No. 99-1627

In the Supreme Court of the United States

EMIL BOTEZATU AND GABRIELA BOTEZATU,
PETITIONERS

v.

IMMIGRATION AND NATURALIZATION SERVICE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

SETH P. WAXMAN
Solicitor General
Counsel of Record
DAVID W. OGDEN
Acting Assistant Attorney General
DONALD E. KEENER
LINDA S. WENDTLAND
PAPU SANDHU
Attorneys
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

QUESTIONS PRESENTED

1. Whether 8 U.S.C. 1252(g) (Supp. IV 1998) deprived the district court of jurisdiction to review the Immigration and Naturalization Service's denial of the lead petitioner's applications for various forms of relief that would defer the execution of his final order of deportation.

2. Whether the Constitution requires judicial review of the lead petitioner's claims challenging the Immigration and Naturalization Service's decision to execute his deportation order, where petitioner is an indisputably deportable alien who has already received administrative and judicial review of his final order of deportation, including review of his application in his deportation proceedings for discretionary relief from deportation.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Constition, statutes and regulations:

In the Supreme Court of the United States

No. 99-1627

EMIL BOTEZATU AND GABRIELA BOTEZATU,
PETITIONERS

v.

IMMIGRATION AND NATURALIZATION SERVICE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 29-35) is reported at 195 F.3d 311. The opinion of the district court (Pet. App. 38-40) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 21, 1999. A petition for rehearing was denied on January 5, 2000. Pet. App. 36-37.[1] The petition for a writ of certiorari was filed on April 4, 2000. The

[1] The reported version of the decision below mistakenly sets forth the date of denial of rehearing as December 6, 1999. See 195 F.3d at 311.

jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner Emil Botezatu and his wife Gabriela Botezatu are natives and citizens of Romania.[2] On March 19, 1993, petitioner and Gabriela (who was then petitioner's fiancée) entered the United States as non-immigrant aliens. Each filed an application for asylum with the Immigration and Naturalization Service (INS). The INS granted Gabriela's application but denied petitioner's. Petitioner was authorized to remain in the United States until March 24, 1993, but he never departed. Pet. App. 29.

On June 14, 1994, the INS issued an Order to Show Cause, charging that petitioner was deportable as an alien who remained in the United States beyond the authorized period. On June 30, 1995, an immigration judge (IJ) found petitioner deportable as charged, denied his applications for asylum and withholding of deportation, and granted his application for voluntary departure. Pet. App. 29-30, 67.

Petitioner appealed to the Board of Immigration Appeals (BIA). On August 17, 1995, while that appeal was pending, petitioner married Gabriela, who was by then a lawful permanent resident alien. Pet. App. 30. In January 1996, Gabriela filed with the INS an immigrant visa petition on petitioner's behalf, seeking his classification as the spouse of a permanent resident, for the purpose of eventually obtaining adjustment of his own status to that of a lawful permanent resident. Although the INS approved the petition, no immigrant

---

[2] The claims of Gabriela Botezatu are entirely derivative of those of Emil Botezatu, and so we refer to Emil as "petitioner."

visas in that category were available when it was approved.[3] Pet. App. 30.

On August 5, 1996, the BIA affirmed the IJ's decision ordering petitioner deported. In its decision, the BIA indicated that petitioner was permitted to depart voluntarily from the United States within 30 days of the date of its decision, but that if he failed to do so he would be deported as provided in the IJ's order. The BIA also indicated that petitioner could apply to the INS District Director for an extension of the voluntary departure period. Petitioner filed a petition for review of the BIA's decision with the Seventh Circuit, but failed to seek an extension of time to depart voluntarily.[4] On April 7, 1997, the Seventh Circuit affirmed the BIA's order in an unpublished decision. Pet. 5; Pet. App. 30.

2. On May 1, 1997, petitioner filed a request with the INS District Director for reinstatement of his voluntary departure pursuant to 8 C.F.R. 240.57. Pet. 5; Pet. App. 30. On June 6, 1997, the District Director denied that request because petitioner had previously violated the terms of his voluntary departure by remaining in

---

[3] Under the Immigration and Nationality Act (INA), immgrant visas for spouses of lawful permanent residents, unlike visas for spouses of citizens, are subject to numerical restrictions and priority dates. See 8 U.S.C. 1151(b) (1994 & Supp. IV 1998) (only "children, spouses, and parents of a citizen of the United States" can qualify for "immediate relative" status exempting them from numerical limitations); 8 U.S.C. 1153(a) (specifying allocation of immigrant visas for spouses of lawful permanent residents). Petitioner's priority date had not been reached. Pet. App. 30.

[4] Under Seventh Circuit case law, the filing of a petition for review did not automatically toll the running of the voluntary departure period. *Kaczmarczyk* v. *INS*, 933 F.2d 588, 598, cert. denied, 502 U.S. 981 (1991).

the country past the date set by the BIA without obtaining an extension. *Id.* at 30, 61-63. On July 9, 1997, petitioner filed a request for humanitarian parole and, in the alternative, for deferred action. Pet. 6; Pet. App. 30, 64-65.[5] On February 5, 1998, the INS denied petitioner's request for humanitarian parole. The INS's

---

[5] Under the INA and its implementing regulations, parole may be granted only for "urgent humanitarian reasons" or "significant public benefit." See 8 U.S.C. 1182(d)(5)(A) (Supp. IV 1998); 8 C.F.R. 212.5. The regulation lists examples of certain aliens for whom parole would "generally be justified," such as aliens who have "serious medical conditions," pregnant aliens, certain juveniles, alien witnesses, and aliens whose detention "is not in the public interest." 8 C.F.R. 212.5(a). Although there is some uncertainty, petitioner apparently sought "advance parole" (see Pet. App. 64-65), which is a procedure by which the INS grants, in advance, permission for an alien to depart from and reenter the United States. The advance parole regulation does not set forth specific standards for granting or denying such parole. See 8 C.F.R. 212.5(e). The INS Operating Instructions indicate that there are six classes of persons who may be granted advance parole, including aliens seeking such parole for "emergent or humanitarian considerations." See 5 Charles Gordon et al., *Immigration Law and Procedure* § 62.02[2] (1998). As an alternative to humanitarian parole, petitioner also sought "deferred action." Pet. 6; Pet. App. 30. As this Court explained in *Reno* v. *American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483-484 (1999), "deferred action" refers to the INS's practice of exercising discretion to defer taking action against an apparently deportable alien for humanitarian reasons or simply for its own convenience. Before 1997, deferred-action decisions were governed by internal INS guidelines, which considered, *inter alia*, factors such as the likelihood of ultimately removing the alien and whether the alien had violated a provision that had been given high enforcement priority. *Id.* at 484 n.8. Those deferred-action guidelines were rescinded on June 27, 1997, but the INS continues to exercise its deferred-action authority on a case-by-case basis.

letter denying humanitarian parole did not address the request for deferred action. *Id.* at 64-65.

On February 5, 1998, petitioner filed with the INS an application for a stay of deportation pursuant to 8 C.F.R. 241.6. Pet. App. 66-69. On March 10, 1998, the District Director denied petitioner's application for a stay of deportation in the exercise of his discretion. *Ibid.* The District Director explained that petitioner was subject to a final order of deportation, that his marriage occurred after the IJ had found him deportable and denied his application for relief, and that petitioner had failed to provide any evidence that his deportation would cause him or his wife to suffer hardship any more severe than that of any other deportee or family member. *Id.* at 68. Accordingly, the INS issued an order requiring petitioner to report for deportation on March 31, 1998. *Id.* at 30.

3. On March 31, 1998, petitioner filed a complaint in district court seeking to enjoin the INS from executing his deportation order. Pet. App. 41-60. Petitioner alleged that his deportation would violate various constitutional provisions and international law.[6] *Id.* at 50-58. Respondents moved to dismiss, arguing that the court's jurisdiction over the complaint was precluded by

[6] Apart from the claims relating to the denial of his applications for reinstatement of voluntary departure, humanitarian relief, and stay of deportation, petitioner abandoned his other claims on appeal to the Seventh Circuit and does not pursue them before this Court.

8 U.S.C. 1252(g) (Supp. IV 1998),[7] which provides:

> 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 chapter.

On November 20, 1998, the district court dismissed the complaint for lack of subject-matter jurisdiction, agreeing with the government that jurisdiction is precluded by Section 1252(g). Pet. App. 31, 38-40. The court found unpersuasive petitioner's contention that Section 1252(g) is inapplicable because he is not directly appealing an order of deportation, but rather is attacking the "hearing process" afforded by the INS. *Id.* at 39. The court concluded that petitioner's claims do indeed "aris[e] from" the final order of deportation, as demonstrated by the fact that petitioner filed his

---

[7] Section 1252(g) was added to the INA by Section 306 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, Tit. I, 110 Stat. 3009-607, 3009-612. Most of IIRIRA's provisions were made applicable only to removal proceedings commenced on or after April 1, 1997. See IIRIRA § 309(c)(1), 110 Stat. 3009-625. Congress made an exception, however, for Section 1252(g), which was made applicable "without limitation to claims arising from all past, pending, or future exclusion, deportation, or removal proceedings under [the INA]." IIRIRA § 306(c)(1), 110 Stat. 3009-612; see *AADC*, 525 U.S. at 477-487. Additionally, although Section 1252(g) itself refers only to "removal" orders, IIRIRA § 309(d)(2) provides that all references in law to "removal" orders are deemed to include exclusion and deportation orders (such as petitioner's deportation order) as well. 110 Stat. 3009-627.

complaint on the day he was to report for deportation. *Ibid.*

4. The court of appeals affirmed. Pet. App. 29-35. Relying on this Court's decision in *Reno* v. *American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999) *(AADC)*, the court of appeals ruled that petitioner's efforts to obtain a stay of execution of his final order of deportation fall within the claims for which district court jurisdiction is precluded by Section 1252(g). After observing that Section 1252(g) applies to three discrete actions of the Attorney General concerning deportation proceedings, including decisions to "execute" removal orders, the court concluded that petitioner's challenges arise out of the decision of the Attorney General to "execute" his removal order. Pet. App. 32-33.

The court noted that this Court in *AADC* described the INS's denial of a stay of a final order of deportation as one of the decisions or actions of the Attorney General falling within the scope of Section 1252(g). Pet. App. 33 (citing *AADC*, 525 U.S. at 484-485). It also concluded that the INS's decisions not to reinstate petitioner's voluntary departure or grant him humanitarian parole fall within Section 1252(g)'s scope because they are "relevantly analogous to 'no deferred action' decisions," which the Court in *AADC* characterized as governed by Section 1252(g). *Id.* at 34-35 (citing *AADC*, 525 U.S. at 485). It also rejected petitioner's argument that Section 1252(g) does not apply because he challenges "the constitutionality of various post-deportation procedures," not any of the three kinds of decisions listed in Section 1252(g). Pet. App. 32-33. The court emphasized that in *AADC*, this Court "unambiguously read '"no deferred action" decisions and similar

discretionary determinations' as governed by § 1252(g)." *Id.* at 34 (quoting *AADC*, 525 U.S. at 485).

ARGUMENT

Petitioner argues (Pet. 8) that the court of appeals erred in ruling that 8 U.S.C. 1252(g) (Supp. IV 1998) divested the district court of jurisdiction over his claims relating to the INS's denial of his applications for a stay of deportation, voluntary departure, and humanitarian parole. The court of appeals' decision is correct and does not conflict with any decision of any other court of appeals. The Court recently denied review of a petition raising similar contentions in *Mapoy* v. *Carroll*, 120 S. Ct. 1417 (2000), and there is no basis for a different result in this case. Further review is therefore not warranted.

1. a. The court of appeals correctly concluded that district court jurisdiction over petitioner's claims is precluded by Section 1252(g). Petitioner seeks to prevent the execution of his deportation order by arguing that the INS erred in denying him a form of relief from such execution, such as a stay, voluntary departure, or humanitarian parole, all of which reside in the Attorney General's discretion. In denying petitioner those forms of relief, the INS in effect made a decision to execute his removal order. Section 1252(g) precludes district court jurisdiction over "the decision or action by the Attorney General to * * * execute removal orders against any alien," and therefore barred district court jurisdiction in this case.

The decision below correctly follows this Court's decision in *Reno* v. *American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999) *(AADC)*. In *AADC*, the Court noted that, before the enactment of the Illegal Immigration Reform and Immigrant

Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, Tit. I, 110 Stat. 3009-546, aliens were able to file suit in district court raising issues collateral to the removal order, such as challenges to refusals by the Attorney General to stay deportation, see 525 U.S. at 485, or to grant "deferred action," *id.* at 483-485.[8] Section 1252(g) was intended to restrict judicial review of those types of claims in order to preserve the Attorney General's discretion to proceed or not proceed at "various stages in the deportation process." *Id.* at 483. Petitioner's claims fall directly within the preclusive scope of Section 1252(g) because he seeks to challenge the Attorney General's exercise of discretion to remove him from the United States following and pursuant to the entry of a final order of deportation, which was itself upheld by the court of appeals. See *id.* at 486 n.9 ("Section 1252(g) was directed against a particular evil: attempts to impose judicial constraint on prosecutorial discretion.").

Petitioner argues (Pet. 15) that his claims do not fall within the scope of Section 1252(g) because he is challenging, not the merits of the INS's decision not to grant him relief from execution of the final order of deportation, but the constitutionality of the procedures

---

[8] With regard to deferred action, the Court explained:

> At each stage the Executive has discretion to abandon the endeavor, and at the time IIRIRA was enacted the INS had been engaging in a regular practice (which had come to be known as "deferred action") of exercising that discretion for humanitarian reasons or simply for its own convenience. * * * Section 1252(g) seems clearly designed to give some measure of protection to "no deferred action" decisions and similar discretionary determinations.

AADC, 525 U.S. at 483-485.

the INS used in reaching that decision. Nothing in the text of Section 1252(g) or this Court's decision in *AADC* suggests, however, that Section 1252(g) is limited to "substantive" as opposed to "procedural" challenges. Section 1252(g) sweepingly refers to "*any* cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to * * * execute removal orders." 8 U.S.C. 1252(g) (Supp. IV 1998) (emphasis added). That language is on its face broad enough to include claims of procedural irregularity. The court of appeals therefore correctly concluded that the INS's decisions to deny discretionary relief in this case fall "within the class of similar discretionary determinations which the Supreme Court treated as relevantly analogous to no deferred action decisions, and so within the scope of § 1252(g)." Pet. App. 34 (internal quotation marks omitted).[9]

b. The decision below is consistent with the decisions of other courts of appeals. In *Mapoy* v. *Carroll*, 185 F.3d 224 (1999), cert. denied, 120 S. Ct. 1417 (2000), the Fourth Circuit concluded that Section 1252(g) divested the district court of jurisdiction to review an alien's challenge to the INS's denial of an administrative stay of deportation pending resolution of a motion

---

[9] Petitioner's argument is also undermined by this Court's rejection in *AADC* of the aliens' constitutional argument that their selective prosecution claim required immediate judicial review because delaying such review would deprive them of the opportunity for adequate factual development and would have a "chilling effect" on their First Amendment rights. 525 U.S. at 488. Thus, even the assertion of a constitutional claim did not preclude the application of Section 1252(g) in *AADC* to divest the district court of jurisdiction. Section 1252(g) is not inapplicable merely because petitioner characterizes his claim as a constitutional challenge to the INS's post-order procedures.

to reopen before the BIA. In *Mapoy*, like this case, the alien's refusal to depart voluntarily resulted in the entry of an order of deportation, which the INS then sought to enforce. *Id.* at 228. The court stressed that the alien was challenging the BIA's denial of his motion to stay the execution of his deportation order, and was therefore challenging the decision of the Attorney General to execute that order. *Ibid.* The court concluded that the claim "clearly arose from the INS's decision to execute a removal order and is subject to § 1252(g)." *Ibid.* No court of appeals has issued a contrary holding.[10]

Petitioner's contention that the decision below conflicts with decisions of other courts of appeals (see Pet. 10-11 n.2) is without merit. Most of the decisions cited by petitioner involve the different question whether, after enactment of IIRIRA, the district courts retain authority under 28 U.S.C. 2241 to consider statutory and constitutional challenges to the merits of final orders of deportation.[11] Petitioner, however, is not

---

[10] Petitioner argues that the court of appeals gave an overly expansive reading to Section 1252(g) by concluding that "all of the Attorney General's discretionary decisions are immune from habeas review." Pet. 17 (emphasis omitted). The court of appeals did not so hold, however, and it noted that Section 1252(g) "precludes only review of the three discretionary decisions or actions listed in the statute." Pet. App. 32. The court further observed, however, that in *AADC* this Court "indicated that a denial of a stay of deportation is not among the actions or decisions to which § 1252(g) is inapplicable." *Id.* at 33.

[11] Compare *Max-George* v. *Reno*, 205 F.3d 194, 198 (5th Cir. 2000) (holding that district courts lack jurisdiction under Section 2241 to review such challenges to final orders of removal in cases governed by IIRIRA's "permanent rules" for proceedings commenced on or after April 1, 1997), with *Liang* v. *INS*, 206 F.3d 308, 317 (3d Cir. 2000) (indicating that district courts do have such

challenging his final order of deportation. Rather, he is seeking to require the INS to exercise its discretion to allow him to remain in this country despite the existence of an indisputably valid final order of deportation. No court of appeals has held that such a claim falls outside the scope of Section 1252(g).

Other cases cited by petitioner (Pet. 10-11 n.2) are inapposite as well. In *Zhislin* v. *Reno*, 195 F.3d 810 (6th Cir. 1999), the court concluded that Section 1252(g) did not deprive the district court of jurisdiction to

---

authority) and *Flores-Miramontes* v. *INS*, No. 98-70924, 2000 WL 558024 (9th Cir. May 9, 2000) (same); see also *Richardson* v. *Reno*, 180 F.3d 1311, 1315 (11th Cir. 1999) (stating that district courts lack such authority), cert. denied, 120 S. Ct. 1529 (2000). A similar conflict in the circuits concerning district court jurisdiction arose under the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214, and IIRIRA's "transitional rules" for deportation cases commenced before April 1, 1997. Compare *LaGuerre* v. *Reno*, 164 F.3d 1035 (7th Cir. 1998) (holding that district courts lacked jurisdiction to review final orders of deportation), cert. denied, 120 S. Ct. 1157 (2000), with *Magana-Pizano* v. *INS*, 200 F.3d 603, 608-609 (9th Cir. 1999); *Wallace* v. *Reno*, 194 F.3d 279, 285 (1st Cir. 1999); *Jurado-Gutierrez* v. *Greene*, 190 F.3d 1135, 1146-1147 (10th Cir. 1999); *Requena-Rodriguez* v. *Pasquarell*, 190 F.3d 299, 303 (5th Cir. 1999); *DeSousa* v. *Reno*, 190 F.3d 175, 182-183 (3d Cir. 1999); *Shah* v. *Reno*, 184 F.3d 719, 722 (8th Cir. 1999); *Mayers* v. *Reno*, 175 F.3d 1289, 1297 (11th Cir. 1999); *Henderson* v. *INS*, 157 F.3d 106, 118-119 (2d Cir. 1998), cert. denied *sub nom. Reno* v. *Navas*, 526 U.S. 1004 (1999); and *Goncalves* v. *Reno*, 144 F.3d 110, 116-123 (1st Cir. 1998), cert. denied, 526 U.S. 1004 (1999) (all holding that district courts had jurisdiction to review the merits of final orders of deportation entered against criminal aliens). This Court noted the existence of that conflict in *AADC*, 525 U.S. at 480 n.7, but denied the government's certiorari petitions on the issue in *Navas* and *Goncalves*, *supra*, as well as the alien's petition on the same issue in *LaGuerre*, *supra*. The Court's decision in *AADC* indicates that Section 1252(g) does not reach such challenges. See 525 U.S. at 482.

review a contention that an alien's continued detention following his order of removal (because no other country would accept his repatriation) violated various constitutional provisions. The court made clear, however, that the alien was not challenging "the right of the Attorney General to execute the [deportation] order." *Id.* at 814. In *Mustata* v. *United States Department of Justice*, 179 F.3d 1017 (6th Cir. 1999), the court held that Section 1252(g) did not prevent the district court from entering a stay of deportation where the aliens were challenging their final deportation orders on the merits and sought a stay only as a matter of remedy. See *id.* at 1023.[12] In *Selgeka* v. *Carroll*, 184 F.3d 337 (4th Cir. 1999), the court held that Section 1252(g) did not prevent the district court from taking jurisdiction over an alien's contention that an IJ, rather than an INS asylum officer, should have conducted the review of his asylum application; the alien did not contest that "the Attorney General, through its designee, the BIA, [would] eventually adjudicate his case." *Id.* at 342. And in *Stewart* v. *INS*, 181 F.3d 587 (4th Cir. 1999), the court ruled that Section 1252(g) does not preclude review by the court of appeals of the merits of

---

[12] Similarly, in *Tefel* v. *Reno*, 180 F.3d 1286, 1297 (11th Cir. 1999), petition for cert. pending, No. 99-1314 (filed Feb. 3, 2000); *Barahona-Gomez* v. *Reno*, 167 F.3d 1228, 1233-1234 (9th Cir. 1999); and *Walters* v. *Reno*, 145 F.3d 1032, 1052 (9th Cir. 1998), cert. denied, 526 U.S. 1003 (1999), the courts held that Section 1252(g) did not divest the district courts of power to enjoin an alien's deportation, where the aliens were raising class-wide constitutional challenges to immigration practices but were not challenging the validity of the INS's decision not to stay execution of a particular deportation order, and where the aliens sought a class-wide stay of deportation only as a remedy for the alleged constitutional violation.

the BIA's denial of a motion to reopen, noting (*id.* at 593) that such denials of motions to reopen have long been treated as similar to a final order of deportation for purposes of invoking judicial review, and (*id.* at 593-594) that this Court specifically indicated in *AADC* that the refusal to reconsider a deportation order is not covered by Section 1252(g) (see 525 U.S. at 482).

2. There is no merit to petitioner's additional contention (Pet. 22-25) that interpreting Section 1252(g) to preclude district court jurisdiction in this case raises a "serious constitutional question" about Congress's power to restrict the jurisdiction of the federal courts to hear constitutional challenges to decisions by the Attorney General to execute final deportation orders and to deny relief from such final orders. Petitioner's allegations of procedural violations do not raise a substantial constitutional issue. Under petitioner's theory, the Due Process Clause would require the INS to grant him a second hearing to adjudicate his requests for a discretionary stay of deportation, reinstatement of voluntary departure, and humanitarian parole. There is, however, no constitutional right to any such hearing.

A due process claim is cognizable only if a constitutionally protected liberty or property interest is at stake. See *Board of Regents* v. *Roth*, 408 U.S. 564, 570-571 (1972). Although petitioner plainly had a constitutionally protected liberty interest in avoiding deportation, that liberty interest was extinguished when he was found deportable and a final order of deportation was entered against him. After that point, petitioner has no *additional* constitutionally protected liberty or property interest in remaining in the United States notwithstanding the existence of an order of deportation. Rather, the grant of any relief from a valid final order of deportation is a matter of administrative grace.

Cf. *Lalani* v. *Perryman*, 105 F.3d 334, 337-338 (7th Cir. 1997) (holding that because INS regulations concerning voluntary departure provide "no guidance as to how the [agency] decides whether to extend [or reinstate] voluntary departure," that decision is "unreviewable"). Cf. *INS* v. *Yueh-Shaio Yang*, 519 U.S. 26, 30 (1996) (suspension of deportation is an "act of grace" accorded pursuant to the Attorney General's "unfettered discretion" and is like "the President's [power] to pardon a convict") (quoting *Jay* v. *Boyd*, 351 U.S. 345, 354 & n.16 (1956)). Moreover, a ruling to the effect that the INS was constitutionally required to grant petitioner a hearing on his request for relief from a *final* order of deportation would conflict with Congress's intent, expressed manifestly in IIRIRA, that aliens unlawfully present in the United States be removed expeditiously. See H.R. Rep. No. 469, 104th Cong., 2d Sess. Pt. 1, at 120-123 (1996); S. Rep. No. 249, 104th Cong., 2d Sess. 7 (1996). Accordingly, the Constitution does not require judicial review of the procedures by which the Attorney General exercises her post-order discretionary authority to execute a lawful removal order.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General
DAVID W. OGDEN
Acting Assistant Attorney General
DONALD E. KEENER
LINDA S. WENDTLAND
PAPU SANDHU
Attorneys

JUNE 2000