

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

At Chandee,
Petitioner,

v.

Pamela Jo Bondi, *et al.*,
Respondents.

Civil Action No. 3:26-CV-00336-LS

RESPONSE TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS

Federal Respondents provide the following response to Petitioner's amended habeas petition, filed pursuant to 28 U.S.C. § 2241.¹ Any allegations that are not specifically admitted herein are denied. Petitioner is not entitled to the relief sought, including attorney's fees under the Equal Access to Justice Act ("EAJA").² Petitioner seeks release from detention and seeks review of his deportation order and an order to vacate the deportation order, issued on January 25, 1995. The Court ordered Respondents to show cause by February 25, 2026, why the Court should not grant the relief sought. ECF No. 3.

Petitioner seeks relief from this Court that is not available to him: a vacatur of his final order of removal. 8 U.S.C. § 1252(a)(5); see also *Rosales v. Bureau of ICE*, 426 F.3d 733, 735-36 (5th Cir. 2005). Though styled as a petition for habeas review, Petitioner seeks relief from the removal order itself, and is in substance, attacking the removal order. The INA precludes judicial review over this type of claim. See 8 U.S.C. § 1252(g). Such relief can be sought only in the court of appeals through a properly filed petition for review. 8 U.S.C. § 1252(a)(5). As such, this Court

¹ The Department of Justice represents only federal employees in this action.
² *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023).

should deny Petitioner's claims for relief.

BACKGROUND

Petitioner alleges that he is a native and citizen of Laos who entered the country on or about April 29, 1980. ECF No. 4, at 28. Petitioner alleges he gained lawful permanent residence status on June 18, 1981. *Id.* He further alleges that he was convicted on November 29, 1993, of two counts of assault in the second degree under Minn. Stat. § 609.222. *Id.* at 29. He alleges he was placed in deportation proceedings on February 15, 1994, and charged with having committed an aggravated felony, multiple crimes involving moral turpitude, and a gun crime. *Id.* He claims that on September 22, 1994, the immigration judge found him removable based on the second-degree assault conviction being a firearm offense. *Id.*

Regarding the deportation proceedings, Petitioner asserts and records show the following:

On January 25, 1995, an immigration judge ordered Petitioner deported to Laos. ECF No. 4-12.

On August 17, 1995, the BIA dismissed Petitioner's appeal. ECF No. 4, at 29; Exh. A, BIA Order Denying Motion to Reopen.

On November 24, 2017, Petitioner filed a motion to reopen. *See* Exh. A.

On May 11, 2018, the BIA entered decision denying Petitioner's untimely motion to reopen. ECF No. 4, at 30; Exh A.

On June 8, 2018, Petitioner filed a petition for review in 8th Circuit Court of Appeals. The petition was denied. ECF No. 4, at 29.

On June 11, 2018, Petitioner filed a motion to reconsider. ECF No. 4, at 30.

On March 14, 2019, the BIA entered a decision denying the motion to reconsider denial of the motion to reopen. *See* Exh. B, Order Denying Motion to Reconsider.

On January 24, 2026, Petitioner was taken into ICE custody, and is currently in custody at the Camp East Montana facility in El Paso, Texas. ECF No. 4, at 4, 32.

DISCUSSION

This Court lacks jurisdiction under the REAL ID Act of 2005 to review a final order of removal. 8 U.S.C. § 1252(a)(5); see also *Rosales*, 426 F.3d at 735-36. A petition for review filed with an appropriate court of appeals . . . [is] the sole and exclusive means for judicial review of an order of removal . . .” 8 U.S.C. § 1252(a)(5); see also *Amaya v. U.S. Immigration and Customs Enforcement*, 383 F. App’x 419, 420, 2010 WL 2546069 at *1 (5th Cir. 2010) (dismissing the appeal of a denial of a Rule 60(b)(4) motion, which essentially was an attack on the removal order); see also *Castillo-Perales v. Holder*, 411 Fed. App’x 695 (2011) (per curiam) (held district court lacked jurisdiction to review petitioner’s § 2241 petition attacking his 1994 removal order on the basis the underlying felony conviction had been vacated and reduced to a misdemeanor).

Additionally, this Court cannot review Petitioner’s enumerated challenges, as, “no court shall have jurisdiction to hear any cause or claim by or on behalf of any 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 chapter.” 8 U.S.C. § 1252(g). Section 1252(g) applies, “to three discrete actions that the Attorney General may take: [the] ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original).

In his pleadings, Petitioner challenges multiple aspects of his immigration case, such as whether the underlying conviction was a sufficient basis for the deportation order, and whether the revocation of supervised release was proper. ECF No. 4, at 33. Petitioner may obtain judicial review of these challenges; however, a court of appeals is the only court that may exercise such

judicial review. *Morales v. Thaler*, N. EP-12-CV-409-PRM, 2013 WL 8476168 (W.D. Tex. July 1, 2013) (declining to review petitioner's challenges to his removal order through a Rule 60(b) motion). Therefore, Petitioner's habeas petition should be denied.

DETENTION IS LAWFUL UNDER ZADVYDAS

Even if the Court finds it retains jurisdiction over Petitioner's habeas petition, Petitioner nonetheless fails to state a claim for unlawful detention in that he fails to show a due process violation under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). To state a claim for relief under *Zadvydas*, Petitioner must show that: (1) he is in DHS custody; (2) he has a final order of removal; (3) he has been detained in *post*-removal-order detention for six months or longer; and (4) there is no significant likelihood of removal in the reasonably foreseeable future. *Zadvydas*, 533 U.S. at 700. Petitioner does not and cannot make this showing, as he has been detained less than six months in post-order custody. *Chance v. Napolitano*, 453 F. App'x 535, 2011 WL 6260210 at *1 (5th Cir. Dec. 15, 2011); *Agyei-Kodie v. Holder*, 418 F. App'x 317, 2011 WL 891071 at *1 (5th Cir. Mar. 15, 2011); *Gutierrez-Soto v. Sessions*, 317 F.Supp.3d 917, 929 n.33 (W.D. Tex. 2018); *Kasangaki v. Barr*, 2019 WL 13221026 at *3 (W.D. Tex. July 31, 2019); *Linares v. Collins*, 1:25-CV-00584-RP-DH, ECF No. 14 at 7–16 (W.D. Tex. Aug. 12, 2025).

APA CHALLENGES MAY NOT BE ASSERTED AS HABEAS PETITIONS

In this proceeding, Petitioner purports to raise a claim under the Administrative Procedure Act ("APA")—a civil claim. *See, e.g.*, ECF 4 at 37. However, this he may not do, as a civil APA claim is not cognizable in the habeas context. *See, e.g., Mesina v. Wiley*, 352 F. App'x 240, 241–42 (10th Cir. 2009) (holding that petition asserting APA claim "does not state a habeas claim").

CONCLUSION

The Court should deny this petition as § 1252(a)(5) vests judicial review of any final order of removal with the Court of Appeals, not the District Court. Respondents respectfully request this Court deny Petitioner's habeas petition and dismiss the case in its entirety without further review.

Dated: February 25, 2026

Respectfully submitted,

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