**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

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| OLUGBENGA ABASS,<br><br>Petitioner,<br><br>v.<br><br>RANDY TATE, in his capacity as Warden of the Montgomery Processing Center,<br><br>Respondent. | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§ | Civil Action No. 4:25-cv-5280 |

**THE GOVERNMENT'S RESPONSE**
**AND MOTION FOR SUMMARY JUDGMENT**

The Government[1] hereby responds to Obugbenga Abass's Petition for Writ of Habeas Corpus and respectfully requests that this Court deny his petition under 28 U.S.C. §2241 and grant summary judgment for the Government pursuant to Federal Rule of Civil Procedure 56. 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.

## I. SUMMARY OF THE ARGUMENT

Petitioner Obulgbenga Abass ("Abass") is a Nigerian national and detainee in the custody of Immigration and Customs Enforcement (ICE). Dkt. 1. On November 1, 2021, Mr. Abass was ordered removed and granted withholding of removal. Dkt 1, Exh. 1. After his

[1] 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 federal respondents i.e. Government officials, 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.

latest arrest, Petitioner was transferred to the custody of ICE for the purposes of effectuating his final order of removal. This action is supported by the Immigration and Nationality Act ("INA"), its implementing regulations, and the Constitution.

Further, the mere fact that the Petitioner has been granted withholding of removal to Nigeria is not a bar to his current detention. Rather, withholding of removal simply prevents the Government from removing the Petitioner to Nigeria. At this time, the Government is attempting to remove Mr. Abass to a third country.

## II. FACTUAL BACKGROUND

Petitioner has a long criminal history. The following are Petitioner's arrests and convictions as set forth in Exhibit 1, Declaration of Deportation Officer George Maple, Jr. ("Maple Decl"):

- On August 17, 2006, the Houston Community College Police Department (HCCPD) in Houston, TX arrested ABASS for theft of property and booked him into the Harris County Jail ("HCJ") in Houston, TX. Maple Decl. ¶10.

- On September 26, 2006, the Harris County Criminal Court at Law #12 convicted ABASS of theft of property and sentenced him 2 days confinement in the HCJ. *Id.* ¶12.

- On June 3, 2010, the Houston Police Department (HPD) in Houston, TX arrested ABASS for liquor violation and booked him into the HCJ in Houston, TX. *Id.* ¶15.

- On June 21, 2010, the HPD in Houston, TX arrested ABASS for assault by threat and booked him into the HCJ in Houston, TX. *Id.* ¶17.

- On June 26, 2010, the HPD in Houston, TX arrested ABASS for theft of property and booked him into the HCJ in Houston, TX. *Id.* ¶19.

- On June 29, 2010, the Harris County Criminal Court at Law #3 convicted ABASS of theft of property and sentenced him 10 days confinement in the HCJ. *Id.* ¶20.

- On August 26, 2010, the HPD in Houston, TX arrested ABASS for criminal trespass and possession of marijuana and booked him into the HCJ in Houston, TX. *Id.* ¶22.

- On August 31, 2010, the Harris County Criminal Court at Law #13 convicted ABASS of criminal trespass and sentenced him to 30 days confinement in the HCJ. On the same date, the same court convicted ABASS of possession of marijuana and sentenced him to 30 days confinement in the HCJ. *Id.* ¶23.

- On January 21, 2011, the HPD in Houston, TX arrested ABASS for liquor violation and booked him into the HCJ in Houston, TX. *Id.* ¶25.

- On March 11, 2011, the HPD in Houston, TX arrested ABASS for possession of marijuana and booked him into the HCJ in Houston, TX. *Id.* ¶28.

- On March 14, 2011, the Harris County Criminal Court at Law #12 convicted ABASS of possession of marijuana and sentenced him to 8 days confinement in the HCJ. *Id.* ¶29.

- On May 19, 2011, the HPD in Houston, TX arrested ABASS for liquor violation and booked him into the HCJ in Houston, TX. *Id.* ¶31.

- On June 13, 2011, the HPD in Houston, TX arrested ABASS for liquor violation and booked him into the HCJ in Houston, TX. *Id.* ¶33.

- On June 14, 2011, the HPD in Houston, TX arrested ABASS for criminal trespass and booked him into the HCJ in Houston, TX. *Id.* ¶35.

- On November 2, 2011, the Harris County Criminal Court at Law #12 convicted ABASS of criminal trespass and sentenced him to 76 days confinement in the HCJ. *Id.* ¶38.

- On April 26, 2013, the Bellaire Police Department ("BPD") in Bellaire, TX arrested ABASS for evading arrest/detention with a vehicle and booked him into the HCJ in Houston, TX. *Id.* ¶39.

- On April 29, 2013, the 178th District Court in Harris County, TX convicted ABASS of evading arrest/detention with a vehicle and sentenced him to 1 year confinement in the HCJ. *Id.* ¶40.

- On August 11, 2015, the HPD in Houston, TX arrested ABASS for liquor violation and booked him into the HCJ in Houston, TX. *Id.* ¶48.

- On September 25, 2015, the HPD in Houston, TX arrested ABASS for liquor violation and booked him into the HCJ in Houston, TX. *Id.* ¶50.

- On November 17, 2015, the HPD in Houston, TX arrested ABASS for aggravated robbery and booked him into the HCJ in Houston, TX. *Id.* ¶52.

- On June 11, 2016, the 248th District Court in Harris County, TX convicted ABASS of aggravated robbery and sentenced him to 2 years confinement in the Texas Department of Criminal Justice (TDCJ). *Id.* ¶53.

- On October 25, 2018, the HPD in Houston, TX arrested ABASS for criminal trespass and booked him into the HCJ in Houston, TX. *Id.* ¶56.

- On October 29, 2018, the Harris County Criminal Court at Law #6 convicted ABASS of criminal trespass and sentenced him to 3 days confinement in the HCJ. *Id.* ¶57.

- On November 24, 2018, the HPD in Houston, TX arrested ABASS for terroristic threat and indecent exposure and booked him into the HCJ in Houston, TX. *Id.* ¶59.

- On March 6, 2019, the Harris County Criminal Court at Law #4 convicted ABASS of terroristic threat and sentenced him to 60 days confinement in the HCJ. On the same date, the same court convicted ABASS of indecent exposure and sentenced him to 60 days confinement in the HCJ. *Id.* ¶60.

- On April 1, 2019, the HPD in Houston, TX arrested ABASS for criminal trespass and booked him into the HCJ in Houston, TX. *Id.* ¶62.

- On April 24, 2019, the HPD in Houston, TX arrested ABASS for taking a weapon from a police officer and booked him into the HCJ in Houston, TX. *Id.* ¶65.

- On August 13, 2019, the 209th District Court in Harris County, TX convicted ABASS of taking a weapon from a police officer and sentenced him to 180 days confinement with the TDCJ. *Id.* ¶66.

- On October 30, 2019, the HPD in Houston, TX arrested ABASS for terroristic threat and booked him into the HCJ in Houston, TX. *Id.* ¶70.

- On November 11, 2020, the 248th District Court in Harris County, TX convicted ABASS of terroristic threat and sentenced him to 1 year confinement in the HCJ. *Id.* ¶73.

- On April 29, 2021, the Harris County Sheriff's Department charged ABASS with prohibited weapons in a correctional facility while in custody at the HCJ. *Id.* ¶74.

- On October 13, 2021, the 482nd District Court in Harris County, TX convicted ABASS of prohibited weapons in a correctional facility and sentenced him to 180 days confinement in the HCJ. *Id.* ¶75.

- On April 24, 2022, the HPD in Houston, TX arrested ABASS for burglary of a building and booked him into the HCJ in Houston, TX. *Id.* ¶77.

- On January 25, 2023, the 263rd District Court in Harris County, TX convicted ABASS of burglary of a building and sentenced him to 7 months confinement in the HCJ. *Id.* ¶78.

- On August 5, 2025, the Metropolitan Transit Authority Police Department (METROPD) arrested ABASS for injury to a child and booked him into the HCJ in Houston, TX. *Id.* ¶80.

- On September 25, 2025, the 495th District Court in Harris County, TX convicted ABASS of injury to a child and sentenced him to 150 days confinement in the HCJ. *Id.* ¶83.

*See generally*, Exhibit 1, Maple Declaration.

After being arrested and convicted for injury to a child, Harris Country transferred Mr. Abass into the custody of ICE. Maple Declaration ¶83. Since being detained on September 27, 2025, Mr. Abass has spent only two months in custody. ICE is making efforts to have Mr. Abass removed to a third country. Maple Declaration ¶84. Given these facts, Mr. Abass fails to show how his continued detention amounts to a constitutional violation. Thus, the Petition must be denied.

## III. AUTHORITY BY WHICH PETITIONER IS HELD

Mr. Abass is being detained pursuant to a final removal order. *See* 8 U.S.C. §1231. On March 18, 2015, an immigration judge ordered Mr. Abass's removal. Dkt. 1. Exhibit 1. Until very recently, September 27, 2025, Mr. Abass spent limited time in immigration detention pursuant to his final order of removal. *See* Maple Declaration ¶¶46-47 (March 18, 2015-March 23, 2015); ¶¶57-58(October 30,2018). Since September 27, 2025, Mr. Abass has spent around two months in custody (or around 60 days).

## IV. STANDARD OF REVIEW

Summary judgment is appropriate under Federal Rule of Civil Procedure 56 only if the pleadings, along with evidence, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *see also* Fed. R. Civ. P. 56(c). If the moving party meets its burden, the non-moving party must show a genuine issue of material fact exists. *Id.* at 322. The non-moving party may not rest upon mere allegations or denials in the pleadings but must present affirmative evidence, setting forth specific facts, to show the existence of a genuine issue for trial. *Id.* at 322-23.

## VI. 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).

Given Mr. Abass's extensive criminal history, Mr. Abass is a risk to the community and/or unlikely to comply with the order of removal. Therefore, he is being detained pursuant to Section 1231(a)(6). Mr. Abass was transferred to ICE's custody after he was arrested once again, for injury to a child. Mr. Abass has shown through his own actions, that he is a risk to the community. Given that he is a risk to the community, ICE properly detained Mr. Abass pursuant to Section 1231(a)(6).

### B. Withholding of Removal does not Preclude Detention

Petitioner mistakenly argues that his detention is unlawful because he was granted withholding of removal to Nigeria. Dkt. 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. *See Johnnson v. Guzman Chavez*, 594 U.S. 523, 531 (2021)("[W]ithholding of removal is a form of country specific relief…nothing prevents DHS from removing [the] alien to a third country other than the country to which removal has been withheld or deferred.")(cleaned up). 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. Alternatively, if the Court finds release appropriate, the Government requests that Mr. Abass be released on an ankle monitor with conditions attached.**

Since, Mr. Abbas entered this country in 2006, he has been over arrested twenty times for various crimes. Given his extensive criminal history, if the Court determines release is appropriate, the Government requests that Mr. Abass be required to wear an ankle monitor and that he be released on an order of supervision until the final order of removal can be executed.

## VII. CONCLUSION

For the foregoing reasons, the Petition for Writ of Habeas Corpus (Dkt. 1) should be denied.

Dated: November 25, 2025

Respectfully submitted,

NICHOLAS J. GANJEI

United States Attorney

By: */s/ Natasha Alexander*

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**CERTIFICATE OF SERVICE**

I certify that, on November 25, 2025, the foregoing was the foregoing was filed and served through the Court's CM/ECF system. In addition, this Motion was provided to Mr. Abass at the Montgomery Processing Center.

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Conroe, TX 77301

*/s/ Natasha Alexander*
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