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,
GEORGE VALDEZ, 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,
MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security, and
TODD BLANCHE, Acting Attorney General, U.S. Department of Justice,

Respondents.[1]

RESPONSE TO PETITIONER'S
SUPPLEMENTAL AMENDED PETITION (ECF No. 31)

In his Supplemental Amended Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (ECF No. 31) ("Supplemental Petition"), Petitioner Norberto Franco Sanchez challenges ICE's authority to require him to "have annual check-ins with ICE." ECF No. 31 ¶ 4. Petitioner argues that the imposition of this condition violates the Fifth Amendment, the Administrative Procedure Act, the *Accardi* doctrine, and the Fourth Amendment. He is wrong.

[1] George Valdez, Markwayne Mullin, and Todd Blanche are substituted for their predecessors pursuant to Fed. R. Civ. P. 25(d).

First, as a threshold matter, Petitioner is challenging this condition in the wrong venue. He is required by statute to challenge this condition 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 Supplemental 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 Supplemental 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. 31 ¶¶ 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.* ¶ 54. 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.* Petitioner also states that the officers 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 Alternatives to Detention program. *Id.* ¶ 66. ICE imposed various reporting conditions on Mr. Franco after his release. *Id.* ¶ 67. However, all but one of those conditions have since been removed and, as of the filing of the Supplemental Petition, Mr. Franco is only required to check-in with ICE once per year. *Id.* ¶ 68.

While he was detained in Colorado, Petitioner filed his original habeas petition in this Court. ECF No. 1. On January 12, 2026, Petitioner filed an Amended Petition challenging release conditions imposed by ICE. *See generally* ECF No. 23. On April 15, 2026, he filed his Supplemental Amended Petition challenging his lone ongoing obligation: to check in with ICE once per year. *See, e.g.*, ECF No. 31 ¶¶ 74-75, Prayer for Relief (requesting writ of habeas corpus "ordering Respondents to immediately release Mr. Franco from custody by removing the requirement of annual check-ins"). He alleges that the imposition of this check-in condition violates his substantive and procedural due process rights, the Administrative Procedure Act, the *Accardi* Doctrine, and the Fourth Amendment. *Id.* ¶¶ 71-117.

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 release condition because (A) the Immigration and Nationality Act (INA) 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. 31 ¶ 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

[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)").

decision"). The Court therefore lacks jurisdiction to review Petitioner's current release condition.

B. Petitioner has not exhausted his administrative remedies for the relief sought in the Supplemental 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 Supplemental Petition challenges the lone remaining condition of release imposed by ICE upon Petitioner's release from custody. Pursuant to 8 C.F.R. § 1236.1(d), Petitioner can challenge this condition by requesting that the IJ review it, *see* 8 C.F.R. § 1236.1(d)(1), or by asking the ICE district director to change the condition, *see* 8 C.F.R. § 1236.1(d)(2). *See also* ECF No. 31 ¶ 24 (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. 31 ¶ 26.

Petitioner should not be permitted to use the Supplemental 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 on their merits.

Even if this Court could hear Petitioner's challenge to his release condition, his claims should be denied.

A. Petitioner's release condition does 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." *See 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)). Nevertheless, "[a] noncitizen's substantive due-process rights may be violated if

immigration detention becomes punitive." *Doe v. Bondi*, No. 1:25-CV-02712-DDD-SBP, 2025 WL 3516292, at *8 (D. Colo. Nov. 4, 2025). And "[a] restriction on liberty is punitive rather than regulatory if (a) the government intends to impose punishment, or (b) the restriction is not rationally related to a legitimate nonpunitive governmental purpose or is excessive in relation to that purpose." *Id.* (citing *United States v. Salerno*, 481 U.S. 739, 746 (1987)); *see also 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)).

Here, the Petitioner's annual check-in requirement does not violate his substantive due process rights. Petitioner puts forth no evidence that this requirement is intended to punish. To the contrary, the requirement ensures 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. *See Yusov v. Shaughnessey*, 671 F. Supp. 2d 523, 530 (S.D.N.Y. 2009) ("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." (quoting *Nguyen*, 435 F. Supp. 2d at 1115)). Petitioner does not cite any case holding that such a minimal condition—an annual check-in—amounts to a violation of substantive due process. The Court should therefore reject this claim.

B. Petitioner's check-in obligation does not violate procedural due process.

Petitioner argues that the imposition of an annual check-in requirement 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 a release condition far short of the detention considered by the Supreme Court in *Demore* and *Zadvydas*. *See Kalombo v. Shanahan*, No. 07 CIV. 11350 (PKC), 2009 WL 1788589, at *5 (S.D.N.Y. June 23, 2009) ("Detention entails a complete deprivation of liberty of movement. Supervision, on the other hand, is substantially less onerous and, if the conditions imposed are reasonably related to legitimate enforcement needs, may be appropriate even if indefinite."); *see also Aguirre Hernandez v. Baltazar*, No. 26-cv-01047-CNS (D. Colo. Apr. 29, 2026) (observing that a "check-in" is "an obligation different in kind, and not merely degree" from more onerous release conditions, such as ankle monitors); *Castillo Cabral v. Baltazar*, No. 26-cv-0418-RBJ (D. Colo. Mar. 9, 2026) (same).[3] The Court, therefore, should not conduct a separate analysis.[4]

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[3] Petitioner recognizes the difference between detention and supervision because as relief he is requesting the Court to enjoin Respondents from re-detaining him without first providing a pre-deprivation hearing where "alternatives to detention [are] considered." ECF No. 31 at 39.

[4] Even under *Mathews*, Petitioner's check-in requirement passes muster. His interest in avoiding an annual check-in is minimal given that it is a small burden and he is a noncitizen in removal proceedings. The risk of erroneous deprivation is low given that he can challenge the check-in requirement before an IJ or an ICE district director. *See supra* at 6-7. And, finally, the government has a strong interest in being able to locate potentially removable aliens. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), 53 F.4th at 1208 (observing that "the government clearly has a strong interest" in preventing noncitizens from "remain[ing] in the United States in violation of our law." (quoting *Demore*, 538 U.S. at 518)).

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).[5]

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. 31 ¶ 108. 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.

E. Petitioner's Fourth Amendment claim fails.

Finally, Petitioner argues that his September 1, 2025, arrest violated the Fourth Amendment. ECF No. 31 ¶¶ 112-17. He is wrong. The facts alleged do not show a Fourth Amendment violation, and, regardless, Petitioner's requested relief is not proper here.

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[5] 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).

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 Supplemental 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. 31 ¶ 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. 31 ¶ 116 (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 condition "would not have been imposed had Mr. Franco not been detained in the first place." ECF No. 31 ¶ 117. But this argument lacks legal or factual support.

First, Petitioner is wrong to the extent he suggests the remedy for a Fourth Amendment violation is restoration of the but-for world. *See Hidalgo Anazco v. Baltazar*, No. 26-cv-01133-PAB (D. Colo. Apr. 14, 2026) (noting that petitioner "provide[d] no authority for his argument that release is the proper remedy for a Fourth Amendment violation."). To the contrary, "[t]he remedy for a Fourth Amendment violation is the suppression of evidence that is the 'fruit' of an unreasonable seizure." *Corregidor v. Bondi*, 2026 WL 636745, at *8 (D.N.M. Mar. 6, 2026); *see also Palma v. Powell*, No. 7:26-CV-299-EGL-SGC, 2026 WL 701778, at *6 (N.D. Ala. Mar. 12, 2026) (noting that "habeas is not a vehicle to redress defects in an initial arrest; its function is to determine whether the petitioner may lawfully remain in custody" (citing *U.S. ex rel. Bilokumsky v. Tod*, 263 U.S. 149 (1923))). Notably, the Supreme Court has held that in the immigration context, the Fourth Amendment does not demand voiding removal proceedings that follow from an improper arrest as a suppressive remedy. *See INS v. Lopez-Mendoza*, 468 U.S. 1032, 1047 (1984) (declining to adopt a broad exclusionary rule for civil immigration proceedings, and finding that suppression leading to "release would clearly frustrate the express public policy against an alien's unregistered presence in this country"); *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 consequence[] 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]"). Thus, even if Petitioner's arrest was unlawful under the Fourth Amendment, that would not warrant removing his reporting requirement.

Second, Petitioner is factually wrong in his assertion that he could not have a current reporting requirement but for an unlawful arrest. 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. Moreover, 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").

Here, the allegations in the Supplemental 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 condition is not a proper remedy for such a violation.

CONCLUSION

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

Submitted: April 29, 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 April 29, 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