

United States District Court
Eastern District of Michigan

Elio Calderon Aguilar,

Petitioner,

Civil No. 25-12831

v.

Honorable Robert J. White
Magistrate Judge David R. Grand

Angela Dunbar, Warden, North Lake
Processing Center; Robert Lynch, Field
Office Director, ICE Enforcement and
Removal Operations Detroit; Kristi
Noem, Secretary of the Department of
Homeland Security; and Pamela Bondi,
Attorney General of the United States,

Respondents.

**Respondents' Opposition to Petitioner's Amended Request for a
Writ of Habeas Corpus**

For the reasons described in the attached brief, respondents Robert Lynch, Field Office Director, ICE Enforcement and Removal Operations Detroit; Kristi Noem, Secretary of the Department of Homeland Security; and Pamela Bondi, Attorney General of the United States, respectfully request that the Court deny petitioner's amended request for a writ of habeas corpus, (ECF No. 10), because his detention pursuant to a reinstated final order of removal is lawful.

Respectfully submitted,

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Honorable Robert J. White
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Angela Dunbar, Warden, North Lake
Processing Center; et al.,

Respondents.

**Respondents' Brief in Support of Their Opposition to Petitioner's
Amended Request for a Writ of Habeas Corpus**

Issues Presented

- I. Should the Court dismiss all respondents except the ICE Field Office Director when he is petitioner's immediate custodian and the only proper respondent in a habeas suit is the petitioner's immediate custodian?
- II. Should the Court deny petitioner's request for a writ of habeas corpus when he is lawfully detained under 8 U.S.C. § 1231 after the agency's reinstatement of his final order of removal?
- III. Should the Court deny petitioner's request for a writ of habeas corpus when his detention complies with the Fifth Amendment?

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Introduction

Petitioner is a noncitizen in detention pursuant to a final order of removal. Between 1995 and 2003, he unlawfully entered the United States several times. In 2003, an immigration judge entered a final order of removal against him and, pursuant to that order, immigration officials removed him from the United States and transported him to Honduras. After that removal, petitioner re-entered the United States unlawfully at an unknown time and location. Immigration officials encountered petitioner again in 2025, reinstated his 2003 final order of removal, and lawfully detained him pursuant to that order under 8 U.S.C. § 1231(a). The Court should reject petitioner's request for a writ of habeas corpus because it is based on a false premise—that the agency did not reinstate his 2003 final order of removal. Accordingly, because the agency did, in fact, reinstate his 2003 final order of removal, petitioner's detention is lawful under 8 U.S.C. § 1231(a) and complies with the Fifth Amendment.

Background

Petitioner Elio Calderon Aguilar is a citizen of Honduras. (Exhibit 1 – Pinson Decl. ¶ 4). Calderon Aguilar first entered the United States in 1995. (*Id.* ¶¶ 5–10). He was quickly apprehended by immigration officials, who placed him into administrative immigration removal proceedings. (*Id.*). In those proceedings, Calderon Aguilar requested a voluntary departure in lieu of removal and an

immigration judge granted that request. (*Id.*). However, Calderon Aguilar did not depart the United States within the time specified by the immigration judge, so the immigration judge's order was automatically converted into an order requiring his removal. (*Id.*).

Almost five years later, in December 2000, immigration officials encountered Calderon Aguilar again. (Exhibit 1 – Pinson Decl. ¶ 12). During that encounter, Calderon Aguilar falsely claimed to be a U.S. citizen and provided a false name. (*Id.*). Immigration officials removed Calderon Aguilar to Honduras a few weeks later. (*Id.*).

Calderon Aguilar unlawfully re-entered the United States again in 2002. (Exhibit 1 – Pinson Decl. ¶ 13). Immigration officials encountered Calderon Aguilar in March 2003 and placed him in administrative immigration removal proceedings because he was inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), which applies when a noncitizen enters the United States unlawfully. (Exhibit 1 – Pinson Decl. ¶¶ 13–15). An immigration judge ordered him removed in April 2003, and ICE removed Calderon Aguilar and transported him to Honduras in June 2003. (*Id.*; Exhibit 2 – Order of Removal).

Calderon Aguilar unlawfully re-entered the United States at an unknown time and place after his June 2003 removal. (Exhibit 1 – Pinson Decl. ¶ 4). In 2010, he was convicted of driving under the influence by local authorities in California. (*Id.*

¶ 16). In 2014, he was convicted of driving without a license and providing false identification to a police officer. (*Id.* ¶ 17).

In 2023, Calderon Aguilar applied for lawful status with USCIS and with the immigration court based on his marriage to a U.S. citizen. (Exhibit 1 – Pinson Decl. ¶¶ 18–21). However, the immigration court denied his motion to reopen his removal proceedings and USCIS denied his application because it lacked jurisdiction. (*Id.*; Exhibit 3 – USCIS Denial; Exhibit 4 – IJ Denial).

On August 25, 2025, ICE encountered Calderon Aguilar in Michigan. (Exhibit 1 – Pinson Decl. ¶ 22). On the same day, ICE reinstated Calderon Aguilar’s 2003 final order of removal and issued him a notice (using Form I-871) notifying him of that fact. (*Id.*; Exhibit 5 – I-871). Calderon Aguilar did not dispute the factual basis of the agency’s reinstatement of his removal order at that time. (*See* Exhibit 5 – I-871). He refused to sign the form acknowledging his receipt and requested an attorney at that time. (*Id.*).

During his interview with an ICE officer on August 25, 2025, Calderon Aguilar claimed that he feared returning to Honduras. (Exhibit 1 – Pinson Decl. ¶ 23; Exhibit 6 – I-213 at 3 (under heading “Consular Notification”). As a result, ICE will refer Calderon Aguilar’s case to USCIS, who will appoint an asylum officer to conduct a reasonable fear interview, once Calderon Aguilar completes the necessary

paperwork. (*Id.*); 8 C.F.R. §§ 208.31, 241.8. No date has been scheduled for the interview. (Exhibit 1 – Pinson Decl. ¶ 23).

On September 8, 2025, Calderon Aguilar filed a writ of habeas corpus challenging his detention, then amended his petition several times. (*See* Pet., ECF No. 1, PageID.15–19; Am. Pet., ECF No. 8, PageID.40–44; Am. Pet., ECF No. 10, PageID.50–54). In his amended petition, he alleges that, because ICE has not reinstated his removal, his detention is unlawful and violates his constitutional rights. (ECF No. 10, PageID.52–53). For relief, Calderon Aguilar seeks immediate release or a bond hearing. (*Id.* at PageID.54).

Standard of Review

A district court may grant a writ of habeas corpus if a petitioner is in federal custody in violation of the Constitution or a federal law. 28 U.S.C. § 2241.

Argument

The Court should dismiss all respondents except the Acting ICE Field Office Director because the Acting ICE Field Office Director is Calderon Aguilar's immediate custodian and only a petitioner's immediate custodian is a proper respondent in a habeas case. The Court should reject petitioner's argument that he is unlawfully detained because his detention is proper under 8 U.S.C. § 1231 pursuant to his reinstated order of removal. His detention does not violate the Due Process Clause because the procedures provided by § 1231 define the scope of Calderon

Aguilar's due process rights and he has received all process required by the statute and the constitution.

I. The Court Should Dismiss All Respondents Except the ICE Field Office Director

A writ of habeas corpus may only be issued "to the person having custody of the person detained." 28 U.S.C. § 2243. Except in extraordinary circumstances, the only proper respondent in a habeas corpus case is the detainee's immediate custodian. *See Roman v. Ashcroft*, 340 F.3d 314, 320 (6th Cir. 2003). In the immigration context, that is the ICE Field Office Director. *See id.*

Here, the Court should dismiss all respondents except the ICE Field Office Director. The ICE Field Office Director is petitioner's immediate custodian. *See Roman*, 340 F.3d at 320. Petitioner does not identify any extraordinary circumstances indicating that any other respondents are proper or necessary in this case. (*See Am. Pet.*, ECF No. 10, PageID.50–54). Therefore, only the ICE Field Office Director is a proper respondent in this case and the remaining respondents should be dismissed.

II. Petitioner is Lawfully Detained under 8 U.S.C. § 1231

If a noncitizen is removed pursuant to a final order of removal, then unlawfully re-enters the United States, immigration officials may reinstate the noncitizen's final order of removal. 8 U.S.C. § 1231(a)(5). To reinstate a final order of removal, an immigration officer must determine that a final order was issued, that

it applies to the noncitizen, and the noncitizen's reentry was unlawful. *See* 8 C.F.R. § 241.8(a)(1)–(3); *Martinez v. Larose*, 968 F.3d 555, 559 n.4 (6th Cir. 2020) (“In practice, this means obtaining the alien's prior removal order, establishing the alien's identity, and showing that the alien was not given permission to enter the United States.”).

If a final order of removal is reinstated, “the prior order of removal . . . 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.” 8 U.S.C. § 1231(a)(5). The only exception to the immediate removal of a noncitizen after reinstatement of a removal order is if the noncitizen requests withholding of removal by claiming that they fear returning to the country of removal. 8 C.F.R. § 241.8(e). If a noncitizen, whose prior order of removal has been reinstated, “expresses a fear of returning to the country” of removal, the noncitizen “shall be immediately referred to an asylum officer for an interview to determine whether [he] has a reasonable fear of persecution or torture.” *Id.*

Reasonable fear interviews are conducted by USCIS, not ICE. *See* 8 U.S.C. § 208.31(a). If a USCIS officer determines that a noncitizen has a reasonable fear of returning to the country of removal, the USCIS officer will refer the matter to an immigration judge. *Id.* § 208.31(e). If the immigration judge agrees with the USCIS

officer and determines that the noncitizen has a reasonable fear of returning to the original country of removal, the immigration judge may order the noncitizen removed to a different country. *See* 8 C.F.R. § 208.16(f).

Meanwhile, if a USCIS officer or an immigration judge finds that a noncitizen does not have a reasonable fear, the noncitizen may appeal that decision to an immigration judge, the Board of Immigration Appeals, then the Sixth Circuit. 8 C.F.R. §§ 208.31(e), (f); *see, e.g., Moreno-Martinez v. Barr*, 932 F.3d 461, 462–65 (6th Cir. 2019) (reviewing challenge to reinstatement of removal order on direct appeal from the Board of Immigration Appeals); *Villegas de la Paz v. Holder*, 640 F.3d 650, 656 (6th Cir. 2010) (same); *Juarez-Chavez v. Holder*, 515 F. App'x 463, 465 (6th Cir. 2013) (same).

Federal district courts do not have jurisdiction to review the reinstatement of a final order of removal or the denial of a request for withholding of removal based on a claim that the noncitizen fears returning to the country of removal. 8 U.S.C. §§ 1231(a)(5), 1252(a)(5). Such challenges may only be addressed in federal court by the U.S. courts of appeals. *See* 8 U.S.C. §§ 1252(a), (g); *Hamama v. Adducci*, 912 F.3d 869, 875 (6th Cir. 2018) (holding that district courts lack jurisdiction to “hear any cause or claim” “arising from” an order of removal); *Villegas de la Paz*, 640 F.3d at 654 (holding that the Sixth Circuit “treats reinstatement orders like removal orders”).

And, even if petitioner could challenge his reinstatement of removal in this forum, he could not raise a plausible challenge to its validity because there is no factual dispute in this case that Calderon Aguilar was ordered removed in 2003, the order of removal applied to him, and his reentry was unlawful. *See, e.g., Moreno-Martinez*, 932 F.3d at 462–65 (rejecting challenge to reinstatement of removal because petitioner did not receive notice of reinstatement and was not given opportunity to challenge underlying order of removal); *Villegas*, 640 F.3d at 656 (rejecting challenge to reinstatement of removal because petitioner was not permitted to dispute basis of reinstatement when there was no factual dispute that original removal order applied to petitioner); *Ovalle-Ruiz v. Holder*, 591 F. App'x 397, 401 (6th Cir. 2014) (rejecting argument that reinstatement of removal order was defective because noncitizen “refused to sign”).

Thus, the only issue before the Court in this habeas case is whether the agency has legal authority to detain Calderon Aguilar pursuant to his reinstated order of removal. Under the plain terms of the statute and recent Supreme Court case law, it does.

After a noncitizen is ordered removed, immigration officials must detain the noncitizen for ninety days unless the noncitizen is removed before that time. 8 U.S.C. §§ 1231(a)(1)(A), (2)(A). The same provision requires detention when a final order of removal is reinstated. *Johnson v. Guzman Chavez*, 594 U.S. 523, 535

(2021). This remains true even if the noncitizen seeks withholding of removal by claiming he fears returning to the country of removal because withholding of removal does not affect the finality of the removal order, it only affects the country to which the noncitizen is ordered removed. *Id.* at 536–40.

Here, Calderon Aguilar’s detention is lawful. ICE reinstated Calderon Aguilar’s final order of removal on August 25, 2025. (Exhibit 5 – I-871). Therefore, he is lawfully detained under 8 U.S.C. § 1231(a)(2)(A) and his request for withholding of removal makes no difference to this analysis. *Guzman Chavez*, 594 U.S. at 536–40. To the extent that Calderon Aguilar challenges any aspect of his final order of removal or the reinstatement of that order, this Court lacks jurisdiction to consider those issues, 8 U.S.C. §§ 1231(a)(5), 1252(a), (g), and even if the Court had jurisdiction, there is no plausible dispute that the agency properly reinstated Calderon Aguilar’s order of removal. *See, e.g., Villegas de la Paz*, 640 F.3d at 656.

III. Petitioner’s Detention Does Not Violate His Due Process Rights

To succeed on a due process claim, a plaintiff must show that they “have a property interest that entitles them to due process protection” and, if so, the “court must then determine ‘what process is due.’” *Leary v. Daeschner*, 228 F.3d 729, 741 (6th Cir. 2000). In the immigration context, the Supreme Court has frequently held that the process due under the constitution is coextensive with the removal procedures provided by Congress, *see Dep’t of Homeland Sec. v. Thuraissigiam*, 591

U.S. 103, 138–140 (2020). It has confirmed that noncitizens detained pursuant to reinstated orders of removals are not entitled to bond hearings, *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 576 (2022), and it has held that even after a noncitizen is ordered removed and detention may have an indefinite end point, detention up to six months is presumptively valid under the due process clause, *see Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Similarly, the Sixth Circuit has confirmed that the limited review available to noncitizens when final orders of removal are reinstated is proper under the Due Process Clause. *See Villegas de la Paz*, 640 F.3d at 656–57.

Here, Calderon Aguilar's detention does not violate the Fifth Amendment. The agency properly reinstated his final order of removal and detained him pursuant to that process. (*See* Exhibit 5 – I-871); 8 U.S.C. § 1231(a)(5); *Guzman Chavez*, 594 U.S. at 535. Neither the statute nor the constitution require that he receive a bond hearing during his detention under § 1231, *see Arteaga-Martinez*, 596 U.S. at 576, and Calderon Aguilar has been detained for less than four weeks, which is well within the ninety-day period during which the statute requires his detention and far short of the six-month period the Supreme Court has found presumptively reasonable under the Due Process Clause. (*See* Exhibit 1 – Pinson Decl. ¶ 22); 8 U.S.C. § 1231(a)(1)(A), (a)(2)(A); *Zadvydas*, 533 U.S. at 701. While the statute provides limited review when orders of removal are reinstated, the statutory limitations do not violate the Fifth Amendment, *see Villegas de la Paz*, 640 F.3d at

656–57, and the agency has provided Calderon Aguilar the opportunity to pursue all permissible challenges to the reinstatement of his removal order. (*See* Exhibit 1 – Pinson Decl. ¶¶ 22–23; Exhibit 5 – I-871). Accordingly, Calderon Aguilar cannot raise a plausible due process challenge to his detention.

Conclusion

Respondents respectfully request that the Court deny petitioner’s request for a writ of habeas corpus because his detention is lawful.

Respectfully submitted,

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Dated: September 26, 2025

Certificate of Service

I hereby certify that on September 26, 2025, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/s/ Zak Toomey

Zak Toomey

Assistant U.S. Attorney