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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

S-M-J, an adult,

Case No. 6:25-cv-01425-MTK

Petitioner,

v.

**RESPONDENTS' RETURN AND
RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

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

Respondents.

Note About Consolidation

Petitioners today filed unopposed motions to consolidate their actions, Nos. 6:25-cv-1425 and 6:25-cv-1426. The Court has not yet acted on the motions. Respondents are filing identical briefs and declarations in each action.

Issues

1. Under the Immigration and Nationality Act, ICE may revoke an alien's bond "at any time," and the revocation is excluded from judicial review. Petitioner S-M-J challenges ICE's decision to revoke his bond. Because that decision is not subject to judicial review, this Court lacks jurisdiction over S-M-J's habeas petition.

2. Under the INA, ICE may reinstate an alien's final order of removal when the alien, after being removed, is found again in the United States, in violation of the order; the reinstatement and execution of that order are excluded from judicial review. Since 2007, petitioner J-M-L has been subject to a final order of removal. In 2019, he was found in the United States in violation of that order. Because ICE's reinstatement and execution of the removal order are not subject to judicial review, this Court lacks jurisdiction over J-M-L's habeas petition.

Statement of the Case and Facts

I. The INA confers wide discretion on the Executive Branch to operate the immigration system.

"Control over immigration is a sovereign prerogative." *El Rescate Legal Servs., Inc. v. Exec. Office of Immigration Review*, 959 F.2d 742, 750 (9th Cir. 1992). The INA, the primary immigration statute, provides the Executive Branch with a comprehensive scheme to administer the immigration system. *See generally*

8 U.S.C. Ch. 12. Among those powers: The President, through the Department of State and the Department of Homeland Security, decides which aliens may enter and remain in the country. *See generally* INA §§ 103, 104, 8 U.S.C. §§ 1103, 1104.

This case involves two aspects of the immigration system: the decision to revoke alien's release from detention while his removal proceedings are ongoing, and the reinstatement of a final order of removal when an alien reenters the country.

A. ICE may grant and revoke release from detention while an alien's removal proceedings are ongoing.

Under the INA, if a person is present in the United States without inspection, a DHS immigration officer may charge the person as inadmissible. *See* INA § 240(a)(2), 8 U.S.C. § 1229a(a)(2) (indicating that an alien placed in removal proceedings may be charged with any applicable removability ground). The immigration officer notifies the alien of the charges and statutory provisions violated by issuing the alien a document called a notice to appear.

Removal proceedings begin when the immigration officer files the notice to appear with an immigration court, which is part of the Executive Office of Immigration Review at the U.S. Department of Justice. 8 C.F.R. §§ 239.1 (listing which DHS authorities may issue a notice to appear), 1003.14 (establishing that proceedings commence when a notice to appear is filed in immigration court). The notice to appear indicates when and where the proceedings will be held. INA § 239(a)(1)(G), 8 U.S.C. § 1229(a)(1)(G). An immigration judge ("IJ") conducts the proceedings for deciding the inadmissibility or removability of an alien.

INA § 240(a)(1), 8 U.S.C. § 1229a(a)(1). If the IJ sustains a charge of removability or inadmissibility in the notice to appear, the alien may file an application for relief. The grant of an application for relief would result in the ability to lawfully remain in the United States. One such application for relief is a Form I-589, Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture.

A removal proceeding is distinct from a bond proceeding. 8 C.F.R. § 1003.19(d). The INA “authorizes the Attorney General to arrest and detain an alien ‘pending a decision on whether the alien is to be removed from the United States.’” *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (quoting INA § 236(a), 8 U.S.C. § 1226(a)). The courts have recognized that “there is little question that the civil detention of [aliens] during removal proceedings can serve a legitimate government purpose, which is ‘preventing deportable ... [aliens] from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the [aliens] will be successfully removed.’” *Prieto-Romero v. Clark*, 534 F.3d 1053, 1065 (9th Cir. 2008) (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)).

The INA confers various authorities on ICE to detain an alien and to revoke an alien’s release. Two sources of authority are relevant here: **INA § 236(a)** and **INA § 235(b)(2)**.

The first source is INA § 236(a), 8 U.S.C. § 1226(a). Under that section, “an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” Under regulations implementing the INA, every

alien apprehended under INA § 236(a) is individually considered for release on parole or on bond. *See* 8 C.F.R. § 236.1(c)(8). “Federal regulations provide that aliens detained under § 1226(a) [§ 236(a)] receive bond hearings at the outset of detention.” *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. § 236.1(d)(1)). An ICE officer initially assesses whether the alien has “demonstrate[d]” that “release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). If the ICE officer denies bond, the alien may ask an IJ for a redetermination of the detention decision. 8 C.F.R. § 236.1(d)(1). Thus, the initial bond hearing for an alien detained under INA § 236(a) is also called a “redetermination hearing.” At this hearing, the alien bears the burden of establishing “that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.” *Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006); *Matter of Adeniji*, 22 I. & N. Dec. 1102 (BIA 1999). An alien may appeal an IJ’s custody redetermination to the Board of Immigration Appeals. 8 C.F.R. §§ 236.1(d)(3)(i); *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011).

INA § 236(e), 8 U.S.C. § 1226(e), expressly precludes judicial review of this process:

The Attorney General’s discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.

The Ninth Circuit has held that, despite this language, an alien may seek judicial review, in habeas, of constitutional and legal issues—but the alien first must seek review before an IJ and the BIA. *Leonardo*, 646 F.3d at 1160–61.

The second source of authority is INA § 235(b)(2), 8 U.S.C. § 1225(b)(2), which provides that, “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a [removal] proceeding under section 1229a of this title.”

B. ICE may reinstate and execute a prior order of removal without judicial review.

After an order of removal becomes final, “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.” INA § 242(g), 8 U.S.C. § 1252(g). That includes “section 2241 of Title 28, or any other habeas corpus provision” *Id.*

If an alien reenters the United States illegally after having been subject to a final order of removal, that order is reinstated, and no relief is available:

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.

INA § 241(a)(5), 8 U.S.C. § 1231(a)(5).

II. ICE detained S-M-J and J-M-L at a recent check-in after concluding that S-M-J's previous status as a minor child no longer warranted release.

J-M-L, 57, is a citizen and national of Guatemala. J-M-L Pet. ¶ 1, Declaration of Jason Weiss as to J-M-L ¶ 4. He has entered the United States without inspection multiple times. Weiss J-M-L Decl. ¶¶ 4–9.

For the earliest entry, in June 2003, J-M-L falsely claimed to be a citizen of Mexico, presumably because Mexican citizens are eligible for a voluntary return, which does not trigger a final order of removal, while Guatemalan citizens are not eligible. *See id.* ¶ 5. J-M-L entered again in June 2007, which triggered a final order of removal. *See id.* ¶ 6. J-M-L entered twice more, in 2017; in both instances, he was removed under a reinstatement of his prior removal order, under INA § 241(a)(5), 8 U.S.C. § 1231(a)(5). *See* Weiss J-M-L Decl. ¶¶ 7–8.

For his most recent entry, J-M-L entered with his son, S-M-J, on March 10, 2019. *Id.* ¶ 9. S-M-J was a minor at the time. Declaration of Jason Weiss as to S-M-J ¶ 4. Because this was S-M-J's first entry without inspection, he was not subject to reinstatement, so ICE issued him a notice to appear for ordinary removal proceedings. *Id.*

The situation for J-M-L's reinstatement was different this time because, as of March 2019, DHS policy precluded the agency from separating a minor child and an adult parent, and ICE lacked bed space to detain J-M-L and S-M-J in a family unit. *Id.* ¶ 5.

ICE released J-M-L and S-M-J with periodic check-in requirements. Weiss J-M-L Decl. ¶ 10, Weiss S-M-J Decl. ¶ 5. J-M-L was released under INA § 241(a)(3),

8 U.S.C. § 1231(a)(3), which requires that aliens subject to removal orders be released on supervision if they are not removed within 90 days; and S-M-J was released under INA § 236(a), 8 U.S.C. § 1226(a), the provision allowing the Attorney General to release applicants for admission while their removal proceedings are ongoing. *See supra* and Weiss S-M-J Decl. ¶ 5.

At the most recent check-in, on August 12, 2025, ICE Deportation Officers determined that circumstances have changed because S-M-J, now 19, is no longer a minor. Weiss S-M-J Decl. ¶ 6, Weiss J-M-L Decl. ¶ 12. J-M-L remains subject to a reinstated final order of removal, and bed space is available. *Id.*

ICE has detained J-M-L under its authority to detain aliens subject to final orders of removal. *See* 8 C.F.R. § 241.4, Weiss J-M-L Decl. ¶¶ 13–14. ICE has taken two steps with respect to S-M-J's detention: First, ICE revoked his release under INA § 236(a), 15 U.S.C. § 1226(a). Second, ICE determined that his detention is required under INA § 235(b)(2), 8 U.S.C. § 1225(b)(2), which provides that, “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a [removal] proceeding under section 1229a of this title.” Weiss S-M-J Decl. ¶ 6.

J-M-L and S-M-J have filed petitions for a writ of habeas corpus challenging their detentions.

Argument

I. This Court lacks habeas jurisdiction to review ICE's revocation decisions.

In 2019, ICE granted J-M-L and S-M-J release because policy precluded ICE from separating a minor child and adult parent, and ICE lacked bed space in a family detention unit. In 2025, ICE revoked both petitioners' releases, now that SMJ is an adult.

This Court lacks jurisdiction to review both petitioners' revocations.

S-M-J's statutory ground of release, INA § 236(a), 8 U.S.C. § 1226(a), provides that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." Under the implementing regulations, ICE considers every alien apprehended under INA § 236(a) for release on parole or on bond. *See* 8 C.F.R. § 236.1(c)(8). But ICE may revoke that release "at any time," and the "discretionary judgment regarding the application of this section shall not be subject to review." INA § 236(e), 8 U.S.C. § 1226(e). Although S-M-J might seek review, in habeas, of a constitutional or legal question, he has not first taken his challenge to an IJ and the BIA, as the Ninth Circuit requires him to do. *Leonardo*, 646 F.3d at 1160–61. That is the end of inquiry with respect to S-M-J.

The inquiry into J-M-L's revocation of release also ends with the plain text of the statute. J-M-L is subject to a final order of removal. The statute places the execution of that order exclusively within the Executive Branch's purview: "[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.” INA § 242(g), 8 U.S.C. § 1252(g). That includes “section 2241 of Title 28, or any other habeas corpus provision” *Id.*

Congress and the Supreme Court have addressed this statutory provision, and they have left no room for debate that it means what it says. 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 INA, Congress provided in the newly enacted INA § 242(g), 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 INA § 242(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, INA § 242(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 *Bonhometre 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 review J-M-L’s revocation of release. In *AADC*, the Supreme Court held that INA § 242(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). S-M-J may not challenge the execution of his removal order.

II. Even if the Court exercises jurisdiction, ICE’s revocations comport with due process and the Administrative Procedure Act.

The sole ground that J-M-L and S-M-J present as violating due process and the APA appears to be that ICE allegedly did not make individualized determinations that revocation was appropriate before detaining them. *See* J-M-L Pet. ¶¶ 29, 48, 53, Prayer for Relief ¶¶ 3–4; S-M-J Pet. ¶ 54, Prayer for Relief ¶¶ 3–4. That ground is mistaken as to both petitioners.

The implementing regulation on which ICE revoked J-M-L’s release, 8 C.F.R. § 241.4(l)(2), requires an individualized determination in the sense that ICE may revoke release if, among other options, the “purposes of release have been served.” As the Deportation Officer handling the petitioners’ cases on August 12 explains, ICE “determined that circumstances had changed as [J-M-L’s] child is now an adult and therefore the requirement to keep the father and child together no longer exists. There is now available bed space and Petitioner is subject to a final order of

removal.” Weiss J-M-L Decl. ¶¶ 12, 14. ICE made an individualized finding that the purposes of release have been served.

The implementing regulation on which ICE revoked S-M-J’s release, 8 C.F.R. § 236.1, does not require an individualized determination. *See* Weiss S-M-J Decl.

¶ 6. It provides that “release may be revoked at any time in the discretion of” authorized officers. 8 C.F.R. § 236.1(c)(9). It does not require that ICE find that “the purposes of release have been served,” as 8 C.F.R. § 241.4(d)(2) does, although ICE made the same finding as to S-M-J about his status as an adult and available bed space. Weiss S-M-J Decl. ¶ 6.

As to both petitioners, ICE correctly applied the law. ICE’s actions comport with due process and the APA.

III. Any remaining unresolved issues do not affect the jurisdictional challenge or the propriety of ICE’s revocations.

The Deportation Officer’s declarations and the habeas petitions refer to three potentially unresolved issues, at least as of the filing of this brief, but they do not affect the disposition of the habeas petitions.

First, now that ICE has revoked S-M-J’s release under INA § 236(a), 8 U.S.C. § 1226(a), ICE has determined that a different statutory provision, INA § 235(b)(2), 8 U.S.C. § 1225(b)(2), requires S-M-J’s detention going forward. Weiss Decl. ¶ 6. That section provides that, “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a [removal] proceeding under section 1229a of this title.”

The change in legal basis does not affect the jurisdictional analysis.

The action that prompted the habeas petition, a revocation under INA § 236(a), is excluded from judicial review. INA § 236(e), 8 U.S.C. § 1226(e). And the change in legal basis comports with due process and the APA: Under INA § 235(b)(2) S-M-J is not “clearly and beyond a doubt entitled to be admitted,” so he “shall be detained for a [removal] proceeding” INA § 235(b)(2), 8 U.S.C. § 1225(b)(2).

Second, at the check-in on August 12, S-M-J elected to take a voluntary departure, rather than to contest his removal proceedings, so he could return to Guatemala with J-M-L and avoid having a removal order on his record. Weiss S-M-J Decl. ¶¶ 7–8. Based on conversations with S-M-J’s counsel, undersigned counsel understands that S-M-J might wish to withdraw the voluntary-departure request after consulting with counsel. Even if he withdraws the request, the ground on which he is detained turns on how he entered the country, not the relief he is seeking now. The voluntary-departure issue is irrelevant to jurisdiction and the propriety of his detention.

Third, J-M-L requested a reasonable-fear interview so he can pursue withholding of removal. *See* J-M-L Pet. ¶ 27 and Weiss J-M-L Decl. ¶ 15. The ground on which J-M-L’s release was revoked—that the purpose of release had been served—is a distinct issue from J-M-L’s desire to pursue withholding of removal. In any event, ICE has referred J-M-L to USCIS for a reasonable-fear interview so that he can pursue a withholding of removal. Weiss J-M-L Decl. ¶ 15.

Conclusion

The statutory grounds on which J-M-L and S-M-J were detained preclude judicial review. Even if the Court were to exercise jurisdiction, ICE correctly applied the law and acted within its statutory authority. The habeas petitions should be denied.

Respectfully submitted this 18th day of August 2025.

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