UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:26-cv-02189-KMM-DLM

Emilio S. R. G.,

Petitioner,

FEDERAL RESPONDENTS' RESPONSE TO AMENDED HABEAS PETITION

v.

Markwayne MULLIN, *et al.*,

Respondents.

Federal Respondents respectfully provide the following response to Petitioner's Amended Habeas Petition pursuant to the Court's order. Petitioner is an alien detained under 8 U.S.C. § 1231. Petitioner argues for immediate release because the arrest was unlawful. Petitioner's arrest were pursuant to a valid warrant of removal and violation of his Order of Supervision (OSUP), as such his detention is authorized by law. Since his detention is lawful, the Respondents respectfully request that the Petition be denied, and this case be dismissed.

STATEMENT OF THE RELEVANT FACTS

Any allegations that are not specifically admitted herein are denied. Petitioner is a citizen and national of Cuba that was ordered removed from the United States on October 28, 1997. Dkt. 6, Ex. C. On August 11, 2004, Form I-205 was issued. Dkt. 6, Ex F, pg 6. Petitioner was released on multiple Order's of Supervision (OSUP), with the last one being issued on March 4, 2009. Dkt. 6, Ex. D. The OSUP required, *inter alia*, that Petitioner not

commit any crimes while on OSUP. After being released on the 2009 OSUP the Petitioner committed three crimes; including sale of narcotics and possession of ammunition or firearms. Dkt. 19, ¶ 13. Another condition of the 2009 OSUP was Petitioner was required to provide any change of address and follow all reporting and supervision requirements. Dkt. 6, Ex. D. Petitioner failed to report multiple times. Dkt. 6, ¶¶ 33, 34, 42 and Ex. E.

On March 3, 2026, ICE detained Petitioner following his release from the Minnesota Correctional Facility, for violation of the OSUP and Warrant of Removal. Dkt. 6, Ex. F. Petitioner was given an opportunity to respond to the revocation of his OSUP and declined. Dkt. 6, Ex. F.

On March 9, 2026, ICE served Petitioner a Notice of Third Country Removal for Mexico and Form I-229(a), Warning for Failure to Depart and Instruction Sheet reminding him of the legal consequences of failure to comply with the final order of removal in his case. Dkt. 6, Ex. G. On March 13, 2026, Petitioner was transferred from Minnesota to Louisiana and on March 23, 2026, Petitioner was transferred from Louisiana to Arizona in preparation for removal to Mexico. Dkt. 6, ¶ 50. On or about March 25, 2026, Petitioner refused to comply with removal to Mexico. Dkt. 6, ¶ 51. On March 31, 2026, Petitioner was transferred back to Minnesota and housed at the Sherburne County Jail in Elk River, where he remains detained.

JURISDICTION AND BURDEN OF PROOF

28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. The burden is on the habeas petitioner to demonstrate that he or she is in custody in violation of the Constitution or laws or treatises of the United States to warrant relief.

See Skaftouros v. United States, 667 F.3d 144, 158 (2d Cir. 2011). For immigration detainees challenging their civil detention via a habeas action, courts must employ a narrow standard of review of decisions made by the Congress or the President regarding immigration and must exercise "the greatest caution" in evaluating constitutional claims that implicate those decisions." *Mathews v. Diaz*, 426 U.S. 67, 81-82 (1976)).

ARGUMENT

Respondents maintain all arguments and exhibits filed in their original response in Dkts. 5 and 6. Section 1231 establishes the framework Congress chose for noncitizens who have already been ordered remove During the removal period, detention is mandatory. 8 U.S.C. § 1231(a)(2). After that period, Congress authorized continued detention for specified categories of noncitizens, including inadmissible noncitizens, *criminal noncitizens, and noncitizens who have been determined to be a risk to the community or unlikely to comply with the order of removal.* 8 U.S.C. § 1231(a)(6)(*emphasis added*). The Supreme Court in *Zadvydas v. Davis* construed that post-removal-period authority contains an implicit reasonableness limitation: detention may continue for the period reasonably necessary to accomplish removal, and six months is presumptively reasonable. 533 U.S. 678, 689 (2001). But *Zadvydas* did not create an automatic release rule. After the six-month period, the noncitizen must first provide good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future before the Government must respond with rebuttal evidence. *Id.* at 701. The facts of Petitioner case do not entitle him to habeas relief; therefore the Court should deny this habeas petition.

I. Petitioner was arrested with a valid issued warrant of removal

The only warrant mentioned in § 1231 statutory scheme is the warrant of removal, Form I-205. 8 C.F.R. §241.2. The warrant of removal is issued by one of the immigration officials listed in 8 C.F.R. § 241.2(a)(1), whereas the execution of the warrant of removal can be completed by any of the immigration officers listed in 8 C.F.R. 287.5(e)(3). 8 C.F.R. § 241.2(b). The warrant of removal was issued in this matter. Dkt. 6, Ex. F.

This Court has previously decided that issuance and execution of Form I-205 are synonymous, stating "[n]othing before the Court suggest that a decade old, previously executed Form I-205 . . . can be used in perpetuity." *Ahmed S. v. Blanche*, No. 26-cv-2265 (KMM/DLM) ECF No. 38 at 12. However, this Court came to that conclusion without applying the regulations definition of "executed" or "execute" which is defined "fully completed". 8 C.F.R. § 1.2. Whereas the word "issue" is not defined by the regulation so the Court should apply the fundamental canon of statutory construction "that unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." *Perrin v. United States*, 444 U.S. 37 at 42 (1979). The ordinary, contemporary, common meaning of the word "issue" is defined, in the context of 8 C.F.R. § 241.2(a), as "the act of publishing or officially giving out or making available"[1]. Applying the common meaning of "issue" and the regulation definition of "execute" show that the two words are not synonymous. Thus, the execution of a warrant of removal can only take place once the noncitizen is removed from the United States and the mere

[1] Issue, Merriam-Webster, https://www.merriam-webster.com/dictionary/issue (last visited July 12, 2026).

issuance just needs to take place after final administrative removal order. The Ninth Circuit agrees that a deportation warrant remains enforceable, no matter the lapse of time. *Spector v. Landon*, 209 F.2d 481 (9th Cir. 1954). Nor is there any requirement that a deportation warrant be served upon an alien before he is deported. *Sulit v. Schiltgen*, 213 F.3d 449, 453 (9th Cir. 2000). The second page of the I-205 agrees with such language, as it requires the executing officer to list the "port, date, and manner of removal"; the executing officer must witness the actual removal; and if its not witnessed the executing officer must give details to confirm such departure occurred. Dkt. 6, Ex. F. Here Form I-205 was properly issued has not yet been executed, because the Petitioner refused at the last second to go to Mexico. Dkt. 6, ¶ 51. Making the Warrant of Removal valid, and the assumption of custody notification validates this point. Dkt. 6, Ex. F.

II. Violation of the Order of Supervision is enough to detain Petitioner

Petitioner received due process as he was promptly notified of the revocation of his order of supervision (OSUP) and was given an opportunity to respond. Dkt. 6, Ex. F. Petitioner argues that a warrant was needed for ICE to take him into custody, however that is not true – a warrant was issued prior to his arrest – when dealing with the revocation of an order of supervision. 8 C.F.R. §§ 241.4 or 241.13.

When the Agency is unable to remove a non-citizen that is subject to a final order of removal, the regulations allow for the non-citizen to be released on supervision. 8 C.F.R. 241.4(e). A violation of the supervision may result in revocation, "Any alien . . . who has been released on an order of supervision . . . who violates the conditions of release may be returned to custody." 8 C.F.R. §§ 241.4(l) and 241.13(h)(i). The procedures for revocation

of an order of supervision are detailed and make no mention of securing a warrant to revoke OSUP[2]. *Id.*

Here the Petitioner was ordered removed from the United States on October 15, 1997. Dkt. 6, Ex B. The required warrant of removal was issued on August 11, 2004. Dkt. 6, Ex. F. Petitioner, was released on his last OSUP on March 4, 2009. Dkt. 6, Ex. D. Since the Petitioner was released on an OSUP the revocation of the OSUP is governed by either 8 C.F.R. §§ 241.4 or 241.13, depending on the reason for revocation. The Petitioner's OSUP clearly stated not to commit any crimes. *Id.* The Petitioner's felony conviction is a direct violation of this condition. Dkt. 19, ¶ 33. In compliance with the regulations ICE served Petitioner with the revocation of release and promptly afforded the Petitioner with an informal interview. 8 C.F.R. § 241.4(l)(1); Dkt. 6, Ex. F. These procedures afforded to Petitioner put his allegations immediately out of place, and this Court should deny this habeas petition[3].

III. There was no violation of Accardi Doctrine

Petitioner fails to prove the agency failed to follow its rules. The facts and documentation clearly show that the agency completely and methodically completed all of its regulated requirements. Specifically, Petitioner was ordered removed on October 15, 1997; the removal order is administratively final complied with 8 C.F.R. § 241.1. On

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2 Whereas if there is no 'Order of Supervision' in place then a warrant could necessitate the detention of a non-citizen, absent a showing that the requirement for a warrantless arrest is allowed. *See generally Inti C.-L., v. Blanche*, No. 26-CV-2777 (PJS/SGE) (D. Minn. June 9, 2026).

3 Although not required the Petitioner was also notified that his custody was regarding the issued I-205. Dkt. 6, Ex. F.

August 11, 2004 a warrant of removal Form I-205 was issued complied with 8 C.F.R. § 241.2(a). On March 4, 2009 the Petitioner was released on his most recent OSUP in compliance with 8 C.F.R. § 241.4(e). Petitioner repeatedly violated the terms of the OSUP triggering revocation under 8 C.F.R. §§ 241.4(l) and 241.13(h)(i). On March 3, 2026 Petitioner's OSUP was formally revoked in compliance with 8 C.F.R. §§ 241.4(l) and 241.13(h)(i). On March 3, 2026, Petitioner was given an opportunity to respond and declined the agency complied with 8 C.F.R. §§ 241.4(l) and 241.13(h)(i). Not necessary, but the agency also gave Petitioner a document titled "Assumption of Custody". Dkt. 6, Ex. F. Petitioner would have already been released from detention, on March 25, 2026, had he not refused removal to Mexico, Dkt. 6, ¶ 49, and filed this habeas petition.

It is clear the Respondents have satisfied every regulation required under these particular facts. There is nothing to correct. As such the Court should deny this habeas petition.

EVIDENTARY HEARING

An evidentiary hearing is **not** necessary because the petition turns on undisputed custody facts and legal questions. Because further factual development would not affect the legality of current custody, the Court should deny the petition without an evidentiary hearing.

CONCLUSION

Because Petitioner is detained pursuant to valid statutory and regulatory authority, and because he has received all process required by law, he cannot demonstrate that his custody is unlawful. For the foregoing reasons, the Court should deny Petitioner's Petition.

DATED: July 15, 2026

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