IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-03638-RMR-CYC

NORBERTO FRANCO SANCHEZ,

Petitioner,

v.

JUAN BALTAZAR, Warden, Denver Contract Detention Facility, Aurora, Colorado,
ROBERT HAGAN, Director, Denver Field Office, U.S. Immigration & Customs Enforcement,
KENNETH GENALO, Director, New York Field Office, U.S. Immigration & Customs Enforcement,
TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement,
KRISTI NOEM, Secretary, U.S. Department of Homeland Security, and
PAMELA BONDI, Attorney General, U.S. Department of Justice,

Respondents.

RESPONSE TO PETITIONER'S AMENDED PETITION (ECF No. 23)

In his Amended Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (ECF No. 23) ("Amended Petition"), Petitioner Norberto Franco Sanchez challenges ICE's authority to require him to: (i) report to an in-person appointment once every twelve weeks, (ii) check-in via a phone application once a week, and (iii) notify ICE before leaving the State of New York. Petitioner argues that the imposition of these conditions violates the Fifth Amendment, the Administrative Procedure Act, the *Accardi* doctrine, and the Fourth Amendment. He is wrong.

First, as a threshold matter, Petitioner is challenging these conditions in the wrong venue. He is required by statute to challenge these conditions before an Immigration

Judge ("IJ"), and then, if he so desires, appeal any decision to the Board of Immigration Appeals. He has not done so, and this Court does not have jurisdiction to hear Petitioner's challenge.

Second, even if this Court could hear Petitioner's challenge, the Amended Petition should still be denied. ICE has statutory authority to impose reporting requirements and such minimal check-in requirements do not violate the Constitution or any statute. The Amended Petition should, therefore, be dismissed.

BACKGROUND

Petitioner is a native of Mexico who was detained by ICE in 2017 and placed in removal proceedings under 8 U.S.C. § 1229a. ECF No. 23 ¶¶ 16, 41. He was served with a Notice to Appear ("NTA"), which identified him as an alien present in the United States who had not been admitted or paroled. *See id.* The NTA included the name "Roberto Galindo Sanchez" for Petitioner, which name Petitioner states has been incorrectly associated with him in removal proceedings since that time. *Id.* ¶¶ 41, 54.

At that time, Petitioner was detained pursuant to 8 U.S.C. § 1226(a). *Id.* ¶ 42. In February 2018, he was granted release on bond by an immigration judge. *Id.* In 2021, an immigration judge administratively closed Petitioner's removal proceedings. *Id.* ¶ 49. On June 17, 2025, ICE moved to recalendar Petitioner's removal proceedings. *Id.* ¶ 52.

On September 1, 2025, ICE officers encountered Petitioner. *Id.* ¶ 53. Petitioner told the officers his name was Norberto Franco Sanchez and gave them his deferred action employment authorization document. *Id.* ¶ 53. Petitioner states that "[t]he officers checked the EAD and told Mr. Franco that the name 'Rodrigo Galindo Sanchez' (the

incorrect name on the Notice to Appear associated with Mr. Franco's removal proceedings) came up in their system associated with that EAD." *Id.* ¶ 54. Petitioner also states that the officers also told him that he had missed a court date in June. *Id.* He was then arrested by the officers. *Id.* Petitioner's bond was cancelled on the same day. *Id.* ¶ 56.

Petitioner was detained by ICE until November 25, 2025, when he was released from ICE custody. *Id.* ¶ 64. Upon his release, he was enrolled in an Alternative to Detention program. *Id.* ¶ 66. Mr. Franco is currently required to check-in at an ICE office once every twelve weeks, check-in via a phone application every Tuesday morning, and obtain ICE's permission before leaving the State of New York. *Id.* ¶¶ 67-68.

While he was detained in Colorado, Petitioner filed his original habeas petition in this Court.[1] ECF No. 1. On January 12, 2026, Petitioner filed his Amended Petition challenging those three requirements. *See generally id.* He alleges that the imposition of these conditions violates his substantive and procedural due process rights, the Administrative Procedure Act, the *Accardi* Doctrine, and the Fourth Amendment. *Id.*

ARGUMENT

I. Petitioner has not shown that this Court has authority to review his conditions of release.

This Court cannot hear Petitioner's challenge to ICE's decision to impose his current conditions of release because (A) the Immigration and Nationality Act (INA)

[1] The original habeas petition requested the Court to order, *inter alia*, a bond hearing in which "alternatives to detention [were] considered." ECF No. 1 at 4.

provides that such discretionary decisions are barred from judicial review by this Court, and (B) Petitioner has not exhausted his administrative remedies.

A. The Court lacks jurisdiction to review Petitioner's conditions of release.

8 U.S.C. § 1226(e) states:

> The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.

Detention and release decisions, including the conditions of release imposed, made under § 1226(a) "are always necessarily founded upon a discretionary decision by the Attorney General." *See El Gamal v. Noem, et al.*, 790 F. Supp. 3d 551, 558 n.4 (W.D. Tex. 2025); 8 C.F.R. § 236.1(c)(8) (stating that "[a]ny officer authorized to issue a warrant of arrest may, *in the officer's discretion*, release an alien . . . under the conditions at section 236(a)(2) and (3) of the Act" (emphasis added)). Such decisions, including decisions to revoke or modify the conditions of release, are barred from judicial review by this Court. *See Pelletier v. United States*, 653 F. App'x 618, 622 (10th Cir. 2016) (unpublished) ("To the extent that [petitioner] seeks modification of or release from the conditions of his bond, 8 U.S.C. § 1226(e) expressly bars judicial review of 'any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole.'" (quoting 8 U.S.C. § 1226(e))). The Tenth Circuit has confirmed that, "to the extent [a petitioner] challenges the agency's discretionary bond decision . . . the court lack[s] jurisdiction" pursuant to § 1226(e). *Mwangi v. Terry*, 465 F. App'x 784, 787 (10th Cir. 2012); *see also Jennings v.*

Rodriguez, 583 U.S. 281, 295-96 (2018) (concluding that § 1226(e) does not bar challenges to "the statutory framework that permits detention without bail" but does preclude challenges to a discretionary judgment to detain. (cleaned up)).

Here, Petitioner admits that his February 2018 bond was revoked.[2] ECF No. 23 ¶ 56. He was then detained by ICE and released under certain release conditions, which he now challenges. He is thus attempting to challenge a discretionary decision not subject to judicial review. *See Wilfredo R. v. Noem*, No. 3:25-CV-1702-D-BK, 2025 WL 3520307, at *2 (N.D. Tex. Nov. 4, 2025) (finding that petitioner pled "no facts establishing this Court's jurisdiction over DHS' discretionary decision to commence removal proceedings much less its decision later to re-detain him or alter his conditions of release."); *see also Elnour v. Crawford*, No. 1:13CV923 JCC/TCB, 2013 WL 6571828, at *2 (E.D. Va. Dec. 13, 2013) (noting that "the Court lacks jurisdiction to hear Petitioner's claims regarding the conditions of his supervised release"); *Mwangi*, 465 F. App'x at 787 (finding that the District Court lacked jurisdiction over a challenge to "the agency's discretionary bond decision"). The Court therefore lacks jurisdiction to review Petitioner's current release conditions.

---

[2] "The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b); *see also Salvador F.-G. v. Noem*, No. 25-CV-0243-CVE-MTS, 2025 WL 1669356, at *9 (N.D. Okla. June 12, 2025) (finding "no support for imposing a 'change in circumstances' requirement on DHS before it can revoke a bond under § 1226(b)").

B. Petitioner has not exhausted his administrative remedies for the relief sought in the Amended Petition.

Generally, "[t]he exhaustion of available administrative remedies is a prerequisite for § 2241 habeas relief, although . . . the statute itself does not expressly contain such a requirement." *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010). Exhaustion is ordinarily nonjurisdictional. *Santos-Zacaria v. Garland*, 598 U.S. 411, 417 (2023). In a different immigration context, the Tenth Circuit has held that "the failure to exhaust issues before the BIA bars judicial review through habeas just as it does through a petition for review." *Soberanes v. Comfort*, 388 F.3d 1305, 1309 (10th Cir. 2004). Importantly, the habeas exhaustion requirement in the immigration context "extends not only to substantive issues, but to constitutional objections that involve administratively correctable procedural errors, even when those errors are failures to follow due process." *Id.* (emphasis added) (citation omitted).

Here, Petitioner has failed to exhaust because he still has administrative remedies available to him. The Amended Petition challenges conditions of release imposed by ICE upon Petitioner's release from custody. Pursuant to 8 C.F.R. § 1236.1(d), Petitioner can challenge the conditions of release by requesting that the IJ review those conditions, *see* 8 C.F.R. § 1236.1(d)(1), or by asking the ICE district director to change those conditions, *see* 8 C.F.R. § 1236.1(d)(2). *See also* ECF No. 23 ¶ 10 (observing that upon release from custody, a noncitizen may "file an application for amelioration of the conditions of release"). Either decision could then be appealed to the Board of Immigration Appeals. *See* 8 C.F.R. § 1336.1(d)(3)(i); 8 C.F.R. § 1003.19(f); *see also* ECF No. 23 ¶ 26.

Petitioner should not be permitted to use the Amended Petition as a "substitute for direct appeal" to the BIA. *Soberanes*, 388 F.3d as 1309 (citation omitted); *see also Reyes v. Lynch*, No. 15-cv-00442-MEH, 2015 WL 5081597, at *3 (D. Colo. Aug. 28, 2015) ("[F]ederal courts must await exhaustion of all administrative appeals before reviewing immigration decisions, whether by a habeas corpus action or a petition for review."). Instead, as a matter of judicial efficiency and pursuant to the applicable regulations, Petitioner should be required to exhaust his administrative remedies before the IJ and the BIA.

II. Petitioner's claims should be denied.

Even if this Court could hear Petitioner's challenge to his release conditions, it should find that his arguments lack merit.

A. Petitioner's release conditions do not violate substantive due process.

"In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to its citizens." *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). Accordingly, "[w]hile the Due Process Clause does apply to aliens within the United States, the government enjoys relatively wide latitude in imposing restrictions on the liberty of such individuals." *Peruch-Vicente v. Longshore*, No. 15-CV-00068-GPG, 2015 WL 1594013, at *4 (D. Colo. Apr. 7, 2015) (citing *Mathews v. Diaz,* 426 U.S. 67, 77 (1976), and *Demore v. Kim*, 538 U.S. 510, 528 (2003)). "Thus, courts reviewing the constitutionality of supervision for aliens subject to removal orders have employed a rational basis standard of review." *Id.*; *see also Yusov v. Shaughnessey*, 671 F. Supp. 2d 523, 530 (S.D.N.Y. 2009); *Zavala v. Prendes*, No. 3–

10–CV–1601–K–BD, 2010 WL 4454055, *1-2 (N.D. Tex. Oct. 5, 2010) (same); *Nguyen v. B.I. Inc.*, 435 F. Supp. 2d 1109, 1115 (D. Or. 2006) ("Because the right at stake is not fundamental, the government's action is subject only to rational basis review . . . ." (citing *Demore*, 538 U.S. at 528)).

"To survive rational basis review, a government action must be rationally related to some legitimate government purpose." *Id.* (citing *Reno v. Flores*, 507 U.S. 292, 305-06 (1993)). "The goals of 'reducing the number of absconding aliens' and 'accounting for and being able to produce any alien who becomes removable' are legitimate government interests." *Yusov*, 671 F. Supp. 2d at 530 (quoting *Nguyen*, 435 F. Supp. 2d at 1115).

Here, the minimal reporting requirements imposed on Petitioner do not violate his substantive due process rights. The requirements ensure that the government will be able to locate and produce Petitioner if he becomes subject to a final order of removal, or if ICE determines that returning him to detention is otherwise justified. Petitioner does not cite any cases holding that such conditions amount to a violation of substantive due process. The Court should therefore reject this claim.

B. Petitioner's release conditions do not violate procedural due process.

Petitioner argues that the imposition of his release conditions violated his procedural due process rights under *Mathews v. Eldridge*, 424 U.S. 319 (1976). But the Supreme Court has not applied the *Mathews* analysis in this context.

In *Demore*, the Supreme Court expressly addressed due process implications of detention pending removal proceedings and never suggested that it was proper to use

the *Mathews* factors. *See generally* 538 U.S. at 517-31. Rather, to resolve the due process challenge, the Supreme Court noted differences in the immigration context ("Congress may make rules as to aliens that would be unacceptable if applied to citizens," *id.* at 522), and considered that detention was "necessarily a part of this deportation procedure," *id.* at 524 (quoting *Carlson v. Landon*, 342 U.S. 524, 538 (1952)), and not indefinite, *id.* at 527-29. In *Thuraissigiam*, the Supreme Court addressed due process issues about admission and likewise made no reference to *Mathews*. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 110, 138-140 (2020). In *Zadvydas*, the Supreme Court considered due process implications of "indefinite detention" when deportation was "no longer practically attainable," *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), and considered the justification for nonpunitive detention against the individual's interest in avoiding physical restraint, but did not cite *Mathews* or employ its three-factor test. *See id.* at 690-701. Indeed, just a few months after deciding *Mathews v. Eldridge*, the Supreme Court considered a different due process question about "an alien's eligibility for participation in a federal medical insurance program," and did not apply the three-factor test in *Mathews*. *Mathews v. Diaz*, 426 U.S. 67, 69 (1976). As explained above, in *Demore*, the Supreme Court concluded that "[d]etention during removal proceedings is a constitutionally permissible part of that process." 538 U.S. at 531.

Although some district courts have found that *Mathews* governs the "adequacy of process in the context of civil immigration confinement," *Hyppolite v. Noem*, 2025 WL 2829511, at *13 (E.D.N.Y. Oct. 6, 2025), here Petitioner is not challenging confinement.

He is challenging release conditions far short of the detention considered by the Supreme Court in *Demore* and *Zadvydas*. The Court, therefore, should not conduct a separate analysis.

C. Petitioner's Administrative Procedure Act claims fail.

To the extent Petitioner seeks a non-custodial remedy under the APA, the Court lacks jurisdiction to consider such a claim here. Congress limited judicial review under the APA to situations where "there is no other adequate remedy in a court." 5 U.S.C. § 704. If the Court were to have jurisdiction over Petitioner's challenge, it must be via a habeas claim because Petitioner is challenging the legality of his "custody." *See J.G.G. v. Trump*, 604 U.S. 670, 673 (2025) (holding that, where a party's argument challenges the validity of detention, the case must proceed in habeas).[3]

D. Respondents did not violate the *Accardi* Doctrine.

Petitioner asserts that Respondents "violated the *Accardi* doctrine in failing to follow its regulations 8 C.F.R. § 1003.19(a), requiring compliance with an IJ's bond order." ECF No. 23 ¶ 112. But, as explained above, ICE has statutory authority to revoke bond, 8 U.S.C. § 1226(b), and impose conditions of release, 8 U.S.C. 1226(a)(2). Petitioner's *Accardi* doctrine claim thus fails.

[3] Respondents do not dispute that a legal challenge to agency action under the APA can be raised in the context of a habeas proceeding, so long as the challenge has "some relationship to the prisoner's release." *See Thieme v. Warden Fort Nix FCI*, 154 F.4th 115, 123 (3d Cir. 2025) (citing 5 U.S.C. § 703).

E. Petitioner's Fourth Amendment claim fails.

Finally, Petitioner argues that his September 1, 2025, arrest violated the Fourth Amendment. ECF No. 23 ¶¶ 116-21.

ICE officers may arrest an individual without a warrant if they have reason to believe the individual is in the United States in violation of law and is likely to escape before a warrant can be obtained for the individual's arrest. 8 U.S.C. § 1357(a)(2).

Here, the circumstances described by Petitioner show that his arrest was lawful. The Amended Petition describes what appears to have been a case of mistaken identity: the arresting officers believed that Mr. Franco was "Rodrigo Galindo Sanchez," and that he had missed a court date related to removal proceedings. *See* ECF No. 23 ¶ 53. Although the information in the database may have been incorrect, the officers had reason to believe that Petitioner had missed a court date and was providing the wrong name to them. The arrest, therefore, complied with § 1357 and the Fourth Amendment.

In support of this claim, Petitioner quotes an allegation from a habeas petition quoted by the Southern District of New York in a case. ECF No. 23 ¶ 120 (quoting *Materano v. Arteta*, No. 25-cv-6137, 2025 WL 2630826, at *17 (S.D.N.Y. Sept. 12, 2025)). But in *Materano*, the government did "not provide any arguments in opposition" to the Fourth Amendment claim. *Materano*, 2025 WL 2630826, at *17. Here, as explained above, the arrest complied with the Fourth Amendment and § 1357.

Even if the arrest was unlawful, Petitioner's requested relief is not appropriate. Petitioner asks the Court to enjoin the government from imposing any release conditions based on the alleged Fourth Amendment violation. He argues, without evidentiary or

precedential support, that, his current release conditions "would not have been imposed had Mr. Franco not been detained in the first place." ECF No. 23 ¶ 121. But Petitioner admits that before his arrest ICE had "moved to recalendar [his] removal proceedings." *Id.* ¶ 52. This fact alone shows that the government had a renewed interest in pursuing Petitioner's removal and where the government is pursuing removal, it has additional interest in Petitioner's whereabouts so that any removal could be effectuated efficiently. *See Yusov,* 671 F. Supp. 2d at 530. The government does not need to arrest an individual in order to impose reporting requirements. *See United States v. Munoz-Jurado*, No. CR 11-50094-JLV, 2012 WL 640049, at *2 (D.S.D. Feb. 27, 2012) (explaining that "[a] G-56 is an 'appointment letter' sent to an individual with questionable immigration status . . . . advis[ing] the recipient to go to a designated ICE office to discuss his or her immigration status"); *see also* 8 C.F.R. § 287.5(a) (authorizing immigration officers "to interrogate , without warrant, any alien or person believed to be an alien concerning his or her right to be, or to remain, in the United States" and to "take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States").

At bottom, Petitioner's request to be returned to the status quo here is essentially a request to suppress his identity, which the Supreme Court has found is not itself suppressible as a fruit of an unlawful arrest. *See INS v. Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984); *see also United States v. Garcia-Beltran*, 443 F.3d 1126, 1132 (9th Cir. 2006) ("In essence, the Court [in *Lopez-Mendoza*] declined to hold that the consequences of an illegal arrest, search, or interrogation is to let the defendant go free because of the unlawfulness of the arrest, search, or interrogation."); *cf. Min-Shey Hung v. United States*,

617 F.2d 201, 203 (10th Cir. 1980) (holding that "[t]he custody of the petitioner during the course of the civil [removal] proceedings, the releases, bonding and appearances should be under control of [DHS]").

Here, the allegations in the Amended Petition show that the arresting officers did not violate the Fourth Amendment or § 1357, and, even if the arrest was unlawful, modifying Petitioner's release conditions is not a proper remedy.

CONCLUSION

For the foregoing reasons, the Amended Petition should be denied.

Submitted: January 26, 2026

PETER MCNEILLY
United States Attorney

s/ Logan P. Brown
Logan P. Brown
Assistant United States Attorney
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: (303) 454-0100
Email: Logan.Brown@usdoj.gov

Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel of record.

s/ Logan P. Brown
U.S. Attorney's Office