

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 9 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ALMA CACERES-OLIVARES, AKA Alma
Cazares-Olivares,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 20-70056

Agency No. A087-737-678

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 7, 2022**
San Francisco, California

Before: GRABER, WATFORD, and WALLACH,*** Circuit Judges.

Petitioner Alma Caceres-Olivares, a native and citizen of Guatemala, entered the United States without inspection in 2010. The Department of Homeland

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Evan J. Wallach, United States Circuit Judge for the U.S. Court of Appeals for the Federal Circuit, sitting by designation.

Security (“DHS”) issued an expedited removal order soon thereafter and removed Petitioner to Guatemala. Petitioner reentered the United States after a few months, and DHS reinstated the prior order of removal. Because Petitioner was a victim of domestic violence and fears return to Guatemala, an immigration judge granted withholding of removal. Petitioner seeks our review of the reinstated removal order so that she can apply for asylum. We deny the petition in part and dismiss it in part.

1. To the extent that Petitioner challenges the original expedited removal order, we lack jurisdiction to consider her arguments. Garcia de Rincon v. Dep’t of Homeland Sec., 539 F.3d 1133, 1137–39 (9th Cir. 2008).

2. We have rejected Petitioner’s argument that a reinstatement order contradicts the asylum statute by improperly precluding access to asylum. Perez-Guzman v. Lynch, 835 F.3d 1066, 1080–82 (9th Cir. 2016). And we lack jurisdiction to adjudicate Petitioner’s claim that she should have been placed in removal proceedings anew, rather than having the prior removal order reinstated. See 8 U.S.C. § 1252(g) (providing that we lack jurisdiction to entertain a non-citizen’s claim that arises “from the decision or action by the Attorney General to commence proceedings”).

3. With respect to the reinstatement order itself, we have jurisdiction but may review only these factual predicates: whether Petitioner is a non-citizen,

whether she was subject to a prior removal order, and whether she re-entered the United States illegally. Morales de Soto v. Lynch, 824 F.3d 822, 825 (9th Cir. 2016). Petitioner does not challenge any of those factual predicates.

4. Petitioner has not established affirmative misconduct beyond mere negligence on the part of the government; misconduct is a prerequisite to her claim of equitable estoppel. Morgan v. Gonzales, 495 F.3d 1084, 1092 (9th Cir. 2007).

PETITION DENIED IN PART AND DISMISSED IN PART.