allow Acuna Cruz to brush aside Congress’ channeling statute.

It is worth emphasizing that Congress specifically preserved judicial review of “constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals[.]” 8 U.S.C. § 1252(a)(2)(D). The Supreme Court recognized that § 1252(a)(2)(D) was intended to preserve the kind of review traditionally available in habeas proceedings, including review of the “erroneous application or interpretation of statutes.” *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 232 (2020). Per that recognition, courts of appeals have routinely reviewed constitutional and legal challenges to removability. *See, e.g., Chavez-Castillo v. Holder*, 771 F.3d 1081, 1082 (8th Cir. 2014)

(reviewing Fourth and Fifth Amendment claims in context of petition for review); *Mocevic v. Mukasey*, 529 F.3d 814, 817 (8th Cir. 2008) (“This Court reviews de novo constitutional claims and questions of law, which are properly raised in a petition for review.”). In other words, contrary to the allegations in the petition, Acuna Cruz can obtain meaningful judicial review by an Article III court through a petition for review. Because that path remains available to this day, § 1252(b)(9) bars the Court from reviewing Acuna Cruz’s arguments about SIJS and deferred action.

**B. Section 1252(g).**

Acuna Cruz’s petition also run into the jurisdictional bar in § 1252(g) because he is challenging the government’s execution of a removal order. That type of challenge is squarely barred. *See Tostado v. Carlson*, 481 F.3d 1012, 1014 (8th Cir. 2007).

Section 1252(g), as amended by the REAL ID Act, specifically deprives courts of jurisdiction (including habeas jurisdiction) to review “any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to [1] commence proceedings, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter.”<sup>5</sup> In *Silva*, the Eighth Circuit affirmed the district court’s holding that it lacked

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<sup>5</sup> Congress initially passed § 1252(g) in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009. In 2005, Congress amended § 1252(g) by adding “(statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title” after “notwithstanding any other provision of law.” REAL ID Act of 2005, Pub. L. 109-13, § 106(a), 119 Stat. 231, 311. After Congress enacted the Homeland Security Act of 2002, § 1252(g)’s reference to the “Attorney General” includes the Secretary of Homeland Security. 6 U.S.C. § 202(3); *see also Enriquez-*

jurisdiction over a challenge to a final order of removal under 8 U.S.C. § 1252(g). 866 F.3d at 940-41. Likewise, this Court declines to adjudicate habeas petitions that directly or indirectly seek review of removal orders. *See, e.g., Adan v. Beauregard*, 2017 WL 6001740 (D. Minn. Dec. 4, 2017) (request to stay execution of removal order pending BIA's decision on motion to stay and reopen was barred); *Mohamed v. Sessions*, 2017 WL 6021293 (D. Minn. Dec. 5, 2017) (request to stay execution based on conditions in removal country and pending motions before BIA was barred); *Gopar v. Dep't of Homeland Sec. Off. of Inspector Gen.*, 2017 WL 2222409 (D. Minn. Apr. 19, 2017) (transferring to the Eighth Circuit a challenge to removal order and BIA affirmance based on alleged constitutional violations during proceedings).

This Court's decision in *Ruiz v. Johnson* is instructive because the petitioner made the same kind of argument Acuna Cruz raises here. 2014 WL 2511094 (D. Minn. June 4, 2014). Specifically, the petitioner was ordered removed from the country and then held in post-order detention. *Id.* at \*1-2. She filed a habeas action arguing that "her detention is unconstitutional because she has a pending I-129 Fiancé Petition and an I-601 waiver of inadmissibility pending with USCIS, so detention is now indefinite, in effect, because a visa is immediately available to her under first-preference. Removal is *NOT* reasonably foreseeable." *Id.* at \*2. Despite the petitioner's assurances that she was not challenging the execution a removal order, *Ruiz* concluded that "[f]undamentally, Petitioner is challenging

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*Perdomo v. Newman*, 54 F.4th 855, 863 & nn.3-4 (6th Cir. 2022) (explaining the historical development of § 1252(g)).

the validity of the immigration judge's removal order. This Court lacks subject matter jurisdiction to consider her claims, which must be raised in the appropriate circuit court of appeals." *Id.* at \*3.

Another good example is *Alonso v. Office of Counsel/Immigration and Customs Enforcement*, particularly because it dealt with the same venue considerations giving rise to the Federal Respondents' motion to transfer. 2013 WL 5999485, at \*2-3 (D. Minn. Nov. 12, 2013). But *Alonso* is also helpful because after concluding that the case should not have been filed in Minnesota, the court observed that the petitioner was trying "to overturn the deportation order that caused ICE to take him into custody." *Id.* at 4. Thus, dismissal rather than transfer was appropriate in *Alonso* because the court lacked subject matter jurisdiction to review the petitioner's "challenge the actual *legality and enforceability* of the deportation order itself." *Id.* (emphasis added). This is exactly the kind of challenge Acuna Cruz is bringing here, and it should meet the same fate.

Acuna Cruz's answer to this argument is a string-cite of decisions that he says "handled the matter of the restriction of liberty of SIJ grantees or other special immigrants with deferred action in the habeas context." Pet. at 13-16. But none of those cases come from within the Eighth Circuit. Thus, none of those cases were decided under the precedent binding this Court holding that: (1) habeas petition brought under 28 U.S.C. § 2241 must challenge the fact or duration of the petitioner's confinement, *see Spencer*, 774 F.3d 467; *Kruger*, 77 F.3d 1071; and (2) if a petitioner's claim arises from a decision to execute a removal order, then there is no jurisdiction because of the provisions of § 1252(g), *see Silva*, 866 F.3d at 940-41.

Acuna Cruz's claims in this case are not substantively different from the arguments he raised in *Acuna Cruz I* or *Acuna Cruz II*. As this Court already explained, he is trying "to litigate the question of whether the government may *execute* the final removal order that has been entered against him." *Acuna Cruz II*, Dkt. 14, at 2 (emphasis added). That litigation must occur in immigration court, the BIA, and the Eighth Circuit.

### CONCLUSION

The Court should dismiss this case because it was filed in the wrong district and Acuna Cruz's subsequent transfer back to Minnesota does not fix that mistake. Furthermore, the claims Acuna Cruz is asserting are not cognizable in habeas and not within this Court's power to adjudicate. Acuna Cruz's petition should therefore be dismissed or denied.

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