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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

L-J-P-L,

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

Petitioner,

**RESPONDENTS' SUPPLEMENTAL
BRIEFING**

v.

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

Respondents.

Respondents, through counsel, submit this brief in response to the Court's request for supplemental briefing. The Court requested additional briefing "on whether Petitioner was immediately returned to the United States because Respondents could not remove him from the United States to any country or because they could not remove him to Guatemala only. *See Johnson v. Guzman Chavez*, 594 U.S. 523 (2021)." ECF 59.¹

ARGUMENT

Respondents immediately returned Petitioner to the United States because his removal order to Guatemala cannot be effectuated until his section 1229a proceedings have been dismissed. On March 4, 2009, Petitioner was ordered removed to Guatemala. Bell Decl. ¶ 9, ECF 16. Petitioner has only been ordered removed to Guatemala, and his two subsequent reinstatement orders—first in 2014, and now in 2025—are reinstatements of the 2009 order of removal to Guatemala. At this time, Guatemala has been designated as the only country of removal. Burns Decl. ¶ 4.

Petitioner's removal order to Guatemala cannot be effectuated at this time because the Immigration Judge ("IJ") has not yet dismissed Petitioner's 1229a proceedings. *Id.* ¶ 3. As a threshold matter, Petitioner has been deemed removable because he is subject to a reinstated removal order. *See Lin v. Gonzales*, 473 F.3d 979, 983 (9th Cir. 2007) (explaining that a noncitizen is removable under a prior

¹ The Court also ordered Respondents to "provide an accompanying declaration of an individual with personal knowledge of why Petitioner was immediately returned to the United States." *Id.* Respondents submit the declaration of SDDO Jamie Burns ("Burns Decl.").

removal order when the requirements in 8 C.F.R. § 241.8(a) and (b) have been satisfied); *Guerra v. Shanahan*, 831 F.3d 59, 62 (2d Cir. 2016) (“An alien subject to a reinstated removal order is clearly removable . . .”), *abrogated on other grounds by Johnson v. Guzman Chavez*, 594 U.S. 523 (2021); *see also* 8 U.S.C. § 1229a(e)(2) (defining removable as inadmissible under section 1182 of Title 8 or deportable under section 1227 of Title 8).

Because Petitioner is removable due to his reinstated removal order, the only relief from removal he can obtain is a grant of 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) (recognizing that a noncitizen subject to reinstatement of removal is eligible for withholding of removal and protection under the CAT); *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). Being granted either form of relief would not change the fact that Petitioner is removable. *See Nasrallah v. Barr*, 590 U.S. 573, 583 (2020) (“But a CAT order is distinct from a final order of removal and does not affect the validity of the final order of removal.”); *Guzman Chavez*, 594 U.S. at 539–40 (“Because the validity of removal orders is not affected by the grant of withholding-only relief, an alien’s initiation of withholding-only proceedings does not render non-final an otherwise ‘administratively final’ reinstated order of removal.”). A grant of either form of relief means DHS simply refrains from effectuating the removal order to the country of

removal. *Guzman Chavez*, 594 U.S. at 537; *INS v. Aguirre-Aguirre*, 526 U.S. 415, 419 (1999).

Even though Petitioner is subject to a reinstated removal order and has withdrawn his request for a reasonable fear interview, ICE cannot effectuate Petitioner's removal order to Guatemala because Petitioner's 1229a proceedings remain ongoing. Under 8 C.F.R. § 1003.6(a), "the decision in any proceeding under this chapter from which an appeal to the Board may be taken shall not be executed during the time allowed for the filing of an appeal unless a waiver of the right to appeal is filed, nor shall such decision be executed while an appeal is pending or while a case is before the Board by way of certification." Though Petitioner's reinstated removal order is administratively final, *Padilla-Ramirez v. Bible*, 882 F.3d 826, 834 (9th Cir. 2017), the dismissal of his section 1229a proceedings is not yet final. The ongoing 1229a proceedings effectively create a stay of physically removing someone from the United States. *See* 8 C.F.R. § 1003.6(a). Accordingly, ICE cannot effectuate Petitioner's removal order to Guatemala until Petitioner waives his appeal rights, the 30-day appeal period lapses, or, if the IJ dismisses the 1229a proceedings, the BIA affirms the dismissal. *See* 8 C.F.R. §§ 1003.6(a), 1003.39.

However, Respondents returning Petitioner to the NWIPC because of his ongoing 1229a proceedings does not invalidate that he is subject to a reinstated removal order and therefore mandatory detention. Similarly, that Petitioner's 1229a proceedings remain ongoing have no bearing on Petitioner's removability. Petitioner's 1229a proceedings are an impediment to physically removing him to

Guatemala, not reinstating his removal order, which has already properly been done. Because Petitioner is undoubtedly subject to a reinstated removal order, his detention is lawful under 8 U.S.C. § 1231(a)(2)(A). Therefore, the Court should dismiss Petitioner's motion for reconsideration of the order denying the habeas petition.

Respectfully submitted this 17th day of October 2025.

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