United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
October 30, 2026
Thomas B. Plunkett, III
Clerk

No. 26-30387

MAEREGU BEZABEH ALAMREW,

Petitioner—Appellant,

versus

TIM MORGAN; BRIAN ACUNA; MARKWAYNE MULLIN, *Secretary, U.S. Department of Homeland Security*; TODD WALLACE BLANCHE, *U.S. Attorney General*; BRET A. BRADFORD, *Director, U.S. Immigration and Customs Enforcement Houston Field Office*,

Respondents—Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 1:26-CV-871

PUBLISHED ORDER

Before HIGGINSON, WILLETT, and OLDHAM, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that Appellant's motion to correct the docket to reflect that this is a civil appeal is GRANTED.

IT IS FURTHER ORDERED that Appellant's motion to dismiss this appeal as moot is GRANTED.

In light of our dismissing Appellant's appeal, IT IS FURTHER ORDERED that Appellant's other pending motions, *see* ECFs 9, 13, are likewise DENIED as moot.

ANDREW S. OLDHAM, *Circuit Judge*, statement respecting the dismissal of this case:

This case is a travesty. Maeregu Bezabeh Alamrew violated our Nation's immigration laws, abused our immigration system, and perverted the writ of habeas corpus. Unfortunately, the district court rewarded his efforts—and today Alamrew is walking freely in our country. I have written extensively about the misuses of immigration-related habeas in district courts throughout our circuit. *See, e.g.*, *Sosnava Rodriguez v. Vergara*, No. 26-50183, 2026 WL 3181188, at *18–45 (5th Cir. Oct. 23, 2026) (en banc) (OLDHAM, J., concurring). This case is the latest chapter in a story about the aliens and the lawyers who are undermining both our immigration system and the rule of law.

I

Two dimensions of the factual and procedural background are relevant here. The first is (A) Alamrew's abuse of the immigration and federal court systems, which the district court correctly rejected as meritless up until it didn't. The second is (B) the magistrate judge's surprise switcheroo on June 22, 2026, which led to Alamrew's release from immigration custody.

A

Alamrew is an illegal alien. He is a citizen of Ethiopia, and he illegally entered our country in August 2024. ROA.86. The Biden Administration detained him in immigration custody and placed him in removal proceedings that same month. ROA.305. On September 3, 2025, an immigration judge found him removable. But at Alamrew's request, the IJ granted him withholding of removal under INA § 241(b)(3), which prevented the Government from removing him to Ethiopia. *See* 8 U.S.C. § 1231(b)(3); ROA.26. Alamrew waived any right to appeal this decision. ROA.27.

Consequently, as of September 3, 2025, the Government could release Alamrew from detention by removing him to any third country—that is, a country not named Ethiopia or the United States. *See* 8 C.F.R. § 208.16(f).

In December 2025, the Government notified Alamrew that it intended to remove him to Cameroon. ROA.306. Months passed, and Alamrew did not challenge his third-country removal to Cameroon. He just sat in immigration custody, bided his time, and counted down the days. *See* ROA.169–70 (explaining "the available evidence reflects that Petitioner was notified that Cameroon was the proposed country of removal and thereafter did not raise a fear-based objection to removal to that country").

Almost exactly six months after the IJ issued his removal order, Alamrew sprung to action. On March 18, 2026, Alamrew filed a petition for a writ of habeas corpus in federal district court. *See* 28 U.S.C. § 2241. He argued that he was entitled to release under *Zadvydas v. Davis*, 533 U.S. 678 (2001). In that case, the Supreme Court said that the Constitution presumptively allows the Government to detain aliens for at least six months after their removal orders become final. "This 6–month presumption, of course, does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* at 701. Like clockwork, when his 6-month clock tolled, Alamrew suddenly insisted that his removal to a third country was not significantly likely in the reasonably foreseeable future. So he petitioned to be released from custody.

In May 2026, the Government attempted to grant Alamrew's wish. It again attempted to release Alamrew from custody by removing him to Cameroon. ROA.284. Having (1) demanded that he not be removed to Ethiopia; (2) sat quietly for more than eight months without objecting to his

third-country removal order; and (3) insisted that he should be released from immigration detention, Alamrew presumably was thrilled by this news? Wrong. After the Government transported him to an airport, Alamrew moved the federal district court for an "Emergency" temporary restraining order to *prevent* the very thing that he previously wanted—namely, release from immigration custody and removal to a third country not named Ethiopia or the United States. ROA.125.

Given the self-contradictory nature of Alamrew's request for a temporary restraining order, the district court unsurprisingly denied it. In a dramatic understatement, the court explained that "the reasoning in Petitioner's motion significantly undercuts his habeas claim." ROA.152.

On May 29, 2026, Alamrew doubled down and filed an "Emergency Motion to Reconsider Order Denying Temporary Restraining Order." ROA.154. What was the second "Emergency"? The apparent "emergency" was that "ICE placed [Alamrew] on a removal flight to Cameroon"—as it had planned and promised to Alamrew for *over five months*. ROA.155. Notwithstanding the fact that he had more than five months' notice of his third-country removal to Cameroon, Alamrew alleged that his removal was "without notice." *Ibid.*

Alamrew was *still* not done. On June 8, 2026, Alamrew filed a "Second Emergency Motion for Temporary Restraining Order and Order to Show Cause, or in the Alternative, for an Order Requiring Respondents to Provide Immediate Notice of any Transfer or Removal." ROA.227. What was this "Second" (read: Third) "Emergency"? Alamrew wanted the district court to know that he really, *really* wanted to stay in immigration

detention.[1] You can imagine the district judge's confusion when the habeas petitioner filed a second motion demanding that he stay *in* custody. If the district court was unwilling to directly enjoin removal, Alamrew alternatively demanded a TRO requiring the Federal Government to:

> 1. Provide undersigned counsel with immediate written notice of the current location, destination, and purpose of Petitioner's transfer within two (2) hours of this Order.
>
> 2. Provide undersigned counsel with at least 72 hours advance written notice before placing Petitioner on any removal flight or transporting Petitioner to any airport or removal staging facility; and
>
> 3. Refrain from placing Petitioner on any removal flight to Cameroon or any third country without first: (a) providing written notice to Petitioner and counsel of the intended country of removal; (b) conducting a full fear screening; (c) conducting a CAT assessment; and (d) reopening removal proceedings and providing Petitioner a full hearing before an immigration judge.

ROA.230.

Each of these demands was sanctionable when made. Alamrew was given written notice of his removal to Cameroon in December 2025—more than five months before he demanded written notice "within two (2) hours of this Order." The five months' notice of Alamrew's removal to Cameroon also far exceed his made-up 72-hour deadline, which has no basis in any source of law whatsoever. And Alamrew received—and lost—his CAT hearing before an immigration judge nine months before he filed this sanctionable motion. ROA.26.

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[1] *Cf.* A Few Good Men, at 1:18:13–1:18:27 (Castle Rock Entertainment 1992) ("'I strenuously object?' Is that how it works? 'Objection.' 'Overruled.' 'No, no, no, no. I *strenuously* object.' 'Oh. Well, if you *strenuously* object then I should take some time to reconsider.'").

On June 16, 2026, the district court (obviously) denied these frivolous motions. ROA.317. It did so in part based on the fact that Alamrew plainly and obviously received notice of his removal to Cameroon in December 2025 and did literally nothing to complain about it. *See, e.g.*, ROA.291–92, 297–304, 305–07 (collecting proof of this notice).[2]

On June 18, 2026, having exhausted his relief in the district court with an avalanche of self-contradicting gibberish, Alamrew appealed to our court. He sought review of the district court's June 16, 2026, Order denying Alamrew's "Emergency Motion for Reconsideration" (ROA.154) and his "Second Emergency Motion for Temporary Restraining Order" (ROA.227). CA5 ECF-1 (Jun. 25, 2026). It would have been very easy for our court to deny him relief as the district court had done. After all, an alien cannot break our immigration laws, flood the immigration courts with motions to prevent his removal to his home country, complain about being in immigration custody, and then *oppose* the Government's efforts to release him. All while

[2] In district court, Alamrew provided a late-breaking declaration to suggest (without actually alleging) that he was never actually served with notice in December 2025. ROA.194. It would pile perjurious frivolity on top of frivolity to deny Alamrew was on actual notice in December 2025. A DHS Deportation Officer gave Alamrew the Cameroon notice, read it to him, and attested to the service on December 23, 2025, at 8:45 A.M. ROA.299; *see also* ROA.98 ¶ 13 (declaration by DHS Field Office Director Justin Williams) ("On or about December 23, 2025, the Petitioner refused to sign the third country removal form to Cameroon. ERO [(ICE Enforcement and Removal Operations)] also received an update that the approved removal form is still pending."); ROA.174 ¶ 14 (another declaration by DHS Field Office Director Justin Williams) ("On or about December 23, 2025, the Petitioner was served the third country removal form to Cameroon but refused to sign the document. The Petitioner has not made any claim of fear regarding removal to Cameroon; therefore, no fear screenings, interviews, determinations, or review processes concerning removal to Cameroon were conducted by ERO."); ROA.297–304 (numerous other notices, including removal notices, all of which Alamrew refused to sign). Alamrew contests none of this, obviously, because then he'd liable for perjury. ROA.194–98. Rather, his declaration "acknowledge[s] that [he] may not recall specific dates with precision." ROA.194–95. So the Government's small mountain of documentary proof of service in December 2025 is unrebutted. And even Alamrew concedes that he had notice "about February 2026." ROA.195. So even if someone credited Alamrew's unsubstantiated non-denial of the Government's proven notice in December 2025, Alamrew still had *months* of notice of his removal to Cameroon.

claiming that he never received the notice that he plainly and obviously received in December 2025.

B

Then, as with an unfortunate number of immigration cases in this circuit, Alamrew's case took a sudden and deeply unfortunate turn into the ditch. *Cf. Sosnava Rodriguez*, 2026 WL 3181188, at *44 (OLDHAM, J., concurring) (collecting district court decisions that disregarded published stay from en banc court). Four days after Alamrew appealed to our court, on June 22, 2026, U.S. Magistrate Judge Carol B. Whitehurst issued a report and recommendation on Alamrew's habeas petition. ROA.329. It's unclear why the magistrate judge thought Alamrew's self-contradictory filings suddenly changed from patently frivolous to meritorious.

But for whatever reason, the magistrate judge determined that petitioner's flood of meritless claims—demanding notice that he already received, seeking hearings he already lost, and demanding first to be removed to a country not named Ethiopia or the United States and then opposing that very same relief—ran out the *Zadvydas* clock. ROA.340–41. The Government obviously provided ample evidence that Alamrew's removal was likely in the reasonably foreseeable future. As the Government explained, it identified Cameroon as the receiving country, served notice to that effect on Alamrew, engaged in requisite diplomatic processes, completed its administrative review, and finalized "a charter flight packet" for "an actual removal operation." ROA.351. The Government *even put Alamrew on a plane for removal*. The record suggests the only reason that Alamrew was not actually removed from the United States is because he was not selected as an "alternate" for that chartered flight. *Ibid.* The fact that the Government ran out of space for standby aliens on Charter Flight 1 is demonstrable proof that it was prepared to remove Alamrew on Charter

Flight 2. But the magistrate judge ignored all of this and accused the Government of wasting time through "bureaucratic activity" and "bureaucratic process." ROA.335, 336 n.4. Because Alamrew unsuccessfully (read: successfully) flooded the litigative zone for more than six months while the Government scrambled to find space for him on a chartered flight, the magistrate judge concluded that he must be released into the United States. ROA.340–41; *but see Balogun v. INS*, 9 F.3d 347, 351 (5th Cir. 1993) ("[W]e hold that if it is shown that petitioner by his conduct has intentionally prevented the INS from effecting his deportation, the six-month period should be equitably tolled until petitioner begins to cooperate with the INS in effecting his deportation or his obstruction no longer prevents the INS from bringing that about."); *Pelich v. INS*, 329 F.3d 1057, 1060 (9th Cir. 2003) ("[T]he detainee cannot convincingly argue that there is no significant likelihood of removal in the reasonably foreseeable future if the detainee controls the clock."); *Hook v. Lynch*, 639 F. App'x. 229, 230 (5th Cir. 2016) (similar).

The Government filed lengthy and strenuous objections to the magistrate judge's recommendation. ROA.344–59. But the district court overruled those objections and granted Alamrew's petition for habeas corpus. WDLA ECF-45 (Aug. 28, 2026). It would be bad enough if the district court ordered Alamrew released into the United States—a remedy that could not be justified on the facts, in light of Alamrew's abusive litigation tactics, under Fifth Circuit precedent, under *Zadvydas*, or under the centuries of precedent governing the writ of habeas corpus. But the district court went even further and ordered relief that is completely foreign to the Great Writ. The district court ordered:

> IT IS HEREBY ORDERED that the motion to expedite ruling [WDLA ECF-42] is GRANTED.

> IT IS FURTHER ORDERED that Petitioner Maeregu Bezabeh Alamrew's petition for habeas corpus [WDLA ECF-1] is GRANTED. Respondents, and the Warden of Winn Correctional Center, shall (A) immediately release Petitioner from custody without bond, under reasonable conditions of supervision if necessary and (B) notify Petitioner's counsel of the exact location and time of his release no less than two hours before his release.
>
> **IT IS FURTHER ORDERED that any possible or anticipated removal or transfer of Petitioner under this present detention is PROHIBITED. Respondents shall, within 24 hours after Petitioner's release, file a status report confirming his release.**

WDLA ECF-45, at 1–2 (emphasis added). The district court did not explain how or why the writ of habeas corpus allows a federal judge to regulate or prohibit immigration transfers. Nor did the district court explain how it could use the writ of habeas corpus to collaterally attack the Government's lawful entitlement to remove Alamrew to any country not named Ethiopia or the United States. *See* 8 U.S.C. § 1252 (prohibiting this in numerous ways).

The Government dutifully released Alamrew from immigration custody on August 28, 2026. *See* WDLA ECF-46. On September 8, 2026, Alamrew moved to dismiss his appeal in our court. *See* CA5 ECF-36. He explained: "Petitioner's release from the detention that occasioned the orders on appeal, leave no live controversy for this Court to decide. Petitioner has obtained in the district court the relief this appeal sought to preserve, and no effective relief remains available here." *Id.* at 3. The Government did not file a response.

II

It is difficult to know where to start or to stop cataloging the mistakes in this case. I will limit myself to four big ones. As an initial matter, (A) the

estoppel doctrines should have barred Alamrew's demands for injunctive relief and "habeas" relief. Second, (B) IIRIRA and the REAL ID Act divested the district court of jurisdiction to grant "habeas" relief undoing the IJ's removal order. Third, (C) no part of Alamrew's "habeas petition" can be squared with the limits that apply to the writ of habeas corpus. Finally, (D) Alamrew's invocation of Federal Rule of Appellate Procedure 23 was meritless.

A

Start with estoppel. Two related estoppel doctrines should have barred Alamrew's claims from the day he stepped into federal court: issue preclusion and judicial estoppel. I (1) describe the doctrines and then (2) apply them.

1

Issue preclusion is "[a] fundamental precept of common-law adjudication." *Montana v. United States*, 440 U.S. 147, 153 (1979). "When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." RESTATEMENT (SECOND) OF JUDGMENTS § 27, at 250 (1980). As the Supreme Court has explained, "the determination of a question directly involved in one action is conclusive as to that question in a second suit." *Cromwell v. Sac County*, 94 U.S. 351, 354 (1877). The adjudication of an issue or a fact in *Case One* "*forever* settle[s it] as between the parties" in *Case Two*, *Three*, *&c. Baldwin v. Iowa State Traveling Men's Assn.*, 283 U.S. 522, 525 (1931) (emphasis added). This rule is essential for many reasons—but one of the most important is that it prevents "the possibility of inconsistent decisions." *Montana*, 440 U.S. at 154. If the court in *Case Two* could re-adjudicate a fact or issue that was

conclusively adjudicated by a different court in *Case One*, it would undermine if not eliminate the integrity and power of the *Case One* court. That is why the Supreme Court has emphasized: "Application of [issue preclusion] is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdictions." *Id.* at 153.

It does not matter that *Case One* was decided by an administrative tribunal like an IJ or the Board of Immigration Appeals. "Both this Court's cases and the Restatement make clear that issue preclusion is not limited to those situations in which the same issue is before two *courts*." *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 148 (2015). "When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply *res judicata* to enforce repose." *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422 (1966). The principle is so well established that "the courts may take it as given that Congress has legislated with an expectation that the [issue-preclusion] principle will apply except when a statutory purpose to the contrary is evident." *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 108 (1991) (quotation omitted). The principle is *so* strong that it even applies to issues and facts adjudicated by *state* agencies. *University of Tenn. v. Elliott*, 478 U.S. 788, 798–99 (1986). And it obviously applies to issues and facts adjudicated by the immigration courts. *See, e.g.*, *Matter of Fedorenko*, 19 I&N Dec. 57 (B.I.A. 1984), *abrogated on other grounds by Negusie v. Holder*, 555 U.S. 511 (2009).

Judicial estoppel is a distinct but related doctrine, and it's equally central to the administration of justice. "[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has

acquiesced in the position formerly taken by him." *Davis v. Wakelee*, 156 U.S. 680, 689 (1895). Judicial estoppel "generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *Pegram v. Herdrich*, 530 U.S. 211, 227 n.8 (2000); *see also* 18B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 4477 (3d ed.) ("[A]bsent any good explanation, a party should not be allowed to gain an advantage by litigating on one theory, and then seek an inconsistent advantage by pursuing an incompatible theory."). Thus, federal "courts have uniformly recognized that [judicial estoppel's] purpose is to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment." *New Hampshire v. Maine*, 532 U.S. 742, 749–50 (2001) (quotations omitted).

2

These doctrines should have squarely foreclosed Alamrew's litigation misconduct. Congress vested immigration judges with the *exclusive* power to resolve all facts and issues related to the admissibility and removability of aliens. *See* 8 U.S.C. § 1229a. On September 3, 2025, the IJ determined that Alamrew was removable under INA § 212(a)(6)(A)(i). ROA.26; *see* 8 U.S.C. § 1182(a)(6)(A)(i) ("An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible."). Then the IJ ordered withholding of removal to Ethiopia under INA § 241(b)(3). ROA.26, 28. Alamrew expressly waived his right to appeal these decisions. ROA.27 ("As such, the Court issues the present summary decision, noting the parties have waived appeal. Thus, an oral decision is not necessary."). And thus, the IJ's determinations became final and subject to the estoppel doctrines. *See B & B Hardware*, 575 U.S. at 152.

On December 23, 2025—approximately four months after Alamrew waived his right to appeal and his removal order became final—the Government served him with a "**NOTICE OF REMOVAL**." ROA.299. The notice was read to Alamrew, and an immigration officer certified that it was served on the alien. *Ibid.* The notice said: "This letter is to inform you that U.S. Immigration and Customs Enforcement (ICE) intends to remove you to CAMEROON." *Ibid.* Having waived any right to contest his removability—or to contest his removal to a third country not named Ethiopia or the United States—Alamrew understandably did nothing. He sat quietly in detention while the Government prepared his third-country removal to Cameroon.

Then, suddenly, he ran to federal district court and demanded *both* to get out of detention *and* to remain in it. First, he filed a petition for habeas corpus—arguing that he should not remain in immigration detention. Then he filed *two* motions for TROs—arguing that he should remain in immigration detention and that the Government should be enjoined from releasing him. Those reliefs are transparently contradictory. And query when the Great Writ started allowing detainees to demand *continued* detention. *See* Part II.C, *infra*.

What's worse, Alamrew violated both the issue-preclusion and the judicial-estoppel doctrines in his TRO filings. In the immigration court, Alamrew won the right not to be removed to Ethiopia, and he conceded by waiving any appeal that he could be removed to another country like Cameroon. Having demanded to the IJ that he be removed to a country like Cameroon, Alamrew then switched horses in federal court; argued he could not be removed to Cameroon; and contended that he *must* be released into the United States—notwithstanding the IJ's determination that he is inadmissible and removable, and notwithstanding Alamrew's previous

concessions and waivers. Issue preclusion and judicial estoppel should have barred this gamesmanship.[3]

B

Congress expressly barred district judges from using habeas corpus to collaterally attack removal orders. I (1) describe the legal principles and (2) apply them.

1

Congress provided one and only one mechanism to review an immigration judge's removal order. That is a petition for review filed in the court of appeals under the Hobbs Act: "Judicial review of a final order of removal . . . is governed *only* by [the Hobbs Act,] chapter 158 of Title 28 ." 8 U.S.C. § 1252(a)(1) (emphasis added); *see also* 28 U.S.C. § 2344 (the Hobbs Act) (requiring challenges to "a final order reviewable under this chapter" to be filed in petitions for review in the courts of appeals, not complaints in the district courts). IIRIRA states that judicial review "of all questions of law and fact . . . 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." 8 U.S.C. § 1252(b)(9) (emphasis added). And the REAL ID Act did everything but underscore these principles in bold-faced font and exclamation points. It amended the INA to strip the district courts of habeas jurisdiction to interfere with removal orders:

[3] The fact that Alamrew was released into the United States to live and walk amongst lawful citizens does not, of course, vitiate the final order of removal against him. The Government can re-arrest him and remove him at any time. But the *only* reason that Alamrew was ordered released from immigration detention is that he was allowed to argue in federal court that he could not be removed to Cameroon after he expressly conceded to the IJ that he could be removed to any country not named Ethiopia or the United States.

> *Notwithstanding any other provision of law (statutory or nonstatutory), including [the federal habeas statute] section 2241 of Title 28, or any other habeas corpus provision,* and sections 1361 and 1651 of such title, 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.

Id. § 1252(a)(5) (emphases added).

Not only does the INA as amended strip habeas jurisdiction and channel all removability claims into Hobbs Act petitions, it also limits what any federal judge can do to interfere with the execution of a removal order. The statute provides:

> Except as provided in this section and *notwithstanding any other provision of law (statutory or nonstatutory), including [the federal habeas statute] 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*.

Id. § 1252(g) (emphasis added). The decision to execute a removal order is vested in the sole and unreviewable discretion of the Attorney General. No court—sitting in habeas or otherwise—can review it. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483–87 (1999).

Not only does the INA as amended strip habeas jurisdiction and channel all removability claims into Hobbs Act petitions, it also limits what an alien can challenge in his Hobbs Act petition. For example, Congress provided:

> *Notwithstanding any other provision of law (statutory or nonstatutory), including [the federal habeas statute] section 2241 of Title 28, or any other habeas corpus provision,* and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, *no* court shall have jurisdiction to review—
>
> * * *
>
> (ii) any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security.

8 U.S.C. § 1252(a)(2)(B)(ii) (emphases added). And § 1252(a)(2)(D) clarifies that this provision strips courts of jurisdiction to consider factual questions, but not "constitutional claims or questions of law." *Id.* § 1252(a)(2)(D).

Romanette ii bars any factual review of the decision to grant withholding in Hobbs Act petitions. Withholding is warranted "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." 8 U.S.C. § 1231(b)(3)(A); *see also id.* § 1231(b)(3)(B) (explaining that withholding is unavailable "if the Attorney General decides that" certain conditions are met, such as that "there are reasonable grounds to believe that the alien is a danger to the security of the United States"). If the statute's text precluded the Attorney General's discretion in finding facts, it would instead read as follows: "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." *Id.* § 1231(b)(3)(A). Because the

decision to grant withholding is discretionary, even courts of appeals lack jurisdiction to consider factual challenges to withholding in Hobbs Act petitions. *Cf. Moncrieffe v. Holder*, 569 U.S. 184, 187 n.1 (2013) (suggesting in dicta that "the Attorney General has no discretion to deny relief to a noncitizen who establishes his eligibility" for statutory withholding under § 1231(b)(3)(A)—but not denying the Attorney General has discretion in finding facts that establish the alien's ineligibility).

With this proper understanding, the ultimate decision to order withholding of removal to a particular country based on factual conditions is barred from any judicial review—in habeas petitions in the district court *and* in Hobbs Act petitions in the courts of appeals. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 547–48 (2021) (THOMAS, J., concurring except for note 4 and concurring in the judgment); *cf. Nasrallah v. Barr*, 590 U.S. 573, 587 (2020) (noting that judicial review extends to certain kinds of "factual challenges" in certain kinds of withholding cases, but that rule does not concern withholding orders under § 1231(b)(3)(A)).

2

These legal principles have three important upshots here.

First, the role of a federal district court in reviewing a final order of removal is precisely zero. *See* 8 U.S.C. § 1252(a). And it's not just the removal order; district courts *also* have no power to review the Attorney General's decision to execute a removal order, *id.* § 1252(g), and they have no power to review *any* "question[] of law and fact . . . arising from any action taken or proceeding brought to remove an alien from the United States," *id.* § 1252(b)(9).

The Government's execution of a removal order implicates numerous questions. For example:

- whether the Government decides to remove Alamrew;
- when the Government decides to remove Alamrew;
- whether the Government decides to remove Alamrew to Cameroon;
- how, when, and to what extent the Government provides notice of removal to Alamrew or his attorney;
- how the Government completes the various "bureaucratic activit[ies]" and "bureaucratic process" (as the magistrate judge derisively labeled them, ROA.335, 336 n.4) necessary to coordinate the removal with Cameroonian authorities;
- how the Government compiles a "charter flight packet" for the removal flight; and
- whether the Government assigns a Alamrew to a standby seat on a charter flight as an "alternate."

All of these questions are implicated by the execution of a concededly valid removal order. And all of them are expressly stripped from the district court's jurisdiction under the federal habeas statute or otherwise. The Supreme Court has underscored it this way: "By consolidating the issues arising from a final order of removal, *eliminating review in the district courts*, and supplying direct review in the courts of appeals, the Act expedites judicial review of final orders of removal." *Nasrallah*, 590 U.S. at 580 (emphasis added). The district court in this case violated all of these principles by using the writ of habeas corpus to interfere with the Government's removal efforts, ordering the Government to provide notice to Alamrew's attorney, and otherwise barring the Government from removing Alamrew to Cameroon. *See* WDLA ECF-45, at 1–2 (Aug. 28, 2026) ("IT IS FURTHER ORDERED that any possible or anticipated removal or transfer of Petitioner under this present detention is PROHIBITED.").

Second, the district court could not interfere with Alamrew's removal order after it became administratively final. *See Johnson*, 594 U.S. at 533–44

(discussing administrative finality). The IJ entered that removal order on September 3, 2025. ROA.26, 28. Alamrew waived any challenge to or appeal from that removal order. ROA.27. So the Government was free to execute it. No provision of the INA or any of its amendments authorizes a federal district court sitting in habeas to countermand the Government's removal efforts after the alien waived any challenge to his removal to any country not named Ethiopia or the United States.

Third, the district court could not review the IJ's determination to grant withholding-only relief under 8 U.S.C. § 1231(b)(3)(A). The factual determinations underlying such withholding are vested in the Attorney General's discretion, *see ibid.*, and hence stripped from any judicial review under § 1252(a)(2)(B)(ii). So even if Alamrew tried to challenge the Attorney General's factual determinations (which he didn't), and even if he tried to petition our court under the Hobbs Act (which he didn't), he *still* could not get review of the IJ's factual determinations. And even if the alien could appeal to *our* court—to challenge, say, a question of law implicated by the withholding order, *see id.* § 1252(a)(2)(D)—the *district court's* power to review a withholding question of any kind remains precisely zero. Nevertheless, the district court's habeas order *did* review that withholding decision: The district court reviewed it, enforced it by finding that Alamrew could not be returned to his native country of Ethiopia, and then used that finding as the premise for ordering him released into the United States.

The irrationality of this approach is particularly patent if you imagine a counterfactual: Imagine that the IJ had *denied* withholding under § 1231(b)(3)(A) rather than granted it. Once that denial became administratively final—as it would, for example, if the alien waived his right to appeal it—the Government could remove him to Ethiopia with impunity. If the Government tried to enforce that waiver and remove Alamrew, no one seriously could contend that any federal court could interfere with those

efforts under §§ 1252(a)(2)(B)(ii), 1252(a)(5), or 1252(g). But because the Attorney General *granted* withholding, that somehow empowered the district court to interfere with a concededly valid and administratively final removal order? Obviously not.

C

Alamrew also distorts the Great Writ.

"It's oft-said that habeas corpus originated in Magna Carta." *Beras v. Johnson*, 978 F.3d 246, 253 (5th Cir. 2020) (OLDHAM, J., concurring). While chapter 39 of the Great Charter prohibited arbitrary imprisonment, the real bite of habeas corpus started in the Petition of Right following *Darnel's Case*, 3 How. St. Tr. 1, 1–59 (K.B. 1627), and the Habeas Corpus Act of 1679, *see, e.g.*, *Earl of Clarendon Case*, 6 Cobbett's St. Tr. 317, 330–31 (Eng. 1667). The Habeas Corpus Act was the "stable bulwark of our liberties." 1 W. BLACKSTONE, COMMENTARIES *137. Blackstone called it the "second magna carta." *Id.* at *133.

In our country, the general law protects the hard-won privilege of habeas corpus, ensuring detainees have a procedural mechanism to challenge the lawfulness of their detention. *See Sosnava Rodriguez*, 2026 WL 3181188, at *25–26, *42 (OLDHAM, J., concurring). From the beginning of the Great Writ's history to today, the writ "simply provide[s] a means of contesting the lawfulness of restraint and securing release." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117 (2020). In short, habeas corpus is "a procedure that authorizes a judge to look at the prisoner's detention, test the custodian's justification for it according to the substantive law supplied elsewhere, and remedy it with release if the detention is unlawful." *Sosnava Rodriguez*, 2026 WL 3181188, at *25 (OLDHAM, J., concurring).

Because habeas is a procedure, it does not provide judges with *any* authority to refashion substantive law or develop novel remedies to

implement their preferred immigration policy. The writ has never empowered an alien "to claim the right to enter or remain in a country." *Thuraissigiam*, 591 U.S. at 117. Because habeas is "not a font of substantive rights," aliens must look to substantive law to establish their entitlement to release. *Sosnava Rodriguez*, 2026 WL 3181188, at *29 (OLDHAM, J., concurring). And the remedial authority of a judge presented with a habeas petition is similarly constrained. The writ has never empowered an alien to seek "relief from removal," an injunction, or mandamus. *Thuraissigiam*, 591 U.S. at 118.

Thuraissigiam illustrates the limits of the writ in immigration proceedings. There, the Government detained a Sri Lankan national pending his removal proceedings. *Id.* at 114. The IJ denied his various claims for asylum and other removal relief and ordered him removed. *Ibid.* Then Thuraissigiam petitioned for habeas corpus in federal district court. *Ibid.* After the Ninth Circuit granted him relief, *see id.* at 115, the Supreme Court reversed. It emphasized that the Great Writ provides a singular remedy: It requires the Government to release the prisoner from custody. *See id.* at 118. And it was sufficient to deny Thuraissigiam's habeas petition to note that "the Government is happy to release him—provided the release occurs in the cabin of a plane bound for Sri Lanka." *Id.* at 119.

So too here. Alamrew has no right to roam freely in our country. His *only* right is to be free from indefinite detention untethered from his removal, *see Sosnava Rodriguez*, 2026 WL 3181188, at *39 (OLDHAM, J., concurring), and even that right does not apply here. The Government proved beyond cavil that it was ready and eager to release Alamrew from custody—provided the release occurred in the cabin of a plane bound for Cameroon. The Government completed its administrative process, found a receiving country, completed its "charter flight packet" for the plane, and even scheduled Alamrew for a flight before he was bumped as an "alternate."

Absent interference from the magistrate judge and the district court, the record provides every reason to believe that Alamrew could and would be removed to Cameroon, as the Government was concededly entitled to do under its concededly valid removal order.

What's worse, the only reason this case was in the district court in the first place is because Alamrew invoked the district court's "jurisdiction" (read: lack thereof) under 28 U.S.C. § 2241. Where § 2241 jurisdiction attaches, it gives district courts authority to grant the one and only remedy habeas has ever known: release from custody. *Thuraissigiam*, 591 U.S. at 117. I can think of no point in the Great Writ's history when a detainee could invoke a court's habeas jurisdiction *to remain* in custody. But that is precisely what Alamrew did here: He demanded in "habeas" that the Government *not* release him to Cameroon.

The district court then granted Alamrew's ahistorical, illogical, and unlawful request. Sitting in "habeas," the district court issued injunctive relief against the Government—directing it to communicate with Alamrew's counsel and to file a status report. And then it *prohibited* the Government from releasing Alamrew in the cabin of a plane bound for Cameroon (or any other country). The district court's habeas order provided: "IT IS FURTHER ORDERED that any possible or anticipated removal or transfer of Petitioner under this present detention is PROHIBITED. Respondents shall, within 24 hours after Petitioner's release, file a status report confirming his release." WDLA ECF-45, at 1–2 (Aug. 28, 2026) (emphasis added).

All of that is plainly prohibited by the Great Writ's historical foundations and the Supreme Court's decision in *Thuraissigiam*. Habeas can be used to get an alien out of executive detention that is prohibited by some other substantive body of law. But an illegal alien cannot use habeas to

demand continued detention; to enjoin his release pursuant to a lawful third-country removal order; and then to order his release *into the United States*. *See Ex parte D'Olivera*, 7 F. Cas. 853, 854 (No. 3,967) (CC Mass. 1813) (STORY, J.) (granting habeas to foreign sailor, but ordering him returned to the master of his foreign ship—not released into the United States). If the Government wanted to comply with the habeas order by removing Alamrew to Cameroon (or the cabin of a plane destined to any other third country), it had every lawful right to do so. *See Thuraissigiam*, 591 U.S. at 119. And the district court's order to the contrary was unlawful.

D

Finally, for what it's worth, Alamrew's appeal in our court was as meritless as his contentions in the district court. He invoked Federal Rule of Appellate Procedure 23(b) to request initial review of his habeas claims here. In addition to all of the other provisions of the INA that prohibit such efforts, *see supra* Part II.B, and in addition to limits on habeas corpus that prohibit such efforts, *see supra* Part II.C, the argument fails on its own terms: Rule 23(b) does not permit appellate courts to bypass district courts.

Federal Rule of Appellate Procedure 23(b) provides:

> DETENTION OR RELEASE PENDING REVIEW OF DECISION NOT TO RELEASE. *While a decision not to release a prisoner is under review*, the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court, may order that the prisoner be:
>
> (1) detained in the custody from which release is sought;
>
> (2) detained in other appropriate custody; or
>
> (3) released on personal recognizance, with or without surety.

FED. R. APP. P. 23(b) (emphasis added). In short, for a detainee to obtain review under Rule 23(b), he *must* be seeking review of a "decision not to release [him]." The rule's text could not be clearer. A prisoner may not receive relief under Rule 23(b) unless the district court has previously denied a request for release. *See United States v. Pfluger*, 522 Fed. App'x. 217, 218 n.1 (5th Cir. 2013) (holding that Rule 23 "does not apply where . . . a prisoner requests release prior to a decision in his habeas action").

The Rule's text reflects common sense. Appellate courts are "court[s] of review, not first review." *Heidi Grp., Inc. v. Tex. Health & Human Servs. Comm'n*, 138 F.4th 920, 931 (5th Cir. 2025) (quotation omitted); *but see A.A.R.P. v. Trump*, 145 S. Ct. 1034, 1034–36 (2025) (ALITO, J., dissenting). A detainee may not request a preliminary injunction on some matter orthogonal to release from confinement, appeal the denial of that preliminary injunction, and then switch gears and request release from custody. The rules do not permit litigants to bootstrap initial review of their habeas claims on appeal. Indeed, even when the district court denies a detainee's habeas request, he ordinarily should move for Rule 23(b) relief first in the district court. *See United States v. Dade*, 959 F.3d 1136, 1138 (9th Cir. 2020); *Smith v. Caldwell*, 339 F. Supp. 215, 216 (S.D. Ga. 1972), *aff'd*, 458 F.2d 160 (5th Cir. 1972) ("Requests for release pending appeal should ordinarily be filed first in the district court."); 16AA WRIGHT & MILLER § 3969 (5th ed.) ("[A] good general principle is to start by making the request to the court or judge who rendered the decision under review."). A request for release pending appeal—when there is no decision denying release to appeal from—puts the cart before the horse.

Alamrew did not appeal from a decision denying his release. He appealed from the district court's denial of his request for injunctions to prevent his removal to a third country. In other words, he appealed from decisions by the district court *that made his release from custody more likely.*

Without an injunction tying its hands, the Government was free to release Alamrew from custody into Cameroon or any other country not named the United States or Ethiopia. The denial of injunctions that would make it harder for the government to release Alamrew from custody through removal can in no way be described as "decision[s] not to release a prisoner." FED. R. APP. P. 23(b).

The great irony, of course, is that the district court *granted* release while the case was on appeal in our court. That highlights Alamrew's decision to put the cart before the horse by appealing first and litigating in the district court second.

* * *

Our country is currently wrestling with profound misunderstandings about the judicial power generally and third-country removals specifically. *See, e.g.*, *D.V.D. v. DHS*, 821 F. Supp. 3d 102 (D. Mass. 2026), *aff'd in part, vacated in part*, No. 26-1212, 2026 WL 2797801 (1st Cir. Sept. 18, 2026), *and cert. granted sub nom. DHS v. D.V.D.*, No. 26-426, 2026 WL 2917860 (U.S. Sept. 29, 2026) (staying district court's amendment of nation's immigration policy through declaratory relief to temporally unbounded, nationwide class—of which Alamrew is a member). Congress, Supreme Court precedent, and the Great Writ all prohibited the district court's interference with the Government's concededly valid removal order in this case. But as a consequence of the district court's order, an inadmissible alien with a final order of removal is presently walking the streets of America. That's deeply regrettable.