

United States Court of Appeals
for the Fifth Circuit

No. 25-60440

United States Court of Appeals
Fifth Circuit

FILED

October 6, 2026

Thomas B. Plunkett, III
Clerk

NESTOR ALEXANDER CORTEZ-MEJIA,

Petitioner,

versus

TODD WALLACE BLANCHE, *U.S. Attorney General,*

Respondent.

Petition for Review of an Order of the
Department of Homeland Security
Agency No. A208 165 080

Before ELROD, *Chief Judge*, and RICHMAN and RAMIREZ, *Circuit Judges*.

PER CURIAM:*

Nestor Alexander Cortez-Mejia petitions for review of an order of the Department of Homeland Security reinstating a prior removal order. His petition is DISMISSED as untimely.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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I

In 2015, the Department of Homeland Security (DHS) issued Nestor Alexander Cortez-Mejia an expedited removal order and removed him to his native country, El Salvador. In August of 2018, after his return to the United States, DHS reinstated his 2015 removal order and again removed him to El Salvador. On January 27, 2025, Texas state police arrested Cortez-Mejia during a traffic stop, and DHS again reinstated his 2015 removal order.

After Cortez-Mejia expressed a fear of returning to El Salvador, an asylum officer conducted a reasonable fear interview. The asylum officer made a negative reasonable fear determination, and Cortez-Mejia requested review by an Immigration Judge (IJ). While his request for IJ review was pending, on August 19, 2025, Cortez-Mejia petitioned this court for review of the reinstatement order.

An IJ later vacated the asylum officer's negative reasonable fear determination and placed Cortez-Mejia in "withholding-only" proceedings before the Immigration Court. An IJ denied Cortez-Mejia withholding relief in February 2026. Cortez-Mejia did not appeal the decision. About three months later, DHS again removed Cortez-Mejia to El Salvador.

II

Cortez-Mejia argues this court has jurisdiction to review the reinstatement of the 2015 removal order because an order of reinstatement is a final order of removal.

This court has the authority to review "final order[s] of removal" under 8 U.S.C. § 1252(a)(1). *Ruiz-Perez v. Garland*, 49 F.4th 972, 975 (5th Cir. 2022). We have previously held that "[t]he reinstatement of a prior removal order is a reviewable final order" for purposes of jurisdiction. *Garcia v. Holder*, 756 F.3d 885, 890 (5th Cir. 2014); *Argueta-Hernandez v. Garland*,

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87 F.4th 698, 705 (5th Cir. 2023); *Ojeda-Terrazas v. Ashcroft*, 290 F.3d 292, 294–95 (5th Cir. 2002); *see also Ruiz-Perez*, 49 F.4th at 976. The Government contends, however, that the Supreme Court recently called this holding into question in *Riley v. Bondi*, 606 U.S. 259 (2025).

In *Riley*, the Supreme Court held that “a [Board of Immigration Appeals (BIA)] order in a withholding-only proceeding is not a ‘final order of removal’” for purposes of the 30-day filing deadline in § 1252(b)(1) because it does not affect the validity of a previously issued order of removal. *Riley*, 606 U.S. at 263, 266–72. Treating reinstatement orders as final orders of removal is inconsistent with the reasoning in *Riley*, the Government claims, because like a BIA decision in a withholding-only proceeding, a reinstatement order does not affect the validity of a previously issued order of removal. We need not decide whether *Riley* raises jurisdictional concerns here because “a federal court has leeway ‘to choose among threshold grounds for denying audience to a case on the merits,’” *Sinochem Int’l Co. Ltd. v. Malaysia Int’l Shipping Corp.*, 549 U.S. 422, 431 (2007) (citations omitted), and Cortez-Mejia’s petition is untimely.¹

III

The Government argues that Cortez-Mejia’s petition for review should be denied as untimely under 8 U.S.C. § 1252(b)(1). Under 8 U.S.C. § 1252(b)(1), a petition for review “must be filed not later than 30 days after the date of the final order of removal.”

In *Argueta-Hernandez v. Garland*, this court recognized “that reinstatement orders are deemed ‘final’ under § 1252(b)(1) ‘only upon completion of reasonable-fear and withholding-of-removal proceedings[.]’”

¹ Similarly, we need not address whether Cortez-Mejia’s removal renders his petition moot, an issue not addressed by the parties.

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87 F.4th at 705; *see also Saravia Martinez v. Blanche*, 185 F.4th 553, 558 (5th Cir. 2026) (Higginson, J., concurring) (“Pre-*Riley*, we required these people to wait for the conclusion of their humanitarian proceedings to petition for review.”). As noted, *Riley* held that “a BIA order in a withholding-only proceeding is not a ‘final order of removal,’ and therefore the 30-day filing deadline cannot be satisfied by filing a petition for review within 30 days of the BIA’s withholding-only order.” 606 U.S. at 263. It was the issuance of a final administrative review order, rather than the BIA order, that triggered the 30-day timeline to file a petition for review. *Id.* at 267, 272. Because “§ 1252’s 30-day filing rule is not jurisdictional” and “the Government [did] not wish to press that ground for dismissal,” however, the Supreme Court found that *Riley*’s filing of his petition for review after the 30-day deadline had elapsed “d[id] not preclude this case from proceeding on remand.” *Id.* at 277.

After *Riley*, this court held in *Liao v. Bondi*, 162 F.4th 519 (5th Cir. 2025) that “§ 1252(b)(1)’s thirty-day filing rule is a mandatory claim-processing rule that, if properly raised, must be enforced.” 162 F.4th at 524. “Unlike in *Riley*, where ‘the [g]overnment d[id] not wish to press’ the thirty-day filing rule as a particular ‘ground for dismissal,’ 606 U.S. at 277, the government in [*Liao*] specifically pressed this challenge,” so the court found the petition untimely. *Id.* In this case, the Government has likewise specifically pressed this challenge, and as noted, Cortez-Mejia filed his petition more than seven months after the January 2025 reinstatement order, and 10 years after the original 2015 removal order. Cortez-Mejia did not respond to the Government’s assertion that his petition was untimely.

This court’s order in *Saravia Martinez* raised the question of whether equitable tolling is available under 8 U.S.C. § 1252(b)(1). *See* 185 F.4th 553. *Compare id.* at 553–58 (Ho, J., concurring) (recognizing that “there are a number of good reasons to think that Congress did not want equitable tolling

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for petitions filed under § 1252(b)(1)” and concluding that “[e]quitable tolling is never available under § 1252(b)(1)”), *with id.* at 558–59 (Higginson, J., dissenting) (agreeing with “other circuits that have concluded equitable tolling is available under § 1252(b)(1), for the reasons they fully and ably articulate” and stating “no circuit post-*Riley* has deemed equitable tolling unavailable under § 1252(b)(1), nor do we here”). Unlike the petitioner in *Saravia Martinez*, Cortez-Mejia has not argued that equitable tolling applies.

Because it is untimely, the petition for review is DISMISSED.