

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Macias-Guerrero v. Barr

No. 19-9514, United States Court of Appeals for the Tenth Circuit (August 19, 2020)

SUMMARY

The Tenth Circuit dismissed a petition for review of an expedited removal order under 8 U.S.C. § 1225(b)(1), holding that 8 U.S.C. § 1252(a)(2)(A) strips jurisdiction over such orders and that § 1252(a)(2)(D) does not preserve review of constitutional or legal claims because it applies only to limitations under subparagraphs (B) or (C), not (A). The court also noted that the Supreme Court in **Dep't of Homeland Sec. v. Thuraissigiam** held that statutory limits on judicial review in expedited removal proceedings do not violate due process for aliens denied entry.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Harris L. Hartz; Phillips; Carson
JURISDICTION	Federal
DECIDED	August 19, 2020
DOCKET	19-9514
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petition for review of an expedited removal order under 8 U.S.C. § 1225(b)(1).
PRECEDENTIAL VALUE	Unpublished
PARTIES	Juan Francisco Macias-Guerrero v. William P. Barr, United States Attorney General

TOPICS

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QUESTIONS PRESENTED

1. Whether the Tenth Circuit has jurisdiction under 8 U.S.C. § 1252(a)(1) or (a)(2)(D) to review a petition for review of an expedited removal order issued under 8 U.S.C. § 1225(b)(1).

HOLDINGS

1. The court lacks jurisdiction because 8 U.S.C. § 1252(a)(2)(A) bars review of expedited removal orders under § 1225(b)(1), and § 1252(a)(2)(D) does not apply to limitations imposed by subparagraph (A).

KEY QUOTATIONS

“The party seeking to invoke the jurisdiction of a federal court must demonstrate that the case is within the court’s jurisdiction. The facts supporting jurisdiction must be affirmatively alleged, and if challenged, the burden is on the party claiming that the court has subject matter jurisdiction.” (at 2)

“The avenues for review provided by § 1252(e) are strictly limited and do not apply here.” (at 3)

“Section 1252(a)(2)(D) preserves § 1252(a)(2)(A).” (at 4)

“we lack jurisdiction to review any constitutional or statutory claims related to [a § 1225(b)(1)] removal order.” (at 4)

“Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.” (at 4)

FACTUAL BACKGROUND

Juan Francisco Macias-Guerrero, a native and citizen of Mexico, was apprehended shortly after illegally crossing the border near Santa Teresa, New Mexico. He was deemed inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I) and placed in expedited removal proceedings under 8 U.S.C. § 1225(b)(1). He expressed a fear of persecution and received a credible-fear interview, but the asylum officer determined he did not establish a credible fear and that there was not a significant possibility of eligibility for withholding or CAT relief. The IJ affirmed the asylum officer's decision.

PROCEDURAL HISTORY

Petitioner was apprehended after illegally crossing the border, deemed inadmissible, placed in expedited removal proceedings, received a credible-fear interview, the asylum officer found no credible fear, and the IJ affirmed. Petitioner then filed a petition for review in the Tenth Circuit.

DISPOSITION

dismissed

CASES CITED

- United States v. Bustillos, 31 F.3d 931 (10th Cir. 1994)
- Lorenzo v. Mukasey, 508 F.3d 1278 (10th Cir. 2007)
- Turgerel v. Mukasey, 513 F.3d 1202 (10th Cir. 2008)

- *Pena v. Lynch*, 815 F.3d 452 (9th Cir. 2016)
- *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959 (2020)

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