No.

In the Supreme Court of the United States

UNITED STATES OF AMERICA,
PETITIONER

v.

JORGE FELIX IBARRA-PEREZ

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under the Immigration and Nationality Act, except as otherwise provided, "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action * * * to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. 1252(g). The question presented is whether Section 1252(g) bars an alien with a valid final order of removal from bringing a claim in federal district court that the government lacked legal authority in executing that order.

PARTIES TO THE PROCEEDING

Petitioner (respondent below) is the United States of America.

Respondent (petitioner below) is Jorge Felix Ibarra-Perez.

RELATED PROCEEDINGS

United States Court of Appeals (9th Cir.):

Ibarra-Perez v. *United States*, No. 24-631 (Aug. 27, 2025)

United States District Court (Ariz.):

Ibarra-Perez v. *United States*, No. 22-cv-1100 (Jan. 19, 2024)

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-61a) is reported at 154 F.4th 989. The order of the district court (App., *infra*, 62a-84a) is available at 2024 WL 216769.

JURISDICTION

The judgment of the court of appeals was entered on August 27, 2025. A petition for rehearing was denied on June 25, 2026 (App., *infra*, 85a-111a). On September 8, 2026, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including October 23, 2026. On October 15, 2026, Justice Kagan further extended the time to and including November 20, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

The pertinent statutory provision is reprinted in the appendix to this petition. App., *infra*, 112a.

STATEMENT

A. Legal Background

1. The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, authorizes the removal of certain classes of aliens from the United States. 8 U.S.C. 1182, 1227. The full administrative process for removal can include a hearing before an immigration judge (IJ), followed by an appeal to the Board of Immigration Appeals (BIA). 8 U.S.C. 1229a. Many aliens facing removal also have an opportunity to apply for relief or protection from removal. See, *e.g.*, 8 U.S.C. 1158 (asylum); 8 U.S.C. 1231(b)(3) (withholding of removal); 8 C.F.R. 208.16, 208.17 (withholding and deferral of removal under the Convention Against Torture (CAT)). Once an IJ issues an order of removal, that order becomes "final" upon the earlier of when the BIA affirms it, or when the time to appeal to the BIA runs out. 8 U.S.C. 1101(a)(47)(B).

The INA also provides a framework for determining the country to which an alien is to be removed. 8 U.S.C. 1231(b). For certain aliens arriving in the United States (Section 1231(b)(1)) and then all other aliens (Section 1231(b)(2)), the Act establishes sequences of countries where an alien shall be removed, subject to certain disqualifying conditions (*e.g.*, the receiving country does not consent). See *Jama* v. *ICE*, 543 U.S. 335, 341 (2005). For instance, under Section 1231(b)(1), possible countries of removal include an alien's country of citizenship, the country where he was born, and the country where he has a residence. Notably, under both Sections 1231(b)(1) and (b)(2), Congress provided a fail-safe op-

tion in the event that the others do not work: An alien may be removed to any country willing and able to accept him. See 8 U.S.C. 1231(b)(1)(C)(iv) and (2)(E)(vii).

Once an IJ finds that an alien is removable, he has a regulatory obligation to "identify" in the removal order "a country, or countries in the alternative, to which the alien's removal may in the first instance be made." 8 C.F.R. 1240.12(d). But "[i]n the event that the Department of Homeland Security is unable to remove the alien to the specified or alternative country or countries" identified, "the order of the [IJ] does not limit the authority of [DHS] to remove the alien to any other country as permitted by [8 U.S.C. 1231(b)]." *Ibid.*

A common reason DHS may be unable to remove an alien to the country identified in his removal order is that he has obtained relief or protection from removal to that country. See *Matter of I-S- & C-S-*, 24 I. & N. Dec. 432, 433-434 (B.I.A. 2008). But any such redress is country-specific. *Johnson* v. *Guzman Chavez*, 594 U.S. 523, 536 (2021). It affects *where* an alien may be removed, not *whether* he may be removed. *Nasrallah* v. *Barr*, 590 U.S. 573, 583 (2020). So even where an alien obtains an order barring his removal to a given country, that has no bearing on the "validity of the final order of removal," *ibid.*, nor the government's authority "to remove the alien to any other country authorized by [8 U.S.C. 1231(b)]," *Guzman Chavez*, 594 U.S. at 536.

2. The INA establishes a framework for "[j]udicial review of a final order of removal." 8 U.S.C. 1252(a)(1). That review is initiated by the filing of a "petition for review" (PFR) in the appropriate court of appeals "not later than 30 days after the date of the final order of removal." 8 U.S.C. 1252(b)(1). The INA generally provides that, subject to exceptions not applicable here, "a

petition for review filed with an appropriate court of appeals * * * shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of [the INA]." 8 U.S.C. 1252(a)(5).

The INA also contains a number of provisions stripping and channeling jurisdiction to cabin judicial review of issues relating to removal orders. Those provisions broadly "eliminat[e] review" of removal orders "in the district courts," *Nasrallah*, 590 U.S. at 580, and make plain that "no court shall have jurisdiction" to "review such an order" or any "questions of law and fact * * * arising from any action taken or proceeding brought to remove an alien," outside of a PFR. 8 U.S.C. 1252(b)(9).

This case concerns one of the INA's most important jurisdiction-limiting provisions, Section 1252(g). That provision states that, "[e]xcept as provided in this section" (namely, in the PFR process), and "notwithstanding any other provision of law (statutory or nonstatutory)," "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action * * * to commence proceedings, adjudicate cases, or execute removal orders against any alien." 8 U.S.C. 1252(g).

B. Factual And Procedural Background

1. Respondent is a Cuban national. App., *infra*, 23a. He fled that country in April 2019, ultimately arriving in Mexico. *Id.* at 64a. After several months there, during which time respondent alleges he was (among other things) extorted by the Mexican police, respondent left for the United States and sought asylum at a port of entry in August 2019. *Ibid.* In September 2019, respondent was placed in removal proceedings as an alien without a valid entry document. *Ibid.*; see 8 U.S.C. 1182(a)(7)(A)(i)(I).

Respondent submitted a *pro se* application for asylum, withholding of removal, and CAT protection. App., *infra*, 64a. He sought only "protection from Cuba," while noting that he "did not consider Mexico to be a safe country." C.A. E.R. 34; see App., *infra*, 64a-65a.

On January 10, 2020, an IJ held a hearing and found respondent removable. App., *infra*, 64a-65a; see *id.* at 23a. The IJ's order identified Cuba as the country of removal. *Id.* at 92a. But the IJ also granted respondent withholding relief for Cuba, while denying his asylum claim—which she did only because she found that it was barred under a then-existing policy that required an alien passing through a third country (here, Mexico) to first apply for asylum in that country (the "Transit Ban"). *Id.* at 4a. The IJ did not identify any other possible country of removal besides Cuba. *Ibid.* Respondent waived any appeal, and his removal order became final. *Id.* at 5a.

Because the government was unable to remove respondent to the country specified in his order (Cuba), it started to explore alternative options pursuant to Section 1231(b). See App., *infra*, 66a. On January 14, 2020, an Immigration and Customs Enforcement (ICE) officer contacted consular representatives from Mexico, Nicaragua, and Colombia to see whether any of those countries would be willing and able to accept respondent. *Ibid.* The next day, Mexico agreed to do so. *Ibid.*

An hour-and-a-half later, in the afternoon of January 15, an ICE agent notified respondent that he would be removed to Mexico. App., *infra*, 66a. Respondent objected, and asked to be removed to Canada or Spain instead. *Ibid.* That evening, respondent allegedly repeated that he was "afraid" to go back to Mexico. *Ibid.*

On January 16, 2020, ICE executed respondent's removal order and removed him to Mexico. See App., *infra*, 67a. According to respondent, he was extorted by a drug cartel the very next day. *Ibid.* Respondent then went to a building run by an immigration nonprofit, where he spoke with a lawyer; and later that day, alongside that attorney, respondent presented himself again at a port of entry in Arizona. *Ibid.* Respondent was taken into custody and placed back into removal proceedings. *Id.* at 68a. There, he successfully moved to reopen his earlier proceedings. See *ibid.* On July 16, 2020, after the Transit Ban had been enjoined by the Ninth Circuit, the IJ granted respondent asylum based on his mistreatment in Cuba. *Ibid.* The government did not appeal. *Id.* at 8a.

2. Respondent then sued the United States under the FTCA. App., *infra*, 8a. He brought four tort claims —false imprisonment, negligence, abuse of process, and intentional infliction of emotional distress—all arising from the assertion that the United States "unlawfully deported him" to Mexico, because the government lacked the legal authority to remove him there without first giving him adequate notice and an opportunity to contest his removal. C.A. E.R. 22; see *id.* at 45-47. In its own words, the suit "seek[s] compensation for the harms and losses [that respondent] suffered as the result of [his] unlawful deportation." *Id.* at 23.

The district court dismissed the complaint as jurisdictionally barred. App., *infra*, 62a-84a. Relevant here, the court relied on Section 1252(g). *Id.* at 70a-80a. As the court explained, while respondent "advances an array of theories as to why the ICE agents should not have executed [his] removal order" as it did, "all of those theories fundamentally relate to the actions of the ICE

agents" in "*executing a removal order*." *Id.* at 72a-73a. Thus, respondent's complaint fell within the heartland of Section 1252(g), which categorically strips federal district courts of jurisdiction over "any cause or claim" "arising from the decision or action" to "execute removal orders." *Id.* at 71a-72a (quoting 8 U.S.C. 1252(g)).

3. The court of appeals reversed. App., *infra*, 1a-22a. In the main, the panel majority (Judges Fletcher and Hawkins) held Section 1252(g) only precludes challenges to the government's exercise of its discretionary authority—*e.g.*, the decision of whether or when to execute a removal order—and does not reach challenges to the government's "legal authority" to take a covered action. *Id.* at 17a. Because respondent claimed that the government lacked the legal authority to remove him to Mexico without first providing him added notice and an opportunity to contest that removal—thereby rendering his removal illegal, and his subsequent injuries tortious—it fell on the latter side of that line, and outside Section 1252(g)'s narrow ambit. See *id.* at 11a-19a.

Judge Nelson dissented. App., *infra*, 22a-61a. He rejected the majority's discretion-versus-authority distinction as having no basis in the text of Section 1252(g), and also as offering a way for aliens to circumvent that provision in virtually every case. *Id.* at 25a-50a. In Judge Nelson's view, respondent's complaint was barred by Section 1252(g), because a suit "arguing that the government lack[s] authority to execute [a] removal order" is nothing but a "challenge to the 'decision or action' to 'execute [a] removal order[].'" *Id.* at 29a.

4. The court of appeals denied rehearing en banc. App., *infra*, 87a. The panel majority wrote a statement respecting the denial and reaffirming their prior reasoning. See *id.* at 88a-90a.

Judge Bea wrote a statement, joined by 11 judges, faulting the court for failing to take this matter en banc. App., *infra*, 90a-111a. In his view, this "should have been an easy decision." *Id.* at 94a. If a "challenge[]" to the "decision to remove [an alien]" to a given country pursuant to a valid final removal order "does not arise from the decision to execute a removal order, what does?" *Id.* at 97a. In holding otherwise, Judge Bea detailed, the panel opinion "ignores clear statutory text," conflicts with multiple circuits, and hazards severe consequences. *Id.* at 91a. In fact, he cataloged, those consequences have already manifest, as district courts within (and outside) the circuit have seized upon this decision to "interfere with the executive branch's exercise of its removal duties, causing * * * friction, delay, and inter-branch conflict." *Ibid.*; see *id.* at 91a n.1, 101a-103a & nn.3-4 (collecting cases).

REASONS FOR GRANTING THE PETITION

This case presents the question of whether 8 U.S.C. 1252(g) bars an alien with a valid final order of removal from bringing a claim in federal district court that the government lacked legal authority in executing that order. This Court granted certiorari in *Department of Homeland Security* v. *D.V.D.*, No. 26-426 (Sept. 29, 2026), to consider that question (among others). Indeed, the court of appeals in *D.V.D.* relied on the decision here to read Section 1252(g) in a similar fashion. *D.V.D.* v. *Department of Homeland Security*, 192 F.4th 74, 88, 89 (1st Cir. 2026); see *id.* at 90 ("[T]he class is not challenging DHS's discretionary decision or action to proceed with the removal of class members.").

Like the *D.V.D.* decision, the decision below conflicts with the text of Section 1252(g) and this Court's decision in *Reno* v. *American-Arab Anti-Discrimination Com-*

mittee, 525 U.S. 471 (1999). See U.S. Br. at 15-21, *Department of Homeland Security* v. *D.V.D.*, No. 26-426 (Oct. 23, 2026). And the decisions of the First and Ninth Circuits are in square conflict with decisions of the Third, Seventh, Eighth, and Eleventh Circuits. See *Tazu* v. *Attorney General*, 975 F.3d 292, 298 (3d Cir. 2020); *E.F.L.* v. *Prim*, 986 F.3d 959, 965 (7th Cir. 2021); *Silva* v. *United States*, 866 F.3d 938, 941 (8th Cir. 2017); *Camarena* v. *ICE*, 988 F.3d 1268, 1273 (11th Cir.), cert. denied, 595 U.S. 1038 (2021); see also App., *infra*, 32a (Nelson, J., dissenting) (acknowledging circuit split), 101a (Bea, J., respecting the denial of rehearing en banc) (same). As 12 Ninth Circuit judges emphasized, the decision below will cause—and indeed, has caused—"disruptive effects" as "many district courts" have seized on it to "interfere with the executive branch's exercise of its removal duties." *Id.* at 91a-92a (Bea, J., respecting the denial of rehearing en banc).

Accordingly, this case would have warranted plenary review absent the grant of certiorari in *D.V.D.* But in light of *D.V.D.*, a hold is appropriate. Because Section 1252(g) is the threshold jurisdictional question in *D.V.D.*, this Court is likely to resolve this question there, and that will control here. But if the Court does not resolve this question in *D.V.D.*—which is possible given that the government has raised additional threshold defenses there—then certiorari would be warranted here at that time.

CONCLUSION

The Court should hold the petition for a writ of certiorari pending the disposition of the petition in *D.V.D.* v. *Department of Homeland Security*, cert. granted, No. 26-426 (Sept. 29, 2026), and then dispose of this petition as appropriate.

Respectfully submitted.

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NOVEMBER 2026

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-631

JORGE FELIX IBARRA-PEREZ, ALSO KNOWN AS JORGE IBARRA-PEREZ, PLAINTIFF-APPELLANT

v.

UNITED STATES OF AMERICA, DEFENDANT-APPELLEE

Argued and Submitted: Apr. 2, 2025
Phoenix, Arizona
Filed: Aug. 27, 2025

OPINION

Before: MICHAEL DALY HAWKINS, WILLIAM A. FLETCHER, and RYAN D. NELSON, Circuit Judges.

Opinion by Judge W. FLETCHER;

Dissent by Judge R. NELSON

W. FLETCHER, Circuit Judge:

After a hearing before an Immigration Judge ("IJ"), at which he had sought relief based on persecution in Cuba, plaintiff-appellant Jorge Felix Ibarra-Perez was granted withholding of removal to Cuba. Ibarra-Perez had stayed briefly in Mexico after he left Cuba and before he came to the United States. At his hearing before the IJ, Ibarra-Perez had described not only persecution

in Cuba but also threats and extortion in Mexico. The government had not asked for an order removing Ibarra-Perez to Mexico, and the IJ did not designate Mexico as a country to which he could be removed. Neither the government nor Ibarra-Perez appealed the IJ's decision to the Board of Immigration Appeals ("BIA").

After completion of proceedings before the IJ, federal immigration officials removed Ibarra-Perez to Mexico. Ibarra-Perez vehemently objected to the removal, repeatedly telling the officials that he feared what would happen to him if he were removed to Mexico. While in Mexico after his removal, Ibarra-Perez was recruited and threatened by gang members. He was able to return to the United States two days after his removal. Upon his return to the United States, he was detained for six months before being granted asylum.

Ibarra-Perez brought suit for damages under the Federal Tort Claims Act ("FTCA"), contending that he was improperly removed to Mexico. The district court dismissed Ibarra-Perez's suit for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1).

The merits of Ibarra-Perez's FTCA suit are not before us. The question before us is jurisdictional—whether the limitation contained in 8 U.S.C. § 1252(g) should be read broadly to preclude Ibarra-Perez's suit, or whether it should be read narrowly to allow it. The Supreme Court has instructed that we should read § 1252(g) narrowly. *See Reno v. Am.-Arab Anti-Discrimination Comm.* (*AADC*), 525 U.S. 471, 487, 119 S. Ct. 936, 142 L. Ed. 2d 940 (1999); *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19, 140 S. Ct. 1891, 207 L. Ed. 2d 353 (2020). Following the Court's

instruction, we hold that the district court has subject matter jurisdiction over Ibarra-Perez's FTCA suit.

We therefore reverse.

I. Background

Because Ibarra-Perez's suit was dismissed under Rule 12(b)(1), we accept as true all of the plausible factual allegations in his complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). The government does not contend that his allegations are implausible. The following narrative is based on these allegations.

Ibarra-Perez fled Cuba after two decades of beatings, surveillance, threats, and harassment because of his opposition to the Castro regime. Before arriving at the United States, Ibarra-Perez spent several months in Mexico. While in Mexico, Ibarra-Perez was "extorted by Mexican police officers and other authorities on multiple occasions, and forced to pay officers money in order to avoid detention and deportation to Cuba." Ibarra-Perez applied for asylum in Mexico. Mexico denied asylum but granted a one-year humanitarian visitor permit.

To escape the threats and extortion in Mexico, Ibarra-Perez presented himself at the DeConcini Port of Entry in Nogales, Arizona in August 2019, seeking asylum in the United States. In September 2019, U.S. Customs and Border Protection took Ibarra-Perez into immigration custody and issued a Notice to Appear, charging him with removability under 8 U.S.C. § 1182(a)(7)(A)(i)(I).

Ibarra-Perez filled out a *pro se* application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT") on a Form I-589.

Because Ibarra-Perez has limited ability to read and write in English, he had another detained person help him fill out the application. He indicated on the form that "he did not consider Mexico to be a 'safe country.'" In addition to his Form I-589, Ibarra-Perez submitted a declaration in Spanish that was translated into English. In that declaration, he "detailed the multiple times [he had been] threatened and extorted while in Mexico." Ibarra-Perez's Form I-589 and declaration were submitted to the immigration court, and an Immigration and Customs Enforcement ("ICE") attorney received copies.

On January 10, 2020, Ibarra-Perez had a hearing before IJ Jennifer I. Gaz. Ibarra-Perez appeared *pro se.* At the hearing, Ibarra-Perez described the persecution he had suffered in Cuba. He explained if he had not received a humanitarian visa from Mexico, he "might have been jailed by the government or deported back to Cuba" or "maybe [he] might have been kidnapped." He also stated that he feared removal to Mexico. The IJ found that Ibarra-Perez had suffered past persecution in Cuba on account of his political opinion and granted him withholding of removal to Cuba. At no point did the IJ designate Mexico, or any other country, as an alternative country of removal. Government counsel never mentioned Mexico as a possible country of removal during proceedings before the IJ.

In her order withholding removal to Cuba, the IJ wrote that she would have granted asylum to Ibarra-Perez if she had not been prevented from doing so by the Transit Ban then in effect. That ban required migrants who passed overland through another country or countries on their way to the southern border of the

United States to first seek asylum in one of those countries. *See* 8 C.F.R. § 1208.13(c) (2020).[1]

Continuing to act *pro se* and believing that the IJ's order granting him withholding of removal to Cuba "prevented him from being deported from the United States," Ibarra-Perez did not appeal the IJ's denial of asylum. The government did not appeal the IJ's grant of withholding of removal. The IJ's decision thus became final. *See* 8 C.F.R. § 1003.39 (2025); 8 U.S.C. § 1101(a)(47)(B)(i)-(ii).

The government continued to detain Ibarra-Perez. Because withholding of removal is country specific, the government "retain[ed] the authority to remove [Ibarra-Perez] to any other country authorized by statute." *Johnson v. Guzman Chavez*, 594 U.S. 523, 536, 141 S. Ct. 2271, 210 L. Ed. 2d 656 (2021). On January 14, 2020, an ICE officer contacted consular representatives from Mexico, Nicaragua, and Colombia to inquire whether they would allow Ibarra-Perez entry into their countries. The next day at 12:35 p.m., Mexico agreed to accept him. At about 2:00 p.m. that day, while Ibarra-Perez was in a holding cell, an ICE agent told him in English that he would be deported to Mexico. Ibarra-Perez, who understood some English, told the officer that he could not go back to Mexico and asked if he could be re-

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[1] Though it is not critical to our decision, we note that the IJ likely erred in concluding that the Transit Ban barred Ibarra-Perez's asylum application. Ibarra-Perez testified during his hearing before the IJ that he had sought asylum in Mexico before seeking entry into the United States. Ibarra-Perez was asked whether he had applied for asylum in Mexico. He responded, "Yes." He was then asked, "Was the application granted or denied?" He responded, "No. I received a humanitarian visa for a year."

moved to Spain or Canada instead. The ICE officer promised to return with more information but never came back. Later that day, while Ibarra-Perez was still in the holding cell, an ICE officer with a computer translation program, wrote on the computer that Ibarra-Perez would be deported to Mexico. Ibarra-Perez told the officer that he was afraid to be deported to Mexico. The officer left without providing any further information.

An ICE officer later asked a Spanish speaking guard to translate for Ibarra-Perez. The guard told Ibarra-Perez that he would be deported "whether he liked it or not." Ibarra-Perez panicked and raised his voice, saying he could not be deported because he had won his case. ICE officers handcuffed Ibarra-Perez, bound him at the ankles and waist, and took him in a van to Florence, Arizona. Ibarra-Perez told an ICE officer at Florence that we was "afraid to be deported to Mexico." The officer ignored him.

At about 6:00 a.m. on January 16, ICE officers delivered Ibarra-Perez to Mexican officials in Nogales, Sonora, Mexico. At 9:00 a.m., Ibarra-Perez was released from Mexican custody. It was "cold and rainy," and he was dressed only in the light clothing he had worn when he came to the United States border seeking entry. Ibarra-Perez went to a Mexican government office at about 11:00 a.m. A woman at the office told him to go look for work. At about noon, Ibarra-Perez contacted his daughter in Florida who wired approximately $100 to a bank in Mexico. He slept that night in a church-affiliated shelter.

The next day, January 17, Ibarra-Perez left the shelter to look for work. As he was walking, a truck with

three men slowed down next to him. One of the men said he wanted to talk to Ibarra-Perez. Ibarra-Perez tried to keep walking. Another man opened his jacket and showed a gun. The men forced Ibarra-Perez into their truck. One of the men showed Ibarra-Perez photographs taken the day before, including a photograph of him getting the money his daughter had wired to him. The men told Ibarra-Perez that he had two options—to work for them as a drug mule or to pay them $500 per month. Ibarra-Perez told the men that he would give them an answer the next day. He asked them where he could find them. They responded, "We'll find you."

Ibarra-Perez went to a food hall run by the "Kino Border Initiative" and told "other immigrants" there what had happened. "They told him he could pay, work for the criminal groups, disappear and end up dead, or turn himself in at the U.S. border." An attorney from the Florence Immigration & Refugee Rights Project was providing legal services to the Kino Border Initiative that day. The attorney contacted an ICE official. Later that day, accompanied by the attorney, Ibarra-Perez presented himself at the Port of Entry in Nogales. Ibarra-Perez was allowed to physically reenter the United States, but was taken into custody.

On January 21, a new Notice to Appear was issued, charging Ibarra-Perez with removability under 8 U.S.C. § 1182(a)(7)(A)(i)(I). Ibarra-Perez's attorney moved successfully before IJ Gaz to dismiss the new Notice to Appear and to reopen Ibarra-Perez's earlier proceeding. The IJ found that "[r]eopening is appropriate in light of the due process concerns." (Brackets in original.) She wrote that the government has "'an affirmative obligation' that applies 'regardless of whether the

country of deportation is designated during or after removal proceedings—to provide a meaningful opportunity to be heard on asylum and withholding claims regarding any potential country of removal."

While the reopened proceeding was pending before the IJ, our court held on July 6, 2020, that the Transit Ban was invalid. *See E. Bay Sanctuary Covenant v. Barr*, 964 F.3d 832 (9th Cir. 2020), *amended by*, 994 F.3d 962 (9th Cir. 2020). On July 16, the IJ granted asylum to Ibarra-Perez based on his past persecution in Cuba and dismissed his withholding and CAT claims as moot. The government did not appeal. Ibarra-Perez was held in continuous custody from the time of his reentry in January until the IJ's decision in July.

Ibarra-Perez brought suit under the FTCA for damages suffered as a result of what he contends was an illegal removal to Mexico. He alleges false imprisonment, negligence, abuse of process, and intentional infliction of emotional distress. The district court dismissed his complaint because it concluded it lacked subject matter jurisdiction under 8 U.S.C. § 1252(a)(5), (b)(9), and (g). Ibarra-Perez timely appealed.

II. Standard of Review

We have appellate jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's determination of its subject matter jurisdiction. *Garcia v. Serv. Emps. Int'l Union*, 993 F.3d 757, 762 (9th Cir. 2021).

III. Discussion

A. Country-of-Removal Designations

The statute that governs determination of countries to which a noncitizen can be removed is 8 U.S.C. § 1231. Section 1231(b)(1) applies to "Aliens arriving at the United States." This subsection refers only to arrivals by "vessel or aircraft," but it has been interpreted to apply to other means of arrival at the border. *See* 8 C.F.R. § 241.25(d) ("Any alien ordered excluded who arrived at a land border on foot shall be deported in the same manner as if the alien had boarded a vessel or aircraft in foreign contiguous territory."); *see also Jama v. ICE*, 543 U.S. 335, 351 n.11, 125 S. Ct. 694, 160 L. Ed. 2d 708 (2005) ("[Section] 1231(b)(1) . . . applies only to aliens placed in removal proceedings immediately upon their arrival at the border."). Section 1232(b)(2) applies to "Other aliens." The two subsections prescribe slightly different ways in which the country of removal is determined. Ibarra-Perez contends that removal in his case is governed by § 1231(b)(2). With the case in its current posture, the government has not taken a position on which subsection applies. For purposes of the appeal now before us, we need not decide that question, for our analysis applies to both subsections.

Both the immigration court and the Department of Homeland Security ("DHS"), which includes ICE, have authority to select a country of removal pursuant to § 1231(b)(1) and (b)(2). The immigration court acts first. "After determining that a noncitizen is removable, an IJ must assign a country of removal." *Hadera v. Gonzales*, 494 F.3d 1154, 1156 (9th Cir. 2007). The IJ "shall identify a country, or countries in the alternative, to which the alien's removal may in the first instance be made,

pursuant to the provisions of [§ 1231(b)]." 8 C.F.R. § 1240.12(d); *see also id.* § 1240.10(f) ("The [IJ] shall also identify for the record a country, or countries in the alternative, to which the alien's removal may be made pursuant to [§ 1231(b)(2)] if the country of the alien's designation" fails). The IJ's designation is subject to judicial review through the petition-for-review process. *See, e.g., Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *Hadera*, 494 F.3d at 1156-59; *Dzyuba v. Mukasey*, 540 F.3d 955, 957 (9th Cir. 2008) (per curiam).

After immigration court proceedings have ended, "DHS retains the authority to remove the alien to any other country authorized by the statute." *Johnson*, 594 U.S. at 536, 141 S. Ct. 2271. If DHS "is unable to remove the alien to the specified or alternative country or countries, the order of the [IJ] does not limit the authority of [DHS] to remove the alien to any other country as permitted by [§ 1231(b)]." 8 C.F.R. § 1240.12(d); *see also id.* §§ 241.15, 208.16(f), 1208.16(f). However, there are restrictions on DHS's removal authority. For purposes of the case before us, the most important is 8 U.S.C. § 1231(b)(3)(A): "Notwithstanding [§ 1231(b)(1)] and [§ 1231(b)(2)] the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion."[2] DHS must also "notify individuals who are

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[2] Section 1231 refers to the Attorney General. In 2002, Congress transferred the Attorney General's immigration enforcement responsibilities to the Secretary of Homeland Security. *Clark v. Martinez*, 543 U.S. 371, 374 n.1, 125 S. Ct. 716, 160 L. Ed. 2d 734

subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported"; otherwise, DHS violates their constitutional right to due process. *Andriasian*, 180 F.3d at 1041; *see also Wani Site v. Holder*, 656 F.3d 590, 594 (7th Cir. 2011) ("We recognize that the government retains broad discretion to designate a country of removal. . . . But it must exercise that authority in the appropriate way. . . . ").

B. Section 1252(g)

The only question presented in this case is whether 8 U.S.C. § 1252(g) precludes federal courts from exercising subject matter jurisdiction over his suit. "'[W]e are guided here . . . by the general rule to resolve any ambiguities in a jurisdiction-stripping statute in favor of the narrower interpretation,' and by the 'strong presumption in favor of judicial review.'" *Arce v. United States*, 899 F.3d 796, 801 (9th Cir. 2018) (per curiam) (citations omitted) (first quoting *ANA Int'l, Inc. v. Way*, 393 F.3d 886, 894 (9th Cir. 2004); then quoting *INS v. St. Cyr*, 533 U.S. 289, 298, 121 S. Ct. 2271, 150 L. Ed. 2d 347 (2001)). "[W]here Congress intends to preclude judicial review of constitutional claims its intent to do so must be clear." *Webster v. Doe*, 486 U.S. 592, 603, 108 S. Ct. 2047, 100 L. Ed. 2d 632 (1988).

Section 1252(g) provides in relevant part: "[N]o 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 proceed-

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(2005). We therefore interpret references to the Attorney General as referring to the Secretary.

ings, adjudicate cases, or *execute removal orders* against any alien under this chapter." (Emphasis added.).

The Supreme Court has given a "narrow reading" to § 1252(g). *AADC*, 525 U.S. at 487, 119 S. Ct. 936; *see also Regents of the Univ. of Cal.*, 591 U.S. at 19, 140 S. Ct. 1891 ("Section 1252(g) is . . . narrow."). "The provision applies only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *AADC*, 525 U.S. at 482, 119 S. Ct. 936 (emphasis in original) (quoting 8 U.S.C. § 1252(g)). Instead of "sweep[ing] in any claim that can technically be said to 'arise from' the three listed actions," the provision "refer[s] to just those three specific actions themselves." *Jennings v. Rodriguez*, 583 U.S. 281, 294, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018) (plurality opinion) (describing the holding of *AADC*). "There are of course many . . . decisions or actions that may be part of the deportation process" not implicated by § 1252(g), "such as the decisions to open an investigation, to surveil the suspected violator, to reschedule the deportation hearing, to include various provisions in the final order that is the product of the adjudication, and to refuse reconsideration of that order." *AADC*, 525 U.S. at 482, 119 S. Ct. 936.

The Court has characterized § 1252(g) as a "discretion-protecting provision." *Id.* at 487, 119 S. Ct. 936. The Court wrote, "Section 1252(g) was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion." *Id.* at 485 n.9, 119 S. Ct. 936. We have jurisdiction to decide a "purely legal question" that "does not challenge the Attorney General's discretionary authority." *United States v. Hovsepian*,

359 F.3d 1144, 1155 (9th Cir. 2004) (citing *Ali v. Ashcroft*, 346 F.3d 873, 878-79 (9th Cir. 2003), *vacated on other grounds sub nom., Ali v. Gonzales*, 421 F.3d 795 (9th Cir. 2005)); *see Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002); *Barahona-Gomez v. Reno*, 236 F.3d 1115, 1119-21 (9th Cir. 2001); *Cath. Soc. Servs., Inc. v. INS*, 232 F.3d 1139, 1150 (9th Cir. 2000) (en banc). We have jurisdiction "even if the answer to that legal question . . . forms the backdrop against which the Attorney General later will exercise discretionary authority." *Hovsepian*, 359 F.3d at 1155; *see, e.g., Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) (holding FTCA challenge to detention not barred by § 1252(g) because "[Kong's] assertions of illegal detention [were] plainly collateral to ICE's prosecutorial decision to execute Kong's removal"); *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006) ("While [§ 1252(g)] bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions."); *Bowrin v. INS*, 194 F.3d 483, 488 (4th Cir. 1999) ("[Section] 1252(g) stripped the federal courts of jurisdiction only to review challenges to the Attorney General's decision to exercise her discretion to initiate or prosecute [the three] specific stages of the deportation process.").

The government argues that Ibarra-Perez's FTCA suit, objecting to his removal to Mexico by ICE, falls "squarely" within § 1252(g). In the government's view, Ibarra-Perez's objection to his removal to Mexico is a challenge to "execution" of a removal order within the meaning of § 1252(g). We disagree.

Ibarra-Perez raises purely legal arguments in challenging his removal. He does not contend that ICE was categorically forbidden to remove him to Mexico. Rather, he contends that he had a right to meaningful notice and an opportunity to present a fear-based claim before he was removed to Mexico. ICE officials removed Ibarra-Perez to Mexico despite Ibarra-Perez's Form I-589, declaration, and testimony before the IJ, all of which indicated that he had good reason to fear returning to Mexico, and despite Ibarra-Perez having repeatedly told ICE officials that he so feared. Ibarra-Perez alleges that in removing him to Mexico, ICE officials violated the Due Process Clause of the Fifth Amendment, the Immigration and Nationality Act ("INA"), and international law. For example, he points to our holding in *Andriasian* that a "last minute" country of removal designation "violated a basic tenet of constitutional due process." 180 F.3d at 1041. He also contends that ICE did not have the statutory authority to remove him to Mexico without having first given him an opportunity to present a fear-based claim, pointing out that ICE's removal authority under § 1231(b)(1) and (b)(2) is subject to the protections specified in (b)(3). *See* 8 U.S.C. § 1231(b)(3).

Ibarra-Perez does not challenge ICE's discretionary authority to decide "when" or "whether" to execute a removal order. *See Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002); *Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022). He does not claim, for example, that ICE should have delayed his removal or exercised its discretion not to remove him. Instead, he challenges ICE's separate decision about *where* to send him. *Cf. Johnson*, 594 U.S. at 536-40, 141 S. Ct. 2271 (removal orders are "separate" from withholding-of-removal or-

ders that limit "where" a noncitizen can be removed). His removal order designated Cuba as his country of removal and did not list an alternative country of removal. Because Mexico was not mentioned in the order of removal, Ibarra-Perez does not challenge the "execution" of his removal order.

There is a reason the Supreme Court has instructed that the jurisdictional bar of § 1252(g) is narrow, applying "only to three discrete actions the Attorney General may take: her 'decision or action' to *commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *AADC*, 525 U.S. at 482, 119 S. Ct. 936 (emphasis in original). The government's broad reading of § 1252(g) would lead to a result that is not contemplated in the statute and that has been disavowed by the Supreme Court. The government's reading of § 1252(g) would entirely insulate from judicial review any post-hearing decision by ICE to remove noncitizens to third countries where they would be in danger of persecution, torture, and even death.

Our cases decided under § 1252(g) are consistent with our narrow reading. From the beginning, we have been clear that § 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders. In *Walters v. Reno*, 145 F.3d 1032 (9th Cir. 1998)—one of our first cases to interpret § 1252(g)—we specifically held § 1252(g) did not bar due process claims. *Id.* at 1052-53; *see also Sulit v. Schiltgen*, 213 F.3d 449, 453 (9th Cir. 2000). There, plaintiffs sought injunctive relief on the ground that certain Immigration and Naturalization Service administrative procedures used to obtain final orders with respect to document fraud violated their due process

rights. *Walters*, 145 F.3d at 1036. These orders "render[ed] the [noncitizen] deportable and permanently excludable." *Id.* The government argued the district court lacked jurisdiction under § 1252(g) to issue an injunction prohibiting the deportation (as it was then called) of noncitizens that received inadequate process. *Id.* at 1052. We held § 1252(g) "does not prevent the district court from exercising jurisdiction over the plaintiffs' due process claims." *Id.* Plaintiffs' due process claims did "not arise from a 'decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien,' but instead constitute 'general collateral challenges to unconstitutional practices and policies used by the agency.'" *Id.* (quoting 8 U.S.C. § 1252(g); then quoting *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 492, 111 S. Ct. 888, 112 L. Ed. 2d 1005 (1991)). We wrote, "Although the constitutional violations ultimately may have led to the plaintiffs' erroneous deportation, the resulting removal orders were simply a consequence of the violations, not the basis of the claims." *Id.*

Arce, a recent case decided in our circuit, also supports our subject matter jurisdiction. Anaya Arce expressed a fear of harm if removed to Mexico. *Arce*, 899 F.3d at 798. An asylum officer determined that he had not established a reasonable fear of persecution or torture. *Id.* An IJ agreed with that determination. *Id.* at 799. Anaya Arce then obtained a temporary stay of removal from our court. *Id.* Despite the stay of removal, DHS officials removed him to Mexico. *Id.* Our court ordered that he be brought back to the United States. *Id.* Once back in the United States, Anaya Arce brought suit under the FTCA, alleging false arrest and imprisonment, intentional infliction of emotional distress, and

negligence. *Id.* He sought "damages suffered as a result of the wrongful removal." *Id.* at 798.

The government argued that the claims in Anaya Arce's FTCA suit "f[e]ll squarely within the scope of § 1252(g) because they 'ar[ose] from' the Attorney General's decision or action to execute the removal order," and that we therefore had no subject matter jurisdiction. *Id.* at 799. We disagreed, holding that we had jurisdiction because Anaya Arce's FTCA suit was premised on a lack of legal authority to remove him to Mexico. *Id.* at 800. We wrote that Anaya Arce "points out—correctly—that the Attorney General lacked the authority to execute the removal order because of the stay of removal issued by our court." *Id.*

Ibarra-Perez's FTCA suit is similarly premised on a lack of legal authority to remove him to Mexico. He argues that before he could be removed to a country not named in his removal order, he had due process and statutory rights to present evidence supporting his contention that he would suffer cognizable harm if he were removed to that country. He brings nearly identical tort claims to those brought by Anaya Arce, who also sought damages for wrongful removal. *Arce* forecloses our dissenting colleague's argument that Ibarra-Perez cannot bring tort claims based on his allegedly wrongful removal to Mexico. Our dissenting colleague attempts to narrow *Arce* to its facts, arguing that its holding only applies to violations of court orders. However, we see no reason to treat a violation of a Ninth Circuit court order any differently from a violation the Constitution, INA, or international law.

The government relies on our recent decision in *Rauda*, to argue that § 1252(g) precludes our exercise of

jurisdiction. We disagree with the government. Matias Rauda was ordered removed to El Salvador by an IJ; the BIA dismissed his appeal; and we denied his petition for review. *Rauda*, 55 F.4th at 776. Matias Rauda then moved to reopen before the BIA. *Id.* While his motion to reopen was pending and his removal order remained in effect, Matias Rauda filed a habeas petition in district court and sought a temporary restraining order that would enjoin the government from removing him until the BIA ruled on his motion to reopen. *Id.* We held that the Attorney General's decision as to when to execute Rauda's valid removal order was a discretionary decision shielded by § 1252(g) from judicial review. We wrote, "[T]he discretion to decide *whether* to execute a removal order includes the discretion to decide *when* to do it." *Id.* at 777 (emphasis in original) (quoting *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 297 (3d Cir. 2020)).

Rauda made no new law. It fits easily into a long series of decisions in our circuit and sister circuits holding that discretionary decisions are shielded from review. *See, e.g., Arce*, 899 F.3d at 800-01; *Hovsepian*, 359 F.3d at 1155; *Ali*, 346 F.3d at 878-79; *Barahona-Gomez*, 236 F.3d at 1119-21; *Cath. Soc. Servs.*, 232 F.3d at 1150; *Kong*, 62 F.4th at 617; *Madu*, 470 F.3d at 1368; *Jama v. INS*, 329 F.3d 630, 632 (8th Cir. 2003), *aff'd sub nom. Jama v. ICE*, 543 U.S. 335, 125 S. Ct. 694, 160 L. Ed. 2d 708 (2005); *Bowrin*, 194 F.3d at 488. Unlike Rauda, Ibarra-Perez does not challenge ICE's discretionary authority about "when" to remove him or "whether" to remove him. Rather, Ibarra-Perez objects to ICE's separate decision about "where" to send him. Specifically, he objects to the lack of process afforded him in connection with having been sent to a country not designated

in the IJ's removal order, despite his vehement and repeated objections that he feared being sent there.

Our dissenting colleague argues at length that § 1252(g) is not limited to discretionary decisions. His argument is foreclosed by our case law. As we wrote in *Arce*, "[W]e are bound by our own precedent that limits § 1252(g)'s scope to discretionary decisions that [the Secretary] actually has the power to make, as compared to the violation of his mandatory duties." 899 F.3d at 801. We have jurisdiction to review Ibarra-Perez's purely legal arguments challenging ICE's removal to Mexico without providing any process that would have allowed him to present evidence supporting his fear of removal to that country.

C. Sections 1252(a)(5) and (b)(9)

The government makes no argument under § 1252(a)(5) and (b)(9)—two provisions aimed at channeling noncitizens' claims into the petition-for-review process. It notes in its brief to us that the district court had held that these sections "bar jurisdiction to the extent that plaintiff attempts to challenge prior removal proceedings," and that Ibarra-Perez "has disclaimed any challenge to the prior removal proceedings and order." We agree with the government that Ibarra-Perez has not brought any challenge under § 1252(a)(5) and (b)(9), and that those provisions are not before us.

Despite the refusal of the government to make any argument based on these provisions, our dissenting colleague relies on them to argue that the petition-for-review process in the immigration court was the proper pathway for Ibarra-Perez to challenge his post-hearing removal. We briefly address § 1252(a)(5) and (b)(9) to make the following clear: If § 1252(g) bars jurisdiction

to review removals outside of removal proceedings, and if § 1252(a)(5) and (b)(9) provide the only remedy to Ibarra-Perez, ICE can send *anyone* to *any* country without *any* review. Section 1252(g) is not such a bar, and § 1252(a)(5) and (b)(9) do not provide the only remedy to someone in Ibarra-Perez's position.

Section 1252(a)(5) provides that a petition for review is "the sole and exclusive means for judicial review of an order of removal." Section 1252(b)(9) is a "'zipper clause' that consolidates all 'questions of law and fact . . . arising from any action taken or proceeding brought to remove an alien' into a petition for review." *Martinez v. Napolitano*, 704 F.3d 620, 622 (9th Cir. 2012) (quoting § 1252(b)(9)). The "arising from" language appears broad, but the Supreme Court has cautioned against an "expansive" interpretation of § 1252(b)(9) that would lead to "absurd" results and make certain claims "effectively unreviewable." *Jennings*, 583 U.S. at 293, 138 S. Ct. 830. We have held that § 1252(b)(9) does not does not bar claims that are "independent of or collateral to the removal process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016).

Because Ibarra-Perez challenges ICE's actions taken after his removal proceedings before the IJ and BIA had ended, neither section applies. Section 1252(a)(5) does not apply because Ibarra-Perez does not seek review of his removal order. *See Aden v. Nielsen*, 409 F. Supp. 3d 998, 1006 (W.D. Wash. 2019) (holding that a habeas petitioner's challenge to a country-of-removal designation was not barred by § 1252(a)(5) because ICE acted "outside of removal proceedings"). Similarly, § 1252(b)(9) does not apply because Ibarra-Perez brings

claims that arose after completion of his removal proceedings.

Instead, Ibarra-Perez challenges ICE's separate and post-hearing decision to remove him to Mexico. He could not have contested this decision through the normal petition-for-review process because it was made after his removal proceedings had ended. The government attorney never mentioned Mexico as a possibility during Ibarra-Perez's proceedings before the IJ, and the IJ did not designate Mexico as an alternative country of removal. To state the obvious, Ibarra-Perez could not seek review of a decision that had not been made.

Our dissenting colleague suggests that a motion to reopen is the proper procedural pathway for Ibarra-Perez to challenge his removal to Mexico. He suggests that once Ibarra-Perez had notice that Mexico was his proposed country of removal, he could have moved to reopen his removal proceedings to present a new fear-based claim addressed to Mexico. The suggestion blinks reality. The actions of ICE officials made that impossible. Ibarra-Perez made clear to ICE officials, loudly and repeatedly, that he feared removal to Mexico. Instead of pausing to allow him to file a motion to reopen, they immediately removed him.

In sum, Ibarra-Perez had no reasonable opportunity for judicial review of ICE's designation decision through the standard petition-for-review process. Under the dissent's expansive interpretation of § 1252(g), Ibarra-Perez would have no way to protect himself. This result is more than merely "harsh," as our dissenting colleague acknowledges. Dissent at 1017-18. It is dangerous. Under our colleague's view of the law, ICE can simply wait until removal proceedings end and then immediately re-

move someone, without notice, to a country where he or she faces imminent persecution, torture, or death. The dissent's approach would "completely immunize[] [DHS's] practices and procedures from due process challenges." *Walters*, 145 F.3d at 1052.

The dissent tries to distract us from the jurisdiction question that is before us by focusing on the merits of Ibarra-Perez's claims. We repeat: The merits of Ibarra-Perez's case are not before us. The question before us is whether the district court has jurisdiction to decide those merits. We conclude that it does.

IV. Conclusion

For the foregoing reasons, we reverse the district court's dismissal of Ibarra-Perez's complaint for lack of subject matter jurisdiction and remand for further proceedings.

REVERSED AND REMANDED.

R. NELSON, Circuit Judge, dissenting:

8 U.S.C. § 1252(g) strips our jurisdiction over "any cause or claim" arising from the government's decision to "execute removal orders." Jorge Ibarra-Perez argues that his removal to Mexico—under a final and valid removal order—was unlawful because the government did not timely tell him he would be sent to Mexico. He seeks damages to compensate his allegedly unlawful removal.

Ibarra-Perez's claims are meritless. In any event, we lack jurisdiction over them. He has improperly repackaged a challenge to his removal proceedings as tort claims. And by asking us to decide whether the government erred in enforcing his removal order, Ibarra-Perez

asks us to do what Congress forbids: review the government's decision or action to "execute removal orders."

To hold otherwise, the majority invents an exception to Congress's commands. Under the majority opinion, legal questions about the government's removal authority are exempt from § 1252(g). Maj. at 996. This exception is foreclosed by the statutory text and Supreme Court precedent. And every circuit to address the majority's exception has rejected it. Congress meant what it said: "any cause or claim" arising from the execution of removal orders is barred.

The majority's holding is radical and sweeping. Under the majority's rule, *any* deportee can evade § 1252(g) and raise *any* claim about the government's authority to deport him.

The result? The majority intrudes where Congress said, "Keep out." Our backlogged immigration docket will now overflow more than ever with meritless collateral challenges to removal orders. And the Ninth Circuit will stand in the way as the Executive Branch attempts to faithfully execute the People's law. Because Congress has stripped our authority, I would affirm the district court's order dismissing Ibarra-Perez's suit for lack of jurisdiction. I dissent.

I

Jorge Ibarra-Perez is a Cuban national who lived in Mexico. He alleges that he faced persecution in both countries. He presented at the southern border and sought asylum and withholding of removal. An immigration judge (IJ) found Ibarra-Perez removable, denied asylum, but granted withholding as to Cuba. Withholding of removal is country-specific relief. *Johnson v.*

Guzman Chavez, 594 U.S. 523, 536, 141 S. Ct. 2271, 210 L. Ed. 2d 656 (2021). It prohibits the government from removing an alien to a particular country, not from the United States altogether. *Id.* So the IJ entered an order authorizing Ibarra-Perez's removal with only one restriction: Ibarra-Perez couldn't be sent to Cuba.

Ibarra-Perez did not appeal his removal order. He waived his right to keep seeking asylum. And he waived any argument that the IJ failed to address his alleged persecution in Mexico. As a result, Ibarra-Perez's removal order became final and uncontested. *See* 8 U.S.C. § 1101(a)(47)(B).

The government prepared to enforce the order and sent Ibarra-Perez to Mexico, where he had a humanitarian visa. *See id.* § 1231(b)(1). That surprised Ibarra-Perez. Ignoring his removal order, Ibarra-Perez wrongly thought he "won his case" because his removal to Cuba was withheld. Even though the IJ entered a valid removal order, Ibarra-Perez says that he didn't know he could be removed to Mexico. As he was being transported to Mexico, Ibarra-Perez told officials that he feared persecution in Mexico. He wanted to be sent to Spain or Canada instead.

Officials sent Ibarra-Perez to Mexico. After he arrived, three men allegedly demanded that he work as a drug mule. The men did not physically harm Ibarra-Perez, and Ibarra-Perez did not suffer any persecution while in Mexico. Still, after only two days in Mexico, he returned to the United States and sued the federal government. He believes the government should have designated Mexico as a country of removal before enforcing his removal order. Because the government didn't, Ibarra-Perez argues that his removal was unlawful. He

brings claims for false imprisonment, negligence, abuse of process, and intentional infliction of emotional distress under the Federal Tort Claims Act. The Biden Administration argued before the district court that § 1252(g) strips jurisdiction over those claims. The district court agreed and dismissed Ibarra-Perez's suit. Ibarra-Perez appealed, and the government renewed its jurisdictional argument.

II

The district court got it right. Congress deprived the federal courts of jurisdiction over Ibarra-Perez's tort claims.

A

Section 1252(g) strips jurisdiction over claims "arising from" the "decision or action" to "commence proceedings, adjudicate cases, or execute removal orders." It applies to "any cause or claim," "any alien," and any federal court, and it governs "notwithstanding any other provision of law." *Id.* The language is clear. Federal courts should stay out of the enforcement of removal orders.

There is one exception. If another provision within § 1252 restores jurisdiction over a claim, § 1252(g) does not apply. 8 U.S.C. § 1252(g). Yet the other provisions of § 1252 don't encourage judicial involvement. The statute allows courts of appeals to review removal proceedings through the petition-for-review process. *Id.* § 1252(a)(1). That's it. The petition for review is the "sole and exclusive" means for judicial review of any questions—factual, legal, or constitutional—that arise from removal proceedings. *Id.* §§ 1252(a)(5), (b)(9). And even the petition-for-review process is limited. Courts

must defer to the agency's factual findings, and discretionary decisions may be reviewed only for legal or constitutional error. *Id.* §§ 1252(a)(2)(B), (a)(2)(D), (b)(4).

Everyone agrees Ibarra-Perez's suit doesn't fall within § 1252(g)'s sole exception, the petition-for-review process. Ibarra-Perez waived his right to invoke that process. Thus, the question is whether Ibarra-Perez's tort claims fall within § 1252(g). If they do, his claims are barred—no exceptions.

Section 1252(g)'s scope is governed by its text. The statute does not strip jurisdiction over "all deportation-related claims." *Reno v. Am.-Arab Anti-Discrim. Comm.* (*AADC*), 525 U.S. 471, 478, 119 S. Ct. 936 (1999). "[W]hat § 1252(g) says is much narrower." *Id.* at 482, 119 S. Ct. 936. The statute bars challenges to three actions: commencing removal proceedings, adjudicating cases, and executing removal orders. 8 U.S.C. § 1252(g). Though the statute bars any claim "arising from" those actions, a plurality of the Supreme Court has interpreted "arising from" as referring to "just those three specific actions themselves," not any action that bears a technical but-for relationship to them. *Jennings v. Rodriguez*, 583 U.S. 281, 294, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018) (plurality op.). Yet any challenge to the three listed actions outside the petition-for-review process is categorically barred.

B

Ibarra-Perez challenges the execution of his removal order, one of the three actions listed in § 1252(g). To see why, start with Ibarra-Perez's characterization of his own claims. He asserts that his removal to Mexico was "unlawful." But he disclaims any challenge to his pre-deportation removal proceedings. Instead, he says that

his claims arose "after" the removal order was entered and when the government "initiated [his] deportation to Mexico." If that's true, Ibarra-Perez *must* be challenging the execution of his removal order. There's nothing else for him to challenge.

Consider next "the action[s] being challenged" in his complaint. *Camarena v. ICE*, 988 F.3d 1268, 1272 (11th Cir. 2021) (quotation omitted). Ibarra-Perez raises four tort claims. Each is tied to the execution of his removal order. Asserting false imprisonment, Ibarra-Perez alleges that the government wrongfully deprived his liberty by "physically deporting him" to Mexico. Asserting abuse of process, he claims that the government "deport[ed] [him] to a country without lawful notice." For his negligence claim, Ibarra-Perez argues that the government breached a duty "not to cause harm or injury" when it physically deported him. Finally, Ibarra-Perez alleges that officials intentionally inflicted emotional distress when they deported him to a country where they knew he'd be harmed. Each claim asserts that the government wrongfully removed him. That is, each attacks the government's "decision or action" to "execute [his] removal order[ ]." 8 U.S.C. § 1252(g). There's no other way to understand his claims.

Turn to the relief sought. *See Walters v. Reno*, 145 F.3d 1032, 1052 (9th Cir. 1998) (considering the remedy). Ibarra-Perez doesn't ask for an injunction remedying a due process violation. *Cf. id.* at 1037, 1052; *Cath. Soc. Servs., Inc. v. INS*, 232 F.3d 1139, 1142, 1150 (9th Cir. 2000) (en banc). Nor does he seek damages related to conduct collateral to his deportation. He seeks "compensation for the harms and losses he suffered as the

result of [his] unlawful deportation." Put simply, he challenges the execution of his removal order.

Ibarra-Perez's briefing is more of the same. In his own words, "he challenges the tortious acts and omissions [of the government] in . . . removing him to Mexico." Over and over, Ibarra-Perez claims that he "was unlawfully deported," and that he's bringing "a tort claim for an unlawful removal." Of course, Ibarra-Perez also explains why he thinks his deportation was unlawful. Because the government allegedly failed to designate Mexico as a possible country of removal, the government "lacked the authority . . . to remove him to Mexico." But that merits-level procedural argument merely explains why Ibarra-Perez thinks the government was wrong to execute his removal order. It doesn't change the fact that, at bottom, Ibarra-Perez challenges the execution of that order. And claims challenging the validity of his removal order should have been brought through a motion to reopen.

"No matter how [Ibarra-Perez] frames it," *Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022), he challenges "the merits of the decision to execute [a] removal order[]," *Walters*, 145 F.3d at 1052. We lack jurisdiction over such claims.

C

The majority ignores all this. The majority never describes Ibarra-Perez's tort claims. It never discusses Ibarra-Perez's concessions, requested remedy, or complaint. Instead, the majority invents an exception to § 1252(g), holding that legal questions are exempt from the statute. That exception conflicts with the statutory text, Supreme Court precedent, and the holdings of our

sister circuits. It also fails to address the question presented here.

1

According to the majority, § 1252(g) doesn't apply to "purely legal" questions "premised on the lack of legal authority" to remove an alien. Maj. at 996, 998. Because Ibarra-Perez argues that the government lacked legal authority to execute his removal order, the majority concludes that his claims are not a challenge to the execution of his removal order "within the meaning of § 1252(g)." *Id.* at 997.

This conclusion cannot be squared with the facts. By arguing that the government lacked authority to execute his removal order, Ibarra-Perez does just that—argue that the government wrongfully executed his removal order. If that's not a challenge to the "decision or action" to "execute removal orders," what is? *See* 8 U.S.C. § 1252(g).

More to the point, the majority's conclusion conflicts with the statutory text. Section 1252(g) applies to "any cause or claim" arising from the execution of removal orders. "Any" means "any." *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 218-20, 128 S. Ct. 831, 169 L. Ed. 2d 680 (2008). The statute bars all claims, even if they raise legal questions.

Contrast § 1252(g)'s categorical language with other parts of § 1252. After barring judicial review of the government's discretionary decisions, § 1252 restores jurisdiction over "constitutional claims or questions of law" that are "raised upon a petition for review." 8 U.S.C. §§ 1252(a)(2)(B), (a)(2)(D). Outside the petition-for-review context, any exception for legal questions is con-

spicuously missing. "It would be easy enough" for Congress to exempt legal questions in § 1252(g), "just as Congress has" in other provisions within the same section. *See Nasrallah v. Barr*, 590 U.S. 573, 583, 140 S. Ct. 1683, 207 L. Ed. 2d 111 (2020). But Congress did not, "and it is not the proper role of the courts to rewrite the laws." *Id.*

Without any textual support, the majority's special treatment for legal questions must rest, if at all, on an inference from Congress's silence. But Congress wasn't silent about the scope of § 1252(g). The statute bars "any" claim. Unlike nearby provisions, there's no exception for legal questions. Congress meant what Congress said, and that forecloses the majority's exception.

Even if the statute's scope were less clear, the majority's inference from silence would fall short. For one, the inference presumes that Congress's silent intent matters. Yet as judges, we enforce the written law—not unexpressed intentions. *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 642-43, 142 S. Ct. 2486, 213 L. Ed. 2d 847 (2022).

For another, silence supports conflicting inferences. *See United States v. Vonn*, 535 U.S. 55, 65-66, 122 S. Ct. 1043, 152 L. Ed. 2d 90 (2002). The majority assumes that because Congress didn't specifically preclude review of legal questions in § 1252(g), it must have meant to authorize that review. It's more likely that because Congress didn't exempt legal questions from § 1252(g) (as it did elsewhere), it intended to bar them. The majority gives no reason for selecting the former inference and shunning the latter. It invents an exception to a jurisdictional bar through pure judicial *ipse dixit.*

Nor is any explanation possible. Congress has rejected the majority's inference from silence. In *INS v. St. Cyr*, 533 U.S. 289, 121 S. Ct. 2271, 150 L. Ed. 2d 347 (2001), the Supreme Court invoked the same inference that the majority relies on here. Because § 1252 didn't specifically mention habeas petitions, the Court reasoned that habeas petitions raising "pure question[s] of law" about "the legality of Executive detention" must be exempt from the statute. *Id.* at 298-300, 305, 121 S. Ct. 2271. In response, Congress amended § 1252—including subsection (g)—to reject the inference. 8 U.S.C. § 1252(g); *Nasrallah*, 590 U.S. at 580, 140 S. Ct. 1683. When the statute bars "any" claim, it bars "any" claim. There's no room for atextual exceptions.

2

The majority's exception also conflicts with Supreme Court precedent. In its seminal § 1252(g) case, the Court used § 1252(g) to bar constitutional claims raising legal questions. Plaintiffs challenged the constitutionality of an anti-communism statute and claimed that the government unconstitutionally sought to remove them because of their political beliefs. *AADC*, 525 U.S. at 473-74, 119 S. Ct. 936. Those constitutional claims, just like Ibarra-Perez's tort claims, raised pure questions of law. *See id.* at 487-92, 119 S. Ct. 936. And those legal questions, just as here, implicated the government's legal authority to conduct immigration proceedings. *See id.* Even so, the Supreme Court held that § 1252(g) barred the claims.

We too have applied § 1252(g) to bar claims raising pure questions of law. *Rauda*, 55 F.4th at 777 ("allegedly unlawful decision" to remove an alien immediately); *Sissoko v. Rocha*, 509 F.3d 947, 948-50 (9th Cir. 2007)

(legality of detention). These cases confirm that § 1252(g) does not depend "on the particular grounds raised by an alien for challenging" the execution of his removal order. *Demore v. Kim*, 538 U.S. 510, 537, 123 S. Ct. 1708, 155 L. Ed. 2d 724 (2003) (O'Connor, J., concurring in part and in the judgment). And they foreclose the majority's attempt to exempt legal questions from § 1252(g).

With all this in mind, it's no surprise that the majority's holding is an outlier. Plaintiffs around the country have argued, just like the majority, that challenges to the government's removal authority are exempt from § 1252(g). Each circuit to resolve the question has rejected the argument. *See Tazu v. Att'y Gen.*, 975 F.3d 292, 298 (3d Cir. 2020);[1] *E.F.L. v. Prim*, 986 F.3d 959, 965 (7th Cir. 2021); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017); *Camarena*, 988 F.3d at 1272. For good reason. Ruling otherwise elevates a faulty inference from silence over statutory text and Court precedent.

Our sister circuits gave another reason for rejecting the majority's rule. The majority's rule "would gut § 1252(g)." *Tazu*, 975 F.3d at 298. "[A]ny petitioner challenging the execution of a removal order could characterize his or her claim as an attack on [the government's] 'legal authority' to execute the order." *E.F.L.*, 986 F.3d

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[1] Compelled by circuit precedent, *Tazu* left open an exception for when the Immigration and Nationality Act "itself t[akes] away the Attorney General's authority." 975 F.3d at 298. Ibarra-Perez has made no such argument. Similarly, though the majority cites *Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023), for the proposition that § 1252(g) allows challenges to the "legality of [arrest and] detention," that holding is irrelevant. Ibarra-Perez challenges the execution of his removal order, not the validity of his arrest and detention.

at 965. Suppose an alien disagrees with the IJ's decision to deny withholding of removal. Or argues that the agency wrongly discounted testimony showing that he's entitled to asylum. Or that the agency made the wrong factual findings when rejecting his claim for relief under the Convention Against Torture. Each claim is "premised on a lack of legal authority" to execute a removal order. Maj. at 998. And under the majority's theory, every such claim is exempt from § 1252(g). In other words, under the majority's theory, § 1252(g) means nothing.

3

Set aside the statutory text, Supreme Court precedent, and the wisdom of our sister circuits. The majority's rule still fails.

Section 1252(g) strips jurisdiction over "cause[s] or claim[s]." Thus, the issue is whether Ibarra-Perez's tort *claims* are the type of "cause or claim" that is barred. The majority doesn't answer that question. It identifies a single *question* presented by Ibarra-Perez's claims that is purely legal. Yet Ibarra-Perez's tort claims present many factual questions, which, under the majority's theory, are barred. Did government officials fail to act with reasonable prudence or intend to harm Ibarra-Perez? Did Ibarra-Perez suffer extreme emotional distress in Mexico? What are his damages? By focusing on one legal question and ignoring the many factual questions, the majority neglects to determine our jurisdiction over Ibarra-Perez's entire claims.

* * *

Section 1252(g) means what it says. "[A]ny cause or claim," legal or otherwise, challenging the execution of

removal orders is barred. At the very least, the statute must mean *something*. And under the majority's rule, it means nothing. Every circuit has rejected the majority's proposed rule. The statutory text and Supreme Court precedent demand the opposite result.

D

The majority gives five reasons to ignore the statutory text, Court precedent, and out-of-circuit authority. Each argument fails.

1

First, the majority invokes a substantive canon. Citing a "presumption in favor of judicial review," the majority suggests that any "ambiguities" in § 1252(g) should be construed narrowly. Maj. at 995 (quotation omitted). *But see Biden v. Nebraska*, 600 U.S. 477, 508-09, 143 S. Ct. 2355, 216 L. Ed. 2d 1063 (2023) (Barrett, J., concurring) (criticizing similar canons).

The majority, however, doesn't identify any ambiguity in § 1252(g). It provides no textual basis for concluding that legal questions are exempt from § 1252(g). Instead, the majority hangs its hat on an atextual exception to the statute's otherwise clear scope. The statute isn't ambiguous. The statute bars "any cause or claim" arising out of the execution of removal orders. 8 U.S.C. § 1252(g). That's the type of "clear statement in favor of limiting judicial review" that overcomes the presumption of judicial review. *Rauda*, 55 F.4th at 780 n.3.

2

The majority next resorts to statutory purpose. Citing Justice Scalia's majority opinion in *AADC*, the majority notes that § 1252(g) was designed to address a

"particular evil": judicial restraints on prosecutorial discretion. Maj. at 996 (quoting *AADC*, 525 U.S. at 485 n.9, 119 S. Ct. 936). Thus, the majority reasons that § 1252(g) applies only to claims that affect prosecutorial discretion. Because legal questions don't affect prosecutorial discretion, the majority concludes that they aren't barred by the statute.

This reasoning is ironic. The majority's purpose-based argument rests on a quote from Justice Scalia—perhaps the most vocal opponent of purposivism in living memory. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 16-17 (2012) ("If any interpretive method deserves to be labeled an ideological 'device' it is . . . purposivism."). Only the Ninth Circuit could find an endorsement for a purposivist interpretation from Justice Scalia.[2]

The majority's purpose-based argument fails on three additional levels. First, statutes "often go beyond the principal evil" they are meant to address. *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79, 118 S. Ct. 998, 140 L. Ed. 2d 201 (1998). As federal courts, we credit "the text of a law" over "purported legislative intentions." *Castro-Huerta*, 597 U.S. at 642, 142 S. Ct. 2486. What Congress "*meant* to say" cannot trump "what it *did* say." *Zuni Pub. Sch. Dist. v. Dep't of Educ.*, 550 U.S. 81, 119, 127 S. Ct. 1534, 167 L. Ed. 2d 449 (2007) (Scalia, J., dissenting). Thus, while *AADC* cited the purpose of § 1252(g) to explain why the text said what it did, the Court ultimately enforced not the purpose, but "what § 1252(g) says." 525 U.S. at 482, 119 S. Ct. 936.

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[2] The majority cites other cases for the statute's purpose, but these rest on *AADC*.

It's easy to see why. "Only the written word is the law." *Bostock v. Clayton County*, 590 U.S. 644, 653, 140 S. Ct. 1731, 207 L. Ed. 2d 218 (2020). The majority uses unwritten purpose to set aside statutory text. That mode of reasoning was common when courts invoked "reason"—or the natural law "written in men's hearts" —to set aside or narrowly construe statutory text. Thomas Aquinas, Summa Theologica Pt. I-II, Q.94, art. 6, s.c. (referencing 2 Corinth. 3:3); *id.* Q.96, art. 6, co.; *see, e.g., Holy Trinity Church v. United States*, 143 U.S. 457, 458-59, 470-71, 12 S. Ct. 511, 36 L. Ed. 226 (1892). That mode of reasoning has no place in our interpretive practice today.

Second, the majority's argument rests on a false premise. The majority assumes that judicial review of the government's removal authority doesn't impact prosecutorial discretion. Yet forcing the government to answer in court every time it removes an alien who thinks his removal unlawful would thwart the government's discretionary removal authority. By stripping jurisdiction over challenges to the government's legal authority to execute removal orders, § 1252(g) protects the government's discretion. So even if § 1252(g) were limited to actions addressing its "principal evil," the majority's legal-question exception is still wrong.

Third, the majority's argument rests on another false premise. The majority reasons that because § 1252(g) aims to protect discretionary decisions, the statute must not bar legal questions. This assumes a dichotomy between legal questions and challenges to discretionary decisions. There is no such dichotomy. A challenge to a discretionary decision may raise pure questions of law. The statute expressly recognizes that. 8 U.S.C.

§§ 1252(a)(2)(B), (a)(2)(D) (discussing legal questions that challenge discretionary decisions). As does our precedent. *Rauda*, 55 F.4th at 777-78 (identifying a legal question that arose from a discretionary decision); *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004) (en banc) (noting legal questions can form "the backdrop" for discretionary decisions). Any distinction between legal questions and challenges to discretionary decisions is "illusory." *E.F.L.*, 986 F.3d at 965.

In the end, the majority's purpose-based argument is a nonstarter. Purpose can't control over unambiguous text, especially when the purpose-based argument relies on false premises. Rather than twisting to invent an exception for Ibarra-Perez, we should have enforced the written law.

3

Third, the majority suggests that its exception is based on precedent. Not so. Our precedent is best read consistent with the statutory text.

a

Start with the case that the majority says is most directly on point, *Arce v. United States*, 899 F.3d 796 (9th Cir. 2018) (per curiam). There, we stayed an alien's removal order while we resolved his petition for review. *Id.* at 799. The government removed him anyway. The alien sued, and we held that § 1252(g) didn't bar his suit. *Id.* at 800. His claims, we reasoned, arose "not from the execution of the removal order, but from the violation of our court's order." *Id.* Even if the claims related "tangentially" to the execution of a removal order, they challenged the "decision or action to violate a court order."

Id. If those claims were barred, we couldn't enforce "*any* court order" connected with immigration proceedings. *Id.* at 801.

Arce is inapt. "[B]ut for the violation of the [court order in *Arce*]," § 1252(g) would have barred the alien's claims. *Id.* at 800; *see also id.* at 801 (emphasizing the need to "enforce our orders"). The majority attempts to massage *Arce* to fit with this case, stating that Ibarra-Perez "brings nearly identical tort claims to those brought by" the plaintiff in *Arce.* Maj. at 998. Despite the underlying claims, however, *Arce* turned on the violation of a court order. Here, by contrast, the government didn't violate a court order when it deported Ibarra-Perez. So on its own terms, *Arce* is no help.

The majority's remaining cases are similarly unhelpful. The majority cites cases that follow Justice Scalia's observation about § 1252(g)'s purpose and note that the three actions listed in § 1252(g) (commencing proceedings, adjudicating cases, and executing removal orders) involve discretion. *E.g.*, *Barahona-Gomez v. Reno*, 236 F.3d 1115, 1119-21 (9th Cir. 2001); *Ali v. Ashcroft*, 346 F.3d 873, 878 (9th Cir. 2003), *vacated on reh'g, Ali v. Gonzales*, 421 F.3d 795 (9th Cir. 2005);[3] *Hovsepian*, 359 F.3d at 1155. But the fact that the listed actions gener-

[3] The majority's citation to *Ali* is especially problematic since it was vacated. *Ali* also cuts against the majority. Before the opinion was withdrawn and in response to the government's arguments, *Ali* characterized the plaintiff's claim as raising "a purely legal question." 346 F.3d at 878. But *Ali* didn't rely on that characterization to find § 1252(g) inapplicable. Instead, *Ali* rested on the (since superseded) ground that habeas petitions are exempt from § 1252(g). *Id.* at 879. By resting on an alternative ground, *Ali* suggests that the legal nature of the claim wasn't enough to render § 1252(g) inapplicable.

ally *involve* discretion doesn't mean that an action is covered by the statute *only if* it's discretionary. The execution of a removal order remains a "decision or action . . . [to] execute removal orders" even if it's nondiscretionary. *See* 8 U.S.C. § 1252(g). In any event, that the listed actions involve discretion does nothing to support the majority's rule that *legal* questions are exempt.

The majority also quotes restatements of our early § 1252(g) decisions. In those early decisions, the government asked us to extend § 1252(g) beyond its text. We declined, holding that § 1252(g) applies "only to the three specific discretionary actions mentioned in its text, not to all claims relating in any way to deportation proceedings." *Cath. Soc. Servs.*, 232 F.3d at 1150; *Sulit v. Schiltgen*, 213 F.3d 449, 453 (9th Cir. 2000). And we emphasized that our decisions went "no further" than this textual holding. *Barahona-Gomez*, 236 F.3d at 1121.

Walters, 145 F.3d at 1052, was the first of these cases. The parties agreed that the court had jurisdiction over the underlying claims but disputed whether § 1252(g) barred a portion of the requested relief. *Id.* at 1048, 1051-52. The government argued that § 1252(g) stripped jurisdiction over "any relief" that "interferes" with the execution of removal orders. *Id.* at 1052. We disagreed because the underlying claims "d[id] not arise from" the actions listed in § 1252(g). *Id.*; *see also* 8 U.S.C. § 1252(g) (focusing on the "cause or claim," not the remedy). The plaintiffs didn't challenge "the merits of the decision to execute removal orders," and their deportation was "a consequence," but "not the basis," for their claims. *Walters*, 145 F.3d at 1052. We thus described their claims as "general collateral challenges to

unconstitutional practices and policies" and held that § 1252(g) did not apply. *Id.* (quotation omitted).

Over time, panels began to describe *Walters* and its progeny less carefully. One panel described *Walters* as holding that "constitutional challenges to deportation procedures" are exempt from § 1252(g). *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002).[4] Another suggested that we can consider "purely legal question[s]" that don't challenge the government's "discretionary authority." *Hovsepian*, 359 F.3d at 1155.

In context, these restatements of circuit precedent are not as broad as they sound. Each case—both the early cases and the later cases that described them—is best read to go "no further" than limiting § 1252(g) to its text. *Barahona-Gomez*, 236 F.3d at 1121; *see also Arce*, 899 F.3d at 800 ("[H]is claims arise not from the execution of the removal order."); *Hovsepian*, 359 F.3d at 1155 ("[T]he gravamen of Hovsepian's claim does not arise from [the three listed actions]."); *see also Cath. Soc. Servs.*, 232 F.3d at 1150 (similar). That is, each case holds that § 1252(g) "is simply not implicated" by every claim that is "tangentially" connected to immigration proceedings. *Arce*, 899 F.3d at 800-01. None of these cases hold—like the majority now—that claims within the statute's textual scope are exempt.

The majority interprets our restatements of circuit precedent as broadly as possible. That's an error. The majority makes our restatements of circuit precedent

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[4] *Jimenez-Angeles* discussed *Walters* but is itself inapposite. *Jimenez-Angeles* arose on a petition for review—proceedings in which Congress has authorized review of constitutional challenges. 291 F.3d at 598, 603; 8 U.S.C. § 1252(a)(2)(D).

inconsistent with the very cases that they purport to describe. These early cases went "no further" than limiting § 1252(g) to its text. *Barahona-Gomez*, 236 F.3d at 1121. The majority also places our caselaw on a collision course with the statutory text, which applies to "any" claim, whether legal or constitutional. The majority's reading also conflicts with Supreme Court precedent, which has applied § 1252(g) to legal and constitutional claims. *AADC*, 525 U.S. at 487, 119 S. Ct. 936. We should read our precedent consistent with instructions from Congress and the Supreme Court rather than stretching it to violate both. The majority errs in choosing otherwise.

b

Every time we've created an atextual exception to § 1252(g), we've been corrected. The majority courts reversal by repeating a mistake that's been cured before.

In our first published decision interpreting § 1252(g), we held that constitutional claims were exempt. *Am.-Arab Anti-Discrim. Comm. v. Reno*, 119 F.3d 1367, 1374 (9th Cir. 1997). Our reasoning then tracked the majority's reasoning now. If § 1252(g) barred constitutional claims, there would be "no other avenue[ ]" to review those claims. *Id.* Several judges dissented from the denial of rehearing en banc. *Am.-Arab Anti-Discrim. Comm. v. Reno*, 132 F.3d 531, 532 (9th Cir. 1997) (O'Scannlain, J., dissenting from denial of rehearing en banc). And the Supreme Court reversed, applying § 1252(g) to bar a constitutional claim. *AADC*, 525 U.S. at 476, 487, 119 S. Ct. 936. We were wrong to deem constitutional claims exempt from the statute.

Our next atextual exemption was superseded by Congress. At first, a three-judge panel correctly relied on

§ 1252(g) to dismiss a habeas claim. *Hose v. INS*, 141 F.3d 932, 935 (9th Cir. 1998). After we vacated that correct decision to rehear it en banc, *Hose v. INS*, 180 F.3d 992, 994 (9th Cir. 1999), panels began holding that habeas petitions were exempt from § 1252(g), *e.g., Magana-Pizano v. INS*, 152 F.3d 1213, 1222 (9th Cir. 1998) (per curiam); *Ali*, 346 F.3d at 880. This time, the Supreme Court failed to correct us, holding that habeas claims were exempt from § 1252. *St. Cyr*, 533 U.S. at 310 n.33, 121 S. Ct. 2271. So Congress stepped in and amended § 1252 to correct the misunderstanding. *See Nasrallah*, 590 U.S. at 580, 140 S. Ct. 1683. The statute now repeats what was "utterly clear" before: Habeas claims aren't exempt. *See St. Cyr*, 533 U.S. at 326, 121 S. Ct. 2271 (Scalia, J., dissenting).

Later, a three-judge panel created an exception for *Bivens* claims. *Sissoko v. Rocha*, 412 F.3d 1021, 1031-32 (9th Cir. 2005). The panel there invoked the same substantive canon and purpose-based argument that the majority repeats here. *Id.* Fortunately, we didn't let our own error stand. After the government petitioned for rehearing en banc, we withdrew our opinion and replaced it with one that recognized that § 1252(g) bars constitutional tort claims. *Sissoko*, 509 F.3d at 947.

Apparently for the majority, three reversals aren't experience enough. By creating another atextual exception to § 1252(g), the majority repeats a mistake corrected before.

4

The majority also concludes that Ibarra-Perez's removal to Mexico was unlawful because his final order of removal did not list Mexico as an alternative country of removal on it. Maj. at 997. As discussed below, the ma-

jority incorrectly tips its hand at the merits in making this conclusion. The majority also too narrowly construes the plain text of § 1252(g).

The IJ's removal order *authorized* Ibarra-Perez's removal from the United States. The only restriction was that the government couldn't send him to Cuba. No order —either from the IJ or a court—prohibited the government executing that removal order to send him to Mexico. The government's decision to do so thus executed that removal order as ordinarily understood. Section 1252(g) therefore bars Ibarra-Perez's claims.

This conclusion flows naturally from both Supreme Court and Ninth Circuit precedent. The Supreme Court has explained that when "an alien applies for withholding-only relief, he does so as to a particular country." *Johnson*, 594 U.S. at 535-36, 141 S. Ct. 2271. If an immigration judge grants withholding, the "removal order is not vacated or otherwise set aside," but "remains in full force." *Id.* at 536, 141 S. Ct. 2271. The government may execute the removal order "to remove the alien to any other country authorized by the statute." *Id.*; *see Huang v. Ashcroft*, 390 F.3d 1118, 1121 n.2 (9th Cir. 2004) ("[N]either withholding nor deferral of removal prevents the government from removing an alien to a third country other than the country to which removal was withheld or deferred").

When the government removes an alien to a country authorized under 8 U.S.C. § 1231 or another statute, it "executes" that removal order in a manner that falls under § 1252(g). Section 1252(g) in turn categorically strips this court from hearing claims like those Ibarra-Perez brings here outside the petition-for-review process. Such a reading comports with Supreme Court prece-

dent, and indeed, what the text of § 1252(g) states. After all, Ibarra-Perez must be challenging *something*—and here the only plausible answer is a challenge to the execution of the order of removal entered against him. Instead, the majority adopts a tortured reading of § 1252(g) under which it has no clear answer to the question of what Ibarra-Perez is challenging in bringing this lawsuit.

5

Finally, the majority tries to reframe Ibarra-Perez's tort claims as a due process claim that § 1252(g) cannot strip from the federal courts. But Ibarra-Perez brings tort claims, not due process claims. And Ibarra-Perez's tort claims cannot lead to any further due process in his situation. So Ibarra-Perez is attempting to wring money damages out of the federal government. And Congress could (and did) strip the federal courts of jurisdiction to entertain that type of claim.

The majority cites four cases for the proposition that DHS must "notify individuals who are subject to deportation that they have the right to apply for asylum in the United States and for withholding of deportation to the country to which they will be deported." *Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *see Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *Hadera v. Gonzales*, 494 F.3d 1154, 1156-59 (9th Cir. 2007); *Dzyuba v. Mukasey*, 540 F.3d 955, 957 (9th Cir. 2008) (per curiam). Whatever these cases say about due process, none supports our jurisdiction over Ibarra-Perez's tort claims.

To the contrary, these cases prove my point: challenges to removal belong in the petition for review process and we lack jurisdiction of these claims. In each of them, a petitioner challenged removal to a third country

on appeal within the petition for review process. *See Andriasian v. I.N.S.*, 180 F.3d at 1039-40 (petitioner appealed through normal immigration appeals to challenge destination of removal as improper); *Himri*, 378 F.3d at 938 (same); *Hadera*, 494 F.3d at 1155 (same); *Dzyuba*, 540 F.3d at 955 (same). Since these cases all arose within the petition for review process, § 1252(g) did not strip the federal courts of jurisdiction. By contrast, Ibarra-Perez brings tort claims to challenge the execution of his removal order outside the petition for review process, meaning § 1252(g) does strip our court of jurisdiction. To the extent Ibarra-Perez had a right to be notified that he would be deported to Mexico (which the majority concedes the INA does not provide but claims the due process clause does), the federal courts only had jurisdiction to entertain that argument within the petition for review process.

Rather than reach this conclusion, the majority opinion resorts to bizarre hyperbole as apparent scare tactics. It claims that "[i]f § 1252(g) bars jurisdiction over removals occurring outside of removal proceedings, . . . ICE can send *anyone* to *any* country without *any* review." Maj. at 999.

That statement is false on many levels. ICE has no authority to send a *citizen* to any country. And its decision to send an *alien* to any country is bound by the petition for review process Congress provided. None of the provisions the majority cites authorize ICE to remove anyone to any country without review. Such a claim is patently absurd. Section 1252(g) only pertains to aliens with final orders of removal entered against them. And an alien can only have a final order of removal entered against him after an immigration judge

has thoroughly reviewed that alien's claims (as with Ibarra-Perez). Indeed, even if the majority were correct that courts have jurisdiction over Ibarra-Perez's tort claims here, the relief would do nothing to rectify the majority's perceived harm. The FTCA only provides monetary damages, not injunctive relief. So the majority's hyperbole is not only false, but it rings hollow.

The majority also concludes that "Ibarra-Perez challenges ICE's separate and post-hearing decision to remove him to Mexico." Maj. at 1000.

The majority ignores, however, that ICE removed Ibarra-Perez under the final order of removal entered against him. The decision to send him to Mexico was a part of ICE executing that removal order, permitted under the INA—not a separate decision divorced from the order's execution. *See Johnson*, 594 U.S. at 536, 141 S. Ct. 2271. Withholding of removal does not "vacate[] or otherwise set aside" a final order of removal since *that order* "remains in full force." *Id.* "DHS retains the authority to remove the alien to any other country authorized by the statute," under that final order of removal. *Id.* ICE's decision to remove Ibarra-Perez to Mexico was a choice made to execute the final order of removal entered against him. Even if such a decision were unlawful, § 1252(g) makes clear that we only have jurisdiction to hear such a claim and issue a remedy through the petition for review process.

The majority suggests that a motion to reopen removal proceedings could not have helped Ibarra-Perez. Maj. at 1000-01. This is nonsense. Ibarra-Perez obtained asylum. How? By moving to reopen, the very mechanism the majority says would not work. The majority even recognizes this. *See* Maj. at 994. If Ibarra-

Perez did suffer an injury, it got cured through the petition for review process that the majority derides. In its excitement to curtail the INS from acting contrary to how the majority wants it to, the majority resorts to pounding square pegs in round holes. And its pegs don't fit.

Now Ibarra-Perez brings statutory tort claims outside of that petition for review process. His claims don't attempt to remedy the constitutional injury he allegedly suffered by allowing him back into the country through injunctive relief. Indeed, such relief is expressly barred by the FTCA. He instead seeks money damages.

Congress therefore was especially free to strip us of jurisdiction to hear his claims for monetary damages. The United States is "generally immune from suits seeking money damages," and it is "Congress's prerogative, not ours," to allow such money damage suits against the federal government. *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 48-49, 144 S. Ct. 457, 217 L. Ed. 2d 361 (2024). Although the majority tries to frame Ibarra-Perez's claim in terms of constitutional injury, § 1252(g) divests us of jurisdiction to entertain Ibarra-Perez's tort claims for financial compensation.

"Within constitutional bounds, Congress decides what cases the federal courts have jurisdiction to consider." *Bowles v. Russell*, 551 U.S. 205, 212, 127 S. Ct. 2360, 168 L. Ed. 2d 96 (2007). And stripping the federal courts of jurisdiction to hear money damages claims challenging the execution of a removal order, easily falls within those bounds. The majority cites no case anywhere to the contrary. And for good reason. Congress had the authority to categorically prevent Ibarra-Perez

from seeking money damages against the federal government. *See Kirtz*, 601 U.S. at 48-49, 144 S. Ct. 457. It therefore also had the power to prevent the federal courts from entertaining such claims outside the petition for review process and did so through § 1252(g). *See Patchak v. Zinke*, 583 U.S. 244, 252, 138 S. Ct. 897, 200 L. Ed. 2d 92 (2018) ("Congress' greater power to create lower federal courts includes its less power to 'limit the jurisdiction of those Courts.'") (citation omitted).

The two cases the majority cites on this point, *Walters v. Reno*, 145 F.3d at 1052-53, and *Sulit v. Schiltgen*, 213 F.3d at 453, do not save it. Neither permits an FTCA claim to proceed when otherwise barred by § 1252(g). In *Walters*, plaintiffs "brought suit against the government on behalf of themselves and similarly situated noncitizens, seeking declaratory and injunctive relief on the ground that the administrative procedures used by the INS to obtain final orders under the document fraud provisions of the Immigration and Nationality Act . . . violated their rights to procedural due process." *Walters*, 145 F.3d at 1036.

We upheld an injunction enjoining the future deportation of aliens receiving inadequate notice under those procedures. Section 1252(g) did not apply because the plaintiffs' claims did not arise from a challenge to the execution of a removal order, but brought "general collateral challenges to unconstitutional practices and policies used by the agency." *Id* at 1052 (quotation omitted). And we only reached this conclusion because "if the plaintiffs prevail[ed] on their claims, they [would] not be entitled to any substantive benefits; rather, they [would] only be entitled to reopen their proceedings." *Id.*

When a plaintiff seeks a substantive benefit, such as money damages, such a challenge isn't collateral but a direct challenge to the execution of a removal order. *Id.* The majority cannot rely on *Walters*. *Walters* confirms that § 1252(g) divests us of jurisdiction over claims such as the one Ibarra-Perez brings here. *Id.*

Sulit also proves unavailing. In *Sulit* we held that § 1252(g) did not strip us of jurisdiction over a due process claim where plaintiffs alleged the INS seized their green cards "without providing a rescission hearing pursuant to 8 U.S.C. § 1256." 213 F.3d at 453. *Sulit* did not involve a challenge to the execution of a removal order, which would have been barred under § 1252(g), but a challenge to the rescission of green cards. *Id.* The case does not support the proposition that a plaintiff can bring tort claims to challenge the execution of his removal order and disguise those claims as due process challenges to extract money from the government.

The majority attempts to reframe this case as one about curing an alleged due process injury. But Ibarra-Perez's claims cannot cure such an injury, as injunctive relief would. Ibarra-Perez was already able to reenter the United States and has received asylum through the statutory petition for review process. In that sense, the system worked just fine for Ibarra-Perez, as Congress provided. He can only win money damages from the United States beyond that if Congress authorizes him to bring such a claim. And here Congress affirmatively barred him from doing so through § 1252(g).

* * *

Ibarra-Perez challenges the execution of his removal order, so § 1252(g) strips our jurisdiction over his

claims. The majority invents an exception for legal questions that cannot be squared with the statutory text, conflicts with Supreme Court precedent, creates a circuit split, and guts the jurisdictional bar.

III

If § 1252(g) doesn't bar Ibarra-Perez's claims, § 1252(b)(9) does. That section prohibits review of "all questions of law and fact" that arise from removal proceedings outside the petition-for-review process. This provision is "breathtaking in scope," *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (internal quotation marks omitted), and covers "all claims arising from deportation proceedings," *AADC*, 525 U.S. at 482-83, 119 S. Ct. 936. It bars challenges to "the process" through which removability is "determined." *Jennings*, 583 U.S. at 294, 138 S. Ct. 830; *see also id.* at 317, 138 S. Ct. 830 (Thomas, J., concurring in part and concurring in the judgment).

According to the majority, the provision doesn't apply because Ibarra-Perez doesn't contest the validity of his removal proceedings or removal order. Maj. at 997, 999-1000. That argument is refuted by the rest of the majority opinion. Throughout, the majority recognizes that Ibarra-Perez challenges the "procedures" (or lack thereof) leading to his removal. *Id.* at 1000-01. Section 1252(b)(9) bars such claims. *Jennings*, 583 U.S. at 294, 138 S. Ct. 830.

In arguing otherwise, the majority backs itself into a dilemma. If Ibarra-Perez challenges the government's failure to provide adequate process before removing him, § 1252(b)(9) bars his claim. If he instead takes the process as given and challenges the execution of his re-

moval order, § 1252(g) bars his claim. There's no way out of this dilemma.

As Ibarra-Perez and the majority face each horn of the dilemma, they make concessions that run headfirst into the other. Trying to avoid § 1252(g), the majority focuses on the procedures leading up to Ibarra-Perez's removal. Of course, that runs headlong into § 1252(b)(9). Then, trying to avoid § 1252(b)(9), the majority changes its tune and says that the claims have nothing to do with the validity of his removal order or removal proceedings. Maj. at 999-1000. But if that's true, then the only thing left for Ibarra-Perez to challenge is the execution of his removal order, which § 1252(g) forbids. The majority can't have it both ways. And either way, we lack jurisdiction over Ibarra-Perez's claims.

The majority attempts to sidestep this issue by pointing to a footnote in the government's brief which states that Ibarra-Perez has disclaimed any challenge to the prior removal proceeding. The majority states that it agrees with the government and thus won't find § 1252(b)(9) applicable here. Maj. at 999-1000.

This sleight of hand gives the game away. If the majority concedes that Ibarra-Perez isn't bringing a challenge to his prior removal proceeding, a challenge barred under § 1252(b)(9), then it is tacitly admitting that he brings a challenge to the execution of his removal order—the only thing he could otherwise challenge. That challenge, in turn, is barred by § 1252(g). No matter how the majority attempts to rationalize its conclusion, the self-evident structure of § 1252, when applied here, demonstrates that we lack jurisdiction.

IV

Jurisdiction is the only question on appeal. Yet the majority tips its hand on the merits, so I address the merits too. Ibarra-Perez argues that a statute, two regulations, and due process required notice that he could be sent to Mexico. The majority similarly suggests that because Ibarra-Perez's removal order did not designate Mexico, his removal was unlawful. Maj. at 1000. Each argument fails. The government was not required to notify Ibarra-Perez that he could be removed to Mexico before entering a removal order and sending him to Mexico. In any event, these merits arguments confirm that Ibarra-Perez's claims are barred by § 1252(g).

A

Start with Ibarra-Perez's statutory argument. After an alien is ordered removed, 8 U.S.C. § 1231 determines where to send the alien. The statute creates two procedural tracks. The first, § 1231(b)(1), is for aliens placed in removal proceedings "immediately upon their arrival at the border." *Jama v. ICE*, 543 U.S. 335, 705 n.11, 125 S. Ct. 694, 160 L. Ed. 2d 708 (2005) (citing 8 U.S.C. §§ 1231(b)(1)(A), (c)(1)). These aliens are generally sent to the country from which they traveled, but they may also be sent to a country willing to receive them or where they have citizenship or residence. 8 U.S.C. § 1231(b)(1)(C). The statute does not give these aliens any say in designating the country of removal. Nor does it require notice of that country.

The second track, § 1231(b)(2), applies to aliens removed after being "allowed into the country," such as through a visa. *Jama*, 543 U.S. at 705 n.11, 125 S. Ct. 694. Aliens on this track have a statutory right to designate where they'd like to be sent. 8 U.S.C.

§ 1231(b)(2)(A). The government must honor the alien's preference, unless an exception applies. *Id.* If an exception applies, the statute lists categories of countries where the alien may be sent. *Id.* § 1231(b)(2)(C)-(E). The statute itself doesn't require notice of the alternative countries.

Both tracks carry a caveat. The government may not send an alien to a country where he is likely to be persecuted based on a protected characteristic. *Id.* § 1231(b)(3). This restriction is "withholding of removal."

All these provisions come into play only after an alien has been "ordered removed." *Id.* § 1231(a). In fact, the BIA prohibits IJs from addressing withholding of removal before ordering removal. *Matter of I-S-& C-S-*, 24 I. & N. Dec. 432, 434 (BIA 2008). That makes sense. Withholding of removal is country-specific relief. *Johnson*, 594 U.S. at 536, 141 S. Ct. 2271. It prohibits removal "to" a particular country but does not prevent removal "from the United States." *Id.* (emphasis omitted). Thus, withholding has "nothing to do" with the government's "legal authority" to remove an alien. *Id.* at 545-46, 141 S. Ct. 2271; *see also Nasrallah*, 590 U.S. at 583, 140 S. Ct. 1683 (country-specific relief "does not affect the validity of the final order of removal"). So while a removal order determines *whether* an alien may be removed, it need not identify *where* the alien will be sent. *See* 8 U.S.C. § 1101(a)(47)(A); *see also Johnson*, 594 U.S. at 539, 141 S. Ct. 2271.

Ibarra-Perez was never allowed into the United States and was placed in removal proceedings at a port of entry. He thus faced the first, less onerous track of designation procedures. *See* 8 U.S.C. § 1231(b)(1); *Mat-*

ter of A-S-M-, 28 I. & N. Dec. 282, 284 n.1 (BIA 2021). He had no right to designate a country of removal. The statute authorized his removal to Mexico, a country willing to accept him and where he had a visa. *Id.* §§ 1231(b)(1)(C)(iii), (iv); *see also* 8 C.F.R. § 241.25(d). And the statute did not require the government to notify Ibarra-Perez that Mexico was an option.

Because the applicable designation provisions don't require notice of the country of removal, Ibarra-Perez focuses on the withholding-of-removal provision, which he says creates a notice requirement not found elsewhere in the statute. But the withholding provision doesn't say anything about notice, either. *See* 8 U.S.C. § 1231(b)(3). Nor does it say anything about how to designate countries of removal. *See id.* The withholding provision takes the designation process (defined elsewhere in the statute) as given and carves out an exception to the list of possible countries. *Id.* It doesn't silently rewrite the designation process to create a notice requirement. *See Jama*, 543 U.S. at 341, 125 S. Ct. 694. Nothing in the statute required the government to notify Ibarra-Perez that he could be sent to Mexico.

B

The majority makes a related argument. The majority suggests that a removal order isn't enforceable unless it designates a valid country of removal. Removal orders that don't designate a valid country can be challenged based on a separate decision of where to send an alien. Maj. at 999.

The Supreme Court has said otherwise. "[T]he finality of the order of removal does not depend in any way on the outcome of [withholding] proceedings." *Johnson*, 594 U.S. at 539, 141 S. Ct. 2271; *see also Nasrallah*, 590

U.S. at 582, 140 S. Ct. 1683. So has Congress. Congress defines a final removal order as one "concluding that the alien is deportable or ordering deportation." 8 U.S.C. § 1101(a)(47)(A); *Monsalvo Velazquez v. Bondi*, 604 U.S. 712, 145 S. Ct. 1232, 1240, 221 L. Ed. 2d 609 (2025) (noting a final removal order is one "specifying that the government may remove [the alien]"). A removal order meets these criteria and is final even if it doesn't designate a country of removal. Again, under the statute, the government determines where to send an alien only after the alien is "ordered removed." 8 U.S.C. § 1231(a); *Matter of I-S- & C-S-*, 24 I. & N. Dec. at 434.

Thus, the majority errs in suggesting that Ibarra-Perez's removal order was incomplete since it didn't designate Mexico. Determining where to send Ibarra-Perez has "nothing to do" with the finality or enforceability of the order allowing the government to remove him. *Johnson*, 594 U.S. at 545-46, 141 S. Ct. 2271; *see Nasrallah*, 590 U.S. at 582, 140 S. Ct. 1683. Once the IJ ordered Ibarra-Perez removed, the government could remove him. *See* 8 C.F.R. § 1240.12(d) (so indicating). No subsequent removal order designating Mexico was required.

C

Ibarra-Perez next searches agency regulations for a notice requirement. He first cites 8 C.F.R. § 1240.10(f). This regulation requires IJs to "notify" certain aliens that they have a right to designate a country of removal. *Id.* The regulation also requires IJs to identify alternative countries for these aliens. *Id.*

This regulation, however, applies only to aliens in the second designation track, or those removed after being admitting into the United States. *Id.* Ibarra-Perez was

not admitted into the United States. And "[w]ith respect to an arriving alien" like Ibarra-Perez, the regulation creates *no* notice requirement. *Id.* It merely observes that designation will occur "pursuant to" the statutory requirements. *Id.* As discussed, the statute doesn't require notice. *See supra* § IV.A.

Ibarra-Perez also cites 8 C.F.R. § 1240.12(d), which requires IJs to "identify a country, or countries in the alternative, to which the alien's removal may in the first instance be made." While this regulation requires IJs to identify *a* possible country of removal (here, Cuba), it doesn't require a list of *all* alternatives. Nor does it require IJs to list the specific country to which the alien is ultimately removed (here, Mexico). Indeed, the regulation says that if the government can't send the alien to the listed countries, the regulation "does not limit the authority of the [government] to remove the alien to any other country as permitted by" the statute. *Id.* While the "better practice" might be to notify the alien of all possible alternatives, "[t]he regulations, however, do not require it." *Matter of Sagasti*, 13 I. & N. Dec. 771, 773 (BIA 1971); *see also* 70 Fed. Reg. 661, 671 (2005) (noting alternatives "can be" designated but acknowledging that's not required).

D

Finally, Ibarra-Perez suggests that due process required the government to designate Mexico before entering and enforcing his removal order.

The Fifth Amendment provides that no "person" may be deprived of "life, liberty, or property, without due process of law." U.S. Const. amend. V. Because deportation deprives persons of the rights "to stay and live and work in this land of freedom," due process attaches

to removal proceedings. *Bridges v. Wixon*, 326 U.S. 135, 154, 65 S. Ct. 1443, 89 L. Ed. 2103 (1945). These proceedings must comport with "essential standards of fairness." *Id.* Those standards include notice of, and opportunity to challenge, the grounds for removal.

These principles are important. Yet we should exercise caution before creating procedural hurdles for our coequal branches. Too often, when courts pick up the due process hammer, everything becomes a nail. Caution is especially important in immigration law. "[O]ver no conceivable subject is the legislative power of Congress more complete." *Reno v. Flores*, 507 U.S. 292, 305, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993) (quotation omitted).

Ibarra-Perez invites us to throw caution to the wind. Ibarra-Perez could have challenged whether he could be removed from the United States and failed in doing so. But he demands another opportunity to challenge the government's decision to send him to Mexico over alternative destinations.

Due process guarantees no such opportunity. Due process attaches only to the deprivation of life, liberty, or property. *Paul v. Davis*, 424 U.S. 693, 700-01, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976); *Kerry v. Din*, 576 U.S. 86, 90-92, 135 S. Ct. 2128, 192 L. Ed. 2d 183 (2015) (plurality op.). While removal *from* the United States implicates a liberty interest, *Bridges*, 326 U.S. at 154, 65 S. Ct. 1443; *Kerry*, 576 U.S. at 91, 135 S. Ct. 2128, being sent *to* Mexico does not. Ibarra-Perez prefers to be sent to Spain or Canada rather than Mexico, but that preference is not "life,""liberty," or "property" as those phrases were originally understood. *See Kerry*, 576 U.S. at 91-92, 135 S. Ct. 2128 (canvassing the original mean-

ing). Nor does any statute or regulation grant Ibarra-Perez a liberty interest in being sent somewhere other than Mexico. *See id.* at 98, 135 S. Ct. 2128; *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985). An IJ ordered Ibarra-Perez removed, and the applicable regulations and statute authorized removal to Mexico.

Thus, while due process required the "essential standards of fairness" in determining *whether* Ibarra-Perez could be removed from the United States, due process said nothing about how the government should have determined *where* to send Ibarra-Perez. *See Yamataya v. Fisher*, 189 U.S. 86, 101, 23 S. Ct. 611, 47 L. Ed. 721 (1903) (recognizing only a due process right to be heard on "the questions involving [the] right to be and remain in the United States"). Without an interest in being sent to Spain or Canada, Ibarra-Perez had no constitutional right to notice, or an opportunity to dispute, that he would be sent to Mexico instead.[5]

Perhaps that feels harsh. Four responses. First, federal judges aren't empowered to rectify everything that appears unfair. Deportation to Mexico is neither "a criminal proceeding" nor "punishment," and "[n]o judicial review is guaranteed by the Constitution." *Carlson v. Landon*, 342 U.S. 524, 537, 72 S. Ct. 525, 96 L. Ed. 547 (1952).

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[5] *Andriasian v. INS*, 180 F.3d 1033, 1041-42 (9th Cir. 1999), is not to the contrary. There, an IJ denied asylum because the petitioner failed to show persecution in Armenia—a country the petitioner "had no reason to anticipate would be a subject of the asylum hearing." *Id.* In dicta, we opined that it was arbitrary to deny asylum based on "an applicant's inadequate presentation of evidence" on an unforeseeable matter. *Id.* Ibarra-Perez's asylum claim wasn't denied on arbitrary grounds.

Second, aliens need not wait for a list of possible countries of removal before identifying where they fear persecution. Aliens should know the countries in which they fear persecution. Generally, the list of such countries will be short. It's not asking much to require aliens to identify those countries on their own.

Third, if process were required, Ibarra-Perez would at most be entitled to an opportunity to seek withholding of removal. And he lacks a meritorious withholding claim. Ibarra-Perez claims that before coming to the United States, Mexican officials required him to pay fees to stay in Mexico. After being removed to Mexico, three men demanded that he act as a drug mule or hand over a fee. At no point does Ibarra-Perez claim that he was physically harmed or subject to a pattern of serious mistreatment. *See Sharma v. Garland*, 9 F.4th 1052, 1061 (9th Cir. 2021). Under our precedent, Ibarra-Perez's vague and unrelated allegations fall short of the "extreme concept" of persecution, which is required for withholding of removal. *See id.* at 1062. So even if process were required, Ibarra-Perez has no basis to oppose removal to Mexico.

Fourth, Ibarra-Perez received the process that would have been required. He told the IJ that he feared persecution in Mexico, and nothing prevented him from building that argument out. If the IJ rejected his argument, Ibarra-Perez could have appealed to the BIA. If unsuccessful before the BIA, he could have petitioned for our review. And finally, if those were inadequate opportunities to establish persecution in Mexico, Ibarra-Perez could have moved to reopen his removal proceedings to introduce evidence of persecution in Mexico. *See* 70 Fed. Reg. at 671. The government has suggested that

it may agree to reopen proceedings when aliens lack notice of the country of removal. *Id.* In short, Ibarra-Perez had adequate opportunity to litigate his alleged persecution in Mexico and failed to use that opportunity.

E

This merits discussion confirms that Ibarra-Perez's claims are barred by § 1252(g). Under the majority opinion and on remand, Ibarra-Perez's claims will proceed towards a merits resolution. But the district court can't address the merits without reviewing the validity of Ibarra-Perez's removal order and the "process by which" his order was entered—which Congress prohibits courts from addressing outside the petition for review. *See Jennings*, 583 U.S. at 294, 138 S. Ct. 830. To determine whether the government violated a regulation by failing to designate Mexico, the district court must consider which track of designation procedures applies to Ibarra-Perez and whether the government complied with those procedures. To determine whether the government violated due process, the court must analyze Ibarra-Perez's removal proceedings, verify whether Ibarra-Perez had a fair opportunity to seek withholding from Mexico, and determine whether Ibarra-Perez had a meritorious withholding claim. *See Vargas-Hernandez v. Gonzales*, 497 F.3d 919, 926-27 (9th Cir. 2007). These questions are routinely raised on petitions for review. *Id.*; *Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004). And Congress has prohibited courts from reviewing these questions outside the petition for review. *See* 8 U.S.C. § 1252(a)(5); *Jennings*, 583 U.S. at 294, 138 S. Ct. 830. This confirms that Ibarra-Perez's claims are the type barred by § 1252(g).

V

Ibarra-Perez had a final and valid removal order. He claims the government was wrong to execute that order. Congress has precluded us from exercising jurisdiction over such claims. In any event, Ibarra-Perez is wrong that the government removed him unlawfully. Because the majority finds jurisdiction and allows this case to proceed, I dissent.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. CV-22-01100-PHX-DWL (CDB)

JORGE FELIX IBARRA-PEREZ, PLAINTIFF

v.

UNITED STATES OF AMERICA, ET AL., DEFENDANTS

Filed: Jan. 19, 2024

ORDER

INTRODUCTION

Jorge Felix Ibarra-Perez ("Plaintiff") fled Cuba to escape persecution. Plaintiff initially traveled to Mexico, where he was extorted by Mexican law enforcement authorities. Plaintiff then entered the United States and applied for asylum, but an immigration judge ("IJ") denied his asylum application, granted him only a limited form of relief known as withholding of removal (which simply prevented his removal to Cuba), and otherwise authorized his removal from the United States. The IJ explained that she believed this result was compelled by a then-applicable regulation known as the Transit Ban, which precluded certain individuals who had passed through other countries before coming to the United States from obtaining asylum.

A few days after the issuance of the removal order, agents of U.S. Immigration and Customs Enforcement ("ICE") executed the order by removing Plaintiff to Mexico, even though Plaintiff told them he feared persecution there. Plaintiff's fears were prescient, as he was threatened by Mexican gang members soon after his return to Mexico. As a result, Plaintiff quickly entered the United States again. Plaintiff was again placed in immigration proceedings, but this time the IJ reopened his case and eventually granted his asylum application, in part due to an intervening Ninth Circuit decision enjoining the enforcement of the Transit Ban.

In this action, Plaintiff has, through counsel, asserted various claims against the United States of America ("Defendant") under the Federal Tort Claims Act ("FTCA"). Plaintiff's overarching theory is that "[t]his case involves extraordinary misconduct by agents of [ICE] who unlawfully prevented [Plaintiff] from pursuing a claim for protection from persecution to which he was legally entitled, and then unlawfully deported him to the very country he feared." (Doc. 1 ¶ 1.) Plaintiff "seek[s] compensation for the harms and losses he suffered as the result of this unlawful deportation." (*Id.* ¶ 4.)

Now pending before the Court is Defendant's Rule 12(b)(1) motion to dismiss this action for lack of subject-matter jurisdiction. (Doc. 46.) Defendant contends that because all of Plaintiff's claims are, at bottom, challenges to the legality of his removal order or the execution of the removal order, they fall within the ambit of 8 U.S.C. § 1252, which contains various provisions that strip federal district courts of jurisdiction to hear such claims. (*Id.*) The motion is fully briefed. (Docs. 58, 63.) For the following reasons, the motion is granted. Although the

hardship Plaintiff endured is tragic and deserving of sympathy, Congress has made clear that federal district courts lack jurisdiction to entertain the sort of claims he wishes to pursue here.

BACKGROUND

In his four-count complaint, Plaintiff asserts FTCA claims for false imprisonment, negligence, abuse of process, and intentional infliction of emotional distress ("IIED"). (Doc. 1.) In support of these claims, Plaintiff alleges the following facts:

In April 2019, Plaintiff fled Cuba due to persecution because of his opposition to the Castro regime. (*Id.* ¶ 33.) That same month, Plaintiff arrived in Mexico, where he was extorted by Mexican police officers and other authorities with threats of detention and deportation to Cuba. (*Id.* ¶¶ 34-36.) Plaintiff's request for asylum in Mexico was denied but he was granted a one-year humanitarian visitor permit. (*Id.* ¶ 37.)

On August 8, 2019, Plaintiff presented himself at the United States port of entry in Nogales, Arizona to apply for asylum. (*Id.* ¶ 39.) Based on the asylum process in effect at that time, Plaintiff was placed on a waiting list. (*Id.*)

On September 14, 2019, Plaintiff returned to the port of entry, was taken into ICE custody, and was placed in removal proceedings. (*Id.* ¶¶ 38-41.)

On October 16, 2019, Plaintiff made an initial appearance before an IJ. (*Id.* ¶ 42.)

On or about January 10, 2020, Plaintiff filed an application for asylum, withholding of removal, and Convention Against Torture ("CAT") protections. (*Id.* ¶ 44.) In

his application, Plaintiff stated that Mexico was not a "safe country" for him. (*Id.*) Plaintiff also attached a declaration detailing multiple times he was threatened and extorted by Mexican mafias and gangs, along with articles from the Mexican press showing that Cubans were kidnapped, tortured, and killed in Mexico. (*Id.* ¶ 45.)

On January 10, 2020, the IJ held a hearing on Plaintiff's asylum application. (*Id.* ¶ 48.) The IJ determined that Plaintiff had been persecuted in Cuba on account of his political views, but she denied his request for asylum in the United States and instead granted him withholding of removal to Cuba, a lesser form of protection that only prohibits removal to a designated country. (*Id.* ¶ 49.) The IJ wrote that she would have granted Plaintiff's request for asylum had it not been for the Transit Ban, C.F.R. § 1208.13(c), which at that time barred noncitizens who entered the country through the southern border from obtaining asylum without first seeking and being denied asylum in Mexico or another third country. (*Id.* ¶¶ 43, 49.)[1] Both Plaintiff and ICE counsel waived appeal. (*Id.* ¶ 49.) At no time during Plaintiff's

[1] Plaintiff alleges that he applied for asylum in Mexico and that application was denied. (Doc. 1 ¶ 37.) However, during his initial appearance in immigration court, although Plaintiff answered "yes" when asked whether he had applied for asylum in Mexico, he then answered "No, I received a humanitarian visa for a year" in response to the IJ's follow-up question whether the application was granted or denied. (*Id.* ¶ 42.) The IJ then mentioned the Transit Ban, which had recently gone into effect (*id.* ¶ 43), so it appears she took Plaintiff's second answer to mean he had not applied for asylum in Mexico and was therefore barred from seeking asylum in the United States. Plaintiff does not allege that the IJ asked about this issue at his subsequent asylum hearing.

removal proceedings did the IJ or ICE counsel inform him that he could be removed to Mexico, and the IJ did not designate Mexico as an alternative country for removal. (*Id.* ¶ 50.)

On January 14, 2020, an ICE deportation officer sent emails to consular representatives in Mexico, Nicaragua, and Columbia, informing them that Plaintiff had been ordered removed from the United States and inquiring whether they would be willing to accept him. (*Id.* ¶ 52.) Nicaragua and Mexico had previously issued temporary visas to Plaintiff. (*Id.*)

On January 15, 2020, a Mexican consular official responded that Plaintiff could enter Mexico and requested times for Plaintiff's removal to take place. (*Id.* ¶ 53.)

On the afternoon of January 15, 2020, while Plaintiff was still in immigration custody, an ICE agent told Plaintiff he was going to be removed to Mexico, and when Plaintiff objected that he could not go to Mexico and asked if he could instead be sent to Canada or Spain, the officer said he would return with more information but never came back. (*Id.* ¶ 55.) Later that afternoon, another ICE agent told Plaintiff he would be removed to Mexico and gave him paperwork in English to sign, but Plaintiff, who does not read or write English, refused to sign. (*Id.* ¶ 57.) A third ICE agent then arrived with a computer and informed Plaintiff via a Spanish translation program on the computer that Plaintiff would be removed to Mexico, and when Plaintiff said he was afraid to be removed to Mexico, this agent also left without providing more information. (*Id.*) Later the same afternoon, despite Plaintiff's continued objections, ICE agents made Plaintiff get into a van and took him to the ICE office in Florence, Arizona for processing. (*Id.*

¶ 58.) Upon his arrival in Florence, Plaintiff told an ICE agent that he feared going to Mexico, but that agent ignored him. (*Id.* ¶ 59.)

Early the next morning, on January 16, 2020, ICE agents drove Plaintiff to the U.S.-Mexico border, where he was received by Mexican officials and then released into the streets of Nogales, Sonora, Mexico without food, shelter, or sufficiently warm clothing and told to look for work. (*Id.* ¶¶ 60-66.) That night, Plaintiff stayed in a poorly heated one-room shelter with about 30 bunk beds and no other amenities, and the next day, January 17, 2020, he left to look for work. (*Id.* ¶ 67.)

As he was walking on January 17, 2020, Plaintiff was stopped and forced at gunpoint into a truck by gang members. (*Id.* ¶ 68-70.) The gang members tried to extort him to become a drug mule or pay them $500 a month to stay in Nogales and told him he could not leave Nogales because they had taken his photo and distributed it to informants throughout the city. (*Id.*) When Plaintiff said he needed to make some calls and would give them an answer the next day, the gang members let him go but said they would find him. (*Id.* ¶ 71.) Plaintiff then went to the Kino Border Initiative's food hall and talked to other migrants, who told him he could either pay the money, work for criminal groups, disappear and end up dead, or turn himself in at the U.S. border. (*Id.*)

While at the Kino Border Initiative facility, Plaintiff met with an attorney from the Florence Immigrant & Refugee Rights Project ("FIRRP"), and with the help of the FIRRP attorney, he presented himself at the Mariposa Port of Entry in Nogales, Arizona that same afternoon. (*Id.* ¶ 78.) At the port of entry, Plaintiff was interviewed by U.S. Customs and Border Patrol ("CBP")

officials, and when he expressed fear of returning to Mexico, he was placed in ICE custody pending new removal proceedings. (*Id.* ¶¶ 78-79.)

Plaintiff was initially held in several facilities in Arizona before being transferred to the La Palma Correctional Center in Eloy, Arizona. (*Id.* ¶ 80.) During this time, FIRRP counsel filed several motions with the immigration court, and on March 16, 2020, the IJ terminated the new proceedings and reopened the prior proceedings based on due process concerns related to Plaintiff's removal to Mexico without notice or an opportunity to apply for asylum and/or withholding of removal as to that country. (*Id.* ¶ 82.) The IJ cited *Aden v. Nielsen*, 409 F. Supp. 3d 998 (W.D. Wash. 2019), for the proposition that the United States has an affirmative duty to provide a deportee a meaningful opportunity to be heard before being removed to any potential country. (*Id.*)

On July 16, 2020, the IJ granted Plaintiff's application for asylum based on a district court decision vacating the Transit Ban regulation and a Ninth Circuit decision enjoining enforcement of the regulation in four border states, including Arizona. (*Id.* ¶ 83.)

From mid-February to mid-July 2020, when he was granted asylum, Plaintiff remained at the La Palma Correctional Center. (*Id.* ¶ 85.) During his detention there, the La Palma Correctional Center had one of the largest outbreaks of COVID-19 of any ICE detention center in the country, and Plaintiff was placed in medical isolation for flu-like symptoms even though he tested negative for COVID-19. (*Id.* ¶¶ 85-86.) Plaintiff also received substandard medical treatment for kidney stones, causing him excruciating pain, and he missed being with his family members in Florida for a memorial service for

his mother (who died in Cuba while he was detained). (*Id.* ¶ 86.)

Plaintiff alleges that Defendant's actions of deporting him to Mexico without an opportunity to pursue a protection claim were the proximate cause of considerable emotional, physical, and mental distress. (*Id.* ¶ 87.) Plaintiff's alleged injuries include stress and anxiety from the trauma he already suffered in Mexico; from the threats of deportation from Mexico to Cuba, where he would face abuse, torture, forced disappearance, prolonged detention, and/or death; and from his detention at the La Palma Correctional Center, where he was confined in medical isolation, endured excruciating pain from kidney stones, and was forced to grieve his mother's death alone. (*Id.* ¶ 90.) As remedies, Plaintiff seeks compensatory damages, costs, and attorneys' fees. (*Id.* at 27.)

LEGAL STANDARD

Rule 12(b)(1) of the Federal Rules of Civil Procedure provides that a defendant may move to dismiss an action for a "lack of subject-matter jurisdiction." *Id.* "Under Rule 12(b)(1), a defendant may challenge the plaintiff's jurisdictional allegations in one of two ways. A 'facial' attack accepts the truth of the plaintiff's allegations but asserts that they are insufficient on their face to invoke federal jurisdiction. . . . A 'factual' attack, by contrast, contests the truth of the plaintiff's factual allegations, usually by introducing evidence outside the pleadings." *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (citations omitted). "With a factual Rule 12(b)(1) attack, . . . a court may look beyond the complaint . . . without having to convert the motion into one for summary judgment . . . [and] need not presume the truthfulness

of the plaintiffs' allegations." *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000) (internal citations omitted).

The plaintiff bears the burden of establishing that subject-matter jurisdiction exists. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *Leite*, 749 F.3d at 1121. Additionally, courts "have an independent obligation to determine whether subject-matter jurisdiction exists." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006). *See also* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.").

DISCUSSION

Defendant argues that the Court lacks subject-matter jurisdiction over Plaintiff's claims for two overlapping reasons. First, Defendant invokes 8 U.S.C. § 1252(g), which strips the federal courts of jurisdiction to consider any claim arising from the decision of the Attorney General or his or her delegee to execute a final removal order, and argues that § 1252(g) is implicated here because all of Plaintiff's claims are, at bottom, challenges to ICE's execution of the IJ's removal order. (Doc. 46 at 5-7.) Second, Defendant argues that to the extent Plaintiff seeks to challenge the legality of the removal order itself, any such challenge is barred by 8 U.S.C. §§ 1252(a)(5) and (b)(9), which provide that any challenge to a removal order can only be brought in a petition for review of removal proceedings filed in the appropriate Court of Appeals. (*Id.* at 7-8.)

I. 8 U.S.C. § 1252(g)

As noted, Defendant's first challenge turns on 8 U.S.C. § 1252(g), which provides that "[e]xcept as provided in this section and notwithstanding any other provision of

law . . . 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." *Id.* The Supreme Court has clarified that § 1252(g) does not serve as a "zipper clause" that bars judicial review of any decisions or actions that occur as part of the removal process—rather, it "applies only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999).

In Defendant's view, this action implicates § 1252(g) because "[a]ll of the counts for relief in Plaintiff's Complaint —negligence, false imprisonment, abuse of process, and intentional infliction of emotional distress—are based entirely on the allegation that he was unlawfully removed to Mexico, and that in doing so, Defendant committed these alleged torts." (Doc. 46 at 1.) Defendant contends that "there is not a single allegation of tortious conduct in the Complaint which is not premised on ICE's execution of the IJ's final removal order in removing Plaintiff to Mexico. Therefore, the entire suit is barred by section 1252(g)." (*Id.* at 5.)

In response, Plaintiff argues that his claims "fall outside the ambit of § 1252(g)'s bar to reviewing challenges to the 'execution of removal orders'" because the complaint "is devoid of any allegations that challenge the execution of the 2020 removal order. Rather, the Complaint challenges ICE's failure to provide Mr. Ibarra-Perez with mandatory procedural protections that would have prevented his deportation to Mexico based on his

claim of fear of persecution in that country. Notably, no order of removal to Mexico ever existed, and the government never sought to designate nor did the IJ designate Mexico as a country to which he could be deported in removal proceedings. Moreover, Mr. Ibarra-Perez does not ask this Court to set aside, vacate, or even judicially review the 2020 order." (Doc. 58 at 7.) Plaintiff continues: "[E]ven assuming arguendo that Mr. Ibarra-Perez's claims could 'technically' relate to the 2020 order (which they do not), the analysis would not end there. Rather, . . . § 1252(g) strips jurisdiction over only discretionary decisions commencing proceedings, adjudicating cases, and executing removal orders. Here, taking the allegations in the complaint as true, Mr. Ibarra-Perez expressed his fear of deportation to Mexico in his removal proceedings—which was documented in his immigration file—and subsequently verbally expressed this fear to several deportation officers immediately prior to his deportation to Mexico. ICE agents had no discretion to fail to provide him mandatory procedural protections; specifically, they had no discretion to ignore his asserted fear of deportation to Mexico or to deny him a meaningful opportunity to pursue his fear-based claim." (*Id.* at 9-10, citing 8 U.S.C. § 1231(b)(3)(A).)

Defendant has the better of this argument. The bottom line is that the IJ issued a removal order on January 10, 2020 and ICE agents executed that order on January 16, 2020 by removing Plaintiff to Mexico. Although Plaintiff advances an array of theories as to why the ICE agents should not have executed the removal order in that fashion —some of which are premised on misunderstandings of the applicable statutory and regulatory provisions, as discussed in subsequent paragraphs of this order—all of those theories fundamentally relate to the actions of the

ICE agents (as delegees of the Attorney General) in *executing a removal order*. As other courts have concluded, § 1252(g) bars such claims. *See, e.g., Rivera Ramirez v. United States*, 2018 WL 6016276, *3 (C.D. Cal. 2018) ("Plaintiff alleges that while in custody of ICE, unknown officers reinstated a non-existent removal order and executed such unlawful order upon plaintiff by removing him to Mexico on that date. This allegation, which is the basis for all of Plaintiff's claims, plainly falls within the ambit of § 1252(g) because it arises from ICE's decision to execute a removal order. Even if the order was unlawful, as Plaintiff alleges, because he was a lawful permanent resident and not subject to any removal proceedings, § 1252(g) shields Plaintiff's claims from judicial review. In fact, courts have found that they lack jurisdiction to hear claims arising out of removal proceedings, even if the removal order was genuinely erroneous.") (cleaned up).

This conclusion is consistent with, and indeed compelled by, the Ninth Circuit's decision in *Arce v. United States*, 899 F.3d 796 (9th Cir. 2018), which Plaintiff incorrectly cites as an authority supporting his position. In *Arce*, the Ninth Circuit ordered a stay of an IJ's removal order but ICE then executed the removal order despite the stay, removing the plaintiff to Mexico. *Id.* at 799. The plaintiff, in turn, brought an FTCA action "for damages suffered as a result of the wrongful removal" and the government moved to dismiss based on § 1252(g). *Id.* The Ninth Circuit concluded that § 1252(g) was inapplicable because the plaintiff's claims arose "not from the execution of the removal order, but from the violation of our court's order. Indeed, the stay of removal temporarily suspended the source of the Attorney General's authority to act, resulting in a setting aside of the

authority to remove Anaya." *Id.* at 800 (cleaned added). Notably, the court added: "Put differently, but for the violation of the stay of removal, Anaya would not have an FTCA claim at all." *Id.* Later in the opinion, the court again emphasized that it was the government's violation of the stay order that rendered § 1252(g) inapplicable: "[T]aken to its logical conclusion, the government's reading would significantly circumscribe our authority to enforce our orders. . . . There is no support for the government's claim that Congress intended to prohibit federal courts from enforcing any court order so long as it is related to or in connection with an immigration proceeding." *Id.* at 801.

This case is distinguishable from *Arce* for the obvious reason that the IJ's removal order, issued on January 10, 2020, had not been stayed (or otherwise invalidated) at the time it was executed by ICE agents on January 16, 2020. To the contrary, Plaintiff waived any right of appeal as part of the proceedings on January 10, 2020. It follows that, under § 1252(g) as interpreted in *Arce*, Plaintiff cannot assert an FTCA claim premised on the ICE agents' execution of the order: "[B]ut for the violation of the stay of removal, Anaya would not have an FTCA claim at all." *Arce*, 899 F.3d at 800.[2]

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[2] Plaintiff seems to suggest that this passage from *Arce* is dicta that is inconsistent with *Arce*'s broader "rationale." (Doc. 58 at 13.) Any such argument is unavailing. Because the cited passage from *Arce* was germane to the resolution of the case and a product of reasoned consideration, it serves as binding circuit law this Court must follow. *United States v. McAdory*, 935 F.3d 838, 843 (9th Cir. 2019) ("Where a panel confronts an issue germane to the eventual resolution of the case, and resolves it after reasoned consideration in a published opinion, that ruling becomes the law of the circuit, regardless of whether doing so is necessary in some strict logical

For similar reasons, Plaintiff's reliance on *Enriquez-Perdomo v. Newman*, 54 F.4th 855 (6th Cir. 2022), is misplaced. There, an IJ issued a removal order as to the plaintiff but United States Citizenship and Immigration Services ("USCIS") subsequently granted her a deferral of removal pursuant to the Deferred Action for Childhood Arrivals ("DACA") program. *Id.* at 858. Nevertheless, despite being aware that the plaintiff "had received DACA," ICE agents arrested her and detained her for a period of days. *Id.* at 858-59. The plaintiff, in turn, brought a *Bivens* action against the ICE agents, who moved to dismiss under § 1252(g) on the ground that the plaintiff's claims arose from the execution of a removal order. *Id.* at 859-61. The Sixth Circuit disagreed with the defendants, concluding that § 1252(g)'s restriction against hearing claims stemming from "executing removal orders" meant that the removal order had to be "executable" and that, because the plaintiff had received affirmative protection from removal under DACA, "§ 1252(g) d[id] not preclude [her] claims because her removal order was not executable." *Id.* at 863-64. In a footnote, the Court clarified that its conclusion that the removal order was not "executable," and therefore outside the reach of § 1252(g), was limited to "the circumstances of this case." *Id.* at 864 n.5. Plaintiff's case, of course, does not fall within the limited "circumstances" at issue in *Enriquez-Perdomo*—Plaintiff has not alleged that his immigration status somehow changed between the issuance of his removal order and the challenged actions of ICE agents in executing that order. Thus, even

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sense. In other words, well-reasoned dicta is the law of the circuit. . . . ") (cleaned up).

if *Arce* weren't binding, *Enriquez-Perdomo* would not support Plaintiff's position.

Plaintiff also relies on *Jennings v. Rodriguez*, 583 U.S. 281 (2018), in which the Supreme Court determined that it had jurisdiction to decide whether immigration detainees had a right to periodic bond hearings despite 8 U.S.C. § 1252(b)(9), which restricts judicial 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." The Court concluded that claims "arising from" actions taken or proceedings brought "to remove an alien from the United States" did not encompass all claims that merely resulted from the fact of being in custody, which it reasoned would have "staggering results," going so far as to bar any civil rights claims challenging a detainee's conditions of confinement that were otherwise unrelated to any decisions and actions pertaining to removal proceedings. *Jennings*, 583 U.S. at 294. Because the respondents in that action were "not asking for review of an order of removal," "not challenging the decision to detain them in the first place or to seek removal," and "not even challenging any part of the process by which their removability will be determined," the Court concluded that the restriction in § 1252(b)(9) did not apply. *Jennings*, 583 U.S. at 294.

The concerns that *Jennings* expressed about giving an expansive meaning to the phrase "arising from" in § 1252(b)(9) are inapplicable here because § 1252(g) does not contain this same term and the Court is not being asked to address whether deciding a detainee's ancillary rights during detention, such as the right to periodic

bond hearings or the right to humane conditions of confinement, would impermissibly impinge on the government's decisions and actions during removal proceedings. Instead, Plaintiff's FTCA claims and alleged injuries are wholly based on, and would not exist but for, the actions of ICE agents "to execute a removal order" by removing him to Mexico. The plain text of § 1252(g), as well as the reasoning and holdings of *Reno* and *Arce,* make clear that claims based on such actions are barred from judicial review.

Plaintiff's reliance on *United States v. Hovsepian*, 359 F.3d 1144 (9th Cir. 2004), is also misplaced. There, the Ninth Circuit concluded that the district court was not barred under § 1252(g) from issuing an injunction enjoining the INS from retroactively applying changes in the immigration laws to remove Hovsepian, reasoning that "[t]he district court may consider a purely legal question that does not challenge the Attorney General's discretionary authority, even if the answer to that legal question—a description of the relevant law—forms the backdrop against which the Attorney General later will exercise discretionary authority." *Id.* at 1156. *Hovsepian* does not support Plaintiff's position because this action does not raise pure legal questions that merely form the backdrop to removal proceedings—instead, this action would require the Court to adjudicate claims based on past actions of ICE agents directly covered by § 1252(g).

Although the analysis regarding § 1252(g) arguably does not need to go any further in light of these conclusions, the Court also notes that some of Plaintiff's arguments as to why ICE agents should not have executed (or were legally barred from executing) his removal or-

der are premised on misunderstandings of the statutory and regulatory provisions he cites in support of those arguments. For example, one of Plaintiff's arguments is that because he expressed a fear of persecution in Mexico to the ICE agents as they were in the process of executing the removal order, those agents were required under 8 U.S.C. § 1231(b)(3)(A) to halt the removal process and provide him with various procedural protections. (Doc. 58 at 9-10 [citing § 1231(b)(3)(A) for the proposition that because Plaintiff "verbally expressed this fear to several deportation officers immediately prior to his deportation to Mexico," the "ICE agents had no discretion to fail to provide him mandatory procedural protections; specifically, they had no discretion to ignore his asserted fear of deportation to Mexico or to deny him a meaningful opportunity to pursue his fear-based claim"].) Plaintiff continues: "Because this provision applies 'notwithstanding' §§ 1231(b)(1) and (2), ICE lacks authority to remove an individual to an alternate country if they have a fear claim, even if that alternate country is willing to accept them." (*Id.* at 2-3.)

As Defendant correctly notes (Doc. 63 at 6-7), the problem with Plaintiff's argument on this point is that § 1231(b)(3)(A) only bars an alien's removal to a particular country "*if the Attorney General decides* that the alien's life or freedom would be threatened in that country." *Id.* (emphasis added).[3] At the time of Plaintiff's

[3] Although Plaintiff misunderstands the scope and applicability of § 1231(b)(3)(A), he correctly acknowledges that "[w]here, as here, an IJ grants the noncitizen withholding of removal to the only country designated by the IJ, ICE may attempt removal to an alternate country pursuant to 8 U.S.C. § 1231(b)(1) and (2)" subject to the restrictions of § 1231(b)(3)(A). (Doc. 58 at 2.) Thus, it is of no moment, at least in relation to the conduct of the ICE agents

removal to Mexico on January 16, 2020, the Attorney General (acting through the Attorney General's designee, the IJ) had never made a finding that Plaintiff's life or freedom would be threatened in Mexico. To the contrary, the only such finding at that time related to Cuba.[4]

Finally, and in a related vein, there is no merit to Plaintiff's contention that the regulations set forth at 8 C.F.R. § 1240.10(f) and § 1240.12(d) support his claim against the ICE agents who executed his removal order. Those provisions apply to removal hearings and require *IJs* to notify an alien of the country or alternative countries to which the alien may be removed, to provide an alien an opportunity to designate a country of removal in the first instance, and to identify the country or alter-

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executing the January 10 removal order, that the order did not expressly designate Mexico as potential country of removal. Under § 1231(b)(2)(E), which is entitled "Additional Removal Countries," some of the potential alternative countries of removal are "[t]he country from which the alien was admitted to the United States," "[t]he country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States," and "[a] country in which the alien resided before the alien entered the country from which the alien entered the United States." Accordingly, the ICE agents executing the removal order could permissibly remove Plaintiff to Mexico in light of the IJ's grant of withholding of removal only as to Cuba (and failure to grant withholding of removal as to Mexico).

[4] As discussed in more detail in Part II, to the extent the IJ failed to follow proper statutory and regulatory requirements for designating an alternative country for removal or overlooked Plaintiff's fears about returning Mexico, the proper way to contest her findings and omissions on those points was to appeal (which Plaintiff declined to do), or to move to reopen the proceedings (which Plaintiff eventually did through the help of FIRRP counsel), or perhaps to file a petition for review in the Court of Appeals (which Plaintiff did not do).

native countries to which an alien may be removed if the alien fails to designate a country or if the alien's designated country will not accept the alien into its territory. Those regulations do not, in contrast, place legal obligations on ICE agents executing an IJ's removal order.

II. 8 U.S.C. §§ 1252(a)(5) and (b)(9)

Although the conclusions reached in Part I arguably make it unnecessary to go any further, the Court clarifies, in an abundance of caution, that Defendant's dismissal arguments premised on 8 U.S.C. § 1252(a)(5) and (b)(9) also have merit.

Under § 1252(a)(5), "[n]otwithstanding any other provision of law . . . a petition for review filed with an appropriate court of appeals in accordance with 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," with exceptions inapplicable here. *Id.* Similarly, § 1252(b)(9) provides:

> Judicial 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. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

Id.

Defendant argues that, under these statutory provisions, a petition for review in the appropriate Court of Appeals was Plaintiff's only way to raise claims that he did not receive proper notice or an opportunity to pursue a claim for relief before his removal to Mexico. (Doc. 46 at 7-8.) Plaintiff responds that these arguments are a red herring because he is not challenging the IJ's order granting him withholding of removal to Cuba, the order did not designate Mexico as a country to which he could be removed, and he is not seeking judicial review of that order. (Doc. 58 at 13-17.)

Plaintiff's position is difficult to reconcile with his repeated assertion that ICE lacked the discretion to remove him to Mexico absent sufficient notice and opportunity to object, which he was entitled to receive during his removal proceedings as a matter of immigration law and due process. (*See, e.g.*, Doc. 58 at 4-5 ["Neither the IJ nor the ICE attorney mentioned, let alone notified Mr. Ibarra-Perez of, the possibility that ICE might deport him to Mexico."]; *id.* at 7 ["[T]he Complaint challenges ICE's failure to provide Mr. Ibarra-Perez with mandatory procedural protections that would have prevented his deportation to Mexico based on his claim of fear of persecution in that country. Notably, no order of removal to Mexico ever existed, and the government never sought to designate nor did the IJ designate Mexico as a country to which he could be deported in removal proceeding."]; *id.* at 10 ["ICE was required to move to reopen his case to allow the IJ to designate Mexico as a country of removal and adjudicate his claim of fear of removal to Mexico."].) At any rate, because the Court has now determined that it is barred under § 1252(g) from hearing claims based on the actions of ICE agents in executing Plaintiff's removal order, Plaintiff's con-

cession that he is not challenging the removal order itself effectively puts an end to his FTCA claims.

Plaintiff also argues, without conceding that § 1252(b)(9) applies, that the Court should adopt the reasoning in *Jennings*, wherein the Supreme Court rejected an overbroad reading of "arising from" in § 1252(b)(9). (Doc. 58 at 16.) Plaintiff does not explain, though, how taking a restrained view of what is meant by "arising from" in § 1252(b)(9) would permit judicial review of the alleged tortious conduct at issue here.

J.E.F.M. v. Lynch, 837 F.3d 1026 (9th Cir. 2016), on which Plaintiff also relies, does not change the analysis. In *J.E.F.M.*, the Ninth Circuit emphasized that §§ 1252(a)(5) and (b)(9) do not "foreclose *all* judicial review of agency actions. Instead, the provisions channel judicial review over final orders of removal to the courts of appeals." *Id.* at 1031 (emphasis in original). The court also recognized that "claims that are independent of or collateral to the removal process do not fall within the scope of § 1252(b)(9)." *Id.* at 1032. But Plaintiff once again fails to explain how any claims based on injuries he allegedly suffered from being removed to Mexico absent proper notice and ability to object are "independent of or collateral to" the removal process.

To illustrate possible claims that fall outside this scope, *J.E.F.M.* noted the "unique situation" in *Singh v. Gonzales*, 499 F.3d 969 (9th Cir. 2007), in which a plaintiff's ineffective-assistance claim arose from counsel's alleged failure to file a timely appeal after the close of removal proceedings and the Ninth Circuit found that this claim was "independent of and collateral to" the removal process because it arose "after a final order of removal had been entered." *Id.* The Ninth Circuit clari-

fied, though, that "[w]e did not, however, allow Singh to raise a different ineffective assistance of counsel claim that arose before a final order of removal entered and that could and should have been brought before the agency." *Id.* 1032. Plaintiff appears to liken his claims in this action to those in *Singh* because his removal to Mexico took place after his removal proceedings were over. (Doc. 58 at 16.) But as discussed, the statutory and regulatory provisions that require the Attorney General to make findings relative to possible removal countries, upon which Plaintiff repeatedly relies to challenge his removal to Mexico in this action, adhere in the context of removal proceedings before an IJ, not during the execution of the resulting removal order. Thus, the alleged deficiencies flow directly from Plaintiff's removal proceedings and can only be challenged in the appropriate court of appeals, not in an FTCA action for money damages.

Plaintiff also makes what is an essence a policy-based argument—that interpreting the statutory provisions at issue here as divesting the Court of jurisdiction over this action would unfairly deprive immigrants of a primary remedy for challenging government abuse. (Doc. 58 at 14-17.) Plaintiff points to the FTCA as evidence that Congress intended to provide money-damages remedies for unlawful government conduct and argues that the FTCA applies to, and has never been repealed in, the immigration context. (*Id.*) Plaintiff also argues that dismissing his claims would deprive him of any other viable remedy to compensate his injuries. (*Id.*)

These arguments are unavailing. Defendant has not challenged the Court's jurisdiction to hear this suit un-

der the FTCA.[5] More important, even assuming Plaintiff's claims might otherwise be actionable under the FTCA and are the type of claims Congress otherwise intended the FTCA to redress, the Court must also give effect to Congress's expressed intent in § 1252(g), § 1252(a)(5), and § 1252(b)(9) to limit judicial review as it relates to certain immigration actions. *Cf. Artuz v. Bennett*, 531 U.S. 4, 10 (2000) ("Whatever merits these and other policy arguments may have, it is not the province of this Court to rewrite the statute to accommodate them.").

Accordingly,

IT IS ORDERED:

(1) The reference to the Magistrate Judge is **withdrawn** as to Defendant's motion to dismiss (Doc. 46).

(2) Defendant's motion to dismiss (Doc. 46) is **granted**, and the action is dismissed without prejudice for lack of subject-matter jurisdiction.

Dated this 19th day of January, 2024.

/s/ DOMINIC W. LANZA
DOMINIC W. LANZA
United States District Judge

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[5] In its reply, Defendant notes that Congress included a "discretionary function exception" in the FTCA, which Defendant argues reflects Congress's intent to shield discretionary acts of government employees from suits for money damages. (Doc. 63 at 10.) Defendant did not, however, base its motion on this provision in the FTCA.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 24-631
D.C. No. 2:22-cv-01100-DWL-CDB
District of Arizona, Phoenix

JORGE FELIX IBARRA-PEREZ, ALSO KNOWN AS JORGE IBARRA-PEREZ, PLAINTIFF-APPELLANT

v.

UNITED STATES OF AMERICA, DEFENDANT-APPELLEE

Filed: June 25, 2026

ORDER

Before: MICHAEL DALY HAWKINS, WILLIAM A. FLETCHER, and RYAN D. NELSON, Circuit Judges.

Order;

Statement by Judges HAWKINS and W. FLETCHER; Statement by Judge BEA

SUMMARY*

Immigration

The panel denied a petition for rehearing en banc in a case in which the panel held that Jorge Felix Ibarra-Perez's Federal Tort Claims Act suit for damages based on an improper removal to Mexico was not barred by 8 U.S.C. § 1252(g), which bars jurisdiction over "any cause or claim by or on behalf of any alien arising from the decision or action by the [government] to commence proceedings, adjudicate cases, or execute removal orders."

Respecting the denial of rehearing en banc, Judges Hawkins and W. Fletcher wrote that the court appropriately denied en banc rehearing. Noting that the Supreme Court has directed courts to read § 1252(g) narrowly and the failure of Ibarra-Perez's removal order to mention Mexico, Judges Hawkins and W. Fletcher disagreed with their dissenting colleagues that Ibarra-Perez's removal to Mexico was an "execution" of his removal order. In their view, this interpretation is dangerous because it would allow § 1252(g) to insulate from judicial review any post-hearing decision to remove noncitizens to third countries where they would be in danger of persecution, torture, and even death.

Respecting the denial of rehearing en banc, Judge Bea, joined by Judges O'Scannlain, Callahan, Bennett, R. Nelson, Bade, Collins, Lee, Bress, Bumatay, VanDyke, and Tung, wrote that the panel's divided decision nullified § 1252(g), and that the court should have reheard this matter en banc to correct the panel's decision, which

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* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

ignored clear statutory language, distorted this court's precedent, and adopted an interpretation of § 1252(g) that has been rejected by every other circuit to consider the issue.

Judge Bea further wrote that, under the panel majority's interpretation of § 1252(g), any alien may now challenge his removal in federal district court, outside the petition-for-review process, so long as his claim for relief alleges the government's "lack of legal authority to remove him." However, Congress sought to forestall such a two-track approach when it made a petition for review in a court of appeals the "sole and exclusive" means for judicial review of "any cause or claim" arising from the execution of a removal order. 8 U.S.C. §§ 1252(a)(5), (g). The disruptive effects of the panel's decision are already apparent. Many district courts, citing the panel's decision, have exercised jurisdiction over petitions filed by aliens subject to final orders of removal who have sought last-second injunctions to block the execution of their removal orders.

ORDER

Judges Hawkins and W. Fletcher recommended denial of Appellee's petition for rehearing en banc. Judge R. Nelson voted to grant the petition.

The full court has been advised of the petition for rehearing en banc. A judge requested a vote on whether to rehear the matter en banc. The matter failed to receive a majority of votes of the nonrecused active judges in favor of en banc consideration. Fed. R. App. P. 40.

The petition for rehearing en banc (Dkt. No. 59) is **DENIED**.

HAWKINS and W. FLETCHER, Circuit Judges, respecting the denial of rehearing en banc:

Our court has appropriately denied en banc rehearing in this case. The sole question answered in the panel's opinion is whether 8 U.S.C. § 1252(g) prevents federal courts from exercising subject matter jurisdiction over Jorge Felix Ibarra-Perez's suit for damages based on an improper removal to Mexico. The panel held that it does not.

Section 1252(g) bars jurisdiction over "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) (emphases added). The Supreme Court has repeatedly cautioned against a broad reading of this jurisdictional bar. The Court has characterized the bar as "narrow," and has rejected the "implausible" assertion that § 1252(g) "covers the universe of deportation claims." *Reno v. Am.-Arab Anti-Discrimination Comm. (AADC)*, 525 U.S. 471, 482, 487 (1999); *see also DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020). In the words of the Court, § 1252(g) applies "only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *AADC*, 525 U.S. at 482 (emphasis in original). The Court has "not interpret[ed] this language to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General," but has instead "read the language to refer to just those three specific actions themselves." *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (plurality opinion) (describing the holding of *AADC*).

The question before our panel was whether the government's removal of Ibarra-Perez to Mexico was an execution of his removal order within the meaning of § 1252(g). Our dissenting colleagues contend that it was. We strongly disagree.

Ibarra-Perez's removal order nowhere mentioned Mexico. The Immigration Judge ("IJ") ordered Ibarra-Perez removed but withheld removal to Cuba because of the likelihood of persecution in that country. During proceedings before the IJ, Ibarra-Perez repeatedly gave reasons why he feared being sent to Mexico, and the government never suggested Mexico as a possible country of removal. Only after proceedings before the IJ were completed did the government designate Mexico as Ibarra-Perez's country of removal. Ibarra-Perez challenged this "separate and post-hearing decision." *Ibarra-Perez v. United States*, 154 F.4th 989, 1000 (9th Cir. 2025); *cf. Johnson v. Guzman Chavez*, 594 U.S. 523, 536-40 (2021) (distinguishing removal orders as "separate" from withholding-of-removal orders, which limit "where" a noncitizen can be removed).

Despite the Supreme Court's direction that we read § 1252(g) narrowly, and despite the failure of Ibarra-Perez's removal order to mention Mexico, our dissenting colleagues contend that the government's removal of Ibarra-Perez to Mexico is an "execution" of his removal order. Our colleagues' interpretation of § 1252(g) is not only wrong. It is dangerous. If our colleagues are right, § 1252(g) "entirely insulate[s] from judicial review any post-hearing decision by ICE to remove noncitizens to third countries where they would be in danger of persecution, torture, and even death." *Ibarra-Perez*, 154 F.4th at 997.

BEA, Circuit Judge, with whom O'SCANNLAIN, CALLAHAN, BENNETT, R. NELSON, BADE, COLLINS, LEE, BRESS, BUMATAY, VANDYKE, and TUNG, Circuit Judges, join, respecting the denial of rehearing en banc:

The panel's divided decision nullified 8 U.S.C. § 1252(g), a basic jurisdiction-stripping provision of the Immigration and Nationality Act (INA). We should have reheard this matter en banc to correct that erroneous and disruptive decision.

Section 1252(g) strips federal courts of jurisdiction over "any cause or claim arising from the decision or action by the [Department of Homeland Security] . . . to . . . execute removal orders," except through a petition for review of a final removal order. But under the panel majority's interpretation of § 1252(g), any alien may now challenge his removal in federal district court, outside the petition-for-review process, so long as his claim for relief alleges the government's "lack of legal authority to remove him." *Ibarra-Perez v. United States*, 154 F.4th 989, 998 (9th Cir. 2025).

Of course, potentially every claim for relief alleges that another party lacked the "legal authority" to take the action to which the claimant objects. If P sues D for trespass, he must allege that D had no "legal authority" to enter his land. Likewise, if an alien sues the government in federal court and seeks injunctive relief to block the execution of his removal order, our basic pleading rules require him to allege, in the panel majority's words, the government's "lack of legal authority to remove him." *See* Fed. R. Civ. P. 8(a). According to the panel majority, Congress went to the trouble of enacting § 1252(g) despite knowing that this provision had no practical effect beyond the well-established pleading

standards in the Federal Rules of Civil Procedure. What an odd thing for Congress to have done.

The panel's decision ignores clear statutory text, distorts our precedent, and adopts an interpretation of § 1252(g) that has been rejected by every other circuit to consider the issue. This interpretation will "gut § 1252(g)," because an alien can "restyle any challenge . . . as [one] to the Executive's general lack of authority." *Tazu v. Att'y Gen. United States*, 975 F.3d 292, 298 (3d Cir. 2020) (Bibas, J.). An alien who is subject to a final removal order has every incentive to step outside the administrative process and seek emergency relief in federal district court. Congress sought to forestall such a two-track approach when it made a petition for review in a court of appeals the "sole and exclusive" means for judicial review of "any cause or claim" arising from the execution of a removal order. 8 U.S.C. §§ 1252(a)(5), (g). The panel's interpretation of § 1252(g) undermines that statutory scheme.

The disruptive effects of the panel's decision are already apparent. Throughout the country, aliens subject to final removal orders have filed last-second petitions in federal district court, requesting injunctions to block the execution of their removal orders. These claims clearly "aris[e] from the decision . . . to . . . execute removal orders" and fall within the scope of § 1252(g). Yet many district courts, citing the panel's misinterpretation of § 1252(g), have exercised jurisdiction over these petitions and enjoined the government from executing these removal orders.[1] Unless the Supreme Court cor-

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[1] *See, e.g.*, *Soliman v. Warden*, No. 1:26-cv-02465-DAD-SCR, 2026 WL 1047787, at *1-*2 (E.D. Cal. Apr. 17, 2026); *Guerra v. Blanche*, No. 2:26-cv-00498-GMN-MDC, 2026 WL 949027, at *3 (D. Nev.

rects the panel's decision, district courts will continue to interfere with the executive branch's exercise of its removal duties, causing the friction, delay, and inter-branch conflict that Congress enacted § 1252(g) to prevent. I respectfully, but strongly, disagree with the decision not to rehear this matter en banc.

I

A

In 2019, at the age of forty-seven, Jorge Ibarra-Perez fled his native Cuba. He arrived in Mexico and received a one-year humanitarian visa. After spending four months in Mexico, Ibarra-Perez traveled to the United States border and presented himself at a port of entry. He was placed in removal proceedings and filed *pro se* applications for asylum, withholding of removal to Cuba, and protection under the Convention Against Torture (CAT). An immigration judge (IJ) denied his asylum and CAT applications and issued an order of removal that designated Cuba as a country of removal. The IJ also granted Ibarra-Perez withholding of removal as to Cuba. Ibarra-Perez waived his right to appeal. Thus, his removal order became final on January 10, 2020.

Employees of U.S. Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security (DHS), then contacted consular rep-

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Apr. 7, 2026); *Castillo v. Chestnut*, No. 1:25-CV-01296-SAB-HC, 2026 WL 121652, at *3, *5 (E.D. Cal. Jan. 16, 2026); *Qu v. Mullin*, No. 5:26-cv-01302-CAS-AGR, 2026 WL836681, at *3 (C.D. Cal. Mar. 26, 2026); *Perez Canet v. Blanche*, No. 2:26-cv-00223-APG-NJK, 2026 WL1091763, at *2-3 (D. Nev. Apr. 22, 2026); *Santamaria Orellana v. Baker*, No. 25-1788-TDC, 2025 WL 2841886, at *6-7 (D. Md. Oct. 7, 2025); *Romero v. Ladwig*, No. 25-cv-1106-JWD-EWD, 2026 WL685131, at *2 (M.D. La. Mar. 10, 2026).

resentatives from Mexico, Nicaragua, and Colombia to ask whether their countries would accept Ibarra-Perez. Because Ibarra-Perez's Mexican humanitarian visa was still effective at this time, Mexico agreed to accept him. On January 15, 2020, ICE agents informed Ibarra-Perez that he would be sent to Mexico. Ibarra-Perez expressed surprise, fear, and distress about being sent there. But he did not file a motion to reopen his removal proceedings, and he had not applied for withholding of removal to Mexico. Early on the morning of January 16, 2020, about 16 hours after Ibarra-Perez was informed that he would be sent to Mexico, ICE agents executed his removal order and took him to Mexico. Ibarra-Perez disliked Mexico and feared criminal elements there. So, after two days, Ibarra-Perez returned to the United States border and was taken back into immigration custody. He then successfully moved to reopen his earlier removal proceeding and was granted asylum on July 16, 2020.

Nearly two years later, Ibarra-Perez sued the ICE officers who removed him under the Federal Tort Claims Act (FTCA). He brought damages claims for negligence, false imprisonment, intentional infliction of emotional distress, and abuse of process, all on the theory that the government's decision to deport him to Mexico "without notice and without an opportunity to pursue a protection claim" was unlawful and that the defendant officers' execution of the removal order in that manner caused him harm. The government moved to dismiss the case for lack of subject matter jurisdiction, Fed. R. Civ. P. 12(b)(1), on the ground that Ibarra-Perez's claims were barred by several jurisdiction-stripping provisions of the INA. *See* 8 U.S.C. §§ 1252(a)(5), (b)(9), (g). The district court granted the motion. *See Ibarra-Perez v. United States*, No. 2:22-cv-01100-DWL-CDB, 2024 WL

216769, at *4-10 (D. Ariz. Jan. 19, 2024). Ibarra-Perez timely appealed.

B

The INA divests federal courts of jurisdiction over "any cause or claim . . . arising from the decision or action by the [DHS] . . . to . . . commence proceedings, adjudicate cases, or execute removal orders," except when such a cause or claim is brought in a petition for review. 8 U.S.C. § 1252(g). The sole question on appeal was whether § 1252(g) encompassed Ibarra-Perez's claims. It should have been an easy decision. Ibarra-Perez's FTCA claims required him to prove that DHS's removal of him to Mexico was unlawful. *See* Complaint, No. 2:22-cv-01100-DWL-CDB (D. Ariz. June 29, 2022), ECF Doc. 1 ("Defendant's actions in deporting [Ibarra-Perez] . . . were the proximate cause of considerable emotional, physical, and mental distress."). Thus, he brought "claim[s] . . . arising from the decision or action . . . to . . . execute [his] removal order." 8 U.S.C. § 1252(g).

Nonetheless, the panel majority, over Judge R. Nelson's dissent, held that § 1252(g) did *not* apply to bar Ibarra-Perez's claims. *See Ibarra-Perez*, 154 F.4th 989. Rather, the panel held that § 1252(g) bars claims that challenge the government's "discretionary authority" to commence removal proceedings, adjudicate cases, or execute removal orders, but does not bar claims that challenge the government's "legal authority" to take one of those actions—here, to execute a removal order. *Id.* at 997-99. In this case, Ibarra-Perez alleged that "he had due process and statutory rights to present evidence" to challenge the location of his removal prior to the execution of his removal order. *Id.* at 998. The panel majority

concluded that he had raised "purely legal arguments" based on the government's "lack of legal authority to remove him to Mexico," so § 1252(g) posed no bar. *Id.* at 998-99. The Court reversed the district court's order that dismissed the case for lack of jurisdiction and remanded the case for further proceedings. *Id.* at 1001.

II

A

I begin by providing an overview of § 1252(g) to illustrate the magnitude of the panel majority's error.

Section 1252(g) was added to the INA as part of the "significantly more restrictive" scheme of judicial review that Congress enacted in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 3009-546. *Reno v. Am.-Arab Anti-Discrimination Comm.* (*AADC*), 525 U.S. 471, 475 (1999). To prevent the "fragmentation, and hence prolongation of removal proceedings," *AADC*, 525 U.S. at 487, Congress sought to channel "most claims that even relate to removal into a single proceeding" that would begin with a petition for review in the proper court of appeals. *Tazu*, 975 F.3d at 296 (citation and internal quotation marks omitted). Section 1252(g) is an integral part of that scheme. That provision divests federal courts of subject matter jurisdiction over "any cause or claim . . . arising from . . . the decision or action . . . to commence proceedings, adjudicate cases, or execute removal orders," except through a petition for review. The text of § 1252(g) is straightforward. "Any cause or claim" that bears a relationship to one of those three acts, such that the cause or claim "aris[es] from" it, is barred.

Consistent with this clear language, we have held that § 1252(g) stripped federal courts of jurisdiction over an alien's request for an emergency stay of removal even when his claim implicated federal statutory and constitutional rights. *Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022). In *Rauda*, the alien sought to "enjoin the government from removing him—or in other words, enjoin 'action . . . to . . . execute removal orders,'" so his claim was barred. *Id.* (quoting 8 U.S.C. § 1252(g)). The source of the alien's asserted rights was irrelevant to our interpretation of § 1252(g). *See id.* at 779-81. It mattered only whether his claim arose from one of the actions specified in § 1252(g), which it did: the execution of his removal order. *Id.* at 778. Similarly, we held that § 1252(g) barred a *Bivens* suit based on a Fourth Amendment claim of false arrest, because the claim "challenge[d] [a] decision to commence expedited removal proceedings" against the alien. *Sissoko v. Rocha*, 509 F.3d 947, 950 (9th Cir. 2007). *Rauda* and *Sissoko* involved challenges to DHS's "legal authority" (after all, DHS has no "legal authority" to violate the Constitution), but we applied § 1252(g) because the claims at issue "arose from" one of the three actions specified by the statute.

B

With this background in mind, the panel should have held that § 1252(g) applied to bar Ibarra-Perez's claims and affirmed the district court's order of dismissal. Ibarra-Perez's FTCA claims sought "compensation for the harms and losses he suffered as the result of [his] unlawful deportation." Complaint, *supra*, p. 3. Those claims fall within the set of "any . . . claim[s] . . . arising from . . . the decision or action . . . to execute [a]

removal order." 8 U.S.C. § 1252(g). As the panel majority itself explained: "Ibarra-Perez challenges ICE's . . . decision to remove him to Mexico." *Ibarra-Perez*, 154 F.4th at 1000. If that claim does not arise from the decision to execute a removal order, what does?

To resist this obvious conclusion, the panel majority contrived an interpretation of § 1252(g) under which its application did *not* turn on whether a claim "arose" from one of the three listed actions, as the text provides, but on whether a claim challenged a "discretionary" act of the government or instead challenged the government's "legal authority" to act. *Ibarra-Perez*, 154 F.4th at 997-99. If the claim challenged the government's "legal authority," then § 1252(g) did not apply to bar it. *Id.* at 998-99. That reading of § 1252(g) constitutes a significant legal error.

First, the panel majority's interpretation relies on the faulty premise that an executive officer's "discretion" is separate from his "legal authority." That distinction does not hold. Often, an agency's organic statute (the "legal authority" for that agency's actions) delegates a degree of discretion to the agency. If the agency abuses its discretion, it also acts beyond its legal authority. Hence, the Administrative Procedure Act provides that the reviewing court shall "hold unlawful . . . agency action" found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). The requirement that an executive officer not abuse his discretion describes one limit on his broader "legal authority." Thus, as a conceptual matter, the panel majority's proposed distinction between "legal authority" and "discretion" is "illusory." *Ibarra-Perez*, 154 F.4th at 1007-08 (R. Nel-

son, J., dissenting) (quoting *E.F.L. v. Prim*, 986 F.3d 959, 965 (7th Cir. 2021)).

Second, the panel majority's interpretation has no basis in the text of § 1252(g). That provision strips federal courts of jurisdiction over "any" claim, whether that claim challenges the government's legal authority or its exercise of discretion, so long as that claim "arise[s] from" one of the statute's three listed actions. "Any" cause or claim that does "arise" from one of those actions is barred, including Ibarra-Perez's claim. Judge R. Nelson's careful dissent analyzed the panoply of errors in the panel majority's textual analysis, and I refer the reader to that opinion. *Ibarra-Perez*, 154 F.4th at 1002-08 (R. Nelson, J., dissenting). Suffice it to say that the panel majority does not explain why "any" claim ought to mean only claims that relate to the government's discretionary authority, but not to its "legal authority."

Third, our precedents do not support the panel majority's unusual reading of § 1252(g). The panel majority claimed to follow longstanding precedents, under which "we have jurisdiction to decide a 'purely legal question' that 'does not challenge the Attorney General's discretionary authority.'" *Ibarra-Perez*, 154 F.4th at 996 (quoting *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004) (en banc)). But while we discussed the terms "legal authority" and "discretion" in decisions that involved § 1252(g), we have never held that a challenge to DHS's "legal authority" to execute a removal order was beyond the scope of § 1252(g).

In *Hovsepian*, for example, the plaintiff had been convicted of a crime in 1985 that was not a basis for deportation under the then-operative immigration laws. *See* 359 F.3d at 1148. In 1988 and 1990, Congress

amended the INA and made the plaintiff's 1985 crime a deportable offense. *Id.* at 1149. The plaintiff sought a permanent injunction to block the government from applying these laws to him retroactively, and we held that § 1252(g) did not bar this claim. *See id.* at 1156-57. But "removal proceedings against [Hovsepian] never commenced." *Id.* at 1165. One cannot challenge the execution of a removal order if removal proceedings have not commenced, so § 1252(g) was inapplicable for that reason. There is no dispute that, unlike Hovsepian, Ibarra-Perez was subject to a final removal order, so *Hovsepian* does not control.

Or consider our decision in *Arce v. United States*, which the panel majority describes as "nearly identical" to this case. *Ibarra-Perez*, 154 F.4th at 998. From *Arce*, the panel majority derives a rule that § 1252(g) does not apply if a plaintiff's claim "was premised on a lack of legal authority to remove him." *Ibarra-Perez*, 154 F.4th at 998 (citing *Arce*, 899 F.3d 796, 800 (9th Cir. 2018) (per curiam)). But *Arce* created no such rule. In *Arce*, our court had stayed an alien's order of removal pursuant to our General Order 6.4(c). *See* 899 F.3d at 798-99. While that stay was in effect, DHS nonetheless removed him. *Id.* at 799. He later brought claims under the FTCA based on his wrongful removal, and we held that § 1252(g) did not bar them. *Id. Arce* reflected a simple reading of the statutory text. The stay of removal meant that "there was no enforceable removal order for the government to execute." *Id.* at 801 (citation omitted). Because there was no valid removal order to execute, Arce's claims did not arise from the government's decision to "execute [his] removal order," but from its disregard of our stay order. There was no stay of removal in Ibarra-Perez's case, so *Arce* is inapplicable.

C

In sum, the panel's interpretation of § 1252(g) fails as a matter of abstract reasoning, conflicts with plain statutory text, and deviates from our precedent. *See also Ibarra-Perez*, 154 F.4th at 1002-14 (R. Nelson, J., dissenting). Although the panel majority tries to limit its holding to the facts, *id.* at 996, nothing in the logic of its opinion limits the decision. That is proven by the multitude of federal district courts that have intervened in the execution of final removal orders and cited the panel's opinion as the basis for doing so. *See supra* note 1; *see also infra* Part II(D).

The rule of decision in the panel's opinion is that when an alien who has been ordered removed sues in federal district court and claims that DHS lacks "legal authority" to remove him, his claims do not "arise" from DHS's "decision or action . . . to . . . execute [his] removal order," so § 1252(g) does not strip the court of jurisdiction. *See id.* The panel majority does not define what constitutes a challenge to "legal authority" with any precision. According to the panel majority, any alien who claims that his removal would violate "the Constitution, INA, or international law" could get into federal district court. *Ibarra-Perez*, 154 F.4th at 998. An alien need allege only that his removal would violate *some* right—perhaps one recognized only by customary international law—to evade § 1252(g)'s jurisdictional bar. That is a far cry from § 1252(g)'s text, which bars review of "any cause or claim."

It should come as no surprise that the four other circuits that have considered the panel majority's interpre-

tation of § 1252(g) have rejected it.[2] As Judge Bibas warned, this interpretation would "gut §1252(g)," because an alien can "restyle any challenge . . . as [one] to the Executive's general lack of authority." *Tazu*, 975 F.3d at 298; *see also Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1273 (11th Cir. 2021) (Grant, J.) ("any petitioner could frame his or her claim as an attack on the government's *authority* to execute a removal order rather than its *execution* of a removal order." (emphases in original)). An interpretation that produces such destructive results suggests that the interpreter committed a serious error. *See Great-West Life & Annuity Co. v. Knudson*, 534 U.S. 204, 217-18 (2002) (per Scalia, J.) ("[I]t is our job to avoid rendering what Congress has plainly done . . . devoid of reason and effect.").

D

The panel's erroneous decision will have serious consequences. Already, district courts in our circuit have applied the panel's decision—which involved a legal remedy for a completed removal—to cases seeking judicial stays of the ongoing execution of a removal order.[3]

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[2] *Tazu v. Att'y Gen. United States*, 975 F.3d 292, 298 (3d Cir. 2020) (Bibas, J.); *Camarena v. Dir., Immigr. & Customs Enf't*, 988 F.3d 1268, 1273 (11th Cir. 2021) (Grant, J.); *E.F.L. v. Prim*, 986 F.3d 959, 965 (7th Cir. 2021) (any "distinction between DHS's 'discretionary decisions' and its 'legal authority' to execute removal orders is illusory."); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (Colloton, J.) ("Silva's case may not involve a discretionary decision by the agency," but § 1252(g) still applies because his claims "arise from a decision to execute a removal order[.]").

[3] *See, e.g.*, *Qu v. Mullin*, 2026 WL 836681, at *2-3 (C.D. Cal. Mar. 26,2026) (granting *ex parte* temporary restraining order (TRO) blocking removal of alien scheduled for removal flight in five days);

Following the panel's decision, these district courts have concluded that § 1252(g) does not strip them of jurisdiction to consider an alien's request to enjoin DHS from executing his removal order, so long as that alien challenges DHS's "legal authority" to remove him. *Qu v. Mullin*, 2026 WL 836681, at *3 (C.D. Cal. Mar. 26, 2026) (concluding that § 1252(g) did not apply because "petitioner here objects to the lack of process afforded him," rather than to "ICE's discretionary authority" (quoting *Ibarra-Perez*, 154 F.4th at 999)). Other district courts have exported the panel's "legal authority" exception from § 1252(g) to § 1252(b)(9), another jurisdiction-stripping provision. *See, e.g.*, *Perez Canet v. Blanche*, 2026 WL 1091763, at *3 (D. Nev. Apr. 22, 2026) ("The Ninth Circuit has concluded that §§ 1252(g) and (b)(9) do not strip courts of jurisdiction where a petitioner 'objects to the lack of process afforded him.'" (quoting *Ibarra-Perez*, 154 F.4th at 1000)). Although the panel majority describes its decision as narrow, the district

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Soliman v. Warden, 2026 WL 1047787, at *1-2 (E.D. Cal. Apr. 17, 2026) (granting *ex parte* TRO blocking government from executing alien's removal order for an indefinite period); *Guerra v. Blanche*, 2026 WL 949027, at *3 (D. Nev. Apr. 7, 2026) (granting habeas petition and enjoining government from removing the petitioner to a third country without providing notice and an opportunity to present a fear-based claim); *Castillo v. Chestnut*, 2026 WL 121652, at *3-5 (E.D. Cal. Jan. 16, 2026) (same); *Perez Canet v. Blanche*, No. 2:26-cv-00223-APG-NJK, 2026 WL 1091763, at *2-3 (D. Nev. Apr. 22, 2026) (same); *Sarkisov v. Blanche*, No. 2:25-CV-02321-JAD-DJA, 2026 WL 949019, at *6-7 (D. Nev. Apr. 8, 2026) (same); *Hassan v. Blanche*, No. 2:26-cv-00411-JAD-MDC, 2026 WL 1121985, at *7 (D. Nev. Apr. 24, 2026) (same); *Samadi v. Blanche*, No. C26-1115-KKE, 2026 WL 1172917, at *5 (W.D. Wash. Apr. 30, 2026) (same).

courts charged with implementing that decision have applied it broadly.[4]

So long as the panel's decision remains good law, federal district courts will be an alternative forum in which an alien may challenge the merits of his removal. An alien's pleadings need only allege that DHS lacked "legal authority" to remove him.

The panel majority's interpretation of § 1252(g) is especially harmful because it subjects an executive agency's judgments on foreign affairs to judicial review. The "selection of a removed alien's destination . . . 'may implicate our relations with foreign powers' and require[s] consideration of 'changing political and economic circumstances.'" *Jama v. Immigr. & Customs*

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[4] *See, e.g.*, *El-Bitar v. Hernandez*, No. 2:26-cv-00919-TMC, 2026 WL1533009, at *3 n.2 (W.D. Wash. June 1, 2026) ("If DHS decides to remove a noncitizen to a country not identified in their removal order, it must provide notice and an opportunity to be heard on claims of asylum and withholding of deportation to that country." (citing *Ibarra-Perez*, 154 F.4th at 995)); *Feh v. Noem*, No. 26-cv-0578-LL-BLM, 2026 WL686168, at *5 (S.D. Cal. Mar. 11, 2026) ("a claim based on a lack of legal authority to execute a removal order due to a violation of a court order, the Constitution, INA, or international law, does not challenge the decision or action to execute a removal order" (citing *Ibarra-Perez*, 154 F.4th at 998)); *Oregel Amezcua v. Noem*, No. 5:26-cv-01070-SRM-AGR, 2026 WL 1048212, at *4 (C.D. Cal. Mar. 25, 2026) ("the Ninth Circuit has specifically held that Section '1252(g) does not bar due process claims'" (quoting *Ibarra-Perez*, 154 F.4th at 997)); *Ramirez v. Noem*, No. 2:25-cv-02136-RFB-MDC, 2026 WL 310090, at *9 (D. Nev. Feb. 5, 2026) ("where a noncitizen challenges the Attorney General's arguably discretionary decision on a purely legal basis as a 'violation [of] the Constitution' or 'INA,' courts have jurisdiction to review such decisions as 'premised on a lack of legal authority.'" (quoting *Ibarra-Perez*, 154 F.4th at 998)).

Enf't, 543 U.S. 335, 348 (2005) (quoting *Mathews v. Diaz*, 426 U.S. 67, 81 (1976)). Congress understood that the executive branch requires "flexibility" in the field of removal, as it must weigh "practical and geopolitical concerns" and "avoid removals that are likely to ruffle diplomatic feathers." *Id.* at 344, 348. The choice of a removal country may turn on matters that are not amenable to judicial review: for instance, on whether the "Secretary or his designee determines that such designation is in the best interests of the United States," 8 C.F.R. § 241.15(f), or on the "nature or existence of a government" in a particular territory. *Id.* § 241.15(a).

Yet under the panel's decision, federal district courts can enjoin DHS from executing a final removal order even after DHS has worked for months to obtain travel documents and has booked a ticket for the alien on a chartered flight. *See, e.g.*, *Qu*, 2026 WL 836681, at *2-3 (enjoining removal of alien subject to final removal order and scheduled to board removal flight in five days). Even if these claims are rejected on the merits, the exercise of jurisdiction alone harms the executive's enforcement efforts. Foreign consular officials who agreed to accept an alien two weeks earlier may renege on that promise. The removal process involves exigencies that do not arise in the typical civil case.

Forcing DHS to justify the execution of a removal order in federal district court constitutes an untenable intrusion on executive functions. Congress understood this reality and enacted a litany of jurisdiction-stripping provisions in various amendments to the INA. *See* 8 U.S.C. §§ 1252(a), (b)(9), (g). It is for the executive branch, acting within the bounds of its delegated authority under the INA, to adapt its immigration policy in response

to changing migration flows, domestic political concerns, and foreign policy issues. Unless corrected, the panel's decision will continue to impose unwarranted burdens on the executive branch and offend the constitutional principle of separation of powers. *See Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) ("It is not within the province of the judiciary to order that foreigners who have never . . . been admitted into the country pursuant to law, shall be permitted to enter, in opposition to . . . the legislative and executive branches of the national government.").

III

The panel majority's arguments to the contrary are unpersuasive.

A

First, the panel majority invokes a "due process" argument to justify its atextual reading of § 1252(g). It argues that § 1252(g)'s jurisdictional bar must stop short of Ibarra-Perez's claims, because otherwise, he would lack a legal remedy. *See Ibarra-Perez*, 154 F.4th at 1000 ("Ibarra-Perez had no reasonable opportunity for judicial review of ICE's designation decision . . . [u]nder [an] expansive interpretation of § 1252(g), Ibarra-Perez would have no way to protect himself.").

But justice is not served when federal judges upend a legislative scheme to redress an individual's harm, no matter how sympathetic that individual's claim is.

As Justice Holmes once observed, "great cases . . . make bad law," for they "involve an overwhelming interest which appeals to the feelings . . . before which even well settled principles of law will bend." *N. Sec. Co. v. United States*, 193 U.S. 197, 400-01 (1904) (Holmes, J.,

dissenting). Ibarra-Perez presented such a case. He is a refugee from political persecution by a Communist dictatorship, having twice been imprisoned by the Cuban police on fabricated charges. Uncounseled, he made a mistake in thinking that the IJ's grant of withholding of removal as to Cuba gave him the right not to be removed to another country. But what was true in Justice Holmes's time is true now: "[w]hat we have to do in this case is to find the meaning of some not very difficult words." *Id.* at 401 (Holmes, J., dissenting). However harsh the result, the panel majority had no license to ignore the "not very difficult words" that spell out § 1252(g).

Indeed, the enactment of a jurisdiction-stripping provision contemplates that courts will be unable to consider some sympathetic and meritorious claims. Section 1252(g) represents a legislative judgment that the costs of judicial interference with removals outweigh the costs to individuals who are removed and whose perhaps meritorious claims fall through the cracks of the petition-for-review and motion-to-reopen processes. "[A]ny policy toward aliens is . . . so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." *See Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952) (Jackson, J.). Respecting that principle, we have already held, consistent with the Third Circuit, that § 1252(g) does not itself violate an alien's due process rights. *See Rauda*, 55 F.4th at 777; *see also Tazu*, 975 F.3d at 299-300 ("[petitioner] can raise all his claims in a petition for review . . . [t]here is no constitutional problem with funneling them there."). The panel majority subverted our holding in *Rauda* by reading an exception into § 1252(g) that effectively nullifies that provision.

Nor should we interpret § 1252(g) to carve out a narrower exception for constitutional claims. To be sure, a statute must evince Congress's "clear" intent to "preclude judicial review of constitutional claims" before we will interpret it to bar such claims. *Ibarra-Perez*, 154 F.4th at 995-96 (quoting *Webster v. Doe*, 486 U.S. 592, 603 (1988)). But § 1252(g) provides such a clear statement: it bars "any" claim arising from three discrete decisions related to removal. "Any" claim means "any" claim, constitutional or otherwise, so it is of no moment that Ibarra-Perez's claims asserted "due process" rights. *Contra Ibarra-Perez*, 154 F.4th at 998.

On other occasions when we have deviated from the INA's plain meaning to serve unstated constitutional concerns, the Supreme Court has corrected us. *See, e.g.*, *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015) (requiring bond hearings after six months of detention under 8 U.S.C. § 1225(b)(1)-(2) because of due process concerns), *rev'd sub nom. Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018) ("[n]othing in the text of § 1225(b)(1) or § 1225(b)(2) even hints that those provisions restrict detention after six months"); *Thuraissigiam v. DHS*, 917 F.3d 1097 (9th Cir. 2019) (holding that 8 U.S.C. § 1252(e)(2), as applied, violated the Suspension Clause), *rev'd*, 591 U.S. 103 (2020); *United States v. Ochoa*, 861 F.3d 1010 (9th Cir. 2017) (due process concerns excused full compliance with 8 U.S.C. § 1326(d)), *abrogated by United States v. Palomar-Santiago*, 593 U.S. 321, 327 (2021) ("[t]he Ninth Circuit's interpretation is incompatible with the text of § 1326(d)."). Rather than waiting for the Supreme Court to rectify the panel's erroneous and disruptive decision, we should have reheard this matter en banc.

B

Finally, the panel majority suggests that its decision merely interpreted the word "execute" in § 1252(g) (which strips jurisdiction only as to claims "arising from the decision or action . . . to . . . *execute* removal orders"). The panel majority reasons that "[b]ecause Mexico was not mentioned in the order of removal, Ibarra-Perez [did] not challenge the 'execution' of his removal order." *Ibarra-Perez*, 154 F.4th at 997. As the panel majority sees it, DHS "executes" an alien's removal order only when it sends him to a country that the IJ has specified in the removal order. But that interpretation conflicts with the basic text and structure of the INA.

A removal order "conclud[es] that the alien is deportable." 8 U.S.C. § 1101(a)(47)(A). The order is the final word as to removability—"whether an alien is to be removed from the United States," *Johnson v. Guzman Chavez*, 594 U.S. 523, 536 (2021)—but it has no legal force as to where the alien may be removed. The INA provides that "[a]t the conclusion of the [removal] proceeding the [IJ] shall decide whether an alien is removable from the United States." 8 U.S.C. § 1229a(c)(1)(A). The statute says nothing about the IJ's duty to make a binding determination about where to send the alien. Although the IJ has a regulatory obligation to "identify a country . . . to which the alien's removal may in the first instance be made," that same regulation clarifies that "the order of the [IJ] does not limit the authority of the [DHS] to remove the alien to any other country as permitted by section 241(b) of the Act [8 U.S.C. § 1231(b)]." 8 C.F.R. § 1240.12(d).

To "execute" an alien's removal order, therefore, DHS need only remove him "*from* the United States," not "*to* [a] particular country." *Guzman Chavez*, 594 U.S. at 536 (emphases in original). Here, Ibarra-Perez was subject to a valid, final removal order. The IJ designated Cuba as the country of removal, thereby fulfilling her obligation to "identify a country . . . to which the alien's removal may in the first instance be made." 8 C.F.R. § 1240.12(d). So, when ICE agents removed Ibarra-Perez from the United States (to Mexico), they "execute[d] [his] removal order." *See* 8 U.S.C. § 1252(g).

Although the IJ had not designated a country of removal other than Cuba (as to which removal was withheld), that did not prevent DHS from "executing" Ibarra-Perez's final removal order. Because of the withholding order, DHS could not remove Ibarra-Perez to Cuba. 8 U.S.C. § 1231(b)(3). But DHS "retain[ed] the authority to remove [Ibarra-Perez] to any other country authorized by the statute." *Guzman Chavez*, 594 U.S. at 536; *see* 8 C.F.R. §§ 241.15(a), 1240.10(f), 1240.12(d) ("In the event that [DHS] is unable to remove the alien to the specified . . . country, the order of the [IJ] does not limit the authority of [DHS] to remove the alien to any other country as permitted by [8 U.S.C. § 1231(b)]."). "[T]he statute makes clear that removability and withholding relief are distinct," and, indeed, withholding of removal relief "says nothing" about the "antecedent question" of removability. *Guzman Chavez*, 594 U.S. at 536-37.

The panel's erroneous interpretation of what it means to "execute" a removal order also disrupts the structure that DHS and the Department of Justice (DOJ) jointly created to carry out their respective duties under the

INA. Under the panel's decision, in the case of an alien who is subject to a valid removal order, an ICE officer apparently must still ask an IJ for authorization before he can remove that alien to any country not named in the alien's removal order. *See Ibarra-Perez*, 154 F.4th at 991 (contemplating that "[t]he government" could have "asked for an order removing Ibarra-Perez to Mexico."). The result is a judicially forced delegation of power from ICE officers (who work for DHS) to IJs (who work for DOJ) that disturbs the agencies' established allocation of statutory authority.

IJs, as officials within DOJ, exercise only the statutory authority delegated to them by the Attorney General. *See* 8 U.S.C. §§ 1101(b)(4), 1103(a)(2); 8 C.F.R. § 1003.10(a). The Attorney General has delegated to IJs the authority to "[d]etermine removability," grant withholding of removal and CAT relief, and decide eligibility for various kinds of admissibility waivers. 8 C.F.R. § 1240.1(a)(1). But he has not authorized IJs to issue country-of-removal designations that bind DHS officials. Rather, the Attorney General reserved for DHS the authority—subject only to statutory limits—to select a country of removal for an alien ordered removed, notwithstanding the IJ's designation. *See id.* §§ 1240.12(d) ("[T]he order of the [IJ] does not limit the authority of the [DHS] to remove the alien to any other country as permitted by [the INA]"); 241.15(a) (similar). DOJ has promulgated another rule clarifying that the immigration courts lack jurisdiction to review DHS's country-of-removal designations. *Id.* § 1241.15. And in a comprehensive joint rulemaking, the agencies explicitly rejected a comment that argued, like the panel majority, that DHS's removal authority was bound by the country (or countries) that an IJ designated in a removal order.

See 70 Fed. Reg. 661, 672 (2005) ("[I]mmigration law provides the United States with the authority to remove aliens to countries other than those designated by an immigration judge.").

The panel's interpretation rewrites these regulations, none of which Ibarra-Perez challenged. The panel's approach requires DHS, on pain of federal district court disapproval, to obtain an IJ's sign-off as to the country of removal before executing any removal order. No such requirement appears in the statute or in agency regulations. Nor would such a requirement be practicable, as an IJ cannot know at the time he issues a removal order whether the designated country of removal will indeed accept the alien. Therefore, even to the extent that the panel's decision was limited to an interpretation of the word "execute," that would not have obviated the need for en banc rehearing.

* * *

The panel majority, without any basis in text or precedent, adopted an interpretation of § 1252(g) that makes no sense on its own terms and has been rejected by every other circuit that has considered it. That interpretation will lead to the "deconstruction, fragmentation, and . . . prolongation of removal proceedings" that § 1252(g) was "specifically directed" to prevent. *AADC*, 525 U.S. at 487. I regret that the panel's confusing, disruptive, and far-reaching decision remains the law of the Ninth Circuit.

APPENDIX D

8 U.S.C. 1252(g) provides:

Judicial review of orders of removal

(g) Exclusive jurisdiction

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, 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.