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8 UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

9 S.A.E.A. (adult), individually and as parent and
10 next friend to her minor children, A.A.E.A.
11 (adult child of S.A.E.A), C.I.C.E. (minor child
of S.A.E.A), and M.M.E.A. (minor child of
S.A.E.A)

12 Petitioners,

13 v.

14 Laura HERMOSILLO, Acting Field Office
15 Director of Enforcement and Removal
16 Operations, Seattle Field Office, Immigration
and Customs Enforcement; Kristi NOEM,
17 Secretary, U.S. Department of Homeland
Security; U.S. DEPARTMENT OF
18 HOMELAND SECURITY; Pamela BONDI,
U.S. Attorney General; EXECUTIVE OFFICE
FOR IMMIGRATION REVIEW.

19 Respondents.
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23
24

Case No. 3:26-cv-00072-SLG

**PETITIONERS' TRAVERSE TO
RESPONDENTS' RETURN AND
OPPOSITION TO DISMISSAL**

PETITIONERS' TRAVERSE TO RESPONDENTS'
RETURN AND OPPOSITION TO DISMISSAL - 1

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INTRODUCTION

The Court has jurisdiction. The *in absentia* removal order entered on January 13, 2026 was not yet administratively final for purposes of *detention*, making said detention unlawful at the time it occurred on February 17, 2026. *See Cui v. Garland*, 13 F.4th 991 (9th Cir. 2021). Critically, Petitioners filed this habeas petition before Respondents removed them from the United States, so Respondents manufactured the very jurisdictional obstacle they now invoke by removing Petitioners after the case was already properly before this Court. In any event, this Court's jurisdiction rests independently on the nature of the claims asserted. Petitioners challenge the lawfulness of Respondents' detention authority under *Cui*, 13 F.4th 991, and the effects that detention had upon their Fifth Amendment right to challenge their removal proceedings with help of their counsel of choice. Simply stated, Petitioners do not seek review of the removal order itself; that is for the immigration court to decide. Rather, they challenge their separation from counsel when they should not even have been detained.

While Petitioners acknowledge that the rejection of the motion to reopen moots their prior contention that a pending motion to reopen independently triggered an automatic stay of removal in this matter, that concession does not resolve the present habeas petition. Petitioners remain within the 180-day period in which to file a motion for rescission of their *in absentia* order of removal, and, under *Cui*, 13 F.4th 991, *in absentia* orders are not administratively final during that 180-day period. Accordingly, INA § 241, 8 U.S.C. § 1231, was not triggered, thus making Petitioner's detention, as well as their removal, unlawful.

Finally, Respondents' decision to remove Petitioners from the State of Alaska has concretely and actually prejudiced Petitioners' ability to communicate with and meaningfully

1 access counsel, including by imposing substantial physical distance and logistical barriers that
2 did not exist while Petitioners were in Alaska.

3 **FACTUAL BACKGROUND**

4 Petitioners do not dispute the facts as set forth in SDDO Bradley Hayes's Declarations.
5 Dkts. 10, 23. There are no factual issues in dispute.

6 **ARGUMENT**

7 **I. This Court Has Jurisdiction Over Petitioners' Claim**

8 Respondents mischaracterize the Petitioners' request in an effort to divest this court of
9 jurisdiction. They aver that Petitioners' habeas action is a challenge to "expedited removal
10 proceedings and the commencement of removal proceedings" and therefore strips the Court's
11 jurisdiction under 1252(g). Dkt. 22 at p. 9, ¶2. This characterization is incorrect. Petitioners have
12 challenged the legality of their detention, regardless of their removal. First, they challenge it
13 because the INA § 241, 8 U.S.C. § 1231, the detention period has not commenced. Dkt. 16-2, pp.
14 9-11. Under *Cui*, 13 F.4th 991, Petitioners' *in absentia* removal order is not administratively
15 final. *Id.* Second, they challenge it because the form of their detention – transfer out of Alaska –
16 would interfere and in fact has interfered with their access to counsel. Dkt. 1, pp. 7-8. Because
17 Petitioners' claims go to detention authority and access to counsel, not to the Executive's
18 decision to "commence" proceedings, "adjudicate" cases, or "execute" removal orders,
19 Respondents' section 1252(g) framing is a mismatch to the petition actually filed.

20 *Cui*, 13 F.4th 991, supplies the controlling rule for administrative finality of *in absentia*
21 orders in the Ninth Circuit. *Bonilla Mejia v. Hermosillo*, Case No. 2:25-cv-02196-TMC (W.D.
22 Wash. Nov. 26, 2025), while not binding precedent, shows how that rule operates in a habeas
23

1 posture where DHS detains (and seeks to remove) a noncitizen during the period before an *in*
2 *absentia* order has become administratively final.

3 Under the INA, a removal order generally becomes final “upon the earlier of (i) a
4 determination by the [BIA] affirming such an order; or (ii) the expiration of the period in which
5 the [noncitizen] is permitted to seek review of such an order by the [BIA].” 8 U.S.C. §
6 1101(a)(47)(B). But *Cui*, 13 F.4th 991, explains that *in absentia* removal orders follow a different
7 finality timeline because they cannot be appealed to the BIA in the ordinary course. Instead, the
8 noncitizen must first file a motion to reopen with the Immigration Judge within 180 days. As the
9 *Cui* court states:

10 Because *in absentia* removal orders may not be appealed to the BIA without first filing a
11 motion to reopen the order before the IJ within 180 days of the order, if the petitioner
12 does not timely file such a motion before the IJ, the order becomes final at the end of the
13 180-day period.

13 *Cui v. Garland*, 13 F.4th 991, 996 (9th Cir. 2021) (internal citations removed).

14 The practical consequence, and the point *Bonilla* helps illustrate, is straightforward: until
15 there is an administratively final removal order, DHS cannot treat the case as one governed by
16 INA § 241, 8 U.S.C. § 1231 (i.e., the “removal period” framework that authorizes detention and
17 removal upon finality). In other words, section 1231 does not “trigger” until administrative
18 finality exists under *Cui*’s rule. See *Bonilla Mejia*, Case No. 2:25-cv-02196-TMC. Like the
19 petitioner in *Bonilla Mejia*, Case No. 2:25-cv-02196-TMC, here, Petitioners do not have an
20 administratively final *in absentia* removal order. In the instant case, the 180-day period is still
21 ongoing and, because it is an *in absentia* order of removal, supports Petitioners’ claim that their
22 detention is unlawful.

1 Respondents also argue that the present habeas petition is an improper attempt to seek a
2 stay of removal or review of the removal order, and that this court does not have jurisdiction for
3 that reason. They aver that Petitioners must instead file a motion to reopen with the immigration
4 judge. Dkt. 22, p. 11, ¶1. However, a motion to reopen is not the proper avenue to stay transfer
5 from Alaska. A motion to reopen seeks to allow a respondent in immigration court to rescind the
6 order of removal entered in their absence and to proceed with relief before that court. However, a
7 motion to reopen does not give a respondent the opportunity to challenge the legality of her
8 detention, or her improper transfer out of the State of Alaska. For that reason, the present habeas
9 petition is necessary.

10 Petitioners agree with Respondents' characterization that, in a habeas petition, "[t]he key
11 inquiry is whether success on the petitioner's claim would 'necessarily lead to immediate or
12 speedier release.'" In fact, the very purpose of the present habeas petition is to seek immediate
13 release of Petitioners from Respondents' custody. Dkt. 1, p. 8. Since Respondents indeed
14 unlawfully detained Petitioners because there is no administratively final removal order under
15 INA § 241, 8 U.S.C. § 1231, Petitioners' release should be immediate. This clearly falls within
16 the parameters of the purpose of a habeas petition, the case law for which Respondents cite in
17 their Return and Motion to Dismiss. Dkt. 22, p. 10.

18 **II. Petitioners Have Suffered Actual Prejudice from Respondents' Interference with**
19 **their Right of Access to Counsel**

20 Respondents also argue that Petitioners have not identified any actual prejudice in
21 interfering with Petitioners' right of access to counsel. Dkt. 22, p.11, ¶2. This argument also fails.
22 In fact, Respondents' detention and lightning-speed removal of Petitioners, materially and
23 actually prejudiced Petitioners because counsel was unable to communicate with Petitioners at

1 all on February 18, 2026, the date that counsel was attempting to prepare and file Petitioners'
2 motion to reopen with Respondent EOIR. Respondents' detention of Petitioners continues to
3 prejudice them because Petitioners are physically remote from counsel in a way that materially
4 interferes with effective consultations and representation before the courts. The relevant
5 constitutional inquiry is whether government action has hindered the pursuit and presentation of
6 nonfrivolous claims in a meaningful and effective manner, not whether some minimal contact is
7 theoretically possible. *See Bounds v. Smith*, 430 U.S. 817, 822 (1977) (protecting prisoners'
8 rights to access to the courts). A removal from the State of Alaska to Mexico in less than thirty-
9 six hours had and continues to have the actual effect of hindering Petitioners' access to counsel.
10 The fact that counsel has continued to represent Petitioners diligently does not negate this
11 unsalutary result.

12 CONCLUSION

13 This Court should deny Respondents' Motion to Dismiss because Petitioners challenge
14 the unlawful detention authority and the resulting interference with access to counsel after this
15 habeas petition was properly filed, not the discretionary enforcement decisions or the validity of
16 the *in absentia* order itself. Although Petitioners acknowledge the motion-to-reopen rejection
17 eliminates the narrow automatic-stay theory, Petitioners remain within the 180-day rescission
18 window for the filing of the motion to reopen and, under the controlling Ninth Circuit authority,
19 *Cui*, 13 F.4th 991, the *in absentia* order is not administratively final. As such, the INA § 241, 8
20 U.S.C. § 1231, removal period never commenced. Thus, Respondents lacked statutory authority
21 to detain and remove Petitioners on that basis. The Court should deny the Motion to Dismiss,
22 retain jurisdiction, and grant appropriate habeas relief.

1 DATED this 2nd day of March, 2026.

2 /s/ Lara Erin Nations

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9 **CERTIFICATE OF SERVICE**

10 I certify that on March 2, 2026, I electronically filed the foregoing with the Clerk of Court using
11 the CM/ECF system, which will send notification to counsel of record.

12
13 /s/ Lara Erin Nations

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