

United States Court of Appeals
for the Fifth Circuit

No. 25-60565

United States Court of Appeals
Fifth Circuit

FILED

October 9, 2026

Thomas B. Plunkett, III
Clerk

DENIS GORBUNOV,

Petitioner,

versus

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

Respondent.

Petition for Review of an Order of the Board of Immigration Appeals
Agency No. A246 581 046

Before CLEMENT, OLDHAM, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Denis Gorbunov is a Russian citizen seeking asylum in the United States. The Board of Immigration Appeals issued a general remand to the Immigration Judge. Because a general remand to the Immigration Judge is not a final order of removal, we lack jurisdiction to review the Board's decision. Therefore, we DISMISS the petition.

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

No. 25-60565

I

In August 2024, Denis Gorbunov arrived at the Laredo, Texas port of entry. He requested asylum. After he completed a credible fear interview, the Department of Homeland Security (“DHS”) initiated removal proceedings. *See* 8 U.S.C. § 1182(a)(7)(A)(i)(I). The Immigration Judge (“IJ”) sustained the removal charge.

Gorbunov then filed an application for asylum, statutory withholding, and protection under the Convention Against Torture (“CAT”). *See id.* §§ 1158, 1231(b); 8 C.F.R. §§ 1208.16–1208.18. He claimed that the Russian government had persecuted him because of his political activity and that the persecution would continue if he returned to Russia.

The IJ granted Gorbunov asylum, finding that he was persecuted because of his political activity and had a well-founded fear of future persecution. *See* 8 C.F.R. § 1208.13(b). The IJ declined to adjudicate Gorbunov’s statutory withholding and CAT claims.

DHS appealed to the Board of Immigration Appeals (“Board” or “BIA”). On September 19, 2025, the Board reversed and denied Gorbunov’s applications for asylum and statutory withholding. It then “remanded to the Immigration Judge for consideration of [Gorbunov]’s request for protection under the CAT, further proceedings consistent with the foregoing, and entry of a new decision.” ROA.79.

On October 20, 2025—before the IJ ruled on remand—Gorbunov filed a petition for review in our court. The Government moved to dismiss because there was not yet a “final order of removal.” ECF No. 11 at 1; *see* 8 U.S.C. § 1252(a)(1). On December 10, a motions panel denied the Government’s motion. ECF No. 21-2. The motions panel noted the IJ had denied Gorbunov’s CAT claim on October 30. That denial became final on December 1, when the time to appeal it to the BIA expired. *See* 8 U.S.C.

No. 25-60565

§ 1101(a)(47)(B)(ii). The motions panel reasoned that there was therefore a final order of removal giving this court jurisdiction to review Gorbunov’s asylum claim.

We are obligated to reconsider the motions panel’s decision *de novo* because it implicates our subject matter jurisdiction. Reconsidering that decision, we disagree with it and dismiss the petition for review.

II

We first (A) explain the rules governing our review of immigration decisions. We then (B) explain that the Board’s decision remanding to the IJ did not constitute a “final order of removal,” so we lack jurisdiction. We finally (C) address Gorbunov’s counterarguments.

A

Jurisdiction is always first—and here, it is also last. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94–95 (1998). In immigration cases, our jurisdiction is statutorily limited to “final order[s] of removal.” 8 U.S.C. § 1252(a)(1). An order of removal is an “order . . . concluding that [an] alien is deportable or ordering deportation.” *Id.* § 1101(a)(47)(A); *Riley v. Bondi*, 606 U.S. 259, 267 (2025). It becomes final when the Board affirms an IJ’s order or when the time to appeal to the Board expires. 8 U.S.C. § 1101(a)(47)(B); *Riley*, 606 U.S. at 267. The order of removal must be final when the alien files his petition for review. *Moreira v. Mukasey*, 509 F.3d 709, 713 (5th Cir. 2007).

We have historically held that orders of removal do not become “final” until all administrative proceedings are complete—including withholding-of-removal proceedings, which determine only whether an alien will be removed to his home country or to somewhere else. *See, e.g., Ponce-*

No. 25-60565

Osorio v. Johnson, 824 F.3d 502, 505–06 (5th Cir. 2016) (per curiam); *Liu v. Holder*, 341 F. App’x 44, 46 (5th Cir. 2009) (per curiam).

The Supreme Court’s recent decision in *Riley* changed that bright-line rule. *See Romero-Lozano v. Bondi*, 150 F.4th 375, 376–77 (5th Cir. 2025). In *Riley*, the Court held that “a BIA order in a withholding-only proceeding is not a ‘final order of removal.’” 606 U.S. at 263. That’s because withholding and removal involve separate inquiries: Removal proceedings determine *whether* an alien may be removed, while withholding proceedings determine *where* an alien may be removed. *Id.* at 265. The existence of withholding-only proceedings “do[] not render non-final an otherwise administratively final order of removal.” *Id.* at 269 (quotation omitted).

In short, federal law “ties finality to agency review.” *Id.* at 267. After *Riley*, a removal order is final when the question of removal is administratively final—once neither the IJ nor the BIA may review the question of removal any further. That rule holds true even if the question of withholding remains pending.

Riley considered expedited removal proceedings under 8 U.S.C. § 1228, not proceedings (like Gorbunov’s) under § 1229a. *Id.* at 264. But *Riley*’s conclusion applies with equal force in both contexts. In both § 1229a and § 1228 proceedings, withholding speaks only to where the Government may send an alien—not whether he is removable in the first place. So *Riley*’s finality holding applies with full force here.

B

This case thus turns on whether the Board remanded to the IJ for withholding-only proceedings. It did not.

There are two kinds of Board remands: general and limited. *See Bianco v. Holder*, 624 F.3d 265, 274 (5th Cir. 2010); *Prasla v. Lynch*, 647 F. App’x

No. 25-60565

501, 501 (5th Cir. 2016) (per curiam). A general remand fully deprives the Board of jurisdiction, meaning the IJ may consider any and all issues on remand. *See Bianco*, 624 F.3d at 274. In a limited remand, by contrast, the Board retains some jurisdiction and the IJ’s authority is limited to certain issues or claims. *See Prasla*, 647 F. App’x at 501; *Matter of Patel*, 16 I. & N. Dec. 600, 601 (BIA 1978). This distinction has long existed in immigration law. *See, e.g., Matter of Patel*, 16 I. & N. Dec. at 600–01.

A Board’s remand is general “unless the Board qualifies or limits [a] remand for a specific purpose.” *Bianco*, 624 F.3d at 274 (quotation omitted). That the Board gives one reason for remanding does not make a remand limited—the Board must specifically limit it. *Ibid.* A “statement of purpose alone” does not suffice to transform a general remand into a specific one. *Johnson v. Ashcroft*, 286 F.3d 696, 701–03 (3d. Cir. 2002).

The Board’s remand here was general. The decretal language said: “The record is remanded to the Immigration Judge for consideration of the respondent’s request for protection under the CAT, further proceedings consistent with the foregoing, and entry of a new decision.” ROA.79. True, one reason for the remand was consideration of Gorbunov’s CAT claims. But the Board did not “limit” the remand by merely mentioning one “purpose” for it. *Bianco*, 624 F.3d at 274. The Board expressly authorized “further proceedings,” underscoring that its remand was general. ROA.79; *see Villegas-Castro v. Garland*, 19 F.4th 1241, 1246 (10th Cir. 2021) (finding a remand “to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision” was a general remand (quotation omitted)).

An IJ may consider myriad issues after a general remand. For example, the IJ could have reconsidered and granted Gorbunov asylum—even after the Board denied it—based on “changed circumstances” like

No. 25-60565

country conditions. 8 U.S.C. § 1158(a)(2)(D); 8 C.F.R. § 1208.4(a)(4); *see Johnson*, 286 F.3d at 703–04. Or the IJ could reconsider when an alien “last arriv[ed]” in the United States for asylum purposes. 8 C.F.R. § 1208.4(a)(2)(ii); *see Linares-Urrutia v. Sessions*, 850 F.3d 477, 482 (2d Cir. 2017). Or the IJ could terminate the proceeding if an alien obtains status as a refugee, lawful permanent resident, or asylee after remand. 8 C.F.R. § 1003.18(d)(1)(i)(D).

We could go on, but you get the point. A general remand is open-ended. And because it’s open-ended, the proceedings that follow are not withholding-only. A general remand cannot be a “final order of removal” under 8 U.S.C. § 1252(a)(1) because removal is not administratively final. *Riley*, 606 U.S. at 267.

C

Now for Gorbunov’s counterarguments. We first (1) address and reject Gorbunov’s two arguments supporting jurisdiction. We then (2) consider the Fourth Circuit’s decision in *Lopez v. Bondi*, 167 F.4th 223 (4th Cir. 2026), which is not inconsistent with today’s decision.

1

Gorbunov argues that we have jurisdiction over his petition for two reasons. Neither persuades.

Gorbunov’s first argument is straightforward. He contends that the law-of-the-case doctrine requires us to find jurisdiction because the motions panel denied the Government’s motion to dismiss. Not so. When a motions panel denies a motion to dismiss, its decision is merely provisional. *Gas Transmission Nw., LLC v. FERC*, 157 F.4th 674, 694 n.10 (5th Cir. 2025); *Tex. Democratic Party v. Abbott*, 978 F.3d 168, 176 (5th Cir. 2020) (“[O]pinions and orders of a panel with initial responsibility for resolving

No. 25-60565

motions filed in an appeal are not binding on the later panel that is assigned the appeal for resolution.” (citation omitted)); *EEOC v. Neches Butane Prods. Co.*, 704 F.2d 144, 147 (5th Cir. 1983) (“A denial by a motions panel of a motion to dismiss for want of jurisdiction . . . is only provisional.”). We have the freedom—and obligation—to make an independent jurisdictional determination “[w]ith the benefit of full briefing.” *Neches Butane*, 704 F.2d at 147; *see Steel Co.*, 523 U.S. at 94–95.

Gorbunov’s second argument fares no better. He notes that a final order of removal exists now, even if one did not when he filed his petition. To recap the relevant dates:

- September 19, 2025: BIA issues general remand to IJ.
- October 20, 2025: Gorbunov petitions for review in our court.
- October 30, 2025: IJ denies CAT relief.
- December 1, 2025: CAT denial becomes final, after expiration of the period for seeking Board review. *See* 8 U.S.C. § 1101(a)(47)(B)(ii).

Even if his petition for review was premature on October 20, Gorbunov contends any finality issues are “moot” after December 1 because DHS’s work is now done. ECF No. 13 at 3–4.

This contention is foreclosed by *Moreira v. Mukasey*, 509 F.3d 709 (5th Cir. 2007). In *Moreira*, we held that § 1252(a)(1) only grants jurisdiction over removal orders that were final when the petition was filed. *Moreira*, 509 F.3d at 713–14. We explained that “a premature petition is a nullity because there is no final deportation order to review.” *Id.* at 713 (quotation omitted). That a removal order later becomes final cannot “cure a petition that was filed prematurely.” *Ibid.* (quotation omitted).

Moreira’s rule makes good sense. The relevant immigration statutes do not provide for early filing. *Compare* 8 U.S.C. § 1252, *with* FED. R. APP.

No. 25-60565

P. 4(a)(2) (permitting filing before entry of judgment). “The force of any negative implication . . . depends on context.” *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 381 (2013). And the negative implication is particularly strong here because the entirety of administrative law depends on agency finality. Since the founding of the administrative state, courts have refused to review “so-called order[s]” which do not “command the [petitioner] to do, or to refrain from doing, anything; . . . which do[] not subject the [petitioner] to any liability . . . ; which do[] not determine any right or obligation.” *Rochester Tel. Corp. v. United States*, 307 U.S. 125, 130–31 (1939) (quotation omitted). That’s because federal courts have long been reluctant to review “interim steps in a[n administrative] proceeding.” *Id.* at 131. That such an interim agency decision “may, of course, become a basis for action” doesn’t allow a court to review a nonfinal order. *United States v. L.A. & Salt Lake R.R. Co.*, 273 U.S. 299, 310 (1927).

Because agency finality is so important, courts of appeal routinely dismiss petitions for review of agency action that wasn’t final when the petition was filed—regardless of if the action later became final. *See, e.g., Pub. Citizen v. NRC*, 845 F.2d 1105, 1109–10 (D.C. Cir. 1988) (dismissing petition filed 51 days before denial of final rulemaking and stating that “a challenge to now-final agency action that was filed before it became final must be dismissed” (quotation omitted)); *Indus. Union Dep’t, AFL-CIO v. Bingham*, 570 F.2d 965, 968–69 (D.C. Cir. 1977) (per curiam) (“One may not *seek* or obtain judicial review of a merely anticipated agency action, even if the agency has made public its intention to take a specific action in the near future.” (emphasis added)). This ensures that a petitioner can see the agency’s final decision before deciding to seek review, guards against gamesmanship and docket manipulation, and conserves judicial resources. *See W. Union Tel. Co. v. FCC*, 773 F.2d 375, 380 (D.C. Cir. 1985) (SCALIA, J.); *Clifton Power Corp. v. FERC*, 294 F.3d 108, 111–12 (D.C. Cir. 2002).

No. 25-60565

Moriera is of a piece with this longstanding emphasis on agency finality. In the agency context, § 1252’s silence on premature filing is deafening. With binding precedent, legal tradition, and statutory text aligned against him, Gorbunov’s contention fails.

2

The Fourth Circuit’s approach in *Lopez v. Bondi* is not to the contrary. In that case, the Fourth Circuit deemed a Board decision a “final order of removal” —even though it remanded for further consideration of the alien’s claim under the CAT. *Lopez*, 167 F.4th at 226–31. One important difference separates that case from this one: *Lopez* involved a Board decision *affirming* an IJ’s removal order. *See id.* at 227–28. That is a critical difference because the statute defines a “final” “order of deportation” to include “a determination by the Board of Immigration Appeals *affirming* [an IJ’s removal] order.” 8 U.S.C. § 1101(a)(47)(B)(i) (emphasis added). The Fourth Circuit relied on this provision in reaching its decision. *See Lopez*, 167 F.4th at 227–28. Our case, by contrast, involves a general remand with no such affirmance.

* * *

For the foregoing reasons, the petition for review is DISMISSED.