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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

M-S-L, an adult,

Case No. 6:25-cv-01204-AA

Petitioner,

MOTION TO DISMISS

v.

**DREW BOSTOCK; TODD LYONS; U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT; KRISTI NOEM; U.S.
DEPARTMENT OF HOMELAND
SECURITY; PAMELA BONDI,**

Respondents.

Respondents move to dismiss Petitioner's habeas petition because this Court lacks subject matter jurisdiction under 8 U.S.C. § 1252(g).

BACKGROUND

Petitioner is a Mexican national who the United States Department of Homeland Security (DHS) first encountered in Laredo, Texas on January 31, 2024, after unlawfully entering the United States without inspection (EWI). Declaration of Jason Weiss ("Weiss Decl.") at ¶ 4. Petitioner was granted a "voluntary return" to Mexico. *Id.* Petitioner did not express fear of

returning to Mexico. *Id.* Petitioner was returned to Mexico via Laredo, Texas, Port of Entry Bridge II. *Id.*

Petitioner unlawfully re-entered the United States EWI near Laredo, Texas, on February 3, 2024, and was apprehended by DHS. *Id.* ¶ 5. On that date Petitioner was deemed inadmissible under section 212(a)(7)(A)(i)(I) of the INA, 8 U.S.C. § 1182(a)(7)(A)(i)(I); 8 U.S.C. 1225(b)(1), because they lacked a valid visa or other entry documents. *Id.* Petitioner claimed no fear if returned to their native country of citizenship and was processed for expedited removal. *Id.* An Order for expedited Removal was issued under INA 235(b)(1), and Petitioner was removed from the United States on February 4, 2024. *Id.*

On February 8, 2024, Petitioner once again unlawfully entered the United States near Laredo, Texas and was arrested by the Webb County Department of Public Safety (DPS) for criminal trespass. Petitioner subsequently admitted to DHS to re-entry EWI on that date by crossing the Rio Grande River. *Id.* at ¶ 6.

On February 25, 2024, DHS provided notice to Petitioner of the Intent/Decision to Reinstate Prior Order of removal. *Id.* at ¶ 7. Petitioner was deemed subject to removal through reinstatement of the prior order in accordance with Section 241(a)(5) of the Act. Petitioner claimed fear of return to Mexico on this date and was released from DHS custody on an order of supervised release (“OSUP”) pending a reasonable fear interview. *Id.* at ¶ 8. The conditions of release included the requirement that Petitioner appear “at the time and place specified, upon each and every request of the agency, for identification and for deportation or removal.” Petitioner was also required to notify ICE and request permission to travel outside the state of California for more than 48 hours. *Id.* ¶ 8.

Petitioner has since violated the conditions of release by failing to report in person and by reporting several months late. Petitioner also moved to Oregon without providing advance notice to ICE or seeking permission to leave the state of California. *Id.* ¶ 9. On July 10, 2025, Petitioner’s prior order for expedited removal was reinstated pursuant to INA § 241(a)(5); 8 U.S.C. 1231(a)(5). *Id.* On this date, ICE officers notified Petitioner that his OSUP was being revoked and took them into custody. *Id.* On July 12, 2025, Petitioner was served with a Notice of Revocation of Release. Because Petitioner has asserted reasonable fear of returning to Mexico, they will receive a reasonable fear interview and be allowed any subsequent appeals while in detention. *Id.* ¶ 11. *See Padilla-Ramirez v. Bible*, 882 F.3d 826 (9th Cir. 2018). *See* 8 C.F.R. § 241.4(l).

Petitioner filed this habeas action arguing Respondent violated the Administrative Procedures Act (“APA”) and the Fifth Amendment Due Process clause by the detention and seeking immediate release. This Court lacks jurisdiction to review Petitioner’s detention invoked under 8 U.S.C. § 1231(a)(5); 8 C.F.R. 241.4(l).

ARGUMENT

I. THE COURT LACKS JURISDICTION TO ORDER PETITIONER’S RELEASE FROM DETENTION

A. The IIRIRA and REAL ID Act Amendments to the Immigration and Nationality Act.

In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), which repealed the existing scheme for judicial review of final orders of deportation and replaced it with a more restrictive scheme. *See Reno v. American-Arab Anti-Discrimination Committee (“AADC”)*, 525 U.S. 471, 474 (1999). Among the IIRIRA amendments to the Immigration and Nationality Act, Congress provided in the newly enacted 8 U.S.C. § 1252(g) that,

Except as provided in this section and notwithstanding any other provision of law, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act.

8 U.S.C. § 1252(g) (1996).

In 2005, in the REAL ID Act, Congress amended section 1252(g) to clarify that the statute's proscription against jurisdiction applies to habeas petitions. *See* REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, 310–11 (amending 8 U.S.C. § 1252(g)). As amended by the REAL ID Act, section 1252(g) now provides that,

Except as provided in this section and notwithstanding any other provision of law, (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g) (2017).

The IIRIRA and REAL ID Act amendments to the INA reflect Congress's desire to "streamline immigration proceedings" and to "effectively limit all aliens to one bite of the apple with regard to challenging an order of removal." *Singh v. Gonzales*, 499 F.3d 969, 976-77 (9th Cir. 2007) (quoting *Bonhomie v. Gonzales*, 414 F.3d 442, 446 (3d Cir. 2005)). "Under these amendments, individuals who seek to challenge an order [of removal] may do so, but only as part of a petition for review in the appropriate court of appeals, as provided under section 1252."

In particular, section 1252(b)(9) provides that,

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter *shall be available only in judicial review of a final order under this section.* Except as otherwise provided in this section, *no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.*

8 U.S.C. § 1252(b)(9) (emphasis added); *see also* 8 U.S.C. § 1252(a)(5) (“Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal”).

This body of law deprives the Court of jurisdiction to release Petitioner from immigration detention or to otherwise review Respondent’s detention of Petitioner for violation of the OSUP. In *AADC*, the Supreme Court held that section 1252(g) precludes judicial review of three discrete actions that DHS may take: the “‘decision or action’ to ‘commence proceedings, *adjudicate* cases, or *execute* removal orders.’” 525 U.S. at 482 (emphasis in original). Thus, a district court is “without jurisdiction to hear ... a claim, even if the claim is for a short stay while [Petitioner] seeks additional administrative remedies.” *Diaz-Amezcuca v. Johnson*, No. C14-1313 MJP, 2015 WL 419029, at *3 (W.D. Wash. Jan. 30, 2015). Here, however, Petitioner is attempting to do just that: to obtain review of Respondent’s decision to revoke the OSUP.

Here, Petitioner is inappropriately seeking review of the government’s execution of a final order of removal. 8 U.S.C.S. § 1231(a)(5). On February 25, 2024, after Petitioner illegally reentered the United States on February 8, 2024, DHS issued a Notice of Intent/Decision to Reinstate Prior final order of removal (Weiss Decl. ¶ 5) in accordance with INA Section 241(a)(5). Petitioner did not contest the decision. Weiss Decl. ¶ 7. Petitioner’s detention and removal, absent a grant to withholding, are an execution of a final order of removal, which 8 U.S.C. § 1252(g) shields from judicial review. Consistent with this statute, 8 U.S.C. § 1231(a)(5) bars an alien from reopening prior removal orders, as the law states, petitioner “is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the

reentry.” *Id.*; *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021) (distinguishing provisions authorizing detention of aliens 8 U.S.C. § 1226 and 8 U.S.C. § 1231); *Padilla-Ramirez v. Bible*, 882 F.3d 826, 832 (9th Cir. 2017). Indeed, the Ninth Circuit recently confirmed its holding in *Padilla-Ramirez*, maintaining that Congress has explicitly immunized reinstated orders from judicial review in the context of detention. *Alonso-Juarez v. Garland*, 80 F.4th 1039, 1051 (9th Cir. 2023) (citing with approval *Padilla-Ramirez*, 882 F.3d at 836; 8 U.S.C. § 1231(a)(5)).

B. Petitioner Fails to State a Claim for Violation of the Administrative Procedures Act.

Even if the Court were to exercise jurisdiction, the detention of Petitioner did not exceed Respondents’ statutory authority or abuse its discretion to reinstate Petitioner’s prior removal order due to violations of the OSUP. Petitioner was detained under a reinstatement of a prior order of removal. INA § 241(a)(5). Petitioner currently is in detention awaiting a reasonable fear interview. The detention is authorized under 8 U.S.C.S. § 1231(a)(5), rather than under 8 U.S.C.S. § 1226 as asserted in the habeas Petition. *Padilla-Ramirez*, 882 F.3d at 831. In *Padilla-Ramirez*, the Ninth Circuit examined whether an alien in withholding-only proceedings would “override section 1231(a)(5)’s prohibition on reopening or reviewing a prior removal order.” The Court concluded that because the removal order “is not at issue in withholding-only proceedings . . . it does not affect its finality.” *Id.* Therefore, the reinstated removal order is administratively final under the statute.

C. OSUP Revocation Not Subject to Due Process Rights.

Contrary to their assertions, Petitioner has no protected liberty interest in remaining free from detention where Respondents have exercised their discretion under a valid removal order and its regulatory authority. *See Moran v. U.S. Dep’t of Homeland Sec.*, 2020 U.S. Dist. LEXIS 193263, at *28 (C.D. Cal. Aug. 21, 2020) (dismissing petitioners’ claim that § 241.4(l) was a

violation of their procedural due process rights and noting, “[Petitioners] fail to point to any constitutional, statutory, or regulatory authority to support their contention that they have a protected interest in remaining at liberty in the United States while they have valid removal orders.”).

Indeed, Petitioner was detained pursuant to 8 C.F.R. § 241.4, which provides that “[t]he Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section.” 8 C.F.R. § 241.4(l)(2). “While the regulation provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion as it allows revocation “when, in the opinion of the revoking official ... [t]he purposes of release have been served ... [or] [t]he conduct of the alien, or *any other circumstance*, indicates that release would no longer be appropriate.” *Rodriguez v. Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009), *opinion amended and superseded*, 591 F.3d 1105 (9th Cir. 2010), citing § 241.4(l)(2)(i), (iv) (emphasis in original).

Petitioner’s assertion that “Respondents have chosen to revoke Petitioner’s parole and release... not based on a rational and individualized determination” is incorrect. Pet. 10. The regulations at 8 C.F.R. § 241.4 allow ICE to revoke a noncitizen’s Order of Supervision when it determines he has violated a condition of release, or when the conduct of the noncitizen, or any other circumstance, indicates that release would no longer be appropriate. Here, Petitioner has an expedited removal order and violated the conditions of his supervision by missing multiple check-ins and failing to notify ICE and seek permission to leave California for more than 48 hours. Weiss Decl. ¶¶ 9. After those instances of noncompliance, Respondent was arrested, ICE detained

Petitioner pursuant to its discretion under 8 U.S.C. § 1231(a)(6), and ICE issued Petitioner a notice of re-detention July 12, 2025. Weiss Decl. ¶ 11.

Further, since Petitioner has stated a fear of removal to Mexico, Petitioner is entitled and will receive a reasonable fear interview and retains relevant appeal rights from that determination.

CONCLUSION

For the foregoing reasons this Court should dismiss this habeas petitioner due to lack of jurisdiction.

Respectfully submitted this 14th day of July 2025.

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/s/ Susanne Luse
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