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Attorneys for Petitioner

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
Portland Division

L-J-P-L-, an adult,

Petitioner,

v.

CAMMILLA WAMSLEY, Seattle Field
Office Director, Immigration and Customs
Enforcement and Removal Operations
("ICE/ERO"); TODD LYONS, Acting
Director of Immigration Customs
Enforcement ("ICE"); U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT; KRISTI
NOEM, Secretary of the Department of
Homeland Security ("DHS"); U.S.
DEPARTMENT OF HOMELAND
SECURITY; and PAMELA BONDI, Attorney
General of the United States,

Respondents.

Case No. 25-cv-01390-IM
Agency No. AXXX-XXX-629

**PETITIONER'S RESPONSE TO
RESPONDENTS' SUPPLEMENTAL
BRIEFING**

Respondents' Supplemental Briefing confirms that Petitioner is not subject to lawful custody under 8 U.S.C. § 1231. Respondents concede that Petitioner cannot be removed from the United States "because Petitioner's 1229a proceedings remain ongoing." ECF 60 at 4. Petitioner is undeniably not in his "removal period" – indeed, he may never be, if the immigration judge declines to dismiss his case and grants relief. Respondents have no authority to detain Petitioner pursuant to 8 U.S.C. § 1231(a)(2). Unless and until Petitioner's proceedings under § 1229a are dismissed, Respondents' only authority to detain him is through an individualized revocation under 8 U.S.C. § 1226(b) of his prior release – an authority that they do not and have never claimed to exercise.

Respondents have now detained Petitioner for more than 72 days based on a custody authority that cannot apply. In that time, they have transferred him to detention centers across the country, flown him to El Salvador and Guatemala and back again, deprived him of access to counsel, and even offered him \$1000 to accept his deportation. The Court should find that Petitioner's detention is in violation of his statutory and due process rights and grant the writ of habeas corpus, order his immediate release, and restore Petitioner to the same conditions Respondents had imposed upon him prior to his unlawful detention on August 7, 2025.

I. Respondents have no authority to detain Petitioner under 8 U.S.C. §1231 because Petitioner is not removable unless and until his § 1229a proceedings are definitively dismissed.

The paradox of Petitioner's circumstances demonstrate that concurrent removal procedures are not cognizable under the Immigration and Nationality Act ("INA"). Petitioner cannot be simultaneously in the removal period and not in the removal period; likewise, Petitioner cannot be simultaneously removable and not removable. Respondents labor mightily to avoid saying so, but they unmistakably concede this point.

Petitioner could not have been removed to any country on August 7, 2025, when Respondents purported to reinstate his removal order because his §1229a proceedings were then pending. Petitioner could not be removed to any country on September 25, 2025, when

Respondents flew him to Guatemala *and* El Salvador because his § 1229a proceedings were then pending. Petitioner cannot be removed now to any country because his § 1229a proceedings are still pending.

Respondents assert that 8 U.S.C. § 1231(a) required Petitioner’s detention on August 7, 2025—while his § 1229a proceedings that Respondents initiated were still pending—because on that date they purported to reinstate his removal order. But that is wrong. The only detention authority that Respondents could have invoked then *and* now is § 1226. There is no dispute that this detention authority governed Petitioner’s release from February 15, 2024, to August 7, 2025. “Section 1226(a)’s detention authority applies ‘pending a decision on whether the alien is to be removed from the United States.’ 8 U.S.C. § 1226(a). By contrast, section 1231(a) applies during an alien’s ‘removal period[.]’” *Padilla-Ramirez v. Bible*, 882 F.3d 826, 830 (9th Cir. 2017). The question of whether Petitioner is currently removable was not answered when Respondents sought to reinstate his prior removal order; instead, because Respondents chose to initiate § 1229a proceedings against Petitioner in February 2024, the question of Petitioner’s removability remains squarely before the Immigration Judge. *See Morales de Soto v. Lynch*, 824 F.3d 822, 825 (9th Cir. 2016) (“As an alternative to reinstatement, ICE has the prosecutorial discretion to initiate a new removal proceeding before an immigration judge.”); *Matter of W-C-B-*, 24 I&N Dec. 118, 122–23 (BIA 2007) (“[O]nce jurisdiction vests with the Immigration Judge, the Notice to Appear cannot be cancelled.”).¹

¹ As L-J-P-L- recently explained at his October 9, 2025 hearing, notwithstanding Respondents’ prior decision to place Petitioner in § 1229a proceedings, they have an available pathway to now pursue reinstatement of his prior removal order under 8 U.S.C. § 1231(a)(5). *See Matter of W-C-B-*, 24 I&N at 122–23 (explaining that “if there is a valid reason specified in the regulations for cancelling the Notice to Appear, the DHS may move for dismissal of the matter, i.e., request termination of the removal proceedings”); 8 C.F.R. § 239.2(c) (allowing ICE to move for dismissal of § 1229a proceedings on the grounds enumerated in 8 C.F.R. § 239.2(a)). Respondents cannot short circuit the procedure to which Petitioner is duly entitled. *See* U.S. Const. amend V. (“No person shall...be deprived of life, liberty, or property without due process of law”).

Respondents further concede that even “*if* the IJ dismisses the 1229a proceedings”, Petitioner is not removable unless and until “Petitioner waives his appeal rights, the 30-day appeal period lapses, or . . . the BIA affirms the dismissal.” ECF 60 at 4 (emphasis added). According to Respondents, BIA appeal proceedings “could take over a year[,]” as “appealed immigration cases last 382 days on average[.]” *J-C-R-M- v Wamsley*, 3:25-cv-0090-SI, ECF 16 at 6 (D. Or. 2025). Respondents’ paradoxical (and impossible) statutory interpretation of competing, simultaneous custody authority is impermissible. *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001) (to avoid constitutional question, “we conclude that, once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.”).

II. Petitioner may be granted asylum in his § 1229a proceedings.

Respondents are not correct that Petitioner’s only available relief from removal is withholding of removal or relief under the Convention Against Torture. Although not germane to the question of Respondents’ detention authority, Petitioner explains the Respondents’ additional interpretative error because it underscores Respondents’ lack of understanding of the INA’s entire statutory scheme.

Petitioner’s prior removal order is not relevant to his eligibility for asylum. *Iraheta-Martinez v. Garland*, 12 F.4th 942, 953-54 (9th Cir. 2021) (citing *Perez-Guzman v. Lynch*, 835 F.3d 1066, 1081 (9th Cir. 2016)). “DHS has the discretion to overlook a noncitizen’s prior removal order rather than reinstate it, which results in the noncitizen entering ordinary removal proceedings, where he can apply for asylum, rather than withholding-only proceedings, where he cannot.” *Id.*; see also *Maldonado Lopez v. Holder*, No. 12-72800 (9th Cir. dismissed Feb. 4, 2014) (approving settlement in which government agreed to exercise prosecutorial discretion to withdraw reinstatement decision, thus allowing noncitizen to apply for asylum notwithstanding prior order). Indeed, as was likely the case for L-J-P-L- when the Respondents initiated his § 1229a proceedings, “the government has discretion to forgo reinstatement and instead place an individual

in ordinary removal proceedings.” *Perez-Guzman*, 835 F.3d at 1081; *Villa–Anguiano v. Holder*, 727 F.3d 873, 878 (9th Cir. 2013) (same).²

III. Respondents’ detention of Petitioner without an individualized custody revocation under 8 U.S.C. § 1226(b) violates his statutory and due process rights.

The *only* detention authority that Respondents could have invoked on August 7, 2025, was 8 U.S.C. § 1226 – the same authority that Respondents used to release Petitioner on conditions on February 15, 2024. But Respondents do not and have never argued that Petitioner is detained under their § 1226 custody authority – nor could they, as no lawful custody revocation has been made under 8 U.S.C. § 1226(b).

During the October 9 hearing, Respondents wrongly suggested that no individualized determination is required to detain Petitioner under 8 U.S.C. § 1226. Not so. Once Respondents exercise their discretion to release a noncitizen pursuant to 8 U.S.C. § 1226(a), as they did for Petitioner in February 2024, a revocation of that decision under 8 U.S.C. § 1226(b) may be made only when warranted by a change in an individual’s specific facts and circumstances. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9) (authorizing revocation of an individual’s release only by particular enumerated officials). In order to make such a revocation decision, the lawful exercise of discretion for civil detention requires that DHS determine on an individualized basis that Petitioner is a flight risk or a danger to the community. *See* 8 U.S.C. § 1226(a); *Zadvydas*, 533 U.S. at 690; *Saravia v. Sessions*, 280 F. Supp. 3d 1168 (N.D. Cal. 2017), *affirmed by* 905 F.3d 1137 (9th Cir. 2018) (holding that DHS cannot revoke prior release from custody absent finding of danger or flight risk); *see also Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006) (establishing individualized factors that must be considered in immigration custody decisions); *Matter of Sugay*, 17 I&N Dec. 637

² “If the Attorney General elects to place an individual who previously applied for and was denied asylum into ordinary removal proceedings upon his reentry to the United States, § 1158(a)(2)(D) is not superfluous. On the contrary, it affirmatively authorizes a second asylum claim in light of his changed circumstances—something that would ordinarily be precluded by § 1158(a)(2)(C).” *Perez-Guzman*, 835 F.3d at 1082.

(BIA 1981) (holding that in immigration bond context, “no change should be made . . . absent a change of circumstances”).³

While Respondents thus have discretion to revoke Petitioner’s prior release under 8 U.S.C. § 1226, this discretion is not “unlimited” and must comport with law, including constitutional due process. *See Zadvydas*, 533 U.S. at 698; *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (“[T]he government’s discretion to incarcerate non-citizens is always constrained by the requirements of due process.”); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (holding that due process applies to revocation of parole). Because Respondents have indisputably made no individualized custody revocation decision under 8 U.S.C. § 1226(b), Petitioner’s ongoing custody is unlawful. *See Jimenez v. Bostock*, No. 3:25-CV-00570-MTK, 2025 WL 2430381, at *5 (D. Or. Aug. 22, 2025) (granting writ of habeas corpus where “Respondents made no individualized determination as to Petitioner’s flight risk and danger to the community” to justify revocation of his prior release under 8 U.S.C. § 1226(a))

For the reasons set forth above, Petitioner respectfully requests that the Court order Respondents to order his release from unlawful executive detention.

Dated: October 20, 2025.

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³ Multiple courts have rejected immigration deterrence as an individualized reason for denying release. *See, e.g., Diaz v. Schiltgen*, 946 F. Supp. 762, 766 ((N.D. Cal. 1996); *Aracely R. v. Nielsen*, 319 F. Supp. 3d 110, 149 (D.D.C. 2018).