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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GUSTAVO QUIROZ,

Petitioner,

v.

KRISTI NOEM, et al., [1]

Respondents.

CASE NO. 1:25-CV-765-KES-SAB

MOTION TO DISMISS PETITON FOR WRIT OF HABEAS CORPUS

Petitioner Gustavo Quiroz, a Mexican citizen, previously illegally entered the United States and was removed in June 2011. His removal order imposed a 10-year ban on reentering the United States absent express prior request and consent of the Department of Homeland Security (DHS). Yet Quiroz unlawfully reentered the United States two months later. He was recently discovered illegally living in the United States through an anonymous tip on the DHS tip line.

In May 2025, DHS reinstated Quiroz's prior deportation order under 8 U.S.C. § 1231(a)(5), a summary removal procedure for aliens who illegally re-enter the United States after previously being removed. That, in turn, required mandatory detention under § 1231(a)(2) pending removal. Quiroz now seeks release and termination of his removal through a habeas corpus petition.

Quiroz notably does not contest that he meets the minimal requirements for § 1231(a)(5)

[1] The Government moves to dismiss all respondents other than Tonya Andrews from this case. A habeas petitioner may only name the officer having custody of him as the respondent to the petition. 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996). Here, Petitioner's custodian is Tonya Andrews, the facility administrator at the Golden State Annex in McFarland, California. Respondents Kristi Noem, Todd Lyons, and Polly Kaiser are not proper respondents for a § 2241 habeas petition.

reinstatement of a removal order. Instead, he raises three unrelated grounds for relief over six "claims." None of those grounds, however, undermines his reinstatement order.

First, he argues that he cannot be removed because the U.S. Citizenship and Immigration Service's (USCIS) has made a prima facie determination that he meets the requirements for a self-petition under the Violence Against Women Act (VAWA). He frames this prima facie determination as entitling him to status adjustment eligibility and rendering any deportation "illegitimate" and a "waste of government resources." But a prima facie determination is not legal status, and § 1231(a)(5) explicitly precludes relief from a reinstated removal order. And because Quiroz challenges his reinstated removal order through this argument, the Court lacks jurisdiction over it as well. *See* 8 U.S.C. § 1252(g).

Second, Quiroz argues that he was provided insufficient notice of the reinstatement under 8 C.F.R. § 241.8(b). But he received that notice—in fact, he previously provided the Court with a copy. And even if Quiroz could prove some yet-to-be-identified defect in notice, he cannot show resulting prejudice because he does not contest the factual basis for reinstating his removal order.

Finally, Quiroz argues that his conditions of confinement violate the Fifth Amendment and demand his release. But Quiroz is subject to mandatory detention under § 1231(a)(2). And he cannot raise conditions of confinement in a habeas petition—he must instead bring a civil rights action.

I. BACKGROUND

A. The Executive Branch's broad statutory power to effect removal.

"Control over immigration is a sovereign prerogative." *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991). The Immigration and Nationality Act (INA), originally enacted in 1952, sets forth a comprehensive plan to administer the immigration system. *See generally* 8 U.S.C. Ch. 12. As set forth therein, the President, through the Department of State and the Department of Homeland Security ("DHS"), decides which noncitizens may enter and remain in the United States. *See generally* 8 U.S.C. §§ 1103, 1104.

The INA establishes procedures for removing aliens unlawfully in the United States. Ordinarily, DHS will initiate removal proceedings against the alien. The alien will be given a notice to appear, and an Immigration Judge (IJ) will decide at a hearing whether the alien should be removed. *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021); 8 U.S.C. §§ 1229(a)(1)(D), (G)(i). The alien may seek

various forms of relief or protection from removal at that hearing. 8 U.S.C. § 1229a(c)(4), (6)-(7); *Johnson*, 594 U.S. at 528 (citing statutes). If the IJ issues an order of removal, the alien may appeal to the Board of Immigration Appeals (BIA) and then seek judicial review in the U.S. Court of Appeals. 8 U.S.C. §§ 1229a(c)(5)-(7), 1252(b); 8 C.F.R. § 1240.15. Once removal is administratively final, the government generally has 90 days to remove the alien.[2] 8 U.S.C. § 1231(a).

If, however, an alien was previously removed but reenters the United States without prior authorization, Congress created an expedited and summary removal process. *Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 34-35 (2006); *Lopez v. Garland*, 40 F.4th 996, 999 (9th Cir. 2022). DHS may "reinstate" a previous order of removal against an alien if an immigration officer (1) determines that the alien was subject to a prior order of removal; (2) confirms the alien's identity; and (3) determines that the alien's reentry was unauthorized. 8 U.S.C. § 1231(a)(5); 8 C.F.R. §§ 241.8(a)-(c); *Johnson*, 594 U.S. at 529-30; *Tomczyk v. Garland*, 25 F.4th 638, 643 (9th Cir. 2022) (en banc).

If the immigration officer so finds, the prior removal order is reinstated, and "the alien *shall be removed* under the prior order." 8 U.S.C. § 1231(a)(5) (emphasis added). During the removal period, the Attorney General is *required* to detain the alien. 8 U.S.C. § 1231(a)(2)(A); *Johnson*, 594 U.S. at 526 (holding that § 1231, not § 1226, applies to alien detention during the removal process); *Riley v. Bondi*, 145 S. Ct. 2190, 2198-99 (2025) (confirming that *Johnson* held that aliens subject to reinstated removal order were subject to mandatory detention under § 1231(a)(2)); *Padilla-Ramirez v. Bible*, 882 F.3d 826, 829 (9th Cir. 2017) (noting in reinstatement context that "Section 1231(a) provides for mandatory detention during a ninety-day 'removal period'").

Unlike typical removal proceedings, an alien subject to a reinstated removal order has no right to an IJ hearing (8 C.F.R. § 241.8(a)) and "is not eligible and may not apply for any relief under" the INA. 8 U.S.C. § 1231(a)(5); *Fernandez-Vargas*, 548 U.S. at 35 (§ 1231(a)(5) "applies to all illegal reentrants . . . and generally forecloses discretionary relief"); *Lopez*, 40 F.4th at 999 ("Unlike in ordinary removal

[2] If a court of appeals stays removal pending resolution of an alien's appeal, then the 90-day period begins once the court of appeals vacates the stay. 8 U.S.C. § 1231(a). But "DHS need not wait for the alien to seek, and a court to complete, judicial review of the removal order before executing it. Rather, once the BIA has reviewed the order . . . , DHS is free to remove the alien *unless* a court issues a stay." *Johnson*, 594 U.S. at 534-35.

proceedings, an alien subject to a reinstatement order is ineligible for cancellation of removal.").

Rather, once a removal order is reinstated, the alien may only assert a "withholding-only" claim that he should not be removed to a country due to a high likelihood of persecution or torture. *Johnson*, 594 U.S. at 530-31; 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 208.16-208.17. Withholding of removal does not prevent removal of the alien *from the United States*—it only prohibits removal *to a particular country*. *Johnson*, 594 U.S. at 536. If an alien makes a withholding-only claim, a USCIS asylum officer conducts a "reasonable fear" interview to determine if the alien's assertion is credible. *See* 8 C.F.R. §§ 208.16, 208.31(c). The asylum officer's determination is reviewed by an IJ. 8 C.F.R. §§ 208.31(e), (g), 1208.31(g). If the IJ finds reasonable fear of persecution or torture, the BIA can review the decision. 8 C.F.R. § 1208.31(g)(2)(ii). If the IJ finds no reasonable fear, administrative review ends. 8 C.F.R. § 1208.31(g)(1). The final agency decision on withholding can be reviewed by the U.S. Court of Appeals. 8 U.S.C. § 1252(a); *Valdez-Lopez v. Sessions*, 689 F. App'x 506, 507 (9th Cir 2017).

B. Factual background relating to Quiroz.

1. Quiroz's first illegal entry.

Quiroz illegally entered the United States in October 1992. He was discovered and, on June 1, 2000, was given a written notice that DHS intended to remove him and that he must appear for a hearing before an IJ. Ex. A, Declaration of Armando Meneses, Jr. ¶ 5 & Ex. 1 (pp.1-2).[3]

Quiroz unsuccessfully challenged his removal, both administratively and in the Ninth Circuit. *See Quiroz Plancarte v. Mukasey*, 299 F. App'x 680 (9th Cir. 2008). When he failed to voluntarily depart the United States, his voluntary departure converted to an order of removal. He was removed from the United States in June 2011. Petition ¶ 20; Meneses Decl. ¶ 9 & Exs. 2, 3, 5 (pp.3-6, 12-13).

Due to his removal, Quiroz became inadmissible for 10 years, and thus he could not apply for admission during that time unless he first requested and obtained permission from the Attorney General. Meneses Decl. Ex. 5 (pp.12-13); *see* 8 U.S.C. § 1182(a)(9)(C). Quiroz was also warned that entering or being in the United States without such advance permission could be prosecuted as a felony. Meneses

[3] Respondents believe that the Meneses Declaration and documents previously filed by Quiroz (*see* ECF 2-2) include all documents necessary for resolution of Quiroz's habeas petition and this Motion to Dismiss. *See* 6/25/25 Order, ECF 4, at ¶ 3.

Decl. Ex. 5; *see* 8 U.S.C. § 1326(a).

2. Quiroz's illegal reentry and reinstatement of prior removal order.

About two months after being removed, Quiroz illegally reentered the United States. *See* Petition ¶ 20; Meneses Decl. Ex. 7 (p.15). He went undiscovered until March 25, 2024, when ICE received an anonymous tip via the DHS tip line. Meneses Decl. ¶ 10 & Ex. 6 (p.14).[4] DHS located and arrested Quiroz a little more than a year later, on May 7, 2025. Petition ¶ 31.

During his arrest, Quiroz was given a Notice of Intent/Decision to Reinstate Prior Order. Petition ¶ 31; Meneses Decl. ¶ 11 & Ex. 7 (p.15); *see also* ECF 2-2, at 11. The Notice confirmed that DHS intended to reinstate Quiroz's November 18, 2004 removal order, and it detailed the factual basis for doing so—specifically, that Quiroz was subject to a prior removal order, he was removed, and he illegally reentered the United States in August 2011. Meneses Decl. Ex. 7 (p.15). The Notice allowed Quiroz to make a statement contesting DHS's determination. Quiroz declined to sign the Notice, make a statement, or submit information countering the factual basis for § 1231(a)(5) reinstatement. *Id.* After reviewing the available evidence, a deportation officer reinstated Quiroz's prior removal order. *Id.* As required by § 1231(a)(2)'s mandatory detention requirement during the removal period, Quiroz has been detained at the Golden State Annex since May 7, 2025. Petition ¶ 7; Meneses Decl. ¶ 12.

3. Quiroz's withholding-only proceedings.

While detained, Quiroz initiated withholding-only proceedings, asserting a fear of persecution or torture if removed to Mexico. He thus was referred to a USCIS asylum officer for a reasonable fear interview. Meneses Decl. Ex. 8 (pp.16-17); Petition ¶ 30; *see* 8 C.F.R. §§ 208.31(a)-(c), 1208.31(a). On May 21, USCIS found no reasonable fear of persecution or torture and denied withholding-only relief. Meneses Decl. Ex. 8. An IJ concurred with USCIS's denial. Meneses Decl. Exs. 8-10 (pp.16-22).

Quiroz petitioned for review of his withholding-only claims in the Ninth Circuit, which stayed removal pending resolution on the merits. That case, *Quiroz v. Bondi*, 9th Cir. No. 25-3912, remains pending. Meneses Decl. ¶ 16 & Ex. 11 (pp.23-25). Based on the Ninth Circuit's stay of removal, and

[4] Quiroz repeatedly speculates that USCIS wrongly shared his confidential information with ICE as part of "an undisclosed policy change," which led to ICE detaining him. *See, e.g.*, Petition ¶¶ 65, 70, 73, 78. But he offers no facts supporting such an extraordinary assertion, which is directly refuted by the Meneses Declaration.

on the government's representation that it had no intent to transfer him to another facility, Quiroz withdrew his Motion for Temporary Restraining Order. ECF 11, at 2.

4. The VAWA self-petition process, and Quiroz's VAWA self-petition.

Normally, a U.S. citizen or a lawful permanent resident (LPR) must file a petition seeking adjustment of status for an alien family member. *See* 8 C.F.R. § 240.2(a), (b), (f). But if the citizen/LPR abuses the alien family member, the alien can file a VAWA self-petition to seek a family classification without needing to rely on the abusive relative. VAWA self-petitions may be filed by aliens alleging abuse by a citizen/LPR spouse, parent, or child. 8 U.S.C. § 1154(a)(1)(A)(iii)-(v), (vii).

When an alien files a VAWA self-petition, USCIS first decides whether the petition and supporting documentation establish a prima facie case. 8 C.F.R. § 204.2(c)(6)(i), (e)(6)(i). USCIS considers whether the self-petitioner has made a prima facie showing that he (1) has a qualifying relationship to an abusive U.S. citizen; (2) is eligible for immigrant classification as an immediate relative or family-based category; (3) was subject to battery or extreme cruelty by the citizen; (4) resided with the abusive citizen; and (5) is of good moral character. 8 U.S.C. § 1154(a)(1)(A)(vii); 8 C.F.R. § 204.2(c)(1), (e)(1).

Importantly, a prima facie determination "does not establish eligibility for the underlying petition." 8 C.F.R. § 204.2(c)(6)(ii), (e)(6)(ii). Nor does it establish credibility of the evidence provided in the petition or relieve the self-petitioner from further submitting evidence necessary to support the petition. 8 C.F.R. § 204.2(c)(6)(ii), (iv). The prima facie determination merely allows USCIS to decide whether to deny or approve the petition. 8 C.F.R. § 204.2(c)(6)(iii), (e)(6)(ii).

Further, even an *approved* VAWA self-petition does not adjust an alien's status—it "is only one step in the application for adjustment of status.'" *Vasquez de Alcantar v. Holder*, 645 F.3d 1097, 1103 (9th Cir. 2011). Approval merely allows the Attorney General, in his exclusive discretion, to adjust the status of the VAWA self-petitioner. 8 U.S.C. § 1255(a); *Gonzalez Morales v. Bondi*, No. 23-1942, 2025 WL 444139, at *2 (9th Cir. Feb. 10, 2025) ("The presumed result of a successful I-360 [VAWA self-] petition would be an opportunity to seek adjustment of status, but that application require[s] . . . the exercise of discretion in [an alien's] favor.").

In this case, Quiroz submitted a VAWA self-petition on October 7, 2024. Petition ¶ 22; *see* ECF

2-2, at 31-34. USCIS made a prima facie determination on November 2, 2024. Petition ¶ 22; ECF 2-2, at 28. But USCIS has not yet adjudicated Quiroz's self-petition. *See* Petition ¶ 24.

II. LEGAL STANDARD

A habeas petition contests the "legality or duration" of confinement. *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991) (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 485 (1973)). The petitioner must make specific factual allegations that, if true, would entitle him to habeas corpus relief. *O'Bremski v. Maass*, 915 F.2d 418, 420 (9th Cir. 1990); *United States v. Poopola*, 881 F.2d 811, 812 (9th Cir. 1989).

A federal court may only grant a habeas petition if the petitioner shows that "he is in custody in violation of the Constitution or laws . . . of the United States." 28 U.S.C. § 2241(c)(3). "[H]abeas is not available to claim that the [government] simply came to an unwise, yet lawful, conclusion when it did exercise its discretion." *Guetierrez-Chavez v. INS*, 298 F.3d 824, 828 (9th Cir. 2002). If the petitioner fails to show that his custody violates the Constitution or federal law, a motion to dismiss the petition is appropriate. *See* Order of 6/25/25 (ECF 4); *White v. Lewis*, 874 F.2d 599, 602-03 (9th Cir. 1989); *Schwarz v. Meinberg*, 478 F. App'x 394, 395 (9th Cir. 2012).

When ruling on a motion to dismiss, the Court may take judicial notice of "records and reports of administrative bodies." *Mack v. S. Bay Beer Distrib., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986); *Papai v. Harbor Tug and Barge Co.*, 67 F.3d 203, 207 n.5 (9th Cir. 1995). It may also take judicial notice of documents referred to in a petitioner's pleadings. *See, e.g., United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); *Sizemore v. Pac. Gas & Elec. Ret. Plan*, 939 F. Supp. 2d 987, 989 (N.D. Cal. 2013). And "the court need not accept as true allegations that contradict facts which may be judicially noticed." *Westlands Water Dist. v. U.S. Dep't of Interior*, 850 F. Supp. 1388, 1399 (E.D. Cal. 1994) (citing *Mullis v. U.S. Bankr. Ct.*, 828 F.2d 1385, 1388 (9th Cir. 1987)).

III. LAW AND ANALYSIS

Quiroz's petition asserts six "claims for relief": (1) exceeding authority under § 1231(a)(5); (2) violation of due process; (3) violation of VAWA's protected framework; (4) "systematic targeting" of protected classes; (5) violation of the Administrative Procedure Act; and (6) violation of *Villa-Anguiano* doctrine. These six claims, however, rely on three assertions:

(1) USCIS's prima facie determination on Quiroz's VAWA petition protects him from a reinstated removal order (Claims 1-6; Petition ¶¶ 53-55, 58, 64-67, 70-73, 76-79, 82);

(2) ICE did not provide him with 8 C.F.R. § 214.8(b) notice (Claims 1, 2; Petition ¶¶ 56, 59); and

(3) his conditions of confinement violate due process (Claim 2; Petition ¶¶ 60).

Each ground is meritless as a matter of law.

A. The USCIS's prima facie determination does not affect Quiroz's removal.

Quiroz has a final removal order. But he asserts that because USCIS made a prima facie determination for his classification under VAWA, "ICE lacked authority to reinstate" his prior deportation order and there was a "jurisdictional bar" against removing him. Petition ¶¶ 54-55. He also contends that Quiroz's detention lacks a rational basis given USCIS's prima facie determination. Petition ¶¶ 58, 66, 76, 82. These contentions are wrong and do not entitled Quiroz to relief.

Section 1231(a)(5) reinstatement explicitly renders an alien "ineligible" and precludes "apply[ing] for any relief under" the INA. 8 U.S.C. § 1231(a)(5). There are two exceptions, neither applying to Quiroz: the Nicaraguan Adjustment and Central American Relief Act and the Haitian Refugee Immigration Fairness Act. 8 C.F.R. § 241.8(d); *Padilla v. Ashcroft*, 334 F.3d 921, 925 (9th Cir. 2003). Given § 1231(a)(5)'s clear language, the Ninth Circuit has repeatedly barred aliens subject to reinstated removal orders from relief under numerous INA statutes.[5] While the Ninth Circuit does not appear to have specifically considered VAWA self-petitions, the Fifth Circuit has—and it held that § 1231(a)(5) "speaks in absolute terms" in barring "any relief." *Ruiz-Perez v. Garland*, 49 F.4th 972, 977-79 (5th Cir. 2022). The Court should apply the plain meaning of § 1231(a)(5) here.

Further, § 1252(g) strips this Court of jurisdiction to grant the relief Quiroz seeks. The Court may not "hear any cause or claim by . . . any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders," including those

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[5] *See, e.g.*, *Padilla*, 334 F.3d at 925 (LIFE Act); *Cuenca v. Barr*, 941 F.3d 1213, 1218 (9th Cir. 2019) (reopening under 8 U.S.C. § 1229a(c)(7)); *Morales-Izquierdo v. DHS*, 600 F.3d 1076, 1079-80 (9th Cir. 2010) (Form I-485 adjustment or Form I-212 waiver), *overruled in part on other grounds*, *Garfias-Rodriguez v. Holder*, 702 F.3d 504 (9th Cir. 2012); *Angulo-Morgan v. Holder*, 473 F. App'x 653, 654 (9th Cir. 2012) (adjustment of status under 8 U.S.C. § 1255(i)); *Romero v. Holder*, 471 F. App'x 762, 763 (9th Cir. 2012) (same); *Guzman v. Holder*, 406 F. App'x 120, 121 (9th Cir. 2012) (waiver applications); *Mena v. Mukasey*, 292 F. App'x 583, 583 (9th Cir. 2008) (adjustment of status); *Avelar-Olmos v. Mukasey*, 285 F. App'x 384, 384 (9th Cir. 2008) (adjustment of status)

asserted in habeas petitions. 8 U.S.C. § 1252(g). But by asking this Court to prohibit ICE from executing his removal order while he pursues his VAWA self-petition, Quiroz necessarily challenges his reinstatement order. "Until the Reinstatement Order is vacated, [Quiroz] is not eligible for 'any relief,' including adjustment of status." *Morales-Izquierdo*, 600 F.3d at 1082-83. The Court therefore lacks jurisdiction over Quiroz's request to stay removal pending adjudication of his VAWA petition.[6]

Quiroz argues that the Court should halt his removal order and release him because USCIS has "superior expertise." *See* Petition ¶¶ 55, 76. He also argues that removing him would waste resources and serve no law enforcement interest in light of USCIS's prima facie determination, and he faults ICE for failing to exercise "prosecutorial discretion" in his favor. Petition ¶¶ 72, 76, 79. But Quiroz's policy-based arguments do not overcome the plain text of § 1231(a)(5) or § 1252(g). Nor is habeas corpus a proper vehicle "to claim that the [government] simply came to an unwise, yet lawful, conclusion when it did exercise its discretion." *Guetierrez-Chavez*, 298 F.3d at 828.

Moreover, Quiroz vastly overstates the significance of USCIS's prima facie determination. USCIS only considered whether Quiroz made a prima facie showing that he had the requisite relationship with his abusive citizen child, that he was battered or subject to extreme cruelty by that child, and that he was of good moral character.[7] *See* Section II.B.4. A prima facie determination does not entitle Quiroz to adjustment of status, nor does it mean his petition will ultimately be approved. And

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[6] *See E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021) (§ 1252(g) precluded jurisdiction over claim that reinstated removal order should be stayed until adjudication of petitioner's adjustment of status application based on an approved VAWA petition); *Suarez-Reyes v. Williams*, No. CV-20-1222, 2020 WL 3414781, at *2 (D. Ariz. June 22, 2020) (habeas petitioner's attacks on decision to remove him before adjudicating his VAWA petition "arise from [ICE]'s decision or action to execute his removal order [and] are barred by 8 U.S.C. § 1252(g)"); *compare Velarde-Flores v. Whitaker*, 750 F. App'x 606, 607 (9th Cir. 2019) (§ 1252(g) barred challenge to ICE executing removal orders against aliens who filed for a U-visa, as that decision was "entirely within the Attorney General's discretion"); *Garcia-Herrera v. Asher*, 585 F. App'x 439 (9th Cir. 2014) (§ 1252(g) barred challenge to ICE's decision not to delay removal pending adjudication of a DACA petition); *Palacios-Bernal v. Barr*, No. 5:19-cv-1963, 2019 WL 5394019, at *4 (C.D. Cal. Oct. 22, 2019) (§ 1252(g) precluded habeas request to postpone removal pending U-visa application adjudication).

[7] Lack of good moral character is established if the alien is a habitual drunkard, was convicted of an aggravated felony or drug or other crimes, engaged in human smuggling, is a practicing polygamist, primarily derives income from gambling, has been convicted of two or more gambling offenses, provided false testimony to gain an immigration benefit, has served a criminal sentence of at least 180 days, or participated in torture or genocide. 8 U.S.C. § 1101(f).

even if USCIS approved Quiroz's petition (which itself is speculative), the Attorney General has absolute discretion to allow adjustment, which this Court would lack jurisdiction to review. *See* Section I.B.4; 8 U.S.C. §§ 1252(a)(2)(B), 1255(a); *Patel v. Garland*, 596 U.S. 328, 347 (2022); *Gonzalez v. Bondi*, No. 24-2777, 2025 WL 1431267, at *1 (9th Cir. May 19, 2025); *Mutie-Timothy v. Lynch*, 811 F.3d 1044, 1048-49 (8th Cir. 2016); *Henton v. U.S. Att'y Gen.*, 52 F. App'x 801, 805 (11th Cir. 2013); *Sadik v. Holder*, 525 F. App'x 723, 724-25 (10th Cir. 2013).[8]

The discretionary nature of § 1255 adjustment of status also renders meritless Quiroz's Administrative Procedure Act claim. *See* Petition ¶¶74-79 (Claim 5). The APA does not apply where "statutes preclude judicial review" or "agency action is committed to agency discretion by law." 5 U.S.C. § 701(a). Both are true here—Section 1252(g) precludes judicial review, and adjustment of status is committed to Attorney General discretion by law. Quiroz thus cannot state an APA claim. *See E.F.L.*, 986 F.3d at 965 (APA did not apply to claim that reinstated removal order should be stayed until petitioner's VAWA petition was adjudicated); *Poghosyan v. DHS*, No. 2:25-cv-3091, 2025 WL 1287771, at *4 (C.D. Cal. May 1, 2025) (§ 1252(g) barred APA challenge to decision to execute removal order pending adjudication of adjustment of status application).

Nor is USCIS's prima facie determination a "material change in circumstances" that merits reconsideration of his reinstated removal order under *Villa-Anguiano v. Holder*, 727 F.3d 873 (9th Cir. 2013. *See* Petition ¶¶ 81-82 (Claim 6). *Villa-Anguiano* involved an intervening determination that the underlying removal order was invalid and thus could not be reinstated. 727 F.3d at 876-77. No such infirmity exists here, as there is no dispute that Quiroz's 2011 removal order was valid. *Iraheta-Martinez v. Garland*, 12 F.4th 942, 954 (9th Cir. 2021) (holding that *Villa-Anguiano* did not apply where petitioner "does not dispute the predicates rendering him lawfully subject to reinstatement"). Even assuming that ICE had discretion to reinstate Quiroz's removal order, discretion alone "does not mean that every noncitizen with a prior removal order has a due process right to make his case to DHS for why its discretion should be exercised in his favor." *Id.* at 954-55.

[8] Of note, *Mutie-Timothy* rejected a VAWA petitioner's argument that an IJ was required to defer to USCIS's factual findings in an *approved* petition because of USCIS's alleged "specialized knowledge and expertise." 811 F.3d at 1048. Here, Quiroz does not even have an approved VAWA petition.

In short, Quiroz's pending VAWA self-petition provides no basis for relief from his reinstated removal order. Sections 1231(a)(5) and 1252(g) preclude relief based on it, the petition has yet to be adjudicated, and relief is entirely discretionary—and speculative—in any event.

B. Quiroz received notice of reinstatement and had an opportunity to be heard.

Quiroz asserts that ICE violated his due process by failing to provide him notice of the reinstatement and an opportunity to contest it as required by 8 C.F.R. § 241.8(b). Petition ¶¶ 29, 56, 59. "It is difficult to deal with a proposition of this kind except by saying that it is not true." *Hunter v. City of Pittsburgh*, 207 U.S. 161, 177 (1907). Quiroz explicitly pleads that he was "served with a Notice of Intent to Reinstate the Prior Removal Order" when he was apprehended. Petition ¶ 31. Both parties have provided that Notice to the Court. ECF 2-2 Ex. B (p.11); Meneses Decl. Ex. 7. Per § 241.8(b), the Notice provided the basis for reinstating Quiroz's removal order and informed him that he could make a statement contesting the determination. Quiroz declined to sign the acknowledgment and offered no statement in his defense. *Id.* "Because aliens do not have a constitutional right to enter or remain in the United States, the only protections afforded are the minimal procedural due process rights for an opportunity to be heard at a meaningful time and in a meaningful manner." *Arambula-Medina v. Holder*, 572 F.3d 824, 828 (10th Cir. 2009). Quiroz received that with the Notice.

But even were Quiroz to demonstrate some defect under § 241.8(b), he cannot show the prejudice required to establish a due process claim. *Padilla*, 334 F.3d at 924-25 ("As a predicate to obtaining relief for a violation of procedural due process rights in immigration proceedings, an alien must show that the violation prejudiced him."). Quiroz does not contest any of the necessary findings to reinstate his removal order, i.e., that he was correctly identified, was previously removed, and illegally reentered the United States. He therefore cannot establish a due process violation. *Id.* at 925 (rejecting due process challenge to reinstatement order because alien did not "challenge any of the three 'relevant determinations' underlying [it]"); *Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 495-97 (9th Cir. 2007) (en banc) (same); *Manuel-Miguel v. Holder*, 397 F. App'x 306, 308 (9th Cir. 2010) (same); *see also Garcia-Moreno v. Sessions*, 718 F. App'x 531, 534-35 (9th Cir. 2018) (petitioner not entitled to relief from reinstatement order because he did not challenge the three relevant determinations underlying it).

C. Quiroz cannot challenge his conditions of detention in a habeas proceeding.

Quiroz asserts that his conditions of detention violate the Fifth Amendment, and he demands release. *See* Petition ¶¶ 37-45, 60. But the conditions of detention that Quiroz deems unsatisfactory do not countermand § 1231(a)(2)'s mandatory detention for him, nor invalidate the "immigration purpose" that is served by that detention. *Demore v. Kim*, 538 U.S. 510, 527 (2003) (stating that mandatory detention is constitutional so long as it "serve[s] its purported immigration purpose"); *Johnson*, 594 U.S. at 544 ("Congress had obvious treasons to treat" two "groups of aliens who posed different risks of flight"—those detained under § 1226 and those detained under § 1231—differently because "aliens who have already been ordered removed are generally inadmissible" and can seek only withholding relief). Further, release is not a proper remedy, as "[t]he appropriate remedy for such constitutional violations, if proven, would be a judicially mandated change in conditions and/or an award of damages, but not release from confinement." *Crawford v. Bell*, 599 F.2d 890, 892 (9th Cir. 1979).

More fundamentally, a habeas petition is not the proper mechanism for challenging conditions of detention. *Pinson v. Carvajal*, 69 F.4th 1059, 1065, 1073-75 (9th Cir. 2023); *Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991). Conditions of detention/confinement challenges, rather, are properly brought in a civil rights action. *Pinson*, 69 F.4th at 1075-76; *Badea*, 931 F.2d at 574; *Brown v. Blanckensee*, 857 F. App'x 289, 290 (9th Cir. 2021); *Alcala v. Rios*, 434 F. App'x 668, 669-70 (9th Cir. 2011). Quiroz cannot obtain habeas corpus relief based on his alleged conditions of confinement.

IV. CONCLUSION

For the foregoing reasons, Quiroz's Petition for Writ of Habeas Corpus should be dismissed.

Dated: August 22, 2025

ERIC GRANT
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