UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:26-cv-02189-KMM-DLM

Emilio S. R. G.,

Petitioner,

FEDERAL RESPONDENTS' RESPONSE TO HABEAS PETITION

v.

David EASTERWOOD, Acting Director,
Immigration and Customs Enforcement,

Todd LYONS, Acting Director,
Immigration and Customs Enforcement,

Markwayne MULLIN, Secretary U.S. Department
Of Homeland Security,

Respondents.

Federal Respondents respectfully provide the following response to Petitioner's Habeas Petition pursuant to the Court's briefing order.[1] Any allegations that are not specifically admitted herein are denied. Petitioner Emilio S. R. G. (hereinafter referred to as "Petitioner") is an alien detained under civil immigration removal proceedings. He alleges that his arrest and detention violates (1) 8 U.S.C. § 1231 of the Immigration and Nationality Act ("INA"), (2) the Fifth Amendment Substantive Due Process, (3) the Fifth Amendment Procedural Due Process, (4) the Fourth Amendment Search and Seizure, and (5) the *Accardi* Doctrine. *See generally* Petition. For relief, he requests that the Court order his

[1] The Department of Justice represents only federal employees in this action.

immediate release. *See* Petition, at p. 17, Prayer for Relief. However, Petitioner's arrest was carried out with a valid warrant, and his detention is authorized by law. Since his detention is lawful, the Federal Respondents respectfully request that the Petition be denied, and this case be dismissed.

STATEMENT OF THE RELEVANT FACTS

Petitioner is a citizen and national of Cuba with no claim to United States (U.S.) Citizenship or Lawful Permanent Residence. *See* Declaration of Angela Minner (Minner Decl.) ¶ 4. On or about July 12, 1980, the U.S. Immigration & Naturalization Service (USINS) paroled Petitioner into the U.S. at or near Key West, Florida as a Cuban parolee. *See* Minner Decl. ¶ 5. On December 18, 1985, Petitioner was convicted in Nevada of uttering a forged instrument. *See* Minner Decl. ¶ 6. On September 8, 1986, Petitioner was convicted in Woods Cross Justice Court, Utah of shoplifting. *See* Minner Decl. ¶ 7. On October 14, 1986, Petitioner was convicted in Ogden, Utah of two counts of theft. *See* Minner Decl. ¶ 8.

On January 20, 1987, Petitioner was convicted in the state of Utah of shoplifting. *See* Minner Decl. ¶ 9. On January 26, 1987, Petitioner was convicted in Ogden, Utah of theft and carrying a concealed and dangerous weapon. *See* Minner Decl. ¶ 10. On February 11, 1987, Petitioner was convicted in Ogden, Utah of burglary and felony theft. *See* Minner Decl. ¶ 11. On June 13, 1988, USINS placed Petitioner in exclusion proceedings with service of Form I-122, Notice to Applicant for Admission Detained For Hearing Before Immigration Judge. *See* Minner Decl. ¶ 12.

On June 12, 1990, Petitioner was released from USINS custody on parole following

a USINS Cuban Review Panel. *See* Minner Decl. ¶ 13. On September 1, 1994, Petitioner was convicted in Hennepin County, Minnesota of assault-5th degree. *See* Minner Decl. ¶ 14. On October 3, 1994, Petitioner was convicted in Hennepin County, Minnesota of assault-5th degree. *See* Minner Decl. ¶ 15. On October 30, 1995, Petitioner was convicted in Hennepin County, Minnesota of check forgery-offer a forged check and was sentenced to 15 months incarceration. *See* Minner Decl. ¶ 16.

On January 4, 1996, Petitioner was convicted in Hennepin County, Minnesota of loitering. *See* Minner Decl. ¶ 17. On April 16, 1997, Petitioner was convicted in Hennepin County, Minnesota of 5th degree possession of crack cocaine. *See* Minner Decl. ¶ 18. On September 26, 1997, Petitioner was returned to USINS custody and his parole status terminated for failure to comply with the conditions of release. *See* Minner Decl. ¶ 19. On October 15, 1997, Petitioner was issued Form I-862, Notice to Appear in removal proceedings. *See* Minner Decl. ¶ 20. On October 28, 1997, an immigration judge at Chicago, Illinois ordered Petitioner removed from the United States to Cuba. *See* Minner Decl. ¶ 21. Petitioner waived appeal. *See id.*

On February 20, 1998, Petitioner was released from USINS custody on parole status by a USINS Cuban Review Panel. *See* Minner Decl. ¶ 22. On June 22, 1998, Petitioner was convicted in Hennepin County, Minnesota of controlled substance crime-5th degree. *See* Minner Decl. ¶ 23. On September 17, 2001, Petitioner was convicted in Becker County, Minnesota of two counts of controlled substance sale. *See* Minner Decl. ¶ 24. On the same date in a separate case, Petitioner was convicted in Becker County, Minnesota of assault-2nd degree and sentenced to 60 months incarceration. *See* Minner Decl. ¶ 25. On June 14,

2004, Petitioner was brought into ICE custody for failure to comply with conditions of release. *See* Minner Decl. ¶ 26. On September 10, 2004, Petitioner was released from custody on parole status by a DHS Cuban Review Panel. *See* Minner Decl. ¶ 27.

On May 9, 2008, Petitioner was convicted in Becker County, Minnesota of possession of drugs-5th degree. *See* Minner Decl. ¶ 28. On July 7, 2008, Petitioner was convicted in Becker County, Minnesota of drugs - 4th degree – sale and receiving stolen property. *See* Minner Decl. ¶ 29. On July 7, 2008, Petitioner was convicted in Becker County, Minnesota of two counts of drugs-4th degree-sale and sentenced to 26 months incarceration. *See* Minner Decl. ¶ 30. On December 1, 2008, Petitioner was returned to ICE custody for failure to comply with conditions of release and his parole was revoked on December 2, 2008. *See* Minner Decl. ¶ 31.

On March 4, 2009, ICE released Petitioner on an Order of Supervision due to Cuban government's unwillingness to accept Petitioner back. *See* Minner Decl. ¶ 32. At the time of his release on an Order of Supervision, ICE instructed Petitioner to report back on August 1, 2008. *See* Minner Decl. ¶ 33. A review of the DHS electronic records indicates that Petitioner did not report to ICE as instructed in 2008, 2009, 2010, 2011, or 2012. *See id.* On August 9, 2012, ICE sent a G-56 call-in letter to Petitioner's last known address instructing him to report to ICE on August 30, 2012. *See* Minner Decl.¶ 34. ICE received a signed confirmation of delivery receipt with Petitioner's signature establishing his receipt of the notice. *See id.* Petitioner did not report. *See id.* Follow-up attempts to contact Petitioner by phone were unsuccessful. *See id.*

A review of the DHS electronic records indicates that Petitioner did not report to ICE in 2013, 2014 or 2015. *See* Minner Decl.¶ 35. On March 3, 2015, ICE located Petitioner at the Becker County Jail after his arrest on a criminal warrant and made contact with him by phone. *See* Minner Decl.¶ 36. Petitioner was instructed to report to ICE within 72 hours of his release from jail. *See id.* Petitioner did not report. *See id.* On March 27, 2015, a woman identifying herself as Petitioner's girlfriend called ICE on Petitioner's behalf stating he was sick, and they did not have gas money to appear at the ICE office but would try to get a gas voucher from a church and appear on May 1, 2015. *See id.*

On April 16, 2015, and July 8, 2015, ICE identified Petitioner as being incarcerated at county jails on criminal charges. *See* Minner Decl.¶ 37. Petitioner did not report to ICE in 2015, 2016, 2017, or 2018. *See id.* On December 18, 2015, Petitioner was convicted in Becker County, Minnesota of drugs - 3rd degree - sale - narcotic and sentenced him to 68 months incarceration. *See* Minner Decl.¶ 38.

On March 27, 2018, ICE identified Petitioner at the Becker County Jail after his arrest on a parole violation. ICE sent a G-56 call-in letter by fax to the jail instructing Petitioner to report to the ICE office within 72 hours of release. *See* Minner Decl.¶ 39. Petitioner did not report to ICE. *See id.* On October 18, 2018, ICE identified Petitioner as an inmate at the Minnesota Correctional Facility-Lino Lakes with a projected release date of July 15, 2019. *See* Minner Decl.¶ 40. Petitioner did not report to ICE in 2019, 2020, or 2021. *See* Minner Decl.¶ 41.

On March 10, 2021, ICE identified Petitioner at the Becker County Jail where he was facing charges related to manufacturing of simulated drugs. *See* Minner Decl.¶ 42.

ICE sent another G-56 call-in letter to Petitioner via fax to the jail instructing Petitioner to report to ICE within 48 hours of release. *See id.* Petitioner failed to report to ICE as instructed and did not report in 2022, 2023, 2024, 2025, or 2026. *See id.*

On October 3, 2022, Petitioner was convicted in Cass County, North Dakota of unlawful possession of drug paraphernalia-use/storage-marijuana. *See* Minner Decl.¶ 43. On May 15, 2023, Petitioner was convicted in Clay County, Minnesota of possess ammo/any firearm – conviction or adjudicated delinquent for crime of violence and sentenced to 60 months. *See* Minner Decl.¶ 44. On May 18, 2023, DHS lodged a detainer request with the MN Department of Corrections for Petitioner. *See* Minner Decl.¶ 45.

On March 3, 2026, ICE arrested Petitioner following his release from the Minnesota Correctional Facility-Faribault and served Petitioner a Notice of Revocation of Release and conducted an informal interview. *See* Minner Decl.¶ 46. On that same day, ICE also served Petitioner Form 71-075 Assumption of Custody Notification based on his final order and warrant of removal. *See id.*

While the Government of Cuba accepts many Cubans back for repatriation, most "Mariel Cuban" cases, including Petitioner, have traditionally been denied repatriation by Cuba. DHS and the Department of State continue to engage in diplomatic efforts to increase acceptance by Cuba of Cuban nationals. *See* Minner Decl.¶ 47. Additional countries have also entered agreements with the United States in 2025 and 2026 to accept third-country nationals. *See id.* Mexico is currently accepting third-country nationals including Cubans that are not eligible to return to Cuba. *See* Minner Decl.¶ 48. Third-country removals to Mexico are occurring on a weekly basis at various border ports along the southern border

including citizens of Cuba, Venezuela, Haiti, Honduras, El Salvador, Guatemala, and Nicaragua. *See id.*

On March 9, 2026, ICE served Petitioner a Notice of Third Country Removal for Mexico and Form I-229(a), Warning for Failure to Depart and Instruction Sheet reminding him of the legal consequences of failure to comply with the final order of removal in his case. *See* Minner Decl.¶ 49. On March 13, 2026, Petitioner was transferred from Minnesota to Louisiana and on March 23, 2026, Petitioner was transferred from Louisiana to Arizona in preparation for removal to Mexico. *See* Minner Decl.¶ 50.

On or about March 25, 2026, Petitioner refused to comply with removal to Mexico. *See* Minner Decl.¶ 51. On March 31, 2026, Petitioner was transferred back to Minnesota and housed at the Sherburne County Jail in Elk River, where he remains detained. *See* Minner Decl.¶ 52. On April 7, 2026, the ICE St. Paul Field Office Director issued a Notice of Failure to Comply for Petitioner, which was personally served on him on April 13, 2026. *See* Minner Decl.¶ 53.

ICE St. Paul has referred Petitioner's case to DHS Headquarters for nomination to an alternate third country due to his refusal to comply and will continue to follow up with DHS Headquarters on procedural next steps once an alternate third country has been identified. *See* Minner Decl.¶ 54.

JURISDICTION AND BURDEN OF PROOF

28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. The burden is on the habeas petitioner to demonstrate that he or she is in custody in violation of the Constitution or laws or treatises of the United States to warrant relief.

See Skaftouros v. United States, 667 F.3d 144, 158 (2d Cir. 2011). For immigration detainees challenging their civil detention via a habeas action, courts must employ a narrow standard of review of decisions made by the Congress or the President regarding immigration and must exercise "the greatest caution" in evaluating constitutional claims that implicate those decisions." *Mathews v. Diaz*, 426 U.S. 67, 81-82 (1976)).

ARGUMENT

Petitioner is not entitled to habeas relief. Counts I through V of the petition fail as a matter of law. Petitioner misunderstands both the legal basis for his detention and the statutory framework governing immigration detention. Petitioner is lawfully subject to detention pursuant to statute, which authorizes the arrest and detention of noncitizens pending removal proceedings. *See* 8 U.S.C. §§ 1231 and 1357.

Through the INA, Congress enacted a multi-layered statutory scheme for the civil detention of noncitizens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See* 8 U.S.C. §§ 1225, 1226, and 1231. Once a noncitizen is subject to a final removal order—as Petitioner is here—his detention is governed by 8 U.S.C. § 1231 and its implementing regulations at 8 C.F.R. part 241.

A noncitizen who has been ordered removed lacks a legal right to remain in the United States, and his liberty interest in remaining in the country is reduced. Accordingly, federal law provides that "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days" and "shall detain

the alien" during the removal period. 8 U.S.C. § 1231(a)(1)(A) and (a)(2)(A).[2] The Supreme Court has held that an alien subject to a final removal order can file a habeas petition and seek release if he can show that his detention has become prolonged and that there is "no significant likelihood of removal in the reasonably foreseeable future." *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

The Supreme Court also recognized a presumptively reasonable six-month period of post-removal detention pursuant to 8 U.S.C. §1231(a)(6). *See Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). The Supreme Court's 6-month presumption, "does not mean that every alien not removed must be released after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future." *See id.*

Habeas relief is only available when the petitioner demonstrates that he or she is "in custody in violation of the Constitution or laws or treatises of the United States." *See* 28 U.S.C. § 2241(c)(3); *Cuellar v. Fisher*, No. 10-2041 (SRN/FLN), 2011 U.S. Dist. Lexis 33929, at *7 (D. Minn. Feb. 24, 2011). Petitioner here cannot meet that burden.

I. Counts I, II, and III

The Court should deny habeas relief as to Counts I, II, and III. These claims challenge the lawfulness of Petitioner's detention under 8 U.S.C. §1231, the Fifth Amendment Substantive Due Process, and the Fifth Amendment Procedural Due Process.

[2] The Homeland Security Act of 2002 transferred many immigration enforcement and administrative functions from the Attorney General to the Secretary of Homeland Security. *See* Pub. L. No. 107-296, 116 Stat. 2135 (2002).

The Supreme Court has "underscore[d] the limited scope of inquiry into immigration legislation" and "repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (citations and internal quotation marks omitted). Federal courts therefore employ a narrow standard of review and exercise "the greatest caution" in evaluating constitutional claims that implicate those decisions. *Mathews v. Diaz*, 426 U.S. 67, 81-82 (1976).

The plenary power of Congress and the Executive Branch over immigration necessarily encompasses immigration detention, because the authority to detain is elemental to the authority to deport. *See Shaughnessy v. United States*, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure."); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896) ("Proceedings to exclude or expel would be vain if those accused could not be held in custody pending the inquiry into their true character, and while arrangements were being made for their deportation.").

Under 8 U.S.C. §1231(a)(1)(c), the removal period is extended beyond a period of 90 days where an alien fails or refuses cooperate with removal. In such circumstances, continued detention is authorized. *See* 8 U.S.C. §1231(a)(1)(c).

Consistent with this statutory framework, 8 C.F.R. § 241.4 further provides regulatory guidance for continued detention of inadmissible, criminal, and other aliens

beyond the removal period.

Petitioner does not challenge his final order of removal here, nor could he. *See* Petition. Apart from an administrative appeal, jurisdiction over a challenge to a final order of removal lies exclusively with the appropriate Circuit Court of Appeals. *See* 8 U.S.C. § 1252; *see also Tostado v. Carlson*, 481 F.3d 1012, 1014 (8th Cir. 2007) (the circuit court has exclusive jurisdiction to review final orders of removal, not the district, court). Here, Petitioner has a Final Order of Removal issued by an immigration judge on October 28, 1997. *See* Minner Decl. Ex. C. On March 3, 2026, ICE properly revoked Petitioner's OSUP due to a violation of a condition release. *See* Minner Decl. Ex. F. Petitioner was arrested following his release from the Minnesota Correctional Facility-Faribault. *See* Minner Decl.¶ 46. ICE served Petitioner Form 71-075 Assumption of Custody Notification based on his final order and warrant of removal. *See* Minner Decl. Ex. F. ICE served Petitioner a notice of third country removal to Mexico dated March 3, 2026, which Petitioner declined to sign. *See* Minner Decl. Ex. G. Petitioner was served Form I-229(a), Warning for Failure to Depart and Instruction Sheet reminding him of the legal consequences of failure to comply with the final order of removal in his case. *See* Minner Decl. Ex. G. Around March 25, 2026, Petitioner refused to comply with his removal to Mexico. *See* Minner Decl.¶ 51.

On April 7, 2026, ICE issued a Notice of Failure to Comply to Petitioner, which was personally served on him on April 13, 2026. *See* Minner Decl. Ex. H.

ICE St. Paul has referred Petitioner case to DHS Headquarters for nomination to an alternate third country due to his refusal to comply and will continue to follow up with DHS Headquarters on procedural next steps once an alternate third country has been

identified. *See* Minner Decl.¶ 54.

Petitioner's continued detention is therefore the direct result of his own noncompliance. Because Petitioner has failed to cooperate in effectuating his removal, the statutory removal period has been extended, and his detention remains lawful under 8 U.S.C. § 1231(a)(1)(C). Accordingly, his claims fail.

II. Count IV

The Court should also deny habeas relief as to Count IV, because Petitioner's arrest was *not* warrantless. There was a warrant. *See* Minner Decl. Ex. F. Therefore, his detention is lawful.

III. Count V

The Court should also deny habeas relief as to Count V, because Petitioner's arrest and detention complied with 8 C.F.R. § 241.13, which governs the detention of aliens during the removal period. Petitioner argues that his detention is unlawful because ICE failed to follow its own regulations; specifically, 8 C.F.R. § 241.13, which addresses the determination of whether there is a significant likelihood of removing a detained alien in the reasonably foreseeable future. That argument fails. Section 241.13(i)(1) expressly permits revocation of Petitioner's release if conditions are violated. Section 241.13(i)(3) sets forth the required procedures for revocation, including revocation notice to the alien and that an initial informal interview be conducted promptly upon alien's return to custody. Federal Respondents complied with both requirements.

Petitioner was formally notified of the revocation of his release on March 3, 2026. His release, granted under the order of supervision issued around March 4, 2009, was

revoked due to violations of conditions involving a conviction for 3rd degree drugs sale (narcotic), possession of ammunition or a firearm, or adjudicated delinquent for crime of violence. *See* Minner Decl. Ex. F. That same day, Petitioner was given an informal interview but declined to provide a written statement or supporting documentation. *See* Minner Decl. Ex. F. Following this process, Federal Respondents determined that detention was warranted. Accordingly, because Federal Respondents adhered to the governing regulatory framework, Petitioner's detention is lawful.

CONCLUSION

Because Petitioner is detained pursuant to valid statutory and regulatory authority, and because he has received all process required by law, he cannot demonstrate that his custody is unlawful. For the foregoing reasons, the Court should deny Petitioner's Petition.

Respectfully submitted,

DATED: April 22, 2026

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