UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

JAIME EDUARDO VILLANUEVA HERRERA,

Petitioner,

v.

RANDALL TATE Warden, Montgomery Processing Center, BRET BRADFORD, Houston Field Office Director, TODD LYONS, Acting Director U.S. Immigrations and Customs Enforcement, and KRISTI NOEM, U.S. Secretary of Homeland Security,

Respondents.

Case No. 25-3364

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Jaime Eduardo Villanueva Herrera is a Mexican national in valid immigration status with an order for withholding of removal under 8 U.S.C. § 1231(b)(3). On information and belief, he was unlawfully detained by federal immigration agents on July 20, 2025.

2. Petitioner's final order of removal and concurrent grant of withholding of removal were issued on January 20, 2017 and are administratively final. The 90-day removal period provided by 8 U.S.C. § 1231(a) has long passed. Petitioner has complied in all respects with his order of supervision and the revocation of that order as well as Petitioner's detention were in violation of the law.

3. Accordingly, to vindicate Petitioner's constitutional rights, this Court should grant the instant petition for a writ of habeas corpus.

4. Petitioner asks this Court to find that he was unlawfully detained and order his release.

JURISDICTION

5. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question).

6. Venue is proper because Petitioner resides and was detained in Houston, Texas, and on information and belief is detained in the Southern District of Texas.

THE PARTIES

7. The Petitioner, Jaime Eduardo Villanueva Herrera is a small business owner. He resides in Houston, Texas with his wife and children.

8. Respondent Bret Bradford is the Houston Field Office Director for U.S. Immigration and Customs Enforcement ("ICE").

9. Respondent Todd Lyons is the Acting Director for U.S. Immigration and Customs Enforcement.

10. Respondent Kristi Noem is the Secretary of the Department of Homeland Security ("DHS").

11. Respondent Randall Tate is the Warden of the Montgomery Processing Center and is petitioner's immediate custodian.

12. All respondents are named in their official capacities.

RELEVANT LEGAL DOCTRINES

Withholding of Removal

13. Federal law prohibits the government from removing a noncitizen to a country where they are more likely than not to face persecution on account of a statutorily protected ground. 8 U.S.C. § 1231(b)(3)(A). This protection is generally known as "withholding of removal."

14. To receive a grant of withholding of removal, a noncitizen must prove that they is more

likely than not to suffer persecution. "The burden of proof is on the applicant for withholding of removal … to establish that his or her life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 C.F.R. § 1208.16(b).

15. Once granted withholding of removal, "DHS may not remove the alien to the country designated in the removal order unless the order of withholding is terminated." *Johnson v. Guzman Chavez*, 594 U.S. 523, 531 (2021).

16. Federal regulations provide a procedure by which a grant of withholding of removal issued by an immigration judge may be terminated: DHS must move to reopen the removal proceedings before the immigration judge, and then DHS will bear the burden of proof, by a preponderance of the evidence, that grounds for termination exist. 8 C.F.R. § 1208.24(e).

Third Country Removal

17. A noncitizen with an order of withholding of removal to a particular country may only be removed to another country upon receiving notice and associated due process, including having an opportunity to apply for protection from removal to that third country. *See* 8 U.S.C. § 1231(b)(3)(A); *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021).

18. An individual with an order of withholding of removal to a particular country may also not be removed to another country with the intent or prospect of "chain refoulement"—i.e. that they will be subsequently sent to the country for which they have an order of withholding of removal. *See* 8 C.F.R. § 1208.18(a)(1).

19. Federal law also places restrictions on removal of aliens to countries to which they have no connection, or a country to where their "life or freedom would be threatened." 8 U.S.C. § 1231(b)(3)(A); *see also Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 348 (2005).

20. Likewise, the Convention Against Torture ("CAT"), as implemented in U.S. law through the Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), prohibits Respondents from removing an individual to any country where such individual is more likely than not to face torture by or at the acquiescence of the government. *See* Pub. L. No. 105-277, § 2242, 112 Stat. 2681, 2681-822 (1998) (codified at 8 U.S.C. § 1231 note); 8 C.F.R. § 1208.16(c); 8 C.F.R. § 1208.18.

21. The CAT also prohibits refoulment, which includes chain refoulement—where an individual will be sent to a country which will, in turn, send him to another country where he is more likely than not to be tortured.

Revocation of Supervised Release and Arrest

22. Federal regulations governing enforcement actions by immigration officers require that "[a] warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained." 8 C.F.R. § 287.8(c)(2)(ii).

23. Where an individual with a final removal order has been released on supervision, 8 C.F.R. § 241.4(l)(2) provides that only the Executive Associate Commissioner or a district director may revoke supervised release, and the district director may do so only "when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner." That regulation also requires that an individual whose supervised release is revoked be informed as to the reasons why and be given a prompt post-deprivation opportunity to be heard as to why his supervised release should be restored.

Detention Beyond Removal Period

24. Under 8 U.S.C. § 1231(a), the government may detain a noncitizen for removal only during the 90-day "removal period," which begins when the removal order becomes administratively final. 8 U.S.C. § 1231(a)(1)(A)-(B)(i). This period may be extended only if the noncitizen "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal." 8 U.S.C. § 1231(a)(1)(C).

25. The Supreme Court has also recognized a constitutional limitation on post-removal- period detention: such detention is permissible only when there is a "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

FACTS

26. Petitioner is a Mexican national who was ordered removed from the United States on January 20, 2017 and simultaneously granted withholding of removal to Mexico due to the dangers he would face in his native country. Exhibit 1—Removal and Withholding Order.

27. ICE did not appeal the order granting Petitioner withholding of removal.

28. Following the decision in his removal proceedings, Petitioner was held in ICE custody as they attempted to remove him to a third country. Unable to secure a travel document or otherwise effectuate his removal, ICE released Petitioner on March 23, 2017 under an order of supervision. Exhibit 2—Order of Supervision.

29. Petitioner has at all times complied with his order of supervision and was never requested by ICE to take any specific actions to obtain a travel document from any third country. Further, he has not been arrested or charged with any criminal offense since his release

from ICE custody.

30. ICE has never moved to reopen Petitioner's removal proceeding nor indicated an intention to do so.

31. On information and belief, his order of supervision was revoked and he was detained without cause by U.S. Immigration and Customs Enforcement agents on July 20, 2025.

32. At no time was Petitioner informed as to the reasons for revoking his order of supervision nor was he given the required interview to demonstrate reasons why it should be restored.

33. Petitioner is currently in custody in the Southern District of Texas, and one or more of the Respondents is his immediate custodian. Exhibit 3—Detention Information.

34. ICE Officer Juan Rodriguez-Lopez, an employee or subordinate of Director Bret Bradford, informed Petitioner's counsel today that ICE intends to remove Petitioner to a third country but that no third country has yet been identified.

35. On information and belief, Petitioner's removal is not likely in the reasonable, foreseeable future.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process

36. Petitioner incorporates paragraphs 1-35 by reference.

37. On information and belief, Petitioner is currently being detained by federal agents without cause and in violation of his constitutional rights to due process of law.

COUNT TWO
Unlawful Arrest in Violation of Federal Regulations

38. Petitioner incorporates paragraphs 1-35 by reference.

39. When ICE arrested Petitioner on July 20, 2025, they flagrantly violated federal regulations.

40. Petitioner was under a valid Order of Supervision following his 2017 grant of withholding of removal. He had fully complied with all requirements.

41. Respondents violated 8 C.F.R. § 241.4(I)(1), which requires that upon revocation of supervised release, "the alien will be notified of the reasons for revocation of his or her release or parole. The alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification."

42. Respondents provided Petitioner with no written notification of revocation, no explanation of the reasons for revocation, and no opportunity to contest the revocation.

43. Respondents further violated 8 C.F.R. § 241.4(l)(2), which provides that only the Executive Associate Commissioner or a district director may revoke supervised release, and the district director may do so only "when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner." Upon information and belief, no such determination was made by the Executive Associate Commissioner or district director, and no exigent circumstances existed that would have prevented referral to the proper authority.

44. These regulations were promulgated to safeguard due process rights of noncitizens, and Respondents' violations severely prejudiced Petitioner. Had these regulations been followed, Petitioner would have had a meaningful opportunity to contest the revocation of his supervised release, demonstrate his compliance with the Order of Supervision, and prevent his unlawful detention.

45. Under the well-established Accardi doctrine, when an agency fails to follow its own procedures or regulations, that agency's actions are generally invalid. *United States ex rel.*

Accardi v. Shaughnessy, 347 U.S. 260, 268 (1954)).

46. This Court must not permit Defendants to benefit from their flagrant regulatory violations.

47. As relief, Petitioner asks the Court to immediately order Respondents to release him from custody and restore his Order of Supervision on the same conditions as before his July 2025 arrest.

COUNT THREE
Unlawful Detention Beyond Removal Period

48. Petitioner incorporates paragraphs 1-35 by reference.

49. Under 8 U.S.C. § 1231(a), the government may detain a noncitizen for removal only during the 90-day "removal period," which begins when the removal order becomes administratively final. 8 U.S.C. § 1231(a)(1)(A)-(B)(i). This period may be extended only if the noncitizen "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal." 8 U.S.C. § 1231(a)(1)(C).

50. The Supreme Court has recognized a constitutional limitation on post-removal- period detention: such detention is permissible only when there is a "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). After six months of detention—the "presumptively reasonable period"—the government bears the burden of proving this likelihood if the noncitizen provides "good reason to believe" that removal is not reasonably foreseeable. *Id.*

51. Petitioner was initially released from custody in March of 2017 because he could not be removed from the United States due to his order for withholding of removal.

52. Petitioner's removal order became final in 2017, when his 90-day removal period ended on April 20, 2017. His 180-day *Zadvydas* presumptively reasonable period expired July

19, 2017.

53. More than eight years later, Petitioner remains unremovable to Mexico due to his still-valid order for withholding of removal. As of the filing of this petition, Respondents have not designated any other country for his removal.

54. Even if Respondents were to designate a third country, Petitioner would be entitled to apply for withholding of removal or protection from refoulement under, among other things, the Convention Against Torture with respect to that country, and those proceedings would further delay any potential removal.

55. Petitioner has established far more than a "good reason to believe" that there is no significant likelihood of his removal in the reasonably foreseeable future as (1) he cannot legally be removed to Mexico; (2) no other country has agreed to accept him; and (3) even if such a country were identified, Petitioner would be entitled to apply for protection from removal to that country, including on the basis that the country would send him to Mexico, a process that would take many months if not years to complete.

56. Under *Zadvydas*, Respondents cannot detain Petitioner indefinitely while they search for a country that might accept him or while they pursue lengthy legal proceedings to try to overcome his withholding protection. Such detention violates both the statutory limitations of 8 U.S.C. § 1231(a)(6) and his constitutional due process rights.

57. As relief, Petitioner requests an order from this Court immediately releasing him from Respondents' custody and placing him under an order of supervision pursuant to 8 U.S.C.§ 1231(a)(3).

COUNT FOUR
Third Country Removal Without Opportunity to Seek Protection

58. Petitioner incorporates paragraphs 1-35 by reference.

59. The Convention Against Torture, as implemented in U.S. law, prohibits Respondents from removing an individual to any country where such individual is more likely than not to face torture by or at the acquiescence of the government. *See* Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, § 2242, 112 Stat. 2681, 2681-822 (1998) (codified at 8 U.S.C. § 1231 note); 8 C.F.R. §§ 1208.16(c), 1208.18. This prohibition extends to chain refoulement— the practice of deporting someone to a country which will in turn deport that person to be tortured elsewhere. *See* 8 C.F.R. § 1208.18(a)(1).

60. For an individual with an order of withholding of removal to a particular country, like Petitioner, Respondents can only remove him to another country if he first receives notice and an opportunity to apply for protection from removal to that third country. *See* 8 U.S.C. § 1231(b)(3)(A).

61. Petitioner has no claim to citizenship or permanent residence in any country other than Mexico. Accordingly, any third country to which he might be deported would, in turn, likely deport him to Mexico, where it has already been held that he faces a substantial risk of persecution.

62. Respondents have communicated to Petitioner's counsel that they intend to remove him to a third country but have not yet determined which country.

63. Petitioner could face persecution or torture if removed directly to various other countries, including but not limited to countries with notorious human rights abuses like Libya, South Sudan, and Eritrea. Without knowing which country Respondents intend to try to remove him to, Petitioner cannot prepare or file an application for protection.

64. As relief, Petitioner request an order from this Court that Respondents may not remove Petitioner from the continental United States without first providing him and his counsel with written notice of the specific country they intend to remove him to, and a reasonable period of

time—which Petitioner respectfully suggests is at least fifteen days—to file an application for relief under, among other things, the withholding of removal statute and the Convention Against Torture with respect to such country.

65. Additionally, as access to counsel is critical to preparing any potential application for relief, Petitioner asks that such order be further narrowed to prohibiting Respondents from removing him or relocating him to a detention facility outside the Southern District of Texas.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Order that Petitioner shall not be transferred outside the Southern District of Texas;

(3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days and setting an immediate hearing.

(4) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

(5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately.

(6) Issue an order that Petitioner's Order of Supervision be restored and that he continue supervision under the same terms as in place prior to July 20, 2025.

(7) Issue an order that Petitioner be provided notice and an opportunity to request protection from removal to any third country that the Respondents may identify.

(8) Grant any further relief this Court deems just and proper.

Respectfully submitted,

Date: July 21, 2025

/S/ Amanda Waterhouse
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Attorney for Petitioner

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

JAIME EDUARDO VILLANUEVA HERRERA,

Petitioner,

v.

RANDALL TATE Warden, Montgomery Processing Center, BRET BRADFORD, Houston Field Office Director, TODD LYONS, Acting Director U.S. Immigrations and Customs Enforcement, and KRISTI NOEM, U.S. Secretary of Homeland Security,

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INDEX OF EXHIBITS

Exhibit 1—Removal and Withholding Order

Exhibit 2—Order of Supervision

Exhibit 3—Detention Information

Exhibit 1

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
5520 GREENS ROAD
HOUSTON, TX 77032

Reina & Bates Immigration & Nationality Law
Waterhouse, Amanda Lea
PO Box 670608
Houston, TX 77267

IN THE MATTER OF
VILLANUEVA HERRERA, JAIME EDUARDO

FILE A [redacted]

DATE: Jan 20, 2017

__ UNABLE TO FORWARD - NO ADDRESS PROVIDED

X ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO:

BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
5107 Leesburg Pike, Suite 2000
FALLS CHURCH, VA 22041

__ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT
5520 GREENS ROAD
HOUSTON, TX 77032

__ OTHER: _____

_____

COURT CLERK
IMMIGRATION COURT

FF

CC: JAMES E. MANNING, ADC
126 NORTHPOINT DR., ROOM 2020
HOUSTON, TX, 77060

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
HOUSTON, TEXAS

IN THE MATTER OF:	§	
	§	
Jaime Eduardo VILLANUEVA HERRERA, A.K.A., Jaime Eduar VILLANUEVA HERRERA	§	IN REMOVAL PROCEEDINGS
	§	A[redacted]
	§	
	§	
Respondent.	§	

ON BEHALF OF THE RESPONDENT:
Amanda Lea Waterhouse
Reina & Bates Immigration Law Group
123 Northpoint, Suite 190
Houston, TX 77060

ON BEHALF OF THE GOVERNMENT:
James E. Manning, Assistant Chief Counsel
Department of Homeland Security

I. FACTUAL AND PROCEDURAL HISTORY

Respondent arrived in the United States when he was approximately one-year-old. On November 2, 2004, Respondent was convicted for delivery by actual transfer of less than one gram of cocaine. Exh. 16. On June 22, 2009, Respondent had an administrative order of removal issued against him by the Department of Homeland Security (DHS). Exh. 5. Shortly thereafter, Respondent was removed to Mexico.

Respondent reentered the United States in 2009. He was again apprehended by DHS and removed in January of 2011. Approximately one-and-a-half months later, Respondent returned to the United States and was again apprehended by DHS. On July 5, 2012 Respondent was convicted for illegal reentry after deportation after an aggravated felony conviction and sentenced to 17 months imprisonment. Exh. 9.

After serving his sentence, Respondent was again removed to Mexico, on March 15, 2013. Respondent returned to the United States in May of 2013. He was encountered at his house in October of 2013 and, again, convicted on June 24, 2014, for illegal reentry after deportation after an aggravated felony conviction. Exh. 8. Respondent was sentenced to 29 months imprisonment. *Id.*

After serving his sentence, Respondent was placed in DHS custody. Respondent expressed a fear of returning to Mexico and, consequently, was accorded a reasonable fear hearing. DHS ultimately concluded that Respondent had a reasonable fear of torture. Exh. 2. Thus, on February 3, 2016, Respondent filed a Form I-863 so he could apply for withholding of

removal under Section 241(b)(3) of the Immigration and Nationality Act (INA) and withholding of removal under the Convention Against Torture. *See* Exh. 1.

A hearing was conducted on May 10, 2016. The Court found that Respondent's conviction for delivery by actual transfer of less than one gram of cocaine constituted a particularly serious crime under INA § 241(b)(3)(B)(iii). Accordingly, the Court determined that Respondent was ineligible for withholding of removal under INA § 241(b)(3). The Court denied Respondent's application for deferral of removal under the Convention Against Torture, determining that he had failed to demonstrate that it was more likely than not he would be tortured if removed to Mexico.

On September 28, 2016, the Board of Immigration Appeals (BIA or Board) remanded the decision in light of the United States Court of Appeals for the Fifth Circuit's intervening decision in *U.S. v. Hinkle*, which held that a conviction under Texas Health and Safety Code § 481.112(a) was not an aggravated felony "drug trafficking crime." 832 F.3d 569, 575-77 (5th Cir. 2016). At Respondent's hearing on October 27, 2016, DHS conceded that his conviction for delivery by actual transfer of less than one gram of cocaine is not a particularly serious crime under INA § 241(b)(3)(B)(iii). On November 17, 2016, Respondent submitted a closing brief on eligibility for withholding of removal under INA § 241(b)(3).

II. TESTIMONY AND EVIDENCE

A. Summary of Evidentiary Record

The record in this case consists of the testimony of two witnesses, in addition to the following exhibits:

1. Form I-863, Notice of Referral to the Immigration Judge
2. Form I-899, Reasonable Fear Worksheet
3. Reasonable Fear Transcript
4. Reasonable Fear Checklist
5. Final Administrative Removal Order dated June 22, 2009
6. Form I-851, Notice of Intent to Issue a Final Administrative Removal Order
7. Form I-213, Record of Deportable/Inadmissible Alien, dated October 8, 2013

7A. Form I-213, Record of Deportable/Inadmissible Alien, dated December 24, 2015

7B. Form, I-213, Record of Deportable/Inadmissible Alien, dated October 2, 2013

7C. Form I-213, Record of Deportable/Inadmissible Alien, dated November 10, 2011

8. Record of Conviction for Respondent's June 24, 2014 conviction for Illegal Reentry after Deportation after an Aggravated Felony Conviction
9. Record of Conviction for Respondent's July 5, 2012 conviction for Illegal Reentry after Deportation after an Aggravated Felony Conviction
10. Record of Conviction for the Respondent's October 21, 2011 conviction for Evading Arrest
11. Indictment and May 13, 2010 Dismissal in Cause Number 1262653
12. Record of Conviction for Respondent's June 18, 2008 conviction for Assault on a Family Member

13. Record of Conviction for Respondent's June 24, 2008 conviction for Unauthorized Use of a Motor Vehicle
14. Record of Conviction for Respondent's September 28, 2006 conviction for Possession of 0-2 ounces of Marijuana
15. Record of Conviction for Respondent's November 8, 2005 conviction for Possession of 0-2 ounces of Marijuana
16. Record of Conviction for Respondent's November 2, 2004 conviction for Delivery by Actual Transfer of less than one gram of Cocaine
17. Respondent's Birth Certificate
18. Form I-589, Application for Asylum and Withholding of Removal
19. Incident Report dated July 21, 2004
20. Statement of Javier Villanueva Martinez
21. Sentencing Memorandum in Cause Number H-13-0683
22. U.S. Dep't of State, *Human Rights Report 2015 – Mexico*
23. U.S. Dep't of State, *Mexico 2016 OSAC Crime and Safety Report from Monterrey* (March 3, 2016)
24. LA Times, "Videos of Soldiers Torturing Woman Prompts Apology from Mexican Defense Chief" (April 17, 2016)
25. BBC, "Monterrey Casino Attack, Mexican Police Officer Held" (Sept. 2, 2011)
26. Insight Crime, "The Trail of Corruption Behind Mexico Casino Attack" (Sept. 7, 2011)
27. Justice in Mexico, "Nuevo Leon Police Officer Involved in Casino Massacre" (Sept. 6, 2011)
28. Reuters, "Mexico Arrests Police Officer Over Casino Attack" (Sept. 2, 2011)
29. Voice of America, "State Police Officer Arrested in Deadly Mexican Casino Fire" (Sept. 1, 2011)
30. El Mundo, "Murdered Three Family Police Arrested for the Attack on Mexican Casino" (Sept. 15, 2011)
31. The Christian Science Monitor, "How the Zeta Drug Gang Took Monterrey" (Dec. 20, 2012)
32. The National Security Archive, "Los Zetas Drug Cartel Linked to San Fernando Police to Migrant Massacres" (Dec. 22, 2014)
33. Insight Crime, "Mexico Cartel U.S. Gang Ties Deepening as Criminal Landscape Fragments" (Apr. 18, 2014)
34. Wired.com, "Don't Panic but Mexico Zetas Cartel Wants to Recruit Your Kids" (Apr. 18, 2013)

B. Testimony

1. Testimony of Respondent

Respondent testified that after being removed to Mexico in March of 2013, he began to live with his uncle, Javier Villanueva, in Monterrey. Respondent stated that Javier is an attorney. Respondent explained that while residing in his uncle's home, two federal agents knocked at the door of the house. Respondent observed that these agents had badges and guns. The agents asked for Respondent's uncle and Respondent disclosed that he was Javier Villanueva's nephew.

They asked when he would be back and Respondent stated that he did not know. Respondent narrated that one agent reached over and glanced around the house. He stated that no threats were made to him at that time, but they stated that they would return.

Respondent testified that when his uncle came home, he informed him about the visit. Respondent's uncle simply told him that he would take care of it, but advised Respondent not to answer the door again.

Respondent stated that approximately one week later, he saw trucks similar to those driven by federal agents slowly pass by his uncle's house. On one occasion, Respondent was outside waiting for his cousin and two trucks passed by. At that point, Respondent observed an agent taking photos of his uncle's house with his phone. When Respondent's uncle came home, he told Respondent not to worry about it and to stay inside.

Respondent testified that a week later the trucks came by again. Respondent stated that he was watching television by the front window of his uncle's home. Respondent observed that the second truck had a gun pointed directly towards his uncle's house, albeit, not at a direct angle to start shooting.

Respondent claimed that he started receiving phone calls in which individuals asked for his uncle, observed that he was his uncle's nephew, and informed him to tell his uncle that "he better get off that case or we'll kill all of you." Respondent was very disturbed about this call because he did not know anyone in the area; no one knew he was living with his uncle. The only individuals who knew he was there and that he was the nephew of Javier Villanueva, were the federal agents who had come to the house previously.

Respondent narrated that he informed his uncle about these calls and that his uncle seemed scared. His uncle informed him that he was working on a criminal matter representing a police officer involved in the Monterrey Casino fire bombing. *See* Exhs. 25-29. Respondent stated that the federal police and the Zetas wanted Respondent's uncle to stop representing the arrested police officer, Mr. Miguel Angel Barraza Escamilla (Officer Barraza Escamilla). *See* Exh. 27. Respondent stated that Officer Barraza Escamilla had worked for the Zetas, but that the Zetas had "abandoned" him because he exceeded the orders that were given to him.

Respondent testified that his uncle, in May of 2013, informed him that the two of them had to leave the area where they were living. Respondent's uncle told him that he could come with him to another area in Mexico or go his own way. Respondent decided to go his own way and come to the United States. Respondent's uncle, however, went to San Luis Potosi.

Respondent stated that he arranged to come to the United States through Tamaulipas, an area controlled by the Gulf Cartel and not the Zetas. Respondent did not want to try to enter the United States through Monterrey or Laredo because the Zetas, working with the government, would have caught him and killed him.

Respondent asserted that he will be tortured and killed if he is removed to Mexico, at the hands of the Zetas and the federal police. Respondent stated that the police would seek to harm him because he could identify the agents who passed his uncle's house on several occasions and threatened him. Respondent described himself as a "loose end."

Respondent also articulated that he fears harm because he has multiple tattoos. Respondent testified that he has tattoos that represent the Houston Astros baseball team, which are also construed as gang tattoos, specifically that of the Tango Blast. Several of Respondent's tattoos are visible. He has his daughter's initials on his right hand. He has a playboy bunny on his neck with an Astros star above it. Respondent also has a "Houstones" tattoo on the back of his neck. Respondent fears that he will stand out because of his tattoos and will be harmed by the Zetas, another gang, or the police.

2. Testimony of Gabriela Cordova

Gabriela Cordova, Respondent's wife, testified on his behalf. It was established that she and Respondent met in April of 2013, and that they have one child together. Gabriela Cordova testified that she would be willing to help finance the removal of Respondent's tattoos for his safety. She also explained that she is able to contact Respondent's uncle, Javier Villanueva, through using a secure messaging phone application. She stated that Javier Villanueva remains in hiding in Mexico and is attempting to make arrangements for him and his family to safely come to the United States.

III. CREDIBILITY DETERMINATION

In an application for withholding of removal, the Court must make a threshold determination of the alien's credibility. *See Matter of O-D-*, 21 I&N Dec. 1079, 1081 (BIA 1998). Considering all relevant factors in the aggregate, the Court may base a credibility determination on the applicant's demeanor, candor, responsiveness, inherent plausibility of his account, the consistency between oral and written statements, the internal consistency of such statements, the consistency of such statements with the evidence of record, and any inaccuracy or falsehood in such statements whether or not such inaccuracy or falsehood goes to the heart of the applicant's claim. INA § 208(b)(1)(B)(iii).

An applicant bears the evidentiary burden of proof and persuasion. *See* 8 C.F.R. § 1208.13(a). If the Court determines that an applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain it. INA § 208(b)(1)(B)(ii); INA § 240(c)(4)(B). An applicant's own credible testimony may be sufficient to meet his burden of proving his claim, but only if corroboration is not reasonably available to the applicant. INA § 208(b)(1)(B)(ii); INA § 240(c)(4)(B); *Yang v. Holder*, 664 F.3d 580, 586 (5th Cir. 2011).

In this case, the Court makes a positive credibility determination with respect to Respondent's testimony in regard to his narration of prior fact. The Court also credits the testimony of Respondent's wife, Gabriela Cordova.

IV. RELIEF FROM REMOVAL

A. Withholding of Removal under INA § 241(b)(3)

i. Statement of the Law

For withholding of removal pursuant to INA § 241(b)(3), an alien must show a clear probability of persecution in the country designated for removal, on account of race, religion, nationality, membership in a particular group, or political opinion. *INS v. Cardoza-Fonseca,* 480 U.S. 421, 448 (1987); *Matter of Acosta*, 19 I&N Dec. 211, 214 (BIA 1985) (modified on other grounds by *Matter of Mogharrabi*, 19 I&N Dec. 439, 441, 447 (BIA 1987). A "clear probability" of persecution means that it is "more likely than not" that an alien will be subject to persecution if returned. *Cardoza-Fonseca*, 480 U.S. at 448. There is no discretionary element. If the applicant establishes eligibility, withholding of removal must be granted.

The meaning of the term "persecution" has been interpreted to include threats to the life or freedom of an individual, or the infliction of harm or suffering upon an individual due to a characteristic or belief that the oppressor seeks to overcome or punish. *Acosta*, 19 I&N Dec. at 222. The Fifth Circuit has specifically stated that "persecution" includes "the infliction of suffering or harm, under government sanction, upon persons who differ in a way regarded as offensive [(e.g., race, religion, political opinion, etc.)], in a manner condemned by civilized governments." *Orellana-Monson v. Holder*, 685 F.3d 511, 518 (5th Cir. 2012) (citing *Abdel-Masieh v. U.S. I.N.S.*, 73 F.3d 579, 583 (5th Cir. 1996)). The harm or suffering need not be physical, and may take the form of mental suffering or even economic deprivation so severe as to constitute a threat to an individual's life or freedom. *Orellana-Monson*, 685 F.3d at 518; *Acosta*, 19 I&N Dec. at 222. Multiple lesser harms suffered in the aggregate may also rise to the level of persecution. *See Eduard v. Ashcroft*, 379 F.3d 182, 188 (5th Cir. 2004) (citing *Matter of O-A- & I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998)).

Persecution within the meaning of the Act, however, does not encompass all treatment that society regards as unfair, unjust, unlawful or unconstitutional. *Matter of V-T-S-*, 21 I&N Dec. 792, 798 (BIA 1997); *see also Arif v. Mukasey*, 509 F.3d 677, 680 (5th Cir. 2007) (describing persecution as an "extreme concept that does not include every sort of treatment our society regards as offensive"). Thus, discrimination or a few isolated incidents of harassment or intimidation, unaccompanied by physical punishment, infliction of harm, or significant deprivation of liberty does not constitute persecution. *Eduard*, 379 F.3d at 187 n.4.

If an alien demonstrates that he suffered past persecution in the proposed country of removal, it is presumed that it is more likely than not he would suffer persecution if removed. 8 C.F.R. § 1208.16(b)(1)(i). The burden then shifts to DHS to demonstrate by a preponderance of the evidence that a fundamental change in circumstances has occurred in that country or that the applicant could safely relocate to another area in the proposed country of removal. 8 C.F.R. § 1208.16(b)(1)(i).

To establish membership in a particular social group, the applicant "must show that he [is] a member of a group of persons that share a common characteristic that they either cannot change or should not be required to change because it is fundamental to their individual identities or consciences." *Ontunez-Tursios v. Ashcroft*, 303 F.3d 341, 352 (5th Cir. 2002) (citing *Acosta*, 19 I&N Dec. at 233). To determine whether a particular social group exists, one must consider: (1) "whether the group's shared characteristics gives the members the requisite social visibility to make them readily identifiable in society" and (2) "whether the group can be defined with sufficient particularity to delimit its membership." *Orellana-Monson*, 685 F.3d at 519 (quoting

Matter of A-M-E- & J-G-U-, 24 I&N Dec. 69 (BIA 2007). The BIA has recently clarified that "the phrase 'membership in a particular social group' requires an applicant . . . to establish that the group is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question." *Matter of M-E-V-G-*, 26 I&N Dec. 227, 251-52 (BIA 2014).

Particularity is determined by "whether the proposed group can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons." *Matter of S-E-G-*, 24 I&N Dec. 579, 584 (BIA 2008). "While the size of the proposed group may be an important factor in determining whether the group can be so recognized, the key question is whether the proposed description is sufficiently 'particular,' or is 'too amorphous . . . to create a benchmark for determining group membership.'" *Id.*; *see M-E-V-G-*, 26 I&N Dec. at 239. While members of a particular social group must share a common immutable characteristic, "not every 'immutable characteristic' is sufficiently precise to define a particular social group." *M-E-V-G-*, 26 I&N Dec. at 239-40.

Social distinction (formerly visibility) is determined by "the extent to which members of a society perceive those with the characteristic in question as members of a social group." *Matter of E-A-G-*, 24 I&N Dec. 591, 594 (BIA 2008). However, "literal or ocular visibility," is not required. *M-E-V-G-*, 26 I&N Dec. at 252.

The REAL ID Act of 2005 requires an applicant to establish that race, religion, nationality, membership in a particular social group, or political opinion "was or will be at least one central reason for persecuting the applicant." INA § 208(b)(1)(B)(i). The protected ground need not be the dominant motivating factor, but must not be "incidental, tangential, superficial or subordinate to another reason for harm." *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 214 (BIA 2007) (adopted by *Shaikh v. Holder*, 588 F.3d 861, 864 (5th Cir. 2009)). Instead, to establish a nexus between the protected ground and the feared persecution, the alien must "present specific, detailed facts showing a good reason to fear that he or she will be *singled out* for persecution" on account of said ground. *Orellana-Monson*, 685 F.3d at 518. If the applicant does not provide evidence that he would be singled out individually for persecution, he must establish that there is a pattern or practice "of persecution of a group of persons similarly situated" on account of a protected ground, and that the applicant is included in or identifies with the group in question. *Zhao v. Gonzales*, 404 F.3d 295, 307 (5th Cir. 2005).

ii. Analysis

1. Past Persecution

Respondent alleges that the threats made against him and his uncle constitute past persecution. Threats to the life or the freedom of an individual have been recognized as forms of persecution. *See Acosta*, 19 I&N Dec. at 222. However, the Fifth Circuit has held that "[p]ersecution cannot be based on 'mere denigration, harassment, and threats.'" *Tesfamichael v. Gonzales*, 469 F.3d 109, 116 (5th Cir. 2006) (quoting *Eduard*, 379 F.3d at 188); *see also id.* at 187 n. 4 ("persecution 'requires more than a few isolated incidents of verbal harassment or intimidation'") (quoting *Mikhailevitch v. INS*, 146 F.3d 384, 390 (6th Cir. 1998)). The Court

finds that the specific threats made against Respondent because of his uncle's legal representation of Officer Barraza Escamilla fails to collectively amount to past persecution.

Given Respondent's failure to establish past persecution, he must establish a clear probability of future persecution to meet his burden of proof for withholding of removal under INA §241(b)(3). *Cardoza-Fonseca,* 480 U.S. at 448; *Acosta*, 19 I&N Dec. at 214.

2. Asserted Protected Grounds

Respondent first asserts a clear probability of future persecution on account of his political opinion, specifically, as an opponent of government corruption. In a claim of persecution on account of political opinion, the applicant must allege specific facts from which it can be inferred that he holds a political opinion known to his persecutor. *See INS v. Elias-Zacarias,* 502 U.S. 478, 483 (1992) (finding that a Guatemalan guerrilla organization's attempt to conscript the applicant into its military forces did not necessarily constitute persecution on account of political opinion). In addition, he must establish that the persecution or feared persecution is on account of *his* political opinion, rather than that of the persecutor. *Id.* Persecution based on an imputed political opinion may, in certain circumstances, also be cognizable for purposes of withholding of removal. *Matter of S-P-*, 21 I&N Dec. 486, 489 (BIA 1996).

Though opposition to public corruption is a valid political opinion, Respondent has failed to demonstrate that he holds this political opinion or that it has been imputed to him through his uncle. *Matter of N-M-*, 25 I&N Dec. 526, 528 (BIA 2011). The Board has noted that activities such as campaigning against state corruption through classic political activities may constitute the expression of a political opinion or may lead a persecutor to impute such an opinion to an alien. *Id.* at 528. The Board also noted that exposing or threatening to expose government corruption could constitute the expression of a political opinion. *Id.* Respondent, however, has failed to demonstrate that he has engaged in any such activities sufficient to constitute an expression of a political opinion or that would lead to a political opinion being imputed to him. Rather, Respondent and his uncle experienced threats based on the fact of his uncle's representation of Officer Barraza Escamilla. "[S]imply demonstrating resistance to pressure to engage in certain acts and consequent retaliation for this resistance is insufficient to establish a nexus. Rather, an alien must provide some evidence, [] that the persecutor's motive to persecute arises from the [] political belief." *Id.* at 529. Respondent has simply not established a clear probability of persecution based on his purported political opinion.

Respondent additionally claims eligibility for withholding of removal on account of his membership in the social group of "family members of Javier Villanueva." Respondent contends that the corruption he witnessed, the threats against him personally, and his value as a target to scare or send a message to his uncle are the direct result of Respondent's relationship to his uncle. Respondent's Closing Brief on Eligibility for Relief, at 5 (Nov. 17, 2016).

The Board has intimated that family membership may serve as the basis of a particular social group. *See Matter of Kasinga*, 21 I&N Dec. 357, 365-66 (BIA 1996) (finding that clan membership is a cognizable particular social group); *Matter of Chen*, 20 I&N Dec. 16, 19-22 (BIA 1989) (granting asylum where the abuse of the applicant's father helped to establish that he suffered past persecution on account of his family's religious convictions); *Acosta*, 19 I&N Dec.

at 233 (recognizing kinship ties as a common immutable characteristic). The killing, abuse, or mistreatment of an applicant's family members can constitute past persecution where the applicant establishes a causal connection between harm to his family members and past harm he suffered. *See Matter of Villalta*, 20 I&N Dec. 142, 147 (BIA 1990) (granting asylum where the applicant and his immediate family received a series of death threats from a Death Squad and where the Death Squad murdered the applicant's mother, sister, and brother on account of his political activities). The Board, however, has not yet definitively addressed the issue as to whether a family unit alone can constitute a cognizable particular social group.

In *Acosta*, the Board suggested that "kindred interests," such as a shared family background, may be a sufficient element for the formulation of a "particular social group" for asylum purposes. 19 I&N Dec. at 232-33. Several U.S. Circuit Courts of Appeals have since weighed in on the issue by suggesting, indirectly treating, or explicitly finding that a family relationship qualifies as a "particular social group" under the Act. *See Crespin-Valladares v. Holder*, 632 F.3d 117, 125 (4th Cir. 2011) ("the family provides 'a prototypical example of a particular social group'"); *Al-Ghorbani v. Holder*, 585 F.3d 980, 995 (6th Cir. 2009) (observing that membership in the same family is widely recognized as a particular social group); *Ayele v. Holder*, 564 F.3d 862, 869 (7th Cir. 2009) ("Our Circuit recognizes family as a cognizable social group under the INA."); *Sanchez-Trujillo v. INS*, 801 F.2d 1571, 1576 (9th Cir. 1986) ("Perhaps a prototypical example of a 'particular social group' would consist of the immediate members of a certain family, the family being a focus of fundamental affiliational concerns and common interests for most people.").

The Fifth Circuit has yet to rule on whether a family unit can constitute a particular social group. *See Demiraj v. Holder*, 631 F.3d 194, 198 (5th Cir. 2011) ("the BIA . . . agreed that 'Demiraj family' could constitute a particular social group . . . and the government d[id] not dispute that conclusion") (vacated as moot by *Demiraj v. Holder*, Nos. 08-60991 & 09-60585, 2012 WL 2051799 (5th Cir. May 31, 2012) (unpublished)). In *Orellana-Monson v. Holder,* the Fifth Circuit upheld the Board's determination that "siblings of Salvador[an] males between the ages of 8 and 15 who have been recruited by Mara 18 but have refused to join the gang . . . ." lacked the requisite social distinction and particularity to constitute a particular social group. *Orellana-Monson*, 685 F. 3d at 522. Notably, however, that decision addressed a family formulation that was overbroad, rather than analyzing an alien's individual relationship to a specific family member.[1]

The Court is satisfied that Respondent has established that he is a member of a particular social group, namely, "Javier Villanueva's family." The Court finds that members of Javier Villanueva's family share common immutable characteristics. *Matter of C-A-*, 23 I&N Dec. 951, 959 (BIA 2006) ("[s]ocial groups based on innate characteristics such as . . . family relationship are generally easily recognizable and understood by others to constitute social groups"); *Gebremichael v. INS*, 10 F. 3d 28, 36 (1st Cir. 1993) (finding that there can "be no plainer example of a social group based on common, identifiable and immutable characteristics than that of the nuclear family"). The Court finds that given the immense publicity surrounding the

[1] Recently, DHS adopted the position that membership in a family can constitute a particular social group. See Office of Principal Legal Advisor, Department of Homeland Security Supplemental Brief In the Matter of Luis Enrique Alba, A200553090 (March 23, 2016), available at https://cliniclegal.org/sites/default/files/probono/Department-of-Homeland-Security-Supplemental-Brief.pdf.

prosecution of Officer Barraza Escamilla, *see* Exhs. 25-31, as well as the evidence of the targeting of Javier Villanueva, that membership in Javier Villanueva's family is sufficiently particular and socially distinct. *See, e.g., Hernandez-Ortiz v. INS,* 777 F.2d 509, 516 (9th Cir. 1985) (describing a family as a "small identifiable group"); *Crespin-Valladares* 632 F.3d at 126 ("[W]e can conceive of few groups more readily identifiable than the family"). Indeed, Respondent was identified as a member of Javier Villanueva's family by the callers who made the threats against him and his uncle. Moreover, Respondent was photographed while cohabiting with his uncle, due to his being a part of his uncle's household.

The Court determines that Respondent is the target of persecution based on his status as a member of Javier Villanueva's family. The threats made against Respondent and his uncle, and his value as a target to scare or send a message to his uncle are the direct result of their familial relationship. *See Gebremichael,* 10 F.3d at 36 (noting that "the terrorization of one family member to extract information about the location of another family member" constituted persecution as a result of the relation to the principal family member). Respondent's uncle's representation of Officer Barraza Escamilla ran afoul at the interests of the network of organized criminals and public officials. As a member of his uncle's family, Respondent is a target for intimidation or retribution for his uncle's actions.

3. Clear Probability of Future Persecution

Having found that Respondent has established his membership in a particular social group, the Court further finds that he has demonstrated a clear probability of persecution. Respondent avers that he will be persecuted based on his relationship to his uncle. Respondent asserts that the individuals who made the threatening phone calls had to have been working with the federal agents who came to his home, because they were the only people who knew his identity and that he was staying with his uncle. Respondent further contends that as a witness to the corrupt activities of the federal agents or their associates, Respondent continues to pose a threat of exposure to the guilty officials, and therefore, has a continuing fear of death or other severe mistreatment.

Respondent's uncle has relocated and been in hiding since they began receiving threats. Respondent asserted that the Zetas would want to harm him because they work with the government in Monterrey. Though Respondent's uncle heeded to the threats and ceased representing Officer Barraza Escamilla, the Court observes that Respondent's knowledge of collusion between the Zetas and the federal agents who came to see him make him a target for retribution.

The Court observes that there is a vast amount of evidence in this record of proceeding substantiating governmental corruption in Mexico, and indeed, specific evidence detailing the corruption underscoring the bombing of the casino in Monterrey. *See* Exhs. 24-29, 31-34. On August 25, 2011, 52 people were killed when a casino in Monterrey was set ablaze in an arson attack. Exh. 26. Five members of the Zeta cartel confessed to committing the arson in retribution for unpaid protection money connected to extortion. Exh. 27. Importantly, Officer Barraza Escamilla was arrested for serving as a lookout for the attackers. Exh. 27.

Not only was Officer Barraza Escamilla involved in the attack, but evidence suggested that the brother of the mayor of Monterrey, Manuel Jonas Larazzabal, was involved in the

extortion of the casino prior to the deadly attack. Exh. 26. Respondent asserted that it was believed that Officer Barraza Escamilla was providing testimony regarding an elaborate network of corruption between the Zetas and local government, including the mayor and the mayor's family. Respondent's uncle was then threatened with death for legally representing Officer Barraza Escamilla.

The high-profile nature of the Monterrey casino attack, and the public corruption associated with the incident, incentivize those involved in the attack to silence any witnesses who would be able to expose them. Indeed, the attack which killed 52 people was referred to as "one of the worst killings of civilians in recent years in Mexico." Exh. 28 at 1. Pertinently, members of the family of Officer Barraza Escamilla were killed "by revenge of los Zetas" group. Exh. 30.

The collusion between government officials and the Zetas in the casino arson incident underscores why Respondent justifiably fears persecution from the Mexican government. The ability for corrupt government officials and cartels to exact revenge on those who seek to threaten to expose corruption is well-supported in this case. *See* Exhs. 24-29, 31-34. Additionally, reports indicate that in 2009, approximately half of the police force in the state of Nuevo Leon, in which Monterrey is located, were corrupt. Exh. 26.

In cases in which the persecutor is the government or government sponsored, it is presumed that internal relocation would not be reasonable, unless DHS establishes by a preponderance of the evidence that under all the circumstances it would be reasonable for the applicant to relocate. 8 C.F.R. § 1208.16(b)(3)(ii). In the present case, DHS did not present evidence that Respondent would be able to relocate internally and a preponderance of the evidence does not otherwise establish that it would be reasonable for Respondent to relocate internally.

Respondent has demonstrated that it is more likely than not that he will be subject to persecution if he is returned to Mexico. Respondent was photographed by federal officials or their affiliates. Those who threatened Javier Villanueva know Respondent's identity and his relationship to his uncle. Respondent's uncle, through his representation of Officer Barraza Escamilla, was perceived as a threat to exposing the collusion between the drug cartel and public officials in the casino fire bombing. This makes Respondent a target for persecution as a means of silencing his uncle, who remains in hiding. Indeed, those involved in the attack have already demonstrated the ability to persecute in attacking the family members of Officer Barraza Escamilla.

In conclusion, Respondent has met his burden of proof for Withholding of Removal under INA § 241(b)(3), in that he has established that members of Javier Villanueva's family constitute a cognizable social group, and that there is a clear probability he will be persecuted on account of said ground if removed to Mexico.

B. Withholding of Removal under the Convention Against Torture

As for the Respondent's application for withholding of removal under the Convention Against Torture, the Court stands by its May 10, 2016 decision denying Respondent's

application (albeit in the context of deferral of removal). Although the Court has now found that Respondent faces a clear probability of persecution, it does not find that he faces a clear probability of torture. This is for two reasons. First, torture is far more limited, extreme, and heinous than persecution. "For an act to constitute torture it must be: (1) an act causing severe physical or mental pain or suffering; (2) intentionally inflicted; (3) for a proscribed purpose; (4) by or at the instigation of or with the consent or acquiescence of a public official who has custody or physical control of the victim; and (5) not arising from lawful sanctions." *Matter of J-E-*, 23 I&N Dec. 291, 297 (BIA 2002) (citing 8 C.F.R. § 208.18(a)). Indeed, withholding of removal claims under INA § 241(b)(3) and under the Convention Against Torture are distinguished in that "CAT does not require persecution, but the higher bar of torture." *Efe v. Ashcroft*, 293 F.3d 899, 907 (5th Cir. 2002). Respondent failed to meet that bar.

Second, in the context of an application for protection under the Convention Against Torture, (and in contrast to withholding of removal under INA § 241(b)(3)), where the persecutor is the government or is government sponsored, the burden of proving relocation does not rest on DHS. *Compare Matter of M-Z-M-R-*, 26 I&N Dec. 28, 32 (BIA 2012) (noting that there is a two-step process for determining whether internal relocation is reasonable), *and* 8 C.F.R. § 1208.16(b)(3)(ii) (shifting the burden of proving that relocation would be reasonable under all of the circumstances to DHS when an applicant for withholding of removal under INA § 241(b)(3) proves a clear probability of government or government-sponsored persecution), *with Maldonanado v. Lynch*, 786 F.3d 1155, 1163 (9th Cir. 2015) (*en banc*) (holding, "[t]he regulations governing CAT deferral, unlike the asylum regulation, do not call for any burden shifting"), *and* 8 C.F.R. § 1208.16(c)(3) (listing relocation as one factor to consider with all relevant evidence). Accordingly, the Court reiterates its holding that Respondent has not met his burden of proof for withholding of removal under the Convention Against Torture.

V. ORDERS

In accordance with the above analysis, the following are the orders of the Court:

IT IS ORDERED that Respondent be removed to Mexico.

IT IS FURTHER ORDERED that Respondent's application for withholding of removal under the Convention Against Torture be DENIED.

IT IS FURTHER ORDERED that Respondent's application for withholding of removal under INA § 241(b)(3) be GRANTED, and that his removal to Mexico be withheld.

1/20/17
Date

Saul Greenstein
Immigration Judge

Exhibit 2

280049

U.S. Department of Homeland Security
Immigration and Customs Enforcement

Order of Release on Supervision

File No: [redacted]
Date: March 23, 2017

Name: **VILLANUEVA-Herrera, Jaime**

On June 22, 2009 (Date of final order), you were ordered: Administrative Removal

☐ Excluded or deported pursuant to proceedings commenced prior to April 1, 1997.
☑ Removed pursuant to proceedings commenced on or after April 1, 1997.

Because the Service has not effected your deportation or removal during the period prescribed by law, it is ordered that you be placed under supervision and permitted to be at large under the following conditions:

☑ That you appear in person at the time and place specified, upon each and every request of the Service, for identification and for deportation or removal.

☑ That upon request of the Service, you appear for medical or psychiatric examination at the expense of the United States Government.

☑ That you provide information under oath about your nationality, circumstances, habits, associations, and activities and such other

☑ That you do not travel outside Contiguous Territory of U.S. (Specify geographic limits, if any) for more than 48 hours without first having notified this Service office of the dates and places of such proposed travel.

☑ That you furnish written notice to this Service office of any change of residence or employment within 48 hours of such change.

☑ That you report in person on the within 5 days to this Service office at: 0900 to Duty Deportation Officer 126 NorthPoint, Houston, Texas 77032 Houston/ ICE/ DHS

☑ That you assist the Immigration and Naturalization Service in obtaining any necessary travel documents.

☑ Other: Do not Violate any Local, State or Federal laws

☑ See attached sheet containing other specified conditions (Continue on separate sheet if required)

(Signature of ICE Official)
Bret A. Bradford Field Office Director
(Printed Name and Title of Official)

Alien's Acknowledgment of Conditions of Release under an Order of Supervision

I hereby acknowledge that I have (read) (had interpreted and explained to me in the English language) the contents of this order, a copy of which has been given to me. I understand that failure to comply with the terms of this order may subject me to a fine, detention, or prosecution.

(Signature of INS Official Serving Order)

(Signature of Alien)

3-23-17
(Date)

Form I-220B(Rev. 4-1-97)N

U. S. Department of Homeland Security
Immigration and Customs Enforcement

Order of Supervision-Addendum

File No. A[redacted]
Date: March 23, 2017

Name: VILLANUEVA-Herrera, Jaime

☑ That you do not associate with criminals or members of a gang that are known to be involved in criminal activity

☑ That you register in a substance abuse program within 14 days and provide Immigration and Customs Enforcement (ICE) with written proof of such within 30 days. The proof must include the name, address, duration, and objectives of the program as well as the name of a program counselor.

☑ That you register in a sexual deviancy counseling program within 14 days and provide ICE with written proof of such within 30 days. You must provide ICE with the name of the program, the address of the program, the

☑ That you register as a sex offender, if applicable, within 7 days of being released, with the appropriate agency/agencies and provide ICE with written proof of such registration within 10 days.

☑ That you do not commit any crimes or be associated with any criminal activity while on this Order of Supervision.

☑ That you report to a parole or probation offcer as required within 5 business days and provide ICE with written verification of the officer's name, address, telephone number, and reporting requirements.

☑ You must follow all reporting and supervision requirements as mandated by the parole or probation officer.

☑ That you continue to follow any prescribed doctor's orders whether medical or psychological, including taking prescribed medications.

☑ That you make good faith and timely efforts to obtain a travel document and assist ICE in obtaining a travel document.

☑ That you submit a complete application for a travel document to all appropriate Embassies or Consulates, including those representing the countries of Notification by ICE upon request. You must present ICE with evidence that each Embassy or Consulate to which you apply has received your request and all required documents. This may be done, for example, by mailing your application(s) with a request for return receipt and providing the signed return receipt to ICE, by obtaining a tracking number when you mail your application(s) and providing the number to ICE, or by submitting written confirmation of receipt issued by the Embassy or Consulate.

☑ That you submit your application(s) for a travel document to all appropriate Embassies or Consulates and provide proof of receipt to ICE on or before requested.

☑ That you provide ICE a copy of your application(s) for a travel document that you submit to any Embassy or Consulate, including all supporting documents, photos, and other items provided to the Embassy or Consulate to support your application(s).

U. S. Department of Homeland Security
Immigration and Customs Enforcement

Order of Supervision-Addendum

File No. A[redacted]
Date: March 23, 2017

Name: VILLANUEVA-Herrera, Jaime

☑ That you provide ICE a copy of all correspondence related to your travel document application(s) that you send to, or receive from, an Embassy or Consulate.

☑ That you contact the Embassy or Consulate within 21 calendar days of making your application(s) to confirm that the information you provided is sufficient. when requested

☑ That you comply with any requests from an Embassy or Consulate for an interview and make good faith efforts to submit further documentation if required by the Embassy or Consulate.

☑ Every time you report in person under this order of supervision, you must inform the local ICE office of all actions you have taken to obtain a travel document. You must provide any available written documentation to ICE regarding these actions and the status of your travel document application(s).

☑ That you provide ICE, upon request, with any and all information relevant to application(s) for a travel document. This may include, but is not limited to, information regarding your family history, including dates of birth, nationalities, addresses, and phone numbers as requested for such persons, whether in your country of nationality and/or citizenship or elsewhere, and your past residences, schools attended, etc.

☑ You will participate in a supervised release program, as described in the attached document. You will comply with the rules and requirements of this program, and cooperate with its administrators.

I agree to comply with the rules, requirements, and administrators in the supervised release program described in the attached document.

Aliens Signature: _____ Date: 3-23-2017

☐ Other:

Any violation of any of the above conditions may result in a fine, more restrictive release conditions, return to detention, criminal prosecution, and/or revocation of your employment authorization document.

Alien's Acknowledgement of Conditions of Release under an Order of Supervision

I hereby acknowledge that I have (read) (had interpreted and explained to me in the _Englis___ language) the contents of this order and addendum, a copy of which has been given to me. I understand that failure to comply with the terms of this order and addendum may subject me to a fine, more restrictive release conditions, detention, criminal prosecution, and/or revocation of my employment authorization document.

_____ _____ 3-23-17

(Signature of ICE official serving order) (Signature of alien) (Date)

Please note that all references in this order/addendum to "INS" or "Service" should now be considered to refer to U.S. Immigration and Customs Enforcement (ICE).

Updated 4/25/2005

Outprocessing Checklist

VILLANUEVA-Herrera, Jaime
A# [redacted]

Sex Offenders:

Exhibit 3

Search Results: 1

JAIME EDUARDO VILLANUEVA HERRERA

Country of Birth : Mexico
A-Number [redacted]
Status : In ICE Custody
State: TX
Current Detention Facility: MONTGOMERY PROCESSING CTR (IHSC)