

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

K.E.O.

PETITIONER

v.

CIVIL ACTION NO. 4:25-CV-00074-RGJ (*e-filed*)

Jason WOOSLEY, Grayson County Jailer; Samuel
OLSON, Field Office Director for U.S. Immigration
and Customs Enforcement; Kristi NOEM, in her
official capacity as Secretary, U.S. Department of
Homeland Security

DEFENDANTS

POST HEARING BRIEF

K.E.O.’s habeas petition assumed, on information and belief, that K.E.O. was detained due to a revocation of supervised release that was not executed by someone with authority to do so. (Doc. 1, PageID.10-11, 15-16, ¶¶ 36-37, 54.). On August 1, 2025, ICE served K.E.O. with a Notice of Revocation of Release, issued pursuant to authority delegated by regulation.¹ (Doc. 10, PageID.156; Doc. 10-2, PageID.174, ¶¶ 7-8; Exh. 1, Notice of Revocation of Release.). This brief addresses the impact of that revocation.

I. K.E.O.’s detention is for purposes of execution of an order of removal, precluding jurisdiction for review of the revocation.

K.E.O. has argued that “[t]o comport with due process, immigration detention must bear a reasonable relationship to its two regulatory purposes: ensuring the appearance of noncitizens

¹ K.E.O.’s Notice of Revocation of Release was issued and signed by the Acting Field Office Director. (Exh. 1, Notice of Revocation of Release.). Field Office Directors have authority under 8 C.F.R. § 241.4 to issue revocations of supervised release. 8 C.F.R. § 241.4(l)(2) sets forth delegation to “district directors”, in language preceding the Homeland Security Act of 2002 replacing the Immigration and Naturalization Service (INS) with ICE. *Kholyavskiy v. Achim*, 443 F.3d 946, 948, n. 1 (7th Cir. 2006). “The old INS district directors are now titled ‘Field Office Directors,’ but their functions remain the same.” *Id.*, citing 8 C.F.R. § 1.1(o) (2005); see also 8 C.F.R. § 1.2, explaining that pre-2003 uses of the term “director” or “district director” now delegate authority to field office directors, including those in an acting capacity.

at future hearings and preventing danger to the community pending the completion of removal”, and that “her arrest and detention were not undertaken to effectuate her immediate removal”. (Doc. 1, PageID.14, ¶ 48; Doc. 10, PageID.156-157.). But detention serves purposes related to removal and anticipated removal. Petitioner cites *Jennings v. Rodriguez* in one of her filings (Doc. 10, PageID.157, 158, 159); a concurrence in that case noted that “[t]his detention, the Court further explains, is meant to ensure that the Government can ultimately remove them.” 583 U.S. 281, 317-8 (2018) (Thomas, J., concurring), citing *id.* at 836 and *Demore v. Kim*, 538 U.S. 510, 523 (2003) (“explaining that detention during removal proceedings ‘necessarily serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed’”). ICE detained K.E.O. on April 28, 2025 because she had an executable final order of removal and her child was no longer a newborn. (Doc. 9-1, PageID.148, Schilling Dec., ¶ 7.).

K.E.O.’s supervised release was revoked to execute an order of removal, and thus is not subject to judicial review of the sort Petitioner seeks. (Doc. 9-1, PageID.111-112, 112-113, 148, ¶ 7; 8 U.S.C. § 1252(g).). In *Westley v. Harper*, No. CV 25-229, 2025 WL 592788, at *4–5 (E.D. La. Feb. 24, 2025), a case with many similarities to K.E.O.’s, ICE granted supervised release to an inadmissible criminal alien and T visa applicant with a removal order, enabling her to temporarily obtain medical treatment. *Id.* at *2. ICE then told the alien to appear at an ICE office, and detained her on arrival. *Id.* The alien brought a habeas claim, challenging her detention and the method used to effect it. *Id.* The Court rejected the alien’s claim that ICE’s detention was part of initiating reinstatement of a removal order, holding instead that her detention was part of executing a removal order. *Id.* at *4-5. The Court also explained why

Jennings v. Rodriguez, 583 U.S. 281 (2018) and *Zadvydas v. Davis*, 533 U.S. 678 (2001) do not apply when an inadmissible criminal alien is subjected to revocation of supervised release:

Jennings addressed situations “before any final order of removal was even issued”, and *Zadvydas* addressed situations in which “removal was not reasonably foreseeable because there was no country willing to accept them”. *Id.* at *6. Like the petitioner in *Westley*, K.E.O. was revoked and detained in order to execute an order of removal, subjecting her to 8 U.S.C. § 1252(g), and precluding judicial review of her revocation of supervised release.²

II. Revocation of supervised release is discretionary, and can be done for reasons other than violation of conditions, including that the purposes of release have been served, as in this case.

The petition in this case argues that, “impliedly”, an alien on supervised release can only be re-detained for a violation of the terms of release. (Doc. 1, PageID.12, ¶ 42.). But supervised release can be revoked for reasons other than violation of conditions. 8 C.F.R. § 241.4(l)(1) sets forth a procedure to be used to revoke supervised release for violation of conditions, but 8 C.F.R. § 241.4(l)(2) establishes a procedure for revocation of supervised release for other reasons. Under 8 C.F.R. § 241.4(l)(2), revocation is discretionary, and release may be revoked “when, in the opinion of the revoking official”, “[t]he purposes of release have been served”, or “[t]he conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate”, among other reasons. 8 C.F.R. § 241.4(l)(2).

ICE placed K.E.O. on supervised release because her infant child was less than two months old, and breast feeding. (Doc. 9-1, PageID.148, ¶¶ 2, 6; Doc. 1, PageID.7, ¶ 24.). K.E.O. had

² A case cited by Petitioner, *Ceesay v. Kurzdorfer*, 2025 WL 1284720 (W.D.N.Y. May 2, 2025) (Doc. 1, PageID.11, ¶ 37), acknowledges and disagrees with *Westley*.

raised the issue of a three month reprieve with her sentencing court, to care for her then-41 day old newborn, and her sentencing court expressed an expectation that she would receive a six to nine month reprieve based on an ICE directive, with “likely deportation thereafter”. (Doc. 1, PageID.8, ¶¶ 27; Doc. 1-4, PageID.37, 38; Doc. 9-1, PageID.140-141.). At the time of K.E.O.’s April 27, 2025 detention, her once-newborn was approximately 15 months old. (Doc. 1, PageID.7, ¶ 24.). When K.E.O. was detained on April 27, 2025, her child was no longer a newborn, and all time periods for release contemporaneously discussed and in the record in this case had lapsed. (*Id.*).

III. K.E.O. has no entitlement to the notice and interview requirements of 8 C.F.R. § 241.4(l)(1), as her supervision was revoked under 8 C.F.R. § 241.4(l)(2).

8 C.F.R. § 241.4(l)(1), addressing revocation for violation of conditions of release, requires that “[u]pon revocation, the alien will be notified of the reasons for revocation of his or her release or parole”, and that “[t]he alien will be afforded an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” 8 C.F.R. § 241.4(l)(1). By contrast, 8 C.F.R. § 241.4(l)(2), dealing with discretionary revocation including where “[t]he purposes of release have been served”, “or any other circumstance”, does not require notification of reasons for revocation, or an interview for response. 8 C.F.R. § 241.4(l)(2).

IV. Prior to the revocation of supervised release, K.E.O. was statutorily subject to detention when ICE issued a warrant of arrest and notice of custody determination and detained her.

ICE issued a warrant of arrest and a notice of custody determination on April 27, 2025, the date K.E.O. was detained. (Doc. 9-1, PageID.127, 129.). The warrant of arrest and notice of custody determination cited 8 U.S.C. § 1226, and K.E.O. was subject to detention under both that statute and 8 U.S.C. § 1231. (Doc. 9-1, PageID.112, 114-115, 119-120, 124; see also Doc. 1,

PageID.12, Petition at ¶ 39, “Respondents’ purported basis for detaining K.E.O. is 8 U.S.C. § 1231”). *See also* 8 U.S.C. § 1231(a)(2)(A), “[u]nder no circumstance during the removal period shall the Attorney General release an alien who has been found inadmissible under section 1182(a)(2) or 1182(a)(3)(B)”; 8 U.S.C. § 1231(a)(6), “[a]n alien ordered removed who is inadmissible under section 1182 of this title ... may be detained beyond the removal period”; 8 U.S.C. § 1226(c)(1)(A), “[t]he Attorney General shall take into custody any alien who - is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title”; and 8 U.S.C. § 1225(a)(5), “[i]f the Attorney General finds that an alien has reentered the United States illegally after having been removed ... the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry.”.

V. Conclusion

This is a habeas proceeding. The issue before the Court is whether Petitioner’s custody is lawful. There were and are multiple statutory bases for her detention, and she was served with a warrant of arrest and notification of custody determination on the day she was detained. She was an inadmissible aggravated felon subject to detention under both 8 U.S.C. § 1226, which her warrant and notification cited, and 8 U.S.C. § 1231. She argues that revocation of supervised release under 8 C.F.R. § 241(l) was the only avenue to detain her, but that provision does not preclude other bases or methods of detaining an inadmissible criminal alien, and she now also has a revocation of supervised release, consistent with 8 C.F.R. § 241.4(l)(2). K.E.O. was detained pursuant to statutory authority and is not entitled to release from her lawful custody.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 13, 2025, I electronically filed the foregoing with the clerk of the court, using the CM/ECF system, which will send notice of the filing to petitioner's counsel.

/s/ Jason Snyder
Jason Snyder, Assistant United States Attorney