

United States District Court
Southern District of Texas

ENTERED

August 01, 2025

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAIME EDUARDO VILLANUEVA
HERRERA,

Petitioner,

vs.

RANDALL TATE, Warden, *et al.*,

Respondents.

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CIVIL ACTION NO. H-25-3364

**ORDER TO ANSWER AND ORDER DENYING
REQUEST FOR ORDER TO SHOW CAUSE**

The petitioner, Jaime Eduardo Villanueva Herrera, is a detainee in the custody of United States Department of Homeland Security, Immigration and Customs Enforcement ("ICE") officials at the Montgomery Processing Center in Conroe, Texas. Through counsel, he filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, challenging his recent detention by federal officials under a final order of removal despite a concurrent withhold of that removal. (Dkt. 1). As part of his request for relief, Villanueva asks the Court to order the respondents to show cause within three days why his petition should not be granted and to set an immediate hearing. (*Id.* at 11).

Rule 4 of the Rules Governing § 2254 Cases in the United States District

Courts¹ requires the Court to promptly examine the petition and its attached exhibits and dismiss the petition, in whole or in part, if the face of the petition shows that the petitioner is not entitled to relief. Having conducted the required examination, the Court enters the following orders that will govern these proceedings.

I. BACKGROUND

Villanueva alleges that he is a citizen of Mexico. (Dkt. 1, p. 5). On January 20, 2017, he was ordered removed from the United States, but he was simultaneously granted a withhold of removal to Mexico. (*Id.*). The United States did not appeal the order withholding removal. (*Id.*).

After the order of removal and withhold of removal were entered, ICE officials attempted to secure permission and travel documents to remove Villanueva to a third country. (*Id.*). When those efforts were unsuccessful, ICE officials released Villanueva from detention under an Order of Supervision on March 23, 2017. (*Id.*). Since that time, Villanueva has complied with all of the terms of his Order of Supervision. (*Id.*). Also since that time, ICE officials have not taken any steps to obtain travel documents to effect Villanueva's removal to any third country. (*Id.*).

¹A district court may apply any or all of the rules governing habeas petitions filed under 28 U.S.C. § 2254 to petitions filed under § 2241. *See* Rule 1(b), Rules Governing § 2254 Cases in the United States District Courts.

On July 20, 2025, Villanueva was arrested and detained by ICE officials without cause and without any notice that his Order of Supervision had been revoked. (*Id.*). He has since been told that his Order of Supervision was revoked, but he has not been told of the reasons for the revocation nor has he been given the required interview during which he could demonstrate why supervision should be restored. (*Id.*). ICE officials have not moved to reopen Villanueva's removal proceedings, nor have they notified him of any intent to do so, and he has not been given an opportunity to contest the revocation of his Order of Supervision. (*Id.* at 6-7).

Villanueva contends that the actions surrounding the revocation of his Order of Supervision and his detention violate his Fifth Amendment due process rights and the applicable immigration statutes and rules. (*Id.* at 6-11). He contends that his current detention is unlawful. (*Id.*). He seeks his immediate release from detention and the restoration of his Order of Supervision. (*Id.* at 11). He also seeks an order that he not be transferred out of the Southern District of Texas and that he provided with notice and opportunity to request protection from removal to any third country that ICE officials might identify. (*Id.*). Finally, he asks the Court to issue an order requiring the respondents to show cause within three days why his petition should not be granted and to set an immediate hearing on the petition. (*Id.*).

As of the date of this Order, summonses have been issued to Villanueva's

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counsel, but no returns of service have been filed. (Dkt. 4). Therefore, as of the date of this Order, it does not appear that any of the respondents are yet subject to the jurisdiction of the Court.

II. DISCUSSION

A. Requests for an Order to Show Cause and an Immediate Hearing

As part of his request for relief, Villanueva asks the Court to issue an order requiring the respondents to show cause within three days why his petition should not be granted. (Dkt. 1, p. 11). He also asks the Court to set an “immediate” hearing on the petition. (*Id.*). Villanueva’s petition does not cite authority for such relief, but his request tracks language contained in 28 U.S.C. § 2243, which provides, in relevant part:

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained. *It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.*

28 U.S.C. § 2243 (emphasis added). While this language would appear to require that Villanueva’s requests be granted, case law demonstrates otherwise.

Although petitions under § 2241 were initially governed by the aggressive

time limits set forth in § 2243, such petitions are now governed by the Rules Governing Section 2254 Cases in the United States District Courts, which were promulgated by the Supreme Court in 1976. *See Castillo, v. Pratt*, 162 F. Supp. 2d 575, 577 (N.D. Tex. 2001). These Rules were developed under the Supreme Court's "power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals." 28 U.S.C. § 2072. Section 2072(b) specifically provides that "[a]ll laws in conflict with such rules shall be of no further force or effect after such rules have taken effect." *Id.* And although § 2072(b) states that rules promulgated by the Supreme Court do not "abridge, enlarge, or modify any substantive right," the time for filing a response to a petition and the right to a hearing involve procedural rather than substantive rights.

After considering the provisions of § 2072, courts examining the interplay between § 2243 and the Rules Governing § 2254 Cases have concluded that "the strict time limit prescribed by § 2243 is subordinate to the Court's discretionary authority to set deadlines under Rule 4 of the Rules Governing § 2254 Cases." *Maniar v. Warden Pine Prairie Corr. Ctr.*, No. 6:18-CV-00544, 2018 WL 4869383, at *1 (W.D. La. May 2, 2018) (collecting cases); *accord Cluchette v. Rushen*, 770 F.2d 1469, 1474-75 (9th Cir. 1985); *D.L.G. v. Collins*, No. A-20-CV-1126-RP-SH, 2020 WL 10355163, at *2 (W.D. Tex. Nov. 18, 2020); *Y.V.S. v. Wolf*, No. EP-20-5/10

CV-00228-DCG, 2020 WL 4926545, at *1 (W.D. Tex. Aug. 21, 2020); *Taylor v. Gusman*, No. CV 20-449, 2020 WL 1848073, at *2 (E.D. La. Apr. 13, 2020); *Castillo*, 162 F. Supp. 2d at 576; *see also Danforth v. Minnesota*, 552 U.S. 264, 278 (2008) (holding that under §§ 2241 and 2243, a district court may “adjust the scope of the writ in accordance with equitable and prudential considerations”). Therefore, the strict time limits in § 2243 are not mandatory but instead are subject to the discretion of this Court.

In this case, as in all habeas cases before this Court, equitable and prudential considerations support permitting the respondent time to conduct a reasonable investigation into the facts and circumstances underlying the petition before requiring a response or holding a hearing. As of the date of this Order, returns of service have not been filed for any of the respondents. Further, no meaningful investigation into Villanueva’s petition could reasonably be completed within three days, nor could a hearing reasonably be held within five days of the return. Accordingly, the Court denies Villanueva’s request for an order to show cause and an immediate hearing.

B. Order to Answer

Despite denying Villanueva’s request for an order to show cause, the Court is concerned by the events that resulted in Villanueva’s current detention and the appearance that those events, and the events since then, have violated his procedural

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due process rights. Accordingly, the Court **ORDERS** that this case will proceed based on the deadlines listed below.

1. The Clerk must deliver copies of the petition, (Dkt. 1), and this Order to the United States Attorney for the Southern District of Texas, Nicholas J. Ganjei, by certified mail return receipt requested, to the Civil Process Clerk, United States Attorney's Office, 1000 Louisiana St., Suite 2300, Houston, TX 77002, and by electronic mail to USATXS.CivilNotice@usdoj.gov.

2. The Clerk must also serve copies of the petition, (Dkt. 1), and this Order by certified mail on: (1) the United States Attorney General, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, D.C. 20530-0001; and (2) Warden Randy Tate, Montgomery Processing Center, 806 Hilbig Rd., Conroe, Texas 77301.

3. Warden Tate must file an answer or other appropriate responsive pleading within **twenty (20) days** after the date of service and must forward a copy to the petitioner's counsel. Warden Tate is advised that under Federal Rule of Civil Procedure 12(d), if matters outside the pleadings are relied upon, his motion will be treated as a motion for summary judgment and should be entitled as such.

4. In addition to any defense, in law or fact, to a claim for relief by the petitioner, Warden Tate's answer must contain: (a) a statement of the authority by which the petitioner is held and, if held under the judgment of a court or

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administrative tribunal, the name of such court or tribunal and the number and style of the case(s) in which those judgments were entered; and (b) a statement as to whether the petitioner has exhausted all available administrative remedies.

5. Whether Warden Tate elects to submit an answer or a dispositive motion (*i.e.*, a motion to dismiss or for summary judgment), the petitioner must file any response within **10 days** of the date reflected on the certificate of service. Under the Court's local rules, the petitioner's failure to respond will be considered a representation that the petitioner does not oppose the motion. *See* S.D. Tex. L.R. 7.4. If the petitioner fails to comply on time, the Court may dismiss this case for want of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

6. In addition to Warden Tate, Villanueva has included as respondents to his petition Bret Bradford, Houston Field Office Director; Todd Lyons, Acting Director U.S. Immigration and Customs Enforcement; and Kristi Noem, U.S. Secretary of Homeland Security. (Dkt 1). The Court questions whether these respondents are properly included in this petition. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004) ("there is generally only one proper respondent to a given prisoner's habeas petition" and "the default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official"); *see also* 28 U.S.C. § 2242 (a federal habeas petition shall be directed to "the person who has custody over [the

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petitioner]”); 28 U.S.C. § 2243 (“The writ . . . shall be directed to the person having custody of the person detained.”). Therefore, the Court does not order an expedited response from these respondents at this time. The Court notes that the Clerk has issued summonses to petitioner’s counsel for these respondents. (Dkt. 4). No returns of service for these respondents have been filed to date. Once service is obtained on these defendants, they must file their responses to Villanueva’s petition within **twenty (20) days** from the date of service.

III. CONCLUSION

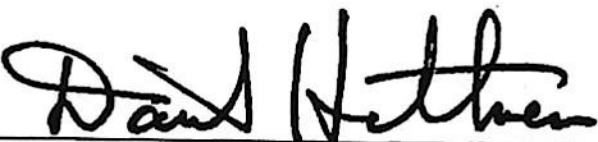
Based on the foregoing, the Court **ORDERS** as follows:

1. Villanueva’s requests for an order to show cause and an immediate hearing are **DENIED**.
2. Respondent Randy Tate, as Warden of the Montgomery Processing Center in Conroe, Texas, must respond to Villanueva’s petition per the schedule outlined above.
3. The respondents other than Randy Tate must respond to Villanueva’s petition **within twenty (20) days** from the date of service of process.
4. The respondents must notify petitioner’s counsel and the Court of any anticipated or planned transfer of Villanueva outside of the Southern District

of Texas at least five (5) days before any such transfer.

The Clerk of Court will provide a copy of this Order to the parties.

SIGNED at Houston, Texas on August 1, 2025.



DAVID HITTNER
UNITED STATES DISTRICT JUDGE