UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAIME EDUARDO VILLANUEVA HERRERA, Petitioner, v. RANDALL TATE, Warden, et al., Respondents.	§ § § § § § § § § § § §	CIVIL NO. 4:25-cv-03364

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND MOTION FOR SUMMARY JUDGMENT

The Government[1] files this response in opposition to the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (Dkt. 1) and moves for summary judgment pursuant to Federal Rule of Civil Procedure 56. As explained below, the Government has re-detained Petitioner as part of its renewed emphasis on removing criminal aliens who pose a danger to the community. Petitioner's claim for habeas relief should be denied because he is lawfully detained, and the Government is actively working to remove him to a third country.

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[1] This response is filed on behalf of all named federal officials. As the Court previously noted, the proper respondent in a habeas petition is the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). That said, it is the originally named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

Petitioner, who has an extensive criminal history, is currently detained by U.S. Immigration and Customs Enforcement ("ICE") for the purpose of effectuating his final order of removal. This action is fully supported by the Immigration and Nationality Act ("INA"), its implementing regulations, and the Constitution. Regarding detention, Petitioner is subject to a final order of removal and is detained pursuant to 8 U.S.C. § 1231(a). The fact that Petitioner has been granted withholding of removal to Mexico is not a bar to his current detention. Contrary to Petitioner's claims, ICE has lawfully exercised its statutory and regulatory authority to arrest and detain him because Petitioner is a threat to the community and ICE is actively working to effectuate his removal to a third country.

Petitioner's claim that his detention violates the Due Process Clause is also without merit. The Supreme Court set forth a framework for analyzing the constitutionality of post-final order detention under Section 1231(a)(6) in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). In *Zadvydas*, the Supreme Court explained that the "reasonableness" of continued detention under Section 1231(a)(6) should be measured "primarily in terms of the statute's basic purpose, namely, assuring the alien's presence at the moment of removal." 533 U.S. at 700. The Court held that post-final order detention under Section 1231 is presumptively reasonable for six months. *Id.* at 701. Petitioner's due process challenge to his detention fails because it is premature as his

current detention began on July 20, 2025—when he was retaken into ICE custody. *See, e.g., Guerra-Castro v. Parra*, No. 1:25-CV-22487, 2025 WL 1984300, at *4 (S.D. Fla. July 17, 2025) (in holding the habeas challenge to be premature, calculating the six-month *Zadvydas* period from the revocation of petitioner's order of supervision).

II. FACTUAL BACKGROUND

Petitioner has a long criminal history. The following are Petitioner's arrests and convictions as set forth in the Declaration of Deportation Officer Scroggins ("Decl."):

- On July 21, 2004, the Houston Police Department (HPD) arrested the Petitioner for the offense of manufacture and delivery of a controlled substance.
- On November 2, 2004, the 228th District Court Houston, Texas convicted Petitioner of manufacture and delivery of a controlled substance and sentenced him to 8 months confinement.
- On September 2, 2005, HPD arrested Petitioner for the offense of possession of marijuana.
- On November 18, 2005, the County Criminal Court at Law No 9 convicted Petitioner of possession of marijuana and sentenced him to 30 days' confinement.
- On April 22, 2006, the League City Police Department arrested Petitioner for the offense of possession of marijuana.

- On September 28, 2006, the County Criminal Court at Law 15 convicted Petitioner of possession of marijuana and sentenced him to 2 days confinement.
- On December 31, 2007, HPD arrested Petitioner for the offense of unauthorized use of a motor vehicle.
- On March 2, 2008, HPD arrested Petitioner for the offense of assault causes bodily injury family member.
- On June 6, 2008, the 232nd District Court Houston, Texas convicted Petitioner of unauthorized use of a motor vehicle and sentenced him to 6 months confinement, Texas Department of Criminal Justice (TDCJ).
- On March 2, 2008, HPD arrested Petitioner for the offense of assault causes bodily injury family member.
- On June 18, 2008, the County Court at Law No 1 Houston, Texas convicted Petitioner of assault causes bodily injury family member and sentenced him to 4 days confinement.
- On November 30, 2010, HPD arrested Petitioner for the offense of evading arrest detention.
- On October 21, 2011, the County Criminal Court at Law No 2 convicted Petitioner of evading arrest detention and sentenced him to 10 days confinement.
- On June 6, 2012, Federal District Court, Houston, Texas convicted Petitioner of illegal re-entry after deportation and sentenced him to 17 months confinement.

- On November 5, 2013, Federal District Court, Houston, Texas convicted Petitioner of illegal re-entry after deportation and sentenced him to 29 months confinement.

Declaration of Deportation Officer Scroggins, Ex. 1, at ¶ 10.

Petitioner is a Mexican national who has a lengthy immigration history: the full details of which are set forth in the Declaration of Deportation Officer Scroggins. *See* Decl. at ¶ 9. As relevant here, Petitioner entered the United States in June of 2009 as a minor. Since then, he has been removed to Mexico multiple times based on a final order of removal, and the subsequent reinstatement of that removal order. *Id.* In 2016, Petitioner expressed a fear of returning to Mexico and, in 2017, an immigration judge granted Petitioner withholding of removal to Mexico. *Id.* Following that ruling, ICE attempted to remove Petitioner to a third country, without success. *Id.* On March 23, 2017, Petitioner was release under an order of supervision. *Id.*

The current administration has placed a renewed emphasis on removing criminal aliens from the United States. *See, e.g.,* Executive Order 14159, January 20, 2025, Protecting the American People Against Invasion (directing the Secretary of Homeland Security to follow certain enforcement priorities, including the removal of aliens posing a danger to public safety). Following this directive, ICE re-detained the Petitioner on July 20, 2025. Decl. at ¶ 9. Petitioner, based on his extensive criminal history, has been deemed a danger to the community. *Id.* ICE is actively working to remove Petitioner to a third country. *Id.*

III. ARGUMENT

A. Petitioner is lawfully detained pursuant to 8 U.S.C. § 1231.

ICE's detention authority stems from 8 U.S.C. § 1231, which provides for the detention and removal of aliens with final orders of removal. Section 1231(a)(1)(A) directs immigration authorities to remove an individual with a final order of removal within a period of 90 days; this is known as the "removal period." During the removal period, section 1231(a)(2) commands that ICE "shall detain" the alien. If, however, the removal period has expired, ICE can either release the alien pursuant to an Order of Supervision as directed by Section 1231(a)(3) or may continue detention under Section 1231(a)(6). Per Section 1231(a)(6), ICE may continue detention beyond the removal period for three categories of individuals:

- Those who are inadmissible to the United States pursuant to 8 U.S.C. § 1182;
- Those who are subject to certain grounds of removability from the United States pursuant to 8 U.S.C. § 1227; or
- Those whom immigration authorities have determined to be a risk to the community or "unlikely to comply with the order of removal."

8 U.S.C. § 1231(a)(6) allows ICE to detain Petitioner because he is inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i); that is, Petitioner was neither admitted nor paroled in the United States upon entry. Moreover, ICE has determined that Petitioner's criminal history makes him a risk to the community. *See* Decl. at ¶ 9.

B. Withholding of removal does not preclude detention.

Petitioner mistakenly argues that his detention is unlawful because he was granted withholding of removal to Mexico. Petition at ¶ 1. When an individual has been granted withholding of removal, they may be detained while ICE attempts to remove that person to a third country. Section 1231(b)(1)(C) authorizes Petitioner's removal to a third country and detention to carry out that removal is lawful under section 1231(a)(6). *See also Cesar v. Achim*, 542 F. Supp. 2d 897, 905, n. 8 (E.D. Wis. 2008) (noting that a grant of withholding of removal does not render detention, while ICE seeks removal to a third country, unlawful) (citing *INS v. Cardoza–Fonseca*, 480 U.S. 421, 429 (1987)).

C. The revocation of supervised release is a non-reviewable discretionary decision.

The Government's decision to revoke an order of supervision is discretionary. *See* 8 C.F.R. §§ 241.5, 241.4(l)(2) ("Release may be revoked in the exercise of discretion when, in the opinion of the revoking official ... (iii) [i]t is appropriate to enforce a removal order")). Indeed, courts have recognized that the applicable regulations permit the Government "extraordinarily broad discretion to revoke" an order of supervision; and, "that discretion is expressly not limited to circumstances where a non-citizen violates the conditions of his" supervised release. *Zhen v. Doe*, No. 3:25-CV-01507-PAB, 2025 WL 2258586, at *10 (N.D. Ohio Aug. 7, 2025) (citing 8 C.F.R. § 241.4(l)(2)(i)-(iv)) (citations and quotations omitted). Here, the Petitioner has been re-detained to

effectuate his removal to a third country because the Government determined it was appropriate to enforce the removal order, which is authorized in 8 C.F.R. § 241.4(l)(2)(iii). Courts have recognized that, due to the discretionary nature of the power, the Government is not required to "demonstrate what facts or factors, if any, it considered in deciding to revoke." *Mong Tran v. Nikita Baker*, 2025 WL 2085020, at *4 (D. Md. July 24, 2025). The discretionary nature of the decision divest the Court of jurisdiction to review a challenge to the revocation.

Under 8 U.S.C. § 1252(a)(2)(B), "Congress has sharply circumscribed judicial review of the ... process" whereby noncitizens may obtain review of a discretionary decision. *Patel v. Garland*, 596 U.S. 328, 332 (2022). The statute strips courts of jurisdiction to review decisions within the discretion of the Attorney General or Secretary of Homeland Security. *Id.* at § 1252(a)(2)(B)(ii). Thus, the Court lacks jurisdiction over a challenge to the revocation of an order of supervision. *See, e.g., Hafed v. US Immig. and Cust. Enf't*, No. 3:20-CV-1248-N-BN, 2020 WL 4587582, at *2 (N.D. Tex. June 30, 2020), report and recommendation adopted, No. 3:20-CV-1248-N, 2020 WL 4583635 (N.D. Tex. Aug. 10, 2020) (citing § 1252(a)(2)(B)(ii) and finding a lack of jurisdiction to consider a challenge to revocation of supervision order).

D. Petitioner's current detention is within 90-days of when he was re-detained.

Although the language of § 1231 does not directly address this question, courts have held that, at least with respect to the mandatory 90-day removal period required

by § 1231(a)(1)(A), the clock restarts each time an alien subject to a final order of removal is again detained by ICE. *See, e.g., Guerra-Castro*, 2025 WL 1984300, at *4; *Thai v. Hyde*, No. 25-11499-NMG, 2025 WL 1655489, at *3 (D. Mass. 2025*); Meskini v. Atty. Gen. of U.S.*, No. 4:14-CV-42 (CDL), 2018 WL 1321576, at *3 (M.D. Ga. Mar. 14, 2018)("This Court does not read *Zadvydas* to be a permanent 'Get Out of Jail Free Card' that may be redeemed at any time just because an alien was detained too long in the past."); *Dogra v. I.C.E.*, No. 09–CV–065A, 2009 WL 2878459, at *2 n. 2 (W.D.N.Y. Sept. 2, 2009) (calculating length of detention as of petitioner's second time in ICE custody). The Court should adopt this approach in this case and find that Petitioner's current length of detention, which was triggered by his July 20, 2025 arrest, is within the bounds of the law.

Here, Petitioner's re-detention was triggered by the current administration's directive to prioritize the removal of criminal aliens. *See* Decl. at ¶ 9; EO 14159. Further, his continued detention is warranted as he has been deemed a danger to the community in light of his extensive criminal history. *Id.* ICE is actively working on removing him to a third country. *Id.* Finally, Petitioner will be afforded the procedural rights of someone who is detained, including a 90-day review. Decl. at ¶ 9. For the forgoing reasons, Petitioner's current detention is lawful and any challenge to the length of his detention is premature.

IV. CONCLUSION

The Government respectfully requests that the Court deny the Petition for Habeas Corpus.

Dated: August 21, 2025

Respectfully submitted,

NICHOLAS J. GANJEI
United States Attorney

s/ Jimmy A. Rodriguez
JIMMY A. RODRIGUEZ
Assistant United States Attorney
Southern District of Texas
Attorney in Charge
Texas Bar No. 24037378
Federal ID No. 572175
1000 Louisiana, Suite 2300
Houston, Texas 77002
Tel: (713) 567-9532
Fax: (713) 718-3303
Jimmy.Rodriguez2@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that on August 21, 2025, the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

s/ Jimmy A. Rodriguez
Jimmy A. Rodriguez
Assistant United States Attorney