

UNITED STATES COURT OF APPEALS August 23, 2019

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

JOSE ALFREDO FLORES
QUEZADA,

Petitioner - Appellant,

v.

UNITED STATES OF AMERICA,

Respondent - Appellee.

No. 19-1236
(1:19-CV-01176-LTB-GPG)
(D. Colo.)

ORDER AND JUDGMENT*

Before **CARSON**, **BALDOCK**, and **MURPHY**, Circuit Judges.

Petitioner Quezada appeals the district court's dismissal of his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 for lack of subject matter jurisdiction. Petitioner is currently being prosecuted in the District of Colorado for illegal reentry of a removed alien subsequent to a felony conviction in violation of 8 U.S.C. § 1326(a) and (b)(1). As explained in the magistrate judge's report and recommendation, adopted in its entirety by the district court, Petitioner filed a motion to dismiss the indictment, arguing that a March 2012 removal order against him is

* This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

invalid because his Colorado conviction for vehicular eluding is not an aggravated felony in light of *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018) (holding the residual clause of the criminal code’s definition of a “crime of violence” as incorporated into the Immigration and Nationality Act’s definition of aggravated felony was unconstitutionally vague). The district court denied Petitioner’s motion to dismiss the indictment in April 2019.

Apparently hoping to forestall his prosecution, Petitioner in his § 2241 petition again challenges the validity of the March 2012 removal order. But as we recently explained in *Thoung v. United States*, 913 F.3d 999, 1001–02 (10th Cir. 2019), the REAL ID Act, in particular 8 U.S.C. § 1252(a)(5), provides that petitions for review filed with the Court of Appeals are the “sole and exclusive means for judicial review from an order of removal.” And the statute specifically excludes “habeas corpus review pursuant to sections 2241 . . . or any other habeas corpus provision.” What Petitioner effectively seeks is interlocutory review of the district court’s denial of his motion to dismiss the indictment against him for illegal reentry. *If* Petitioner is convicted, he may, absent an appeal waiver, challenge his conviction by way of direct appeal after final judgment is entered in the district court.

Accordingly, Petitioner's motion to proceed on appeal *in forma pauperis* is GRANTED, and the district court's judgment dismissing his § 2241 petition is AFFIRMED.

Entered for the Court,

Bobby R. Baldock
United States Circuit Judge