

No. 20-73521

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CARLOS MENDOZA ESQUIVEL,
Petitioner,

v.

PAMELA BONDI, Attorney General,
Respondent.

RESPONDENT'S OPPOSITION TO PETITIONER'S
EMERGENCY MOTION FOR INTERIM RELEASE

Agency No. A [REDACTED]
DETAINED

INTRODUCTION

This is an immigration case in which Petitioner Carlos Mendoza Esquivel ("Petitioner"), a native and citizen of Mexico, seeks review of a November 19, 2020 decision of the Board of Immigration Appeals ("Board" or "BIA"). Petitioner now requests, on an emergency basis, that the Court order his immediate release from custody pending a decision or, in the alternative, transfer his custody challenge to the United States District Court for the Western District of

Washington. See Emergency Motion (“Pet. Mot.”), Dkt. Entry 56 (Dec. 12, 2025).

Respondent hereby opposes Petitioner’s request for release.¹

ARGUMENT

The Court Should Deny Petitioner’s Motion For Release Because It Is Without Jurisdiction To Grant Such Relief

The Court should deny Petitioner’s emergency motion for release from immigration custody pending appeal because it does not have the authority to order his release. The Immigration and Nationality Act (“INA”) limits the Court’s review to final orders of removal. See 8 U.S.C. § 1252(a)(1); *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.*

¹ Upon being taken into custody by the Department of Homeland Security, Petitioner filed an emergency motion to stay his removal. See Emergency Motion, Dkt. Entry 44 (Aug. 13, 2025). He then sought – and was granted – an additional fourteen days to supplement his stay motion. See Motion To Extend Time, Dkt. Entries 45 & 46 (Aug. 27, 2025); Clerk Order, Dkt. Entry 48 (Aug. 28, 2025). Since the initial filing of the stay motion, Petitioner has benefited from a temporary stay of removal. See G.O. 6.4(c) Order, Dkt. Entry 45 (Aug. 13, 2025). The government has timely opposed Petitioner’s stay request and requested expedited consideration of the stay motion. See Response, Dkt. Entry 52 (Sept. 18, 2025). The stay motion remains pending, and the case has been scheduled for oral argument in February 2026. Cf. *Rojas-Espinoza v. Bondi*, --- F.4th ---, 2025 WL 3289117, at *9-10* (9th Cir. Nov. 25, 2025) (expressing significant concerns with the practice of holding a ruling on a stay motion in a fully briefed case, whereby a temporary administrative stay can “effectively become a stay pending appeal”).

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.”). But this Court’s jurisdiction on a petition for review of a removal order 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 v. Holder*, 638 F.3d 1196, 1211 (9th Cir. 2011); *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”).

Accordingly, this Court has previously rejected an alien petitioner’s request to order a bond hearing, explaining that it was “not convinced” that it has “authority to *sua sponte* release [a civil detainee] ... or to order a bond hearing in a petition for review.” *Aguilar-Ramos*, 594 F.3d at 704 n.3. Instead, aliens like Petitioner might challenge their detention “by filing a habeas petition pursuant to 28 U.S.C. § 2241 or by requesting a bond hearing” from an immigration judge. *Id.* Indeed, the Court has repeatedly recognized that detention challenges should be brought in federal district court via a petition for a writ of habeas corpus under 28 U.S.C. § 2241. *See, e.g., Singh*, 638 F.3d at 1211 (“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 and decided by the district court, so as not to duly circumscribe district court's habeas jurisdiction."'). Thus, 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.

The Court also does not have authority under the All Writs Act ("AWA") to order Petitioner's release. *See* Pet. Mot. 8-11. 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 cannot enlarge a court's jurisdiction. *See Perez v. Barr*, 957 F.3d 958, 967 (9th Cir. 2020); *see also Clinton v. Goldsmith*, 526 U.S. 529, 534-35 (1999) (explaining that the AWA confines courts "to issuing process 'in aid of' [their] *existing* statutory jurisdiction; the Act does not enlarge that jurisdiction") (emphasis added). A release order from this Court would not "aid" its limited jurisdiction to adjudicate Petitioner's pending petition for review. The Court thus lacks authority to order release under 28 U.S.C. § 1651(a) because any such order would be contrary to the Court's limited jurisdiction in adjudicating petitions challenging final removal orders under 8 U.S.C. § 1252. Stated differently, because Petitioner's detention status has no bearing on the Court's authority to resolve the issues raised in the

current petition, an order directing his release cannot be in aid of the Court's authority under the INA. *Cf. Pennsylvania Bureau of Correction v. U.S. Marshals Serv.*, 474 U.S. 34, 43 (1985) (explaining that "[w]here a statute specifically addresses the particular issue at hand, it is that authority, and not the [AWA], that is controlling," and that 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 Petitioner 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); *see also 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). Again, when a statute specifically addresses the particular issue at hand, it is that authority, and not the AWA that controls. *Perez*, 957 F.3d at 967.

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 this petition for review – i.e., any challenge to Petitioner's final order of removal – and should not address any detention issues in the first instance. If Petitioner is not satisfied with the outcome of any administrative process, his challenge may be resolved through a habeas petition. *See Aguilar-Ramos*, 594 F.3d at 704 n.3. And because the district court is the correct venue to consider Petitioner's challenges, Respondent does not oppose transferring the custody claims to the United States District Court for the Western District of Washington.² Pet. Mot. at 19-20.

² Because this Court is not the appropriate venue for Petitioner's custody and detention challenges, Respondent will not address the merits of his constitutional and legal claims. *See* Pet. Mot. 11-19. That litigation strategy, however, must not be construed as a tacit or implicit concession that any of Petitioner's claims has merit; the government preserves its ability to substantively oppose and object to Petitioner's request for release and other claims at the appropriate time, in the appropriate forum.

CONCLUSION

For the foregoing reasons, the Court should deny the emergency motion for release.

Respectfully submitted,

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Dated: December 22, 2025

CERTIFICATE OF COMPLIANCE

1. This motion response complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because:

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CERTIFICATE OF SERVICE

I hereby certify that, on December 22, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. Participants in the case, who are registered CM/ECF users, will be served by the appellate CM/ECF system.

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