

Magistrate Judge S. Kate Vaughan

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

YUSHOU CHENG,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

Case No. 2:26-cv-00094-SKV

FEDERAL RESPONDENTS'¹
RETURN

Noted for Consideration:
February 2, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement (“ICE”) lawfully detains Petitioner Yushou Cheng, a Chinese national, while he undergoes removal proceedings before the immigration court. Petitioner is charged as an arriving alien, and his detention is mandatory under 8 U.S.C. § 1225(b). In this habeas proceeding, Petitioner challenges his status of an arriving alien and claims that his detention is unlawful because he did not receive proper notice of the termination of his lawful permanent resident status. On its face, Petitioner is contesting his detention as an arriving alien. In substance, Petitioner’s challenge is to the legal and factual basis of the charge of inadmissibility

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by the U.S. Attorney’s Office.

1 that placed him into removal proceedings. Specifically, Petitioner asserts that he has been
2 improperly charged as an arriving alien because he remains a lawful permanent resident. Thus,
3 the claims in this matter are inextricably intertwined with and arise from U.S. Department of
4 Homeland Security's actions taken to remove Petitioner and issues that would properly be raised
5 in those proceedings. 8 U.S.C. § 1252(b)(9). In fact, Petitioner has a pending motion to terminate
6 his proceedings on this subject pending before the immigration judge. Lambert Decl., Ex. A,
7 Motion to Terminate. Any decision here about Petitioner's detention will directly bear on the
8 question of his inadmissibility charge. Accordingly, this Court should deny the Petition and
9 require Petitioner to proceed before the immigration court.

10 II. FACTUAL BACKGROUND

11 Petitioner is a Chinese national who was conditionally admitted to the United States and
12 an EB-5 immigrant investor in 2013. Melendez Decl., ¶ 5. Petitioner sought to remove the
13 conditions on his permanent resident status in 2015. Melendez Decl., ¶ 6. U.S. Citizenship and
14 Immigration Services ("USCIS") denied his petition in 2018. Melendez Decl., ¶ 6. Petitioner has
15 administratively appealed the denial numerous times, but each time his appeal has been denied.
16 Melendez Decl., ¶¶ 9-12.

17 Petitioner departed the United States on July 1, 2025. Melendez Decl., ¶ 13. When he
18 returned to Sea-Tac airport on November 29, 2025, U.S. Customs and Border Protection ("CBP")
19 found Petitioner inadmissible pursuant to 8 U.S.C. § 1182(1)(7)(A)(i)(I). Melendez Decl., ¶ 14;
20 Lambert Decl., Ex. B, Form I-213; Ex. C, Warrant for Arrest. The next day, DHS issued a notice
21 to appear that placed Petitioner into removal proceedings. Melendez Decl., ¶ 14; Lambert Decl.,
22 Ex. D. Petitioner was taken into ICE custody as he is an arriving alien subject to mandatory
23 detention under 8 U.S.C. § 1225(b). Melendez Decl., ¶ 15.

1 In his removal proceedings, Petitioner asserted that he has been improperly charged as an
2 arriving alien. Pet., ¶ 29. On January 14, 2026, he filed a motion to terminate his proceedings on
3 the basis that when he entered the United States that he was not inadmissible. Lambert Decl., Ex.
4 A, Motion to Terminate. This motion is pending before the immigration court. Petitioner brings
5 this habeas claim asserting that due process has been violated because he did not receive proper
6 notice of termination of his lawful permanent resident status “or of the consequences of re-entering
7 the United States after such a notice.” Pet., ¶ 47.

8 III. ARGUMENT

9 This Court’s review of Petitioner’s claim concerning his lawful permanent resident status
10 at the time he reentered the United States and his classification as an arriving alien is barred by 8
11 U.S.C. § 1252(b)(9). Under Section 1252(b)(9), “judicial review of all questions of law . . .
12 including interpretation and application of statutory provisions . . . arising from any action taken .
13 . . to remove an alien from the United States” is only proper before the appropriate court of appeals
14 in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v.*
15 *American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“AADC”). Section
16 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of all [claims arising
17 from deportation proceedings]” to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*,
18 No. 20-cv-1330, 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590
19 U.S. 573, 579-80 (2020)).

20 Moreover, Section 1252(a)(5) provides that a petition for review is the exclusive means for
21 judicial review of immigration proceedings:

22 Notwithstanding any other provision of law (statutory or nonstatutory), . . . a
23 petition for review filed with an appropriate court of appeals in accordance with
24 this section shall be the sole and exclusive means for judicial review of an order of
removal entered or issued under any provision of this chapter, except as provided
in subsection (e) [concerning aliens not admitted to the United States].

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2 8 U.S.C. § 1252(a)(5). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—
3 whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through
4 the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016)
5 (emphasis in original); *accord Ruiz v. Mukasey*, 552 F.3d 269, 274 n.3 (2d Cir. 2009) (only when
6 the action is “unrelated to any removal action or proceeding” is it within the district court’s
7 jurisdiction); *cf. Xiao Ji Chen v. U.S. Dep’t of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006) (a
8 “primary effect” of the REAL ID Act is to “limit all aliens to one bite of the apple” (internal
9 quotation marks omitted)).

10 Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one.”
11 *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). The petition-for-review process before the court of
12 appeals ensures that aliens have a proper forum for claims arising from their immigration
13 proceedings and “receive their day in court.” *J.E.F.M.*, 837 F.3d at 1031-32 (internal quotations
14 omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) (“The REAL ID Act of 2005
15 amended the [INA] to obviate . . . Suspension Clause concerns” by permitting judicial review of
16 “nondiscretionary” BIA determinations and “all constitutional claims or questions of law.”).

17 The Third Circuit recently described the importance of enforcing the channeling provision:

18 Letting petitioners raise now-or-never injuries through habeas based on claims that
19 can be litigated later would subvert that channeling scheme. If, for instance, a
20 detained alien claimed that the INA section that made him removable was
21 unconstitutionally vague, he could bring that claim right away on habeas (because
22 illegal detention cannot be remedied later). With a final judgment in hand, the
23 winning side could use issue preclusion or law of the case in the later PFR, leaving
24 that court nothing to decide. *See Paulo v. Holder*, 669 F.3d 911, 918 (9th Cir. 2011)
(holding that habeas finding that alien was not removable precluded relitigating that
issue in removal proceedings). That prospect would encourage the very “piecemeal
litigation” that § 1252(b)(9) is designed to prevent.

1 *Khalil v. President, United States*, No. 25-2162, 2026 WL 111933, at *9 (3d Cir. Jan. 15, 2026)
2 (internal citation omitted).

3 While claims “collateral to, or independent of” the removal process are still subject to
4 habeas review, “[w]hen a claim by an alien, however it is framed, challenges the procedure and
5 substance of an agency determination that is ‘inextricably linked’ to the order of removal, it is
6 prohibited by section 1252(a)(5).” *J.E.F.M.*, 837 F.3d at 1031. Here, Petitioner’s claims are
7 inextricably linked to “questions of law and fact, including interpretation and application of
8 constitutional and statutory provisions, arising from any action taken or proceeding brought to
9 remove an alien.” 8 U.S.C. § 1252(b)(9). Petitioner challenges the decision and action to place
10 him into removal proceedings, under which charge, and how this action was taken, which arises
11 from DHS’s decision to commence removal proceedings, and is thus an “action taken . . . to remove
12 [him] from the United States.” See 8 U.S.C. § 1252(b)(9); see also, e.g., *Jennings*, 583 U.S. at
13 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. §
14 1226(e) did not bar review in that case because the petitioner did not challenge “his initial
15 detention”); *Saadullov v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar.
16 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which
17 flows from the government’s decision to “commence proceedings”). As such, the Court lacks
18 jurisdiction over this action. The reasoning in *Jennings* outlines why Petitioner’s due process
19 claim cannot be reviewed here.

20 While holding that it was unnecessary to comprehensively address the scope of Section
21 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may
22 fall within the scope of Section 1252(b)(9). See *Jennings*, 583 U.S. at 293-94. The Court found
23 that “§1252(b)(9) [did] not present a jurisdictional bar” in situations where “respondents . . . [were]
24 not challenging the decision to detain them in the first place.” *Id.*, at 294-95. In this case, Petitioner

1 *does* challenge the government’s decision to detain them in the first place. *See, e.g.*, Compl. ¶¶ 2-
2 3 (arguing that DHS incorrectly categorized him as an arriving alien instead of a lawful permanent
3 resident). Though Petitioner frames his challenge relating to detention authority, rather than a
4 challenge to DHS’s decision to detain him in the first instance, such framing does not evade the
5 preclusive effect of Section 1252(b)(9). *Khalil*, 2026 WL 111933, at *11 (describing purported
6 detention claim as repackaging the petitioner’s challenge to removal).

7 The fact that Petitioner claim indirectly challenges the basis for his removal – the very
8 reason why he is detained – is enough to trigger Section 1252(b)(9) because “detention *is* an
9 ‘action taken . . . to remove’ an alien.” *See Jennings*, 583 U.S. 318, 319 (Thomas, J., concurring);
10 8 U.S.C. § 1252(b)(9). The Court should deny the petition and require Petitioner to proceed with
11 his challenge to the basis for his removal proceedings through immigration court, the Board of
12 Immigration Appeals, and if necessary, with a petition for review in the Ninth Circuit.

13 IV. CONCLUSION

14 For the foregoing reasons, the Petition should be denied.

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1 DATED this 26th day of January, 2026.

2 Respectfully submitted,

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16 *I certify that this memorandum contains 1,645*
17 *words, in compliance with the Local Civil Rules.*