IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

OSMANY ALEXANDER RECINOS, Petitioner,	)	
v.	)	CIV-26-52-R
SCARLET GRANT, et al., Respondents.	)	

RESPONSE IN OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS

Respondents United States Attorney General Pamela Bondi, United States Secretary of the Department of Homeland Security Kristi Noem, Acting Director of the United States Immigration and Customs Enforcement (ICE) Todd Lyons, and ICE Dallas Field Office Director Kelei Walker (collectively, "Respondents"[1]), pursuant to the Court's Order (Doc. 5), respond to the Petition for Writ of Habeas Corpus (Doc. 1), and respectfully submit that the Court should deny the Petition and enter an order of dismissal.

INTRODUCTION

Petitioner is a noncitizen challenging the Department of Homeland Security's (DHS) decision to detain him.[2] He asserts, in a conclusory fashion, that his ongoing

[1] Respondent Scarlet Grant, Warden of the Cimarron Correctional Center, is not a federal official and this response is therefore not filed on her behalf.

[2] As Petitioner is an "applicant for admission," he is detained pursuant to 8 U.S.C. § 1225(b)(2)(A). Section 1225(b)(2)(A) provides that: "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title."

detention is a violation of due process. He also asserts that his detention is contrary to federal regulation. For relief, he seeks immediate release.[3] But as explained below, Petitioner shows no entitlement to habeas relief. Accordingly, Respondent respectfully requests the Court to deny the Petition and all relief requested therein.

BACKGROUND

I. Legal Framework

A. Applicants for Admission

In the INA, Congress established rules governing when certain aliens/noncitizens[4] may be detained or removed. As relevant here, 8 U.S.C. § 1225 governs the processes for the detention and removal of "applicants for admission"—a subset of noncitizens. Section 1225 defines an "applicant for admission" as any "**alien present in the United States who has not been admitted** or who arrives in the United States." 8 U.S.C. § 1225(a)(1) (emphasis added). The INA defines "admission" and "admitted" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." *Id.* § 1101(a)(13)(A). In other words, an applicant for admission is a noncitizen who (1) is present in the United States and did not lawfully enter the country *or* (2) is arriving in the United States. Petitioner falls into the first group.

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[3] Notably, Petitioner does not seek a bond hearing, nor does he assert that his detention should have been pursuant to 8 U.S.C. § 1226(a) rather than § 1225(b)(2)(A). Thus, those avenues of relief should be foreclosed and are not before this Court.

[4] This response "uses the term 'noncitizen' as equivalent to the statutory term 'alien.'" *Nasrallah v. Barr*, 590 U.S. 573, 578 n.2 (2020).

B. Removal Proceedings with Mandatory Detention: 8 U.S.C. § 1225

Applicants for admission may primarily be placed in removal proceedings one of two ways, either through expedited removal under § 1225(b)(1), or through regular removal proceedings under § 1225(b)(2).

Section 1225(b)(1), titled "Inspection of aliens arriving in the United States ... ," describes the two categories of applicants for admission that are subject to expedited removal proceedings. The first category includes those aliens who are arriving and inadmissible under 8 U.S.C. § 1182(a)(6)(c) or (a)(7).[5] *Id.* § 1225(b)(1)(A)(i). The second category includes those noncitizens who have "not been admitted or paroled into the United States," who have not "affirmatively shown, to the satisfaction of an immigration officer, that [they have] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility," and who also are inadmissible under Section 1182(a)(6)(c) or (a)(7). *Id.* § 1225(b)(1)(A)(i), (iii)(II). Noncitizens within the two categories described in § 1225(b)(1) are subject to expedited removal, *see* 8 C.F.R. § 235.3(b), and "shall be detained" until removed (or until the end of asylum or credible fear proceedings). 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV).

Section 1225(b)(2), titled "Inspection of other aliens," "serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1)[.]" *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (citing 8 U.S.C. §§ 1225(b)(2)(A), (B)) (emphasis added). Under § 1225(b)(2)(A), all other applicants for admission who an

[5] Section 1182(a)(6)(c) and (a)(7) address inadmissibility based on misrepresentation or the lack of valid entry documents.

immigration officer determines are "not clearly and beyond a doubt entitled to be admitted" shall be detained for removal proceedings under 8 U.S.C. § 1229a. Thus, § 1225(b)(2)(A) generally provides for detention during full removal proceedings for aliens who are applicants for admission, but who do not fall within one of the two categories described in § 1225(b)(1) (*i.e.*, arriving aliens and other aliens subject to expedited removal). Section 1225 does not provide a bond hearing for aliens detained under that provision.

II. Petitioner's Background

Petitioner is an applicant for admission. He entered the United States on or about November 5, 203, without admission or parole after inspection and did not possess or present a valid immigration visa, reentry permit, border crossing identification card, or other valid entry document. *See* Petition at ¶ 1. On November 22, 2013, Petitioner was placed into removal proceedings[6] through the issuance of a Notice to Appear and was charged as removable under INA § 212(a)(7)(A)(i)(I). *See* Exhibit 1, Notice to Appear.

Significantly, on September 18, 2014, Petitioner filed a Form I-589 Application for Asylum. *See* Exhibit 2, Asylum Application (first page only). Seeking asylum is a step towards seeking a form of admission. "The Secretary of Homeland Security or the Attorney General ... may adjust to the status of an alien **lawfully admitted** for permanent residence the status of any alien granted asylum" who meets various requirements. 8 U.S.C. §

[6] Noncitizens, like Petitioner, who are placed in removal proceedings under 8 U.S.C. § 1229a are entitled to retain counsel, receive notice of the charges of removability, have a hearing, and present a defense, cross-examine witnesses, and compel production of documents and witnesses. See 8 U.S.C. § 1229a(b)(1); 8 U.S.C. § 1229a(b)(4)(A); 8 C.F.R. § 1240.10(a).

1159(b) (emphasis added); 8 C.F.R. § 1209.2(a)(1) ("the status of any alien who has been granted asylum in the United States may be adjusted to that of an alien **lawfully admitted** for permanent residence, provided the alien" (emphasis added)). Thus, Petitioner is seeking a form of admission. *Ugarte-Arenas v. Olson*, 2025 WL 3514451, at *4 (E.D. Wisc. Dec. 8, 2025) ("As a matter of fact, however, it is clear Petitioner is seeking admission into the United States. He has filed an application for asylum and is thus seeking authorization to remain in the country. Petitioner is therefore an "alien seeking admission" into the United States subject to § 1225(b)(2)(A)."); *Rojas v. Olson*, 2025 WL 3033967, at *8 (E.D. Wisc. Oct. 30, 2025) ("The record confirms that Cirrus Rojas is now in fact seeking admission to the United States. His petition acknowledges that he has an application for asylum pending in the immigration court.").

Thereafter, Petitioner's proceedings were administratively closed. However, on September 29, 2025, DHS filed a Motion to Recalendar Administratively Closed Proceedings. Ex. 3, Motion to Recalendar. In error, a Notice to Appear was issued on October 27, 2025. Ex. 4, 2025 Notice to Appear. On November 6, 2025, the Motion to Recalendar Administratively Closed Proceedings was granted. Ex. 5, Order. On November 7, 2025, the Immigration Judge granted, without prejudice, DHS's motion to dismiss based on the duplicative Notice to Appear that was issued in error. *See* Ex. 6, Order on Motion to Dismiss. Petitioner was scheduled for a master hearing on December 3, 2025. *See* Ex. 7, Hearing Notice. Petitioner has not requested bond and the next individual merits hearing in his removal case is set for February 13, 2026. *See* Ex. 8, Merit Notice.

III. Petitioner's Claims

Petitioner asserts two counts. Count I alleges a due process violation stemming from Petitioner's ongoing detention. Count II alleges a violation of a Federal Regulation.

ARGUMENT

The Petition should be denied. Count I's claim of a due process violation is premature and without basis. Count II is inappropriate in the context of a request for habeas corpus relief. Moreover, Petitioner has failed to state claim upon which relief can be granted. *See Aguilera v. Kirkpatrick*, 241 F.3d 1286, 1290 (10th Cir. 2001). Indeed, Petitioner has not demonstrated that he "is in custody in violation of the Constitution of laws or treaties of the United States[.]" 28 U.S.C. § 2241(c)(3). As such a showing is a required for relief to be granted under 28 U.S.C. § 2241, the Petition should be denied.

I. Petitioner's Constitutional Due Process Argument (Count I) Is Premature and Without Basis

The Supreme Court concluded in *Demore v. Kim*, 538 U.S. 510 (2003), that mandatory detention pending removal proceedings does not violate due process. The detainee in *Demore* challenged his detention without an individualized bond hearing under § 1226(c). That provision, much like § 1225(b)(2)(A), mandates detention in certain circumstances throughout the pendency of removal proceedings. *Id.* at 527–28. The *Demore* detainee argued that constituted indefinite detention and violates the Due Process Clause. But the *Demore* Court rejected that premise. Section 1226(c) has a definitive end-point—the end of the removal proceedings—and thus a noncitizen is not subject to indefinite detention. *Id.* at 529.

Petitioner may rely on *Zadvydas v. Davis*, 533 U.S. 678 (2001) to support his claim. But the petitioner there was facing the prospect of indefinite detention and the Court still held that detention up to six months was presumptively reasonable. Petitioner, here, was only detained 79 days when the Petition was filed. Further, like § 1225(c), detention pursuant to § 1225(b) is *not* indefinite. On the contrary, "§§ 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of time." *Jennings*, 583 U.S. at 299. Specifically, "detention must continue . . . until removal proceedings have concluded." *Id.* (internal citation omitted). But "[o]nce those proceedings end, detention under § 1225(b) must end as well." *Id.* at 297. In short, the Petition is premature and without basis.

This Court should decline to take such a drastic step as to entertain Plaintiff's claim. *See Mathews v. Diaz*, 426 U.S. 67, 81 (1976) ("Any rule of constitutional law that would inhibit the flexibility of the political branches of government to respond to changing world conditions should be adopted only with the greatest caution."); *Demore v. Kim*, 538 U.S. 510, 522 (2003) ("And, since *Mathews,* this Court has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.").

Instead, to assess the merits of Petitioner's constitutional claims, it is necessary to first determine what due process rights Petitioner possesses. As noted above, the federal statute *mandates* Petitioner's detention. And the Supreme Court has held, nowhere in the statutory rubric did Congress mention a bond hearing or state a maximum period of time within which an alien could be held in such mandatory detention without providing a bond hearing. *See Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018). Petitioner has not been

admitted to the U.S., and for any noncitizen who has not been admitted into the country, the INA provides the only process due under the Constitution. *United States v. Thuraissigiam*, 591 U.S. 103, 138-40 (2020); *see also Demore*, 538 U.S. at 523 ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings. At the same time, however, this Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." (cleaned up)).

Indeed, the Supreme Court has described "our century-old rule" as:

> [T]he power to admit or exclude aliens is a sovereign prerogative; the Constitution gives the political department of the government plenary authority to decide which aliens to admit; and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted.

Thuraissigiam, 591 U.S. at 139 (cleaned up); *see also U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) ("Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned."). Those holdings cannot be squared with Petitioner's broad claim.

But even under that three-part *Mathews* test, Petitioner should remain detained. As to the first factor, while liberty is of paramount importance, it is limited in this context. The Supreme Court has emphasized that "detention during deportation proceedings [remains] a constitutionally valid aspect of the deportation process." *Demore*, 538 U.S. at 523. Any assessment of the private interest at stake therefore must account for the fact that the Supreme Court has never held that noncitizens have a constitutional right to be released from custody during the pendency of removal proceedings, and in fact has held precisely

the opposite. *See id.* at 530. Petitioner entered and stayed in this country in violation of its laws. *Aguilera v. Kirkpatrick*, 241 F.3d 1286, 1292 (10th Cir. 2001) ("Moreover, the procedural safeguards are minimal because aliens do not have a constitutional right to enter or remain in the United States."). Thus, "the due process rights at issue" here are "more limited liberty in the United States by someone no longer entitled to remain in the country." *Montoya v. Hold*, No. CIV-25-01231-JD, 2025 WL 3733302, at *14 (W.D. Okla. Dec. 26, 2025) (citing *Parra v. Perryman*, 172 F.3d 954, 958 (7th Cir. 1999)). Moreover, Petitioner has the power to free himself. *See Richardson v. Reno*, 180 F.3d 1311, 1317 n.7 (11th Cir. 199) (unlike criminal cases, immigration detention "is not entirely beyond [the noncitizen's] control; he is detained only because of the removal proceedings, and he may obtain his release any time he chooses by withdrawing his application for admission and leaving"), *overruled on other grounds by INS v. St. Cyr*, 533 U.S. 289, 312-13 (2001).

As to the second factor, regarding the potential for erroneous deprivation, Petitioner concedes he has not complied with the immigration laws. There is virtually no risk of an erroneous deprivation given the mandatory detention of § 1225(b)(2)(A). Further, Petitioner may be paroled for "urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A).

Finally, the government's interests, and the fiscal and administrative burdens of using a different scheme, are substantial and strongly weigh against Petitioner's claim. A court "must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). Additionally, "[t]here is always a public

interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings [Congress] established, and permit[s] and prolong[s] a continuing violation of [U.S.] law." *Nken v. Holder*, 556 U.S. 418, 436 (2009); *see Landon*, 459 U.S. at 34 ("The government's interest in efficient administration of the immigration laws . . . is weighty."). Mandatory detention remedies this risk by "increasing the chance that, if ordered removed, [Petitioner] will be successfully removed." *Demore*, 538 U.S. at 528 ; *see also Montoya*, No. CIV-25-01231-JD, 2025 WL 3733302, at *15 (noting "That the Executive did provide bond hearings in the past says nothing about administrative burdens associated with that practice."). Petitioner's mandatory detention indisputably serves each of these interests. And as the Supreme Court has made clear, civil immigration detention is "constitutionally valid" as long as it "serve[s] its purported immigration purpose." *Demore*, 538 U.S. at 523, 527.

II. Immediate release is not an appropriate remedy in this context.

Immediate release due to alleged regulatory violations is inappropriate for at least two reasons. First, because the harmless error standard applies in immigration detention cases. And second, because failure to comply with a *regulation* cannot be a basis for relief under 28 U.S.C. § 2241(c)(3), which forms the basis of Petitioner's lawsuit and is limited to violations of the U.S. Constitution, laws, or treaties of the United States.

To start, Petitioner must show that any alleged violation prejudiced him. As recently noted by the Honorable District Judge Patrick R. Wyrick, "[t]he harmless error standard applies in deportation and administrative cases." *Bahadorani v. Bondi*, No. 25-1091-PRW, 2025 WL 3048932 *2 (W.D. Okla. Oct. 31, 2025) (citing *Nazaraghaie v. I.N.S.*, 102 F.3d

460, 465 (10th Cir. 1996) and *WildEarth Guardians v. Bureau of Land Management*, 870 F.3d 1222, 1238–39 (10th Cir. 2017)). As a result, it is incumbent on Petitioner "to show that the government's failure to abide by its own regulations prejudiced him." *Id.* at *2 (citing *Bar MK Ranches v. Yuetter*, 994 F.2d 735, 740 (10th Cir. 1993) for the proposition that errors in administrative proceedings do not call for reversal without plaintiffs demonstrating that such errors produced prejudice)). In the case in front of Judge Wyrick, Petitioner claimed "zero compliance with 8 C.F.R. § 241.13(i)(2)–(3),"[7] but only "provided conclusory statements about not recalling the government's compliance with the regulations."[8] Such is the case here – Petitioner simply claims he wasn't informed of changed circumstances.

Regardless, habeas is not a mechanism for courts to order the fulfillment of administrative requirements or to direct release on that basis. "The writ, while essential to our political system, is a drastic remedy[;] Permitting conditions-of-confinement claims to be asserted in petitions for writs of habeas corpus would greatly enlarge the writ and fundamentally change its purpose." *Basri v. Barr*, 469 F. Supp. 3d 1063, 1066 (D. Colo. 2020). *See also Shinn v. Ramirez*, 596 U.S. 366, 377 (2022) ("The writ of habeas corpus is an extraordinary remedy that guards only against extreme malfunctions in the state criminal justice systems.") (internal quotation marks and citation omitted); *Gomez-Arias v. U.S. Immigr. & Customs Enf't*, No. 20-CV-00857-MV-KK, 2020 WL 6384209, at *2 (D.N.M. Oct. 30, 2020) ("As release from custody is an extreme remedy, Congress has

[7] *Id.*
[8] *Id.*

circumscribed its use by the courts.").The writ provides recourse against arbitrary arrest and detention by providing a detainee the right to immediate release from illegal custody. *Id.* And the prerequisite of a habeas corpus case is an allegation that the petitioner cannot be legally confined under any circumstances. *Id.* at 1071. Petitioner has not shown that he cannot be legally confined under any circumstances, only that he is allegedly illegally confined because he did not receive notice of the changes in circumstances. Thus, even if the federal Respondents have not satisfied all the procedural requirements of its regulations, the drastic remedy of immediate habeas corpus release would be inappropriate and grossly disproportional to the alleged harm.

To the extent the Court finds a regulatory violation, the appropriate remedy for regulatory noncompliance would be to order the federal Respondents to comply with the regulation. Moreover, release from re-detention is inappropriate here because Petitioner brings his claim under 28 U.S.C. § 2241(c)(3), which is limited to limited to violations of the "Constitution, laws, or the treaties of the United States." *Estelle v. McGuire*, 502 U.S. 62, 68 (1991) ("In conducting habeas review, a federal court is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States.").And in the immigration context, habeas is only "available as a forum for *statutory and constitutional challenges* to post-removal-period detention." *Zadvydas*, 533 U.S. at 688 (emphasis added).Highlighting the differences between regulations and laws, even when courts discuss generally that regulations may have the "force and effect" of law,[9] they in so doing

[9] *See e.g., Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 65 (2004) ("agency regulations that have the force of law").

recognize that regulations are *not* the laws of the United States but merely have the *effect* of law. And regulations certainly are not statutes.

Here, Petitioner's claims rely on only regulatory violations for his habeas action. Indeed, Petitioner has not even been detained the presumptively reasonable six months. But even if he establishes the regulatory violations he claims, they do not constitute statutory or constitutional challenges. Thus, "[t]o the extent that [Petitioner] is complaining that as a result of the alleged violation of the [] regulations he is in custody in violation of the laws of the United States, 28 U.S.C. § 2241(c)(3), he has not established a violation cognizable under the habeas corpus statutes, even assuming that the regulations of a federal prison could be deemed federal law." *Wright v. Lansing*, 75 F. App'x 710, 712 (10th Cir. 2003) (cleaned up).

CONCLUSION

The Respondents respectfully request that the Court deny the Petition and dismiss the case.

Dated: January 29, 2026

Respectfully submitted,
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