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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

L-J-P-L,

Petitioner,

v.

CAMMILLA WAMSLEY;[1] et al.,

Respondents.

Case No.: 3:25-cv-01390-IM

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

[1] For "core" habeas challenges brought under 28 U.S.C. § 2241, that is, challenges to present physical custody, the only proper respondent is the immediate custodian of the habeas petitioner, "not the Attorney General or some other remote supervisory official." *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Thus, the United States Attorney General, the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"), and the Secretary of the Department of Homeland Security ("DHS") are not proper respondents to this core habeas petition, because none of those officials has any immediate responsibility for Petitioner's detention. *See id.* at 440 n.13 ("[T]he proper respondent is the person responsible for maintaining—not authorizing—the custody of the prisoner.").

Respondents, through counsel, respond to the Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241, ECF 1. This response is supported by the Declaration of Ariana N. Garousi ("Garousi Decl.") and its accompanying exhibits.[2]

INTRODUCTION

On August 7, 2025, ICE officers conducted a vehicle stop of the car Petitioner was traveling in. Petitioner admitted to ICE officers he was present in the United States without lawful status. ICE subsequently determined that Petitioner had previously been removed twice. ICE lawfully reinstated Petitioner's prior removal order, which necessitates detention pursuant to 8 U.S.C. § 1231(a)(2)(A). Because Petitioner's detention is lawful under the Immigration and Nationality Act ("INA") and accompanying regulations, the Court should dismiss the Petition for Writ of Habeas Corpus.

BACKGROUND

I. Reinstatement of Removal Order

Under the INA, ICE can reinstate a prior removal order when a noncitizen illegally reenters the country after previously having been removed. *Villa-Anguiano v. Holder*, 727 F.3d 873, 878 (9th Cir. 2013) (recognizing 8 U.S.C. 1231(a)(5) affords ICE with prosecutorial discretion when deciding whether to reinstate a prior order of

[2] On August 11, 2025, the Court ordered Respondents to respond to the petition by 12:00 p.m. on August 14, 2025. On August 13, 2025, Respondents' counsel telephonically conferred with Petitioner's counsel regarding a 24-hour extension of Respondents' deadline to ensure that this office obtained complete information from the agency to support this response. Petitioner's counsel indicated they would oppose a motion for an extension. To comply with the Court's ordered deadline, Respondents timely file this response but expect to submit additional evidence after the filing deadline to supplement the record.

removal); *Morales de Soto v. Lynch*, 824 F.3d 822, 825 (9th Cir. 2016) (upholding ICE's decision to not exercise prosecutorial discretion and instead reinstate prior removal order). The statute governing reinstatement of removal states:

> If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry.

8 U.S.C. § 1231(a)(5).

To establish whether a noncitizen is subject to reinstatement of removal, an immigration officer must determine: (1) "whether the alien has been subject to a prior order of removal;" (2) "the identity of the alien, *i.e.*, whether the alien is in fact an alien who was previously removed;" (3) "whether the alien unlawfully reentered the United States." 8 C.F.R. § 241.8(a); *see also Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 489 (9th Cir. 2007) (recognizing an immigration officer, not an IJ, has the authority to reinstate a removal order). "If an officer determines that an alien is subject to removal under this section, he or she shall provide the alien with written notice of his or her determination." 8 C.F.R. § 241.8(b). The noncitizen may contest the determination, and the officer will consider whether the noncitizen's statement warrants reconsideration of the determination that he is subject to reinstatement of removal. *Id.*

If a noncitizen who is subject to a reinstated removal order expresses a fear of return to the country designated in his removal order, the noncitizen will be referred for a reasonable fear interview. 8 C.F.R. 241.8(e). If the noncitizen is found to have

a reasonable fear of persecution or torture, the noncitizen can apply for withholding of removal or withholding of removal under the Convention Against Torture ("CAT"). *See Andrade-Garcia v. Lynch*, 828 F.3d 829, 831 (9th Cir. 2016). However, the noncitizen is statutorily barred from applying for asylum. *Perez-Guzman v. Lynch*, 835 F.3d 1066, 1082 (9th Cir. 2016) (holding noncitizen subject to a reinstated removal order was ineligible to apply for asylum).

A noncitizen whose prior removal order has been reinstated is subject to mandatory detention. 8 U.S.C. § 1231(a)(2)(A) ("During the removal period, the Attorney General *shall* detain the alien.") (emphasis added); *Padilla-Ramirez v. Bible*, 882 F.3d 826, 834 (9th Cir. 2017) ("[T]he text and structure of the Act [the INA] indicate that Congress intended for section 1231(a) to govern detention of aliens subject to reinstated removal orders."), *amended by*, 882 F.3d 826, 830–33 (9th Cir. 2018).

II. Petitioner's Background

Petitioner is a native and citizen of Guatemala. Pet. ¶ 35. On March 4, 2009, an Immigration Judge ("IJ") ordered Petitioner be removed from the United States; Petitioner was removed on March 17, 2009. Garousi Decl., Ex. C at 4. On May 14, 2014, after Petitioner had illegally reentered the country, Petitioner was removed again. *Id.*

On February 14, 2024, Petitioner was encountered by Border Patrol after entering without inspection in or near Nogales, Arizona. Pet. ¶ 37. On February 15, 2024, DHS initiated removal proceedings under 8 U.S.C. § 1229a against Petitioner by filing a Notice to Appear ("NTA") with the Seattle Immigration Court. *Id.* ¶ 38.

The NTA alleged that Petitioner was inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). *Id.*

On August 7, 2025, ICE's Enforcement and Removal Operations ("ERO") encountered Petitioner via a traffic stop. Garousi Decl., Ex. C at 2. Once identified, Petitioner was taken into custody to be processed for reinstatement of his prior removal order. *Id.* at 4. Petitioner was provided a Form I-871 Notice of Intent/Decision to Reinstate Prior Order ("Form I-871"). *Id.*; Garousi Decl., Ex. A. Petitioner did not wish to a make a statement contesting DHS's determination that he was subject to a prior order of removal. Garousi Decl., Ex. A. He also refused to sign the notice. *Id.* Accordingly, the immigration officer determined that Petitioner "is subject to removal through reinstatement of the prior order, in accordance with section 241(a)(5) of the Act [8 U.S.C. § 1231(a)(5)]." *Id.*

LEGAL STANDARD

"The district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute[.]" *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day[.]" *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). To warrant a grant of habeas corpus, a petitioner must demonstrate that his custody violates the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3).

ARGUMENT

Petitioner's detention is lawful under 8 U.S.C. § 1231(a)(2)(A) because he is subject to a reinstated removal order.

If DHS determines that a noncitizen has been previously removed, DHS can reinstate the removal order. 8 U.S.C. § 1231(a)(5). An immigration officer must comply with the requirements in 8 C.F.R. § 241.8 before reinstating the removal order.

Under 8 C.F.R. § 241.8(a), ICE must first determine if a noncitizen is subject to reinstatement of a removal order. Here, ICE determined that Petitioner had previously been ordered removed twice, once in 2009 and once in 2014. *See* Garousi Decl., Ex. C at 3 ("ERO officers conducted immigration record checks which revealed that [LJPL] received a final order of removal on 03/04/2009 and has been previously removed from the United States in 2009 and 2014."). Immigration record checks also revealed that "[LJPL] was apprehended by CBP on 02/15/24 after attempting to unlawfully enter the United States near Nogales, AZ without inspection." *Id.* Based on the foregoing, Petitioner was found to be an alien who had been subjected to a prior order of removal, who was previously removed, and who unlawfully reentered the United States. *See* 8 C.F.R. § 241.8(a); Garousi Decl., Ex. A.

Next, ICE must provide the noncitizen with notice of the determination and advise the noncitizen that he can make a statement contesting the determination. 8 C.F.R. § 241.8(b). Here, ICE provided Petitioner with a Form I-871. Garousi Decl., Ex. A; Ex. C at 4. The Form I-871 notifies Petitioner that he is "an alien subject to a prior order of deportation / exclusion / removal entered on March 4, 2009 at El Paso,

TX." Garousi Decl., Ex. A. It also indicates that Petitioner has "been identified as an alien who was removed on March 17, 2009 pursuant to an order of deportation / exclusion / removal." *Id.* The Notice further indicates that Petitioner "illegally reentered the United States on or about Unknown Date at or near Unknown Location." *Id.* The Notice informs Petitioner that he is removable under INA Section 241(a)(5) [8 U.S.C. § 1231(a)(5)] and that he may contest the determination of the immigration officer. *Id.* However, Petitioner declined to make a statement contesting the determination. *Id.*; Garousi Decl., Ex. B. ICE properly notified Petitioner of its decision to reinstate his prior removal order and allowed him an opportunity to contest the determination in accordance with 8 C.F.R. § 241.8(b).

Because ICE reinstated Petitioner's removal order, he is subject to detention under 8 U.S.C. § 1231(a)(2)(A). *See Padilla-Ramirez*, 882 F.3d at 834 (holding a reinstated removal order is administratively final, which warrants detention pursuant to § 1231(a)). Petitioner's removal order was reinstated on August 7, 2025, so Petitioner is well within the statutory removal period of 90 days. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022) ("[8 U.S.C. § 1231(a)(2)] provides that the Government 'shall' detain noncitizens during the statutory removal period"). Accordingly, Petitioner's detention is lawful, and the Court should dismiss the Petition.

CONCLUSION

For the foregoing reasons, Respondents respectfully request the Court dismiss the Petition for Writ of Habeas Corpus.

Respectfully submitted this 14th day of August, 2025.

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