UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HERMINIO GUZMAN-VALDEZ,

Petitioner,

v.

JOSEPH D. MCDONALD, Plymouth County Sheriff, TODD M. LYONS, Acting Director Immigration and Customs Enforcement, Boston Field Office, MICHAEL KROL, New England Field Office Director U.S. Immigration and Customs Enforcement, PATRICIA HYDE, Director of the Boston Field Office, U.S. Immigration and Customs Enforcement and Removal Operations, KRISTI NOEM, U.S. Secretary of Homeland Security, PAMELA BONDI, Attorney General of the United States, DONALD J. TRUMP, President of the United States,

Respondents.

Civil Action No. 1:25-CV-12308-MJJ

RESPONDENTS' RESPONSE TO PETITIONER'S PETITION FOR HABEAS CORPUS

Respondents Joseph D. McDonald, Todd M. Lyons, Michael Krol, Patricia Hyde, Kristi Noem, Pamela Bondi, and Donald J. Trump, in their official capacities ("Respondents"), by and through their attorney, Leah B. Foley, United States Attorney for the District of Massachusetts, respectfully submit this opposition to Petitioner Herminio Guzman-Valdez's ("Petitioner") Petition for Writ of Habeas Corpus ("Petition"). Doc. 1. Respondents respond to the Petition as contemplated by Rules 4 and 5 of the Federal Rules Governing Section 2254 cases.[1]

[1] *See* Rule 1(b) ("The district court may apply any or all of these rules to a habeas corpus petition…"); *Vieira v. Moniz*, No. CV 19-12577-PBS, 2020 WL 488552, at *1 n.1 (D. Mass. Jan.

Contrary to Petitioner's assertions in the Petition, his detention by U.S. Immigration and Customs Enforcement ("ICE") is fully supported by the Immigration and Nationality Act, its implementing regulations, and the Constitution. As such this Court should not order his release and his Petition should be denied.

INTRODUCTION

Petitioner has illegally entered the United States three times and has been removed to Guatemala previously. He is subject to a final order of removal from the United States. After Petitioner entered the United States illegally for the third time in 2019—that time, with a minor child—ICE released Petitioner on an Order of Supervision as authorized by 8 U.S.C. § 1231(a)(3). ICE recently revoked this Order of Supervision pursuant to its regulatory authority because the purpose of his release has been served and ICE is prepared to effectuate his removal to Guatemala. Petitioner has recently claimed a fear of return to Guatemala and is therefore pursuing reasonable-fear proceedings with the U.S. Citizenship and Immigration Services ("USCIS"), and ICE is awaiting a decision.

Petitioner claims that his detention is unlawful because ICE allegedly failed to follow its regulatory requirements in revoking his Order of Supervision. Petitioner also claims his detention violates the Fifth Amendment's Due Process clause based on his mistaken belief that he is subject to Expedited Removal. Both claims fail. As described more fully below, ICE has broad, discretionary authority to revoke an Order of Supervision in this context under 8 C.F.R. § 241.4, and it has fully complied with its regulatory requirements here. Additionally, Petitioner's detention does not violate the Constitution because he has a final order of removal and is lawfully detained under 8 U.S.C. § 1231.

30, 2020) (evaluating the Government's response and dismissing habeas petition under Section 2254 Rules).

BACKGROUND

Petitioner is a native and citizen of Guatemala. *See* Declaration of Keith Chan, Assistant Field Office Director ("Decl."), filed herewith, at ¶ 6.

On or about March 2, 2013, U.S. Border Patrol ("USBP") agents encountered Petitioner near Hebbronville, Texas within 14 days of his entering the United States and within 100 air miles of the southwestern border. Decl. ¶ 7. USBP agents determined that Petitioner had recently entered the United States without admission or parole. Decl. ¶ 7. Petitioner was then detained. Decl. ¶ 7. On March 6, 2013, USBP issued a Notice and Order of Expedited Removal under 8 U.S.C. § 1225(b)(1). Decl. ¶ 8. On April 15, 2013, Petitioner was removed from the United States. Decl. ¶ 9.

On June 9, 2013, USBP agents again encountered Petitioner, this time at or near Donna, Texas, and determined that Petitioner had re-entered the United States without admission or parole. Decl. ¶ 10. On June 10, 2013, USBP served Petitioner with a notice of intent/decision to reinstate the prior order of removal. Decl. ¶ 11. Petitioner indicated that he did not wish to make a statement contesting the determination. Decl. ¶ 11. On June 20, 2013, Petitioner was removed from the United States for a second time. Decl. ¶ 12.

On June 24, 2019, USBP encountered Petitioner for a third time, this time near Zapata, Texas. Decl. ¶ 13. USBP agents determined that Petitioner had re-entered the United States for a third time without admission or parole. Decl. ¶ 13. On June 26, 2019, USBP served Petitioner with a notice of intent/decision to reinstate the prior order of removal. Decl. ¶ 14. Petitioner contested the decision to reinstate his prior order of removal. Decl. ¶ 14. On June 27, 2019, Petitioner was released on an Order of Supervision with certain conditions because he had re-entered with a minor child. Decl. ¶ 15.

On July 25, 2025, ICE Enforcement and Removal Operations ("ERO") officers encountered Petitioner in Hartford, Connecticut and arrested him. Decl. ¶ 16. ICE ERO officers determined that Petitioner had only one child who was no longer a juvenile. Decl. ¶ 16. Accordingly, that same day, pursuant to 8 C.F.R. § 241.4(l), ERO revoked Petitioner's Order of Supervision because, in the opinion of the revoking official, the purpose of release had been served and ICE was prepared to effectuate his removal to Guatemala. Decl. ¶ 16. Petitioner was served with a notice of revocation of release and given an initial informal interview for him to have an opportunity to respond to the reasons for the revocation of the order of supervision. Decl. ¶ 16.

On July 30, 2025, counsel for Petitioner requested that Petitioner receive a reasonable fear interview with U.S. Citizenship and Immigration Services ("USCIS"). Decl. ¶ 17. On September 8, 2025, Petitioner received a reasonable fear interview with USCIS and a decision is forthcoming. Decl. ¶ 18.

STATUTORY AND REGULATORY FRAMEWORK

A. 8 U.S.C. § 1231

An individual who has been removed from the United States pursuant to a final order of removal, and who thereafter re-enters the United States illegally, is subject to a statutory provision that allows immigration authorities to reinstate the original removal order and proceed with removal again. 8 U.S.C. § 1231(a)(5); 8 C.F.R. § 241.8; *Johnson v. Guzman Chavez,* 594 U.S. 523, 529 (2021). The Supreme Court, in *Guzman Chavez*, held that the statutory authority to detain and remove a noncitizen with a reinstated final order of removal is found within 8 U.S.C. § 1231. *Id.* at 533.[2]

[2] Removal, however, cannot immediately proceed if the individual expresses a fear of return to his home country. 8 C.F.R. § 241.8(e). And, if his fear is deemed reasonable by an asylum official, the individual is entitled to file an application for withholding of removal and protection under the Convention against Torture in Immigration Court. 8 C.F.R. § 208.31. Such

B. Post-Order Custody Regulations

ICE has issued Post-Order Custody Regulations ("POCR") contained at 8 C.F.R. § 241.4 to set forth mechanisms concerning custody reviews, release from ICE custody, and revocation of release for individuals, like Petitioner, with final orders of removal. Relevant here, ICE has significant discretion to revoke an order of supervision and return an individual to custody. 8 C.F.R. § 241.4(l). ICE can revoke release when an individual violates conditions of release. *Id.* § 241.4(l)(1). ICE can also revoke release when "[t]he purposes of release have been served," when "[i]t is appropriate to enforce a removal order or to commence removal proceedings against an alien," or when "[t]he conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." *Id.* § 241.4(l)(2)(i)-(iv).

When ICE revokes release of an individual under 8 C.F.R. § 241.4(l), ICE must conduct an "informal interview" to advise the individual of the basis for revocation and must also serve the individual with a written notice of revocation. If ICE determines revocation remains appropriate after conducting the informal interview, then ICE will provide notice to the individual of a further custody review that "will ordinarily be expected to occur within approximately three months after release is revoked." 8 C.F.R. § 241.4(l)(3). As part of the 180-day custody review, two ICE officers—a "Review Panel"—review the individual's immigration record, any information submitted by the individual, and conduct a personal interview. *Id.* Following completion of the interview, the Review Panel issues a written recommendation as to the individual's custody status to an ICE official at ICE Headquarters. *Id.* § 241.4(i)(5). The ICE Headquarters official considers

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an individual is in withholding-only proceedings before an Immigration Judge and can appeal the Immigration Judge's decision to the BIA if his protection application is denied. *Id.* § 208.31(e). Even if an Immigration Judge grants a noncitizen protection from removal, such individual nonetheless remains subject to a final order of removal and ICE can seek to remove the noncitizen to a third country. 8 U.S.C. § 1231(b); *Guzman Chavez,* 594 U.S. at 531-32.

the custody recommendation, custody materials, and issues a custody determination. *Id.* § 241.4(i)(6).

If detention is still deemed appropriate, ICE will periodically conduct further reviews thereafter. *Id.* § 241.4(i)(3), (k)(1)-(2). Separately, the individual may present a written request that he should be released from detention because there is no significant likelihood he will be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(d)(1). Upon receipt of a substantiated claim, ICE will analyze the likelihood of removal under the circumstances. *Id.* § 241.13(f). Specifically, an eligible individual "may submit a written request for release," together with "whatever documentation" he wishes "in support of the assertion that there is no significant likelihood of removal in the reasonably foreseeable future." *Id.* § 241.13(d)(1). ICE will then review the case and ultimately "issue a written decision based on the administrative record." *Id.* § 241.13(d)–(e), (g).

ARGUMENT

ICE's detention of Petitioner is authorized by statute and regulation and does not violate the Constitution—as such, this Court should deny the Petition.

To start, Petitioner is not subject to Expedited Removal as he asserts in his Petition. *See* Doc. 1 at ¶ 28 ("On belief, Petitioner is currently being detained and subjected to Expedited Removal in violation of his constitutional right to due process of law"). Rather, Petitioner is detained pursuant to 8 U.S.C. § 1231 because he has a final order of removal that has been reinstated pursuant to 8 U.S.C. § 1231(a)(5).

A. ICE's Revocation of Petitioner's Order of Supervision was Lawful

ICE has significant discretion to revoke an order of supervision, and it has done so here in compliance with its implementing regulations.

Relevant here, 8 C.F.R. § 241.4(l) provides ICE with discretion to revoke release. *See Leybinsky v. U.S. Immigr. & Customs Enf't,* 553 F. App'x 108, 110 (2d Cir. 2014) (remarking on the "broad discretionary authority the regulation grants ICE" to revoke release."); *Rodriguez v. Hayes*, 591 F.3d 1105, 1117 (9th Cir. 2010) (explaining that while the revocation regulation "provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion …."). As acknowledged by Petitioner in his Petition, ICE can revoke release when it determines an alien has violated the conditions of his release. 8 C.F.R. § 241.4(l)(2)(ii). However, ICE can *also* revoke release when it determines that "[t]he purposes of release have been served," or when ICE finds that "[i]t is appropriate to enforce a removal order or to commence removal proceedings against an alien," or when ICE determines that "[t]he conduct of the alien, *or any other circumstance,* indicates that release would no longer be appropriate." *Id.* § 241.4(l)(2)(i)-(iv) (emphasis added).

Here, ICE issued Petitioner a written revocation notice explaining that ICE was revoking his release pursuant to 8 C.F.R. § 241.4 because it had determined that the purpose of release had been served[3] and ICE was prepared to effectuate his removal to Guatemala pursuant to his final order of removal. Decl. ¶ 16. ICE complied with 8 C.F.R. § 241.4(l)'s "informal interview" requirement by providing Petitioner with an informal interview on July 25, 2025, at which time it explained the reasons for the revocation and provided him with an opportunity to respond. Decl. ¶ 16. And, as numerous courts have recognized, ICE is not required to provide advance notice of its intent to revoke release for the obvious reason that it could encourage flight or increase law enforcement safety concerns. *See Doe v. Smith*, No. CV 18-11363-FDS, 2018 WL 4696748, at *7 (D. Mass. Oct. 1, 2018) (explaining that the "regulation does not require that a petitioner or her

[3] ICE noted that Petitioner's child was no longer a juvenile. Decl. ¶ 16.

counsel be given 30 days' notice prior to the initial informal interview."); *Moran v. U.S. Dep't of Homeland Sec*., No. EDCV2000696DOCJDE, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) (expressing skepticism about "the source of any due process right to advance notice of revocation of supervised release or other removal-related detention.").

As such, Petitioner's claim that Petitioner's detention is unlawful fails as Petitioner is lawfully detained pursuant to 8 U.S.C. § 1231 and his order of supervision was appropriately revoked pursuant to 8 C.F.R. § 241.4(l).

B. Petitioner's Statutorily Authorized Detention is Constitutional

Petitioner asserts that his current detention is unconstitutional based primarily on his mistaken belief that he is being subjected to Expedited Removal. *See* Doc. 1 ¶¶ 24-32. In fact, as described above, Petitioner is being detained pursuant to 8 U.S.C. § 1231 because he has a final order of removal. His detention under 8 U.S.C. § 1231 comports with the Constitution.

As recognized by the Supreme Court, "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). As explained by the Supreme Court, when evaluating "reasonableness," the touchstone is whether a noncitizen's detention continues to serve "the statute's basic purpose, namely, assuring the alien's presence at the moment of removal." *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). Here, it does.

As the Supreme Court explained, the flight risk of a noncitizen, such as Petitioner, with a final order of removal and a history of prior removals and illegal re-entries is apparent as such individuals "who reentered the country illegally after removal have demonstrated a willingness to violate the terms of a removal order, and they therefore may be less likely to comply with the reinstated order." *Guzman Chavez*, 594 U.S. at 544.

The Supreme Court in *Zadvydas* acknowledged that a "statute permitting indefinite detention of an alien would raise a serious constitutional problem." *Id.* at 690. As such, the *Zadvydas* Court held that post-removal detention for six months is "presumptively reasonable." *Id.* at 701. Beyond six months, an alien must provide "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future" before the burden shifts to the government to demonstrate removal is likely. *Id.* at 701.

As such, to set forth a Constitutional violation for Section 1231 detention, an individual must satisfy the *Zadvydas* test. *See Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024) (explaining that "*Zadvydas*, largely, if not entirely forecloses due process challenges to § 1231 detention apart from the framework it established."); *Wang v. Ashcroft*, 320 F.3d 130, 146 (2d Cir. 2003) (the *Zadvydas* "test articulates the outer bounds of the Government's ability to detain aliens … without jeopardizing their due process rights.").

Petitioner's Due Process challenge fails under his present circumstances. Petitioner's first hurdle is that any *Zadvydas* challenge cannot be raised until Petitioner has been detained for six-months in post-final order custody. *See Reid v. Donelan*, 390 F. Supp. 3d 201, 220 (D. Mass. 2019); *Lamotte v. Holder*, No. 13-cv-00582, 2013 WL 1629135, at *2 (D. Mass. Apr. 9, 2013). Here, Petitioner has been detained for less than two months, and as such, any claim that his detention is unlawful because his removal is not reasonably foreseeable is premature. *See Farah v. U.S. Att'y Gen.,* 12 F.4th 1312, 1332–33 (11th Cir. 2021) (explaining that "[i]f after six months he is still in custody and has not been removed from the United States, then he can challenge his detention under section 1231(a). But until then, his detention is presumptively reasonable under *Zadvydas*.); *Julce v. Smith*, No. CV 18-10163-FDS, 2018 WL 1083734, at *5 (D. Mass. Feb. 27, 2018) (habeas petition deemed "premature at best" as it was filed after three months of post-final order detention).

And even assuming *arguendo* Petitioner's detention was to stretch beyond six months, such detention will remain permissible as analyzed under *Zadvydas*. The First Circuit recently determined that an individual detained for more than four years as he pursued withholding-only proceedings could not make the initial showing to demonstrate his detention violated the *Zadvydas* framework because his "situation is readily distinguishable from *Zadvydas*." *G.P. v. Garland,* 103 F.4th 898, 901 (1st Cir. 2024). Unlike the two noncitizens in the *Zadvydas* case who faced potentially permanent detention because of being stateless, the First Circuit found that G.P.'s detention was finite because "if he is ultimately denied relief, the government will be able to move forward with removing him" from the United States. *Id.* As such, the First Circuit, joining the Fourth and Sixth Circuits, held that the individual, despite being detained for four-years and with resolution of proceedings nowhere near imminent, "has failed to show that there is no significant likelihood of his removal in the reasonably foreseeable future." *Id.* (internal quotations omitted).

Finally, as explained above, ICE complied with its regulatory authority in revoking Petitioner's release and any claim that ICE violated the Constitution in doing so is without merit. The regulation does not require advance notice, and neither does the Constitution. *See Reyes v. King,* No. 19 CIV. 8674 (KPF), 2021 WL 3727614, at *10 (S.D.N.Y. Aug. 20, 2021) (explaining that "the Due Process Clause of the Fifth Amendment does not entitle [p]etitioner to such a [pre-detetion] hearing at this specified time, and [p]etitioner cites no authority within this Circuit that counsels otherwise."); *Gutierrez-Soto v. Sessions*, 317 F. Supp. 3d 917, 929 (W.D. Tex. 2018) (finding no "due process right to not be snatched off the street without warning" when ICE revoked discretionary parole and returned individual to custody.). The regulation requires that ICE provide an informal interview to explain the basis for the revocation and to provide a written notice and ICE complied with both provisions.

Petitioner can challenge his detention and seek release through the regulatory provisions that apply for individuals detained with final orders of removal. Courts routinely conclude that such regulations are permissible to protect individual's Constitutional rights while detained. *See e.g., Moses v. Lynch*, No. 15-cv-4168, 2016 WL 2636352, at *4 (D. Minn. Apr. 12, 2016) ("When immigration officials reach continued-custody decisions for aliens who have been ordered removed according to the custody-review procedures established in the Code of Federal Regulations, such aliens receive the process that is constitutionally required."); *Portillo v. Decker*, No. 21 CIV. 9506 (PAE), 2022 WL 826941, at *6 (S.D.N.Y. Mar. 18, 2022) (collecting cases supporting conclusion that the POCR framework has routinely been deemed constitutional and noting that petitioner had not "cite[d] legal authority in support of his generalized laments about the administrative process.").

Petitioner's detention is fully permissible and does not violate the Fifth Amendment's Due Process Clause and therefore his claim for release must be rejected.

CONCLUSION

For the reasons described above, Petitioner's detention is lawful and his Petition should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to any non-registered participants via first class mail.

/s/ Nicole M. O'Connor
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Dated: September 12, 2025