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COUNSEL

Margaret D. Stock, Jeffrey Scott Moeller, Stock & Moeller, LLC, Anchorage, Alaska, for the petitioner-appellant.

Hugh G. Mullane, Office of Immigration Litigation, Civil Division, Department of Justice, Washington, D.C., for the respondent-appellee.

OPINION

PER CURIAM:

Appellant Meng Li is a native and citizen of China who seeks judicial review of the merits of the Immigration and Naturalization Service's order of expedited removal under the provisions of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended by Act of Oct. 11, 1996, Pub.L. No. 104-302, 110 Stat. 3656. The district court dismissed Li's petition for habeas corpus relief, holding that under the statute's stringent limitations on judicial review of expedited removal orders, it lacked authority to review the merits of her claim. See 8 U.S.C. §§ 1252(e)(2)ju41df. W naanermellant.hdetain amendts of the Immigration anoNaturalization Sty ANS) in

the second, subsection (e)(5), precisely defines the scope of a court's inquiry.

Under subsection (e)(2), a court hearing a habeas corpus petition is limited to determining whether the petitioner was

> removed under section 1225(b)(1) of this title, the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner. There shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal.

8 U.S.C. § 1252(e)(5).

Although we have not had occasion to review these particular provisions of this relatively recent statute, we have discussed the overall architecture of IIRIRA in the context of the transitional rules to be applied prior to the effective date of the statute. See Magana-Pizano v. INS, 200 F.3d 603 (9th Cir. 1999). These rules are materially indistinguishable from the statute itself. See Flores-Miramontes v. INS, 212 F.3d 1133, 1136-37 (9th Cir. 2000).

In Magana-Pizano we held that more general habeas review of INS decisions remains available under 28 U.S.C.

dited removal orders, however, the statute could not be much

no review was permitted. See Magana-Pizano, 200 F.3d at

Rep. No. 104-518 (1995), U.S. Code Cong. and Adm. News, at 924 (discussing applicability of expedited removal procedure to "individuals who arrive in the United States").

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HAWKINS, Circuit Judge, dissenting:

I respectfully dissent. This case presents an important question under the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"): may the holder of a valid visa to enter the United States seek habeas corpus review when unlawfully issued an expedited removal order by INS? IIRIRA most certainly changed the landscape of habeas T* -0.niuty dd Congpres ientand(toefoecloase habeas(T* -0?) Tj T* -0.0902 Tc 0.0902 Tw sentrely? I suggeos

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ANALYSIS

An expedited removal order shall be issued "if an immigration officer determines that an alien . . . is inadmissible under [8 U.S.C.] section 1182(a)(6)(C) or [8 U.S.C. §] 1182(a)(7)." 8 U.S.C. § 1225(b)(1)(A)(i). 8 U.S.C § 1182(a)(6)(C)(i) pro-

> cate offenses are, without regard to the date of commission, otherwise covered by [8 U.S.C.] section 1227(a)(2)(A)(i) of this title.

8 U.S.C. § 1252(a)(2)(C). Even though the statute in Magana-Pizano clearly stated that courts have no jurisdiction to review "any final order of removal," we held that we have jurisdiction to determine whether a petitioner "is a4TiEve[f remoble]on θ

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review, supra. In such a situation, we retain jurisdiction to determine whether we have jurisdiction, just as in part II of Magana-Pizano. The only way that we can determine whether Li was "ordered removed under [§ 1225], " § 1252(e)(2)(B), and "whether such an order in fact was issued, " § 1252(e)(5), is to determine whether INS has, to whatever extent, identi-