UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VALENTIN ALCANTARA MORALES, Petitioner, v. KRISTI NOEM, in her official capacity as Secretary of Homeland Security, *et al.*, Respondents.	))))))))))	No. 25 C 13259 Judge Ellis

MEMORANDUM IN OPPOSITION TO PETITION FOR A WRIT OF HABEAS CORPUS

This is a habeas case where petitioner Valentin Alcantara Morales (a native and citizen of Mexico), seeks immediate release from custody despite having been twice ordered removed from the United States *over a decade ago*. *See* Exhibits 1–3. He was recently detained by the United States Department of Homeland Security and taken to Broadview Processing Center. Dkt. 1 ("Pet.") at ¶ 24. The problem with petitioner's claims is that by virtue of 8 U.S.C. § 1252(g), this court simply has no jurisdiction to interfere with the Executive Branch's discretion as to when to execute his reinstated orders of deportation. *See, e.g.*, *E.F.L. v. Prim*, 986 F.3d 959, 964–65 (7th Cir. 2021). The Seventh Circuit's decision in *E.F.L.* should control the outcome of this case: dismissal for lack of jurisdiction because Congress was clear that the Executive Branch may execute an order of deportation without interference from the courts. *See id.*

Even if jurisdiction were not at issue, however, the petition's omission of the glaring fact of Morales's past final orders of removal, coupled with his illegal re-entry to the United States thereafter and his reinstated orders of removal, mean that he is subject to mandatory detention under 8 U.S.C. § 1231 ("Detention and Removal of Aliens Ordered Removed"). Under existing immigration laws, once a foreign national has been lawfully removed pursuant to an order of

removal, that person has no right to illegally reenter the country and remain out of custody. Moreover, DHS has the discretion to reinstate a prior order of removal, and if it does so, detention is mandatory under § 1231. That is just what happened here, and U.S. Immigration and Customs Enforcement ("ICE") can lawfully detain Morales pursuant to § 1231 because he is subject to a final order of removal. Moreover, his detention does not implicate due process concerns because he has been detained far less than six months (the presumptive amount of time allotted before a constitutional concern arises under relevant Supreme Court decisions). *See Zadvydas v. Davis*, 533 U.S. 678 (2001). Thus, the habeas petition should be denied, and this case should be dismissed for lack of jurisdiction.

Background

I. Statutory and Regulatory History

To streamline removal proceedings, Congress has removed federal courts' jurisdiction to hear certain immigration-related claims in certain forums. More specifically, § 1252(g) is a jurisdiction-stripping provision that deprives all courts of "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," notwithstanding "any other provision of law (statutory or nonstatutory)" other than § 1252 itself.[1] 8 U.S.C. § 1252(g) (emphasis added); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 486–87 (1999) (hereinafter, "*AADC*") (noting how § 1252(g) is "aimed at protecting

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[1] Many provisions of the Immigration and Nationality Act still refer to the Attorney General. In 2002, however, Congress transferred much of the INA's enforcement authority to the Secretary of Homeland Security. *See* 6 U.S.C. § 557; 8 U.S.C. § 1103; *see also Nielsen v. Preap*, 586 U.S. 392, 397 n.2 (2019) ("Congress has empowered the Secretary to enforce the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, though the Attorney General retains the authority to administer removal proceedings and decide relevant questions of law.").

the Executive's discretion from the courts—indeed, that can fairly be said to be the theme of the legislation" and that "that provision is specifically directed at the deconstruction, fragmentation, and hence prolongation of removal proceedings"); *E.F.L.*, 986 F.3d at 965 ("1252(g) precludes judicial review of 'any' challenge to 'the decision or action by [DHS] to . . . execute removal orders,'" which "includes challenges to DHS's 'legal authority' to do so.").

The Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq*., governs the removal of foreign nationals living unlawfully in the United States. *See, e.g.*, *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2280 (2021). When a foreign national enters the country and is deemed "inadmissible" under 8 U.S.C. § 1182, the government can either arrest and detain the person, or release the person pending a decision on whether they may be "removed" or deported. *See* 8 U.S.C § 1226(a). The government may revoke a person's order of release pursuant to 8 U.S.C § 1226(b) and 8 C.F.R. § 1236.1(c)(9).

Foreign nationals applying for admission into the United States are processed either through expedited removal proceedings under 8 U.S.C § 1225(b)(1) or through regular removal proceedings under 8 U.S.C § 1229a. An individual placed in § 1229a or "regular" removal proceedings is issued a "Notice to Appear" ("NTA"), which charges the individual with inadmissibility and identifies the grounds for inadmissibility. The INA provides for the expedited removal, however, of "any alien who reenters the country illegally after being removed," further stating that this person "can have his or her removal order reinstated, without any review of the order itself or any other relief under the INA," including asylum and adjustment of status. 8 U.S.C. § 1231(a)(5); *see also Lino v. Gonzalez*, 467 F.3d 1077, 1079 (7th Cir. 2006).

Relatedly, DHS may reinstate a prior order of removal for a foreign national it finds "has reentered the United States illegally after having been removed or having departed voluntarily,

under an order of removal." 8 U.S.C. § 1231(a)(5). DHS's regulations set out the process for reinstating an order of removal. *Johnson v. Guzman Chavez*, 594 U.S. 523, 530 (2021). In short, the agency obtains the foreign national's prior order of removal, confirms his identity, determines whether the reentry was unauthorized, provides the foreign national with written notice of its determination, allows him to contest that determination, and then reinstates the order. *Id.* (citing 8 CFR §§ 241.8(a)–(c), 1241.8(a)–(c)). Once the prior order of removal is issued, it is reinstated from its original date. *See Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). When DHS reinstates a removal order, the "prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed." *Id.* at 34–35 (quotations omitted).

II. Factual and Procedural History

Morales is a Mexican national who, according to the petition, last entered the United States without inspection in 2020. Pet. ¶ 23. However, he was previously expeditiously removed around February 10, 2015, and then once again was caught after illegally entering the United States within less than a week later. *See* Exhibits 1 & 2. Indeed, he was criminally convicted for illegal entry on February 19, 2015. *See United States v. Alcantara-Morales*, No. 4:15-po-22077, Dkt. 1-1 at 4 (D. Ariz. Feb. 19, 2015) (Plea Agreement). Closer to present day, though, Morales was arrested and detained on Thursday, October 29, 2025, in Chicago. Pet. ¶ 6; *see also* Exhibit 5. Morales filed a habeas petition the next day, alleging that detaining and deporting him both violates the Fifth Amendment's Due Process Clause and is unlawful under the INA, and that he must either be ordered released, or be given a bond determination. *See* Pet. at 18 (Prayer for Relief).

Legal Standard

Section 2241 confers jurisdiction on this court to order the release of any person who is held in the custody of the United States in violation of the "laws . . . of the United States" or the

United States Constitution. 28 U.S.C. § 2241(c). The burden rests on the person in custody to prove their detention is unlawful. *See, e.g.*, *Walker v. Johnston*, 312 U.S. 275, 286 (1941).

Argument

I. This Court Lacks Jurisdiction Because of 8 U.S.C. § 1252(g).

This court lacks jurisdiction under § 1252(g) to prevent the execution of petitioner's reinstated removal order. The language in 8 U.S.C. § 1252(g) is unequivocal, and its text controls here:

> 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) (emphases added). Given this statutory language, the Supreme Court has likewise noted this power of immigration-related enforcement discretion on numerous occasions. *See, e.g.*, *Arizona v. United States*, 567 U.S. 387, 396 (2012) ("A principal feature of the removal system is the broad discretion exercised by immigration officials. Federal officials, as an initial matter, must decide whether it makes sense to pursue removal at all."). The petition here ignores both the statute and this historical discretion. But binding case law does not.

In *AADC*, for example, the Supreme Court considered the reach of § 1252(g) and the Executive's discretion over immigration enforcement—concluding that the provision demands a narrow reading. More specifically, the jurisdictional bar "applies . . . to three discrete actions that the [federal government] may take: [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" 525 U.S. at 482 (emphases in original). "At each stage the Executive has discretion to abandon the endeavor" of removal, or to proceed, without

judicial interference. *Id.* at 483–84.

The Seventh Circuit's decision in *E.F.L.* is equally helpful regarding the definition of what constitutes "any" challenge to one of § 1252(g)'s three stages. In that case, the habeas petitioner sought injunctive relief to prevent her deportation pending administrative review of another petition for immigration relief (more specifically, a petition for relief under the Violence Against Women Act ("VAWA")). *E.F.L.*, 986 F.3d at 961–62. Although the *E.F.L.* petitioner's VAWA petition was still pending with USCIS, the court of appeals nonetheless held that § 1252(g) barred habeas jurisdiction because the "habeas petition falls directly in § 1252(g)'s path" as she "challenge[d] DHS's decision to execute her removal order while she seeks administrative relief." *Id.* at 964. And *E.F.L.* likewise explained that section "1252(g) precludes judicial review of 'any' challenge to 'the decision or action by [DHS] to . . . execute removal orders,'" which "includes challenges to DHS's 'legal authority' to do so." *Id.* at 965 (alteration in original).

Petitioner's challenge in this case is indistinguishable legally from *E.F.L.*, as it is simply another challenge to the Executive's legal authority to execute a removal order while Morales's habeas petition is pending before this court, with the added twist of including a policy argument about bond hearings during removal proceedings. *See* Pet. ¶ 25. To conclude that there is some sort of wiggle room around § 1252(g) under such circumstances would make the provision "a paper tiger; any petitioner challenging the execution of a removal order could characterize his or her claim as an attack on DHS's 'legal authority' to execute the order and thereby avoid § 1252(g)'s bar." *E.F.L.*, 986 F. 3d at 965 (internal citations omitted). As a result, the Seventh Circuit declined to "render § 1252(g) so toothless." *Id.* And that approach is in line with many other courts of appeals. *See Rauda v. Jennings*, 55 F.4th 773, 777–78 (9th Cir. 2022); *Camarena v. Dir. of ICE*, 988 F.3d 1268, 1274 (11th Cir. 2021) ("[W]e do not have jurisdiction to

consider 'any' cause or claim . . . arising from the government's decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government's *authority* to execute a removal order rather than its *execution* of a removal order."); *Tazu v. Att'y Gen.*, 975 F.3d 292, 297 (3d Cir. 2020) (rejecting a habeas petition challenging the timing of a DHS decision to execute a removal order); *Hamama v. Adducci*, 912 F.3d 869, 874 (6th Cir. 2018); *Silva v. United States*, 866 F.3d 938, 941 (8th Cir. 2017) (noting how § 1252(g) applies to constitutional claims arising from the execution of a final order of removal, and language barring "any cause or claim" made it "unnecessary for Congress to enumerate every possible cause or claim"); *Tsering v. ICE*, 403 F. App'x 339, 342–43 (10th Cir. 2010); *Foster v. Townsley*, 243 F.3d 210, 214 (5th Cir. 2001).

In addition, other decisions from this judicial district are in line with *E.F.L.* In *Albarran v. Ricardo Wong*, 157 F. Supp. 3d 779, 782 (N.D. Ill. 2016), for example, the plaintiff believed he was entitled to a stay of a reinstated removal order based on his interpretation of an internal ICE memorandum that made his offense "a second level priority." The *Albarran* court concluded that § 1252(g) blocks review of specific types of administrative decisions. *Id.*; *accord Hussain v. Keisler*, 505 F.3d 779, 783–84 (7th Cir. 2007); *Wigglesworth v. INS*, 319 F.3d 951, 960 (7th Cir. 2003); *Gomez-Chavez v. Perryman*, 308 F.3d 796, 800–01 (7th Cir. 2002); *Sharif ex. rel. Sharif v. Ashcroft*, 280 F.3d 786, 787 (7th Cir. 2002). Importantly, a foreign national cannot evade § 1252(g) by attempting to recharacterize a claim that, at its core, attacks the decision to execute an order of removal. *See Lemos v. Holder*, 636 F.3d 365, 367 (7th Cir. 2011); *Fedorca v. Perryman*, 197 F.3d 236, 240 (7th Cir. 1999) (affirming dismissal of habeas petition brought under 28 U.S.C. § 2241, because the relief sought (a stay of deportation) was barred by § 1252(g)); *Jung Ok Seol v. Holder*, No. 13 C 1379, 2013 WL 3835370, at *3 (N.D. Ill. July 24, 2013); *Dave v. INS*,

No. 03 C 852, 2003 WL 466006, at *1 (N.D. Ill. Feb. 20, 2003). There is little difference between the reinstated removal order in *Albarran* and the reinstated removal order now at issue in this litigation.

In this case, Morales does not challenge the validity of his underlying removal order, nor does he raise any legal arguments for release from confinement to the extent that order will be executed by ICE. His claims are simply that no removal order can be executed while his habeas petition is pending and that he cannot be detained without a bond hearing during any further removal proceedings. *See* Pet. ¶¶ 54–66. Given the case law discussed above, though, that challenge is barred by § 1252(g). *See AADC*, 525 U.S. at 482; *see also Velarde-Flores v. Whitaker*, 750 F. App'x 606, 607 (9th Cir. 2019) (no jurisdiction under § 1252(g) to enjoin removal of foreign nationals with final order of removal).

Finally, to the extent the court reads the petition as an attack on Morales's short-term detention by ICE to execute his reinstated removal order to Mexico, that claim would be equally barred by the plain language of § 1252(g). *See, e.g.*, *Tazu*, 975 F.3d at 298. This is because a "challenge to [a] short re-detention for removal attacks a key part of *executing* his removal order." *Id.* (emphasis added). The verb "execute" within § 1252(g)'s phrase "execute removal orders" means "[t]o perform or complete." Execute, *Black's Law Dictionary* (11th ed. 2019). And to perform or complete a removal, DHS must exercise its "discretionary power to detain an alien for a few days. That detention does not fall within some other 'part of the deportation process.'" *Id.* (quoting *AADC*, 525 U.S. at 482). Thus, "a brief door-to-plane detention is integral to the act of 'execut[ing] [a] removal order[.]'" *Id.* (quoting § 1252(g)).

II. Alternatively, Morales's Detention Is Lawful Under 8 U.S.C. § 1231.

As alluded to above, the petitioner here does not contest that he was previously removed from the United States under an order of removal but reentered this country illegally (twice). Indeed, the petition *admits* Morales's most recent illegal entry into this country. *See* Pet. ¶ 3 ("Petitioner entered the United States without inspection on or about 2020."). This is why DHS swiftly moved to reinstate his past removal order. *See* Exhibit 4. Once DHS reinstates a prior removal order, detention is mandatory. 8 U.S.C § 1231(a)(2) ("During the removal period, the Attorney General *shall* detain the alien."); *cf. also* Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 112 (2012) ("The traditional, commonly repeated rule is that *shall* is mandatory and *may* is permissive." (emphases in original)).

As alluded to above, when respondents reinstated Morales's prior order of removal pursuant to 8 U.S.C. § 1231(a)(5), it became effective as of the date of the prior removal. Further, it triggered mandatory detention under 8 U.S.C. § 1231(a)(2). Under the plain language of 8 U.S.C. § 1231(a)(5), once the court finds that a foreign national is subject to the reinstatement provision of the INA, the statutory directive found in the statute is mandatory, meaning relief is not allowed and the prior removal order cannot be reopened. *See Cordova-Soto v. Holder*, 732 F.3d 789, 795–96 (7th Cir. 2013) (quoting 8 U.S.C. §1325(a)(5)). The leading case regarding the application of § 1231(a)(5) is *Fernandez-Vargas*, which held that regardless of when a foreign national was removed, if he later reenters illegally, the original order of removal must be reinstated. *See* 548 U.S. at 38–42.

The statute plainly states that for a foreign national who is subject to reinstatement, "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." 8 U.S.C. §1325(a)(5)); *see also L-J-P-L v. Wamsley*, No. 25-cv-1390, 2025 WL 3017817, at *4 (D. Or. Oct. 28, 2025) (dismissing petition where petitioner entered United States unlawfully several times, but was inadvertently given a different A number and sent into full removal proceedings, but later reinstatement of removal because "[p]etitioner's position that Respondents are unlawfully revoking Petitioner's prior release under 8 U.S.C. § 1226(b) is incorrect. Respondents are not seeking to revoke Petitioner's release; instead, they are reinstating his prior order of removal, a wholly separate procedure that is 'not a species of removal'"); *Roman v. Garcia*, No. 24-cv-1006, 2025 WL 1441101, at *2 (W.D. La. Jan. 29, 2025) (denying habeas petition where petitioner had reinstated removal order but was found to have a credible fear of removal to home country and was in withholding proceedings).

In this case, Morales argues that he is entitled to an individualized bond hearing under § 1226(a), at which respondents must show whether he is a danger to the community or a flight risk. *See* Pet. ¶ 64. But *Johnson v. Guzman Chavez*, 594 U.S. 523, 539 (2021), forecloses this argument. In that case, the petitioners had reinstatements of prior orders of removal but were detained while their motions for withholding of removal were pending. *Id.* at 531. Withholding of removal after a reinstatement is a process that begins if a foreign national expresses a fear to DHS of returning to the country of removal. *Id.* Like Morales, the petitioners in *Guzman Chavez* argued that they were entitled to a bond hearing for continued detention. *Id.* But the Supreme Court disagreed. *Id.* at 536.

First, the Court considered the argument that petitioners had not been "ordered removed." The Court rejected this argument because "those prior orders were 'reinstated from [their] original date[s]' under § 1231(a)(5)." *Id.* at 535. Specifically, the Court found that the "reinstated orders

are not subject to reopening or review, nor are respondents eligible for discretionary relief under the INA. Instead, they 'shall be removed under the prior order at any time after the reentry.' Accordingly, respondents' prior orders, reinstated under § 1231(a)(5), show that respondents were ordered removed." *Id.*

Second, the Court likewise rejected the argument that the petitioners' prior removal orders were not "administratively final" because they had withholding proceedings pending. *Id.* Construing the applicable statutes, the Court again acknowledged that reinstatement renders the prior removal order final as of the date it was entered and "it is clear that DHS need not wait for the alien to seek, and a court to complete, judicial review of the removal order before executing it." *Id.; see also id.* at 539.

Last, the Court addressed mandatory detention under § 1231. The Court held that the petitioners were subject to mandatory detention even though they were seeking relief in immigration proceedings. *Id.* at 535 ("§ 1231's detention provisions are a natural fit for aliens subject to reinstated orders of removal."). This is because the only relief the petitioners could seek was a removal to another country other than their home country; they could not stay or stop their removal. *Id.* at 537 ("withholding-only relief "means only that, notwithstanding the order of removal, the noncitizen may not be removed to the designated country of removal, at least until conditions change in that country," and that "the noncitizen still may be removed at any time to another country (citing *Nasrallah v. Barr*, 140 S. Ct. 1683, 1691 (2020)).

Although Morales has not yet sought withholding of removal, he (like the petitioners in *Guzman Chavez*) does not and cannot contest that his prior removal orders have long been "administratively final." He had the opportunity to seek review after the initial removal order was entered, but did not, and § 1231(a)(5) explicitly prohibits him from seeking review or relief from

the order after it is reinstated following unlawful reentry. In other words, there is nothing left for a Board of Immigration Appeals to do with respect to the removal order other than to execute it. Moreover, the "statutory scheme governing the detention of aliens in removal proceedings is not static; rather, the Attorney General's authority over an alien's detention shifts as the alien moves through different phases of administrative and judicial review." *Casas-Castrillon v. DHS*, 535 F.3d 942, 945 (9th Cir. 2008). And in this case, once DHS reinstated Morales's prior removal order, he was subject to mandatory detention. *See L-J-P-L*, 2025 WL 3017817, at *4 (rejecting argument that "Respondents could not reinstate his 2009 removal order . . . , while his removal proceedings under Section 1229a remained ongoing" because "even assuming that ICE was aware of Petitioner's prior 2009 order of removal under a different Alien Registration Number, Respondents' exercise of discretion did not somehow nullify the 2009 removal order").

The above analysis means that ICE can lawfully detain Morales because he is subject to mandatory detention. And his 90-day removal period began to run on October 29, 2025, the date that his removal order was reinstated. *See* 8 U.S.C. § 1231(a)(5) (providing that a prior removal order "is reinstated" upon DHS's finding that the noncitizen "has reentered the United States illegally after having been removed"). And even if he seeks withholding of removal or asserts credible fear in an interview, this does not affect the date on which his removal became administratively final. "[T]he [administrative] finality of the order of removal does not depend in any way on the outcome of the withholding-only proceedings." *Guzman Chavez*, 594 U.S. at 539.

Thus, to the extent Morales is making a due process claim in his petition, *see* Pet. ¶¶ 54 – 61, that should be rejected because he has not been detained longer than six months, and his continued detention is reasonable under *Demore v. Kim*, 538 U.S. 510, 531 (2003) ("Detention during removal proceedings is a constitutionally permissible part of th[e] process."); *Wong Wing*

v. United States, 163 U.S. 228, 235 (1896) ("We think it clear that detention, or temporary confinement, as part of the means necessary to give effect to the provisions for the exclusion or expulsion of aliens would be valid."); *see also Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (holding post-removal that federal government cannot detain an alien "indefinitely," limiting "post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States" and finding a detention period of six months is "presumptively reasonable"). Here, Morales has only been detained since October 29, 2025, so there are no due process concerns at this point regarding his detention while DHS attempts to effect his removal to Mexico (again).

Because respondents have the authority to reinstate a prior order of removal under 8 U.S.C. § 1231(a)(5), that provision requires mandatory detention, *id.* § 1231(a)(2)), and detention under 90 days has already been found to be constitutionally valid, Morales's petition should be denied.

Conclusion

For the foregoing reasons, the court should dismiss this case for lack of jurisdiction.

Respectfully submitted,

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