UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0: 26-CV-3017 KMM-DTS

Anthony N.,

Petitioners,

v.

Markwayne Mullin, *et al.*,

Respondents.

**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

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Respondents respectfully submit this brief pursuant to the Court's June 22, 2026 order, requiring the Respondents to address the basis for Petitioner's continued detention.

## BACKGROUND

Petitioner is a native and citizen of Libera who was ordered removed from this country on April 20, 2015. Draves Decl. ¶ 7. A warrant for removal was issued May 29, 2016. Draves Decl. Ex. B.

Petitioner is convicted rapist and sex offender. On July 3, 2012, he was convicted of Gross Sexual Imposition (N.D. Stat. 12.1-20-03). Draves Decl. ¶ 12. Upon moving to Minnesota, Petitioner was required to register as a sex offender and placed on supervision in Hennepin County. Draves Decl. ¶ 13.

Petitioner now faces Minnesota criminal charges for his failure to register as a sex offender. Ganzhorn Decl. Ex. A. According to the criminal complaint:

> On September 25, 2025, Brooklyn Park Police officers performed an annual compliance check on ANTHONY FOKA NIMPSON (DOB: [redacted],

> Defendant herein, who is required to register as a predatory sex offender. According to Bureau of Criminal Apprehension (BCA), Defendant was registered at 8156 Hampshire Ave in Brooklyn Park, Hennepin County, Minnesota. Defendant's record showed that he was non-compliant. Officers knocked on the door and received no answer. Officers also learned that Defendant changed his address with the Department of Driver and Vehicle Services (DVS) in March 2025 to an address of [redacted] in New Hope, Hennepin County, Minnesota. Officers called the numbers Defendant listed on his registration, but none worked. On 10/13/2025, Officers had not heard back from anyone at the Hampshire Avenue house. BCA records showed that Defendant's registration address was [redacted] as of January 2024. In March 2025, Defendant changed his DVS records to the New Hope address. Defendant's verification letter was sent to the Brooklyn Park address and was returned to the BCA without signature. Defendant became non-complaint in January 2025. None of the phone numbers Defendant listed were working. Defendant has not provided an updated number. Defendant's whereabouts are unknown."
> On February 10, 2026, Petitioner was arrested for Failure to Register.
>
> Ganzhorn Decl. Ex. A.

Petitioner was given a $5,000 conditional bond on February 11, 2026. Ganzhorn Decl. Ex. B. He apparently did not pay the bond, because another Order of Conditional Release was issued on March 10, 2026, allowing him release without bond, but one Electronic Home Monitoring. Ganzhorn Decl. Ex. C.

On May 28, 2026, ICE initiated a knock and talk at Petitioner's New Hope apartment. Draves Decl. ¶ 10. Officers placed him under arrest and provided him an I-200 warrant. *Id.* They later served him with an OSUP Revocation, stating, "ICE records indicate that you are not in compliance with the OSUP because you have failed to remain law abiding. In addition, you have failed to check in w/ICE since January 2025." Draves Decl. Ex. C.

**ARGUMENT**

Petitioner makes no claim that he is not subject to an order for removal, or that he has any right to be in the United States but for his OSUP. Petitioner's only argument is that Respondents engaged in procedural errors in re-detaining him that render the detention unlawful.

As a preliminary matter, the present petition for habeas relief is not properly verified. Habeas petitions must be "signed and verified by the person for whose relief it is intended or by someone acting in his behalf." 28 U.S.C. § 2242 (1948). The Court is justified in denying the petition on this basis alone. *Application of Gibson*, 218 F.2d 320 (9th Cir. 1954), *cert. denied* 348 U.S. 955. Habeas petitioners bear the burden of proving they are entitled to relief. *Copenhaver v. Bennett*, 355 F.2d 417, 422 (8th Cir. 1966); *Harris v. Tahash*, 353 F.2d 119, 123 (8th Cir. 1965).

Many of the claims made in the petition are not factual assertions, but mere speculation based on "information and belief." *See, e.g.*, ECF No. 1, ¶¶ 25, 27, 96. Petitioner is required to state verified *facts* in his petition, not to put forth unfounded "beliefs" in the hope that one might justify a legal basis for relief. This is unacceptable conduct from the party bearing the burden of proof.

The problem is exacerbated by the number of material lacunae in the petition. Petitioner acts perplexed that his OSUP revocation claims he "failed to remain law abiding." ECF No. 1 ¶ 24. Could Petitioner be unaware that he is a sex offender who has failed to register? Ganzhorn Decl. Ex. A. Is he unaware that he was arrested for this crime, and spent a month in jail until his $5,000 conditional bond was removed, or that he is on Electronic Home Monitoring now? Ganzhorn Decl. Ex. B & C.

All of Petitioner's legal arguments are premised on a factual falsehood, namely that he has remained law-abiding and reported changes of address with ICE.

For example, he states as part of his Due Process argument that "the government has no legitimate interest in detaining an individual who has not violated a material term of their supervised release or where has been a change in conditions that would make removal in the reasonably foreseeable future to be substantially likely." ECF No. 1 ¶ 89. This may be true. But it has absolutely nothing to do with the matter at hand. Petitioner was arrested and is now detained because he failed to register as a sex offender, and has failed to check in with ICE since January 2025. Draves Decl. Ex. C.

Denial of the present petition is warranted on the foregoing. A majority of the legal arguments have no bearing on the facts of the case. They could not have been made with actual knowledge of the Petitioner's situation. As it is, the present petition should not have been filed with this court.

**I. Petitioner's detention is justified in § 1231**

Petitioner's detention is based on 8 C.F.R. § 241.13(i)(1), describing Respondents' power to re-detain based on a failure to follow release conditions. "Any alien who has been released under an order of supervision under this section who violates any of the conditions of release may be returned to custody…The alien may be continued in detention for an *additional six months* in order to effect the alien's removal, if possible, and to effect the conditions under which the alien had been released." *Id.* (emphasis added).

In the present case, Petitioner violated his release conditions by failing to remain law-abiding, and failing to check in with ICE since January 2025. He was informed of this

in his Notice of Revocation of Release form. See Draves Decl. Ex. C. "ICE records indicate that you are not in compliance with the OSUP because you have failed to remain law abiding. In addition, you have failed to check in w/ICE since January 2025."

Petitioner attempts to frame his detention under the terms of 8 C.F.R. § 241.13(i)(2), which governs OSUP revocation when after "changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." ECF ¶¶ 53, 54. But § 241.13(i)(2) is irrelevant in this case.

**II. Petitioner has no claim in substantive due process**

Petitioner next argues his detention is barred under "substantive due process." A substantive due process claim asserts a "substantial component" to due process "which forbids the government to infringe certain 'fundamental' liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993). The very nature of a substantive right opens the door to strict scrutiny and for this reason "substantive due process" claims are treated cautiously by the courts. *Dept. of State v. Munoz*, 602 U.S. 899 (2024); *see also Kerry v. Din*, 576 U.S. 86 (2015). To that end, the two-step inquiry put forth in *Washington v. Glucksberg*, disciplines the substantive due process analysis. 521 U.S. 702, 728 (1997). First, it insists on a "careful description of the asserted fundamental liberty interest." *Id.*, at 721 (internal quotation marks omitted). Second, it stresses that "the Due Process Clause specially protects" only "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition." *Id.*, at 720–721 (internal quotation marks omitted).

Petitioner cites only *Zadvydas v. Davis* to support his substantive due process claim. 533 U.S. 678 (2001). But the Court in *Zadvydas* explicitly stated that its holding—setting a six-month limit on detention for aliens ordered removed under § 1231—did not apply to incarceration based on violations of release conditions. *Id.* at 695. "[W]e nowhere deny the right of Congress to remove aliens, to subject them to supervision with conditions when released from detention, or to *incarcerate them where appropriate for violations of those conditions*." *Id.* (emphasis added). In other words, the only case cited by Petitioner directly refutes any claim that his detention is unreasonable.

Petitioner fails to make a showing that he has any substantive due process right to release. Petitioner's detention is justified by the Government's substantial interest in effectuating his removal, and to ensure public safety by enforcing reasonable conditions of release. Petitioner has no basis in the nation's "history and tradition" to claim a right beyond this.

**III. Petitioner alleges no actual violation of procedural due process.**

Petitioner makes a claim that his procedural due process rights have been violated, and that release is the only remedy. He claims this under *Mathews v. Elridge*. 424 U.S. 319 (1976). This argument fails for multiple reasons.

First, the *Mathews* test has been employed in immigration proceedings primarily to determine whether a detainee is owed a bond hearing. *See, e.g., Rodriguez Diaz v. Garland*, 53 F.3d 1189, 1210 (9th Cir. 2022) The original *Mathews* test was, after all, applied to determine if an evidentiary hearing was necessary before depriving a man of his disability benefits. But the right to an individualized bond hearing under 8 U.S.C. § 1231 has been

explicitly denied by the Supreme Court. *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022). There, an alien subject to detention upon a removal order argued that due process requires bond hearings under § 1231(a). *Id.* at 579. The court rejected the alien's argument, stating that the statute was not ambiguous, and could not be read to require a bond hearing. *Id.* at 581-82.

It is not clear why *Mathews* would apply for any other reason. Petitioner cites no cases where *Mathews* has justified the *release* of a detainee on procedural due process grounds, especially those detained post-final removal order. Habeas petitioners regularly cite a host of (mostly non-precedential) cases to back their contention that *Mathews* is applicable. Petitioner cannot cite one to support his claim here.

More broadly, reliance on *Mathews* to evaluate Petitioner's claims is erroneous. *Mathews* articulates a three-part balancing test for analyzing certain procedural due process claims. *Nelson v. Colorado*, 581 U.S. 128, 134 (2017). *Mathews* takes the "nature of the relevant inquiry" as given, 424 U.S. at 343, and asks only whether the "procedures" for conducting that factual inquiry are adequate, *id.* at 335. Here, in stark contrast, Petitioner contends that the Constitution requires a different factual inquiry altogether—one that weighs the supposed equities between Petitioner and Respondents in allowing his release. Because that is fundamentally a *substantive* rather than *procedural* due process challenge, any reliance on *Mathews* as the governing test is erroneous.

Additionally, use of the *Mathews* test would be inappropriate even if Petitioner were owed a "multi-factor reasonableness test" in judging whether a due process violation had occurred. *Banyee v. Garland*, 115 F.4th 928, 933 (8th Cir. 2024). Though the *Mathews*

holding has been used to make individualized assessments relating to individual petitions (*see, e.g., Maldonado v. Olson*, 795 F.Supp.3d 1134, 1154 (D. Minn. 2025)), the *Mathews* holding itself does not deal with an individualized weighing of equities, as in a bond hearing. *Mathews* is not an individualized test. It is a means of assessing whether statutorily created rights comport with due process, either on the face of the statute or as-applied. The fact that *Mathews* can be employed in as-applied challenges does not make it an individualized test. An individualized test is meant to weigh the equities of the parties *based on a given framework*. In contrast, the *Mathews* test is about the *validity of the framework itself*, whether at a facial level or as-applied. The *Mathews* test would be an improper interpretative test, even if the Petitioner's claims sounded in procedural due process.[1]

More than this, the Eighth Circuit Court of Appeals has foreclosed the use of *all* individualized "balancing tests" in immigration detention decisions. *Banyee*, 115 F.4th at 930-31 (8th Cir. 2024), *abrogating Muse v. Sessions*, 409 F. Supp. 3d 707, 715 (D. Minn. 2018) (applying multifactor individualized test in considering whether alien's continued detention was reasonable in habeas case). In *Banyee*, an alien detained through the course of his deportation proceedings argued that due process entitled him to an individualized review of his confinement. *Id.* at 930-31. The Court rejected his claim, and the use of the judge-made, multi-part reasonableness balancing test set out in *Muse*. The Court noted that "*Zadvydas* and *Demore* have already done whatever balancing is necessary," and noted the

[1] It is telling that the now-abrogated balancing test employed in the 8th Circuit did not use the *Mathews* test. *See Muse v. Sessions*, 409 F. Supp. 3d 707, 715 (D. Minn. 2018).

Supreme Court's consistent rejection of individualized determinations of detainment decisions. *Id.* at 933.

*Even if* the *Mathews* factors were applicable here, Petitioner's due process claim would have to be denied. Any proper application of the *Mathews* factors shows that his detention is appropriate.

First, Petitioner has no cognizable private interest to remain in the United States. While the Fifth Amendment prohibits the government from depriving an alien of his liberty without due process of law, "that right affords no protection against the deprivation of liberty interests that are not constitutionally cognizable." *Sanchez-Velasco v. Holder*, 593 F.3d 733, 737 (8th Cir. 2010) *citing Board of Regents v. Roth*, 408 U.S. 564, 569 (1972); *Movers Warehouse, Inc. v. City of Little Canada*, 71 F.3d 716, 718 (8th Cir. 1995). Ultimately, the Petitioner's due process rights extend to the procedures authorized by Congress through the INA. Any right suggested beyond this has no basis in law.

Second, there is no substantial risk Petitioner will be erroneously deprived of his rights. Petitioner's prior immigration proceedings removed all substantial risk of this. The procedures under § 241.13(i) provide additional protections. This was the conclusion of the court which inaugurated the present use of *Mathews* in immigration decisions. "[T]he agency's decision to detain Rodriguez Diaz was subject to numerous levels of review, each offering Rodriguez Diaz the opportunity to be heard by a neutral decisionmaker. These procedures ensured that the risk of erroneous deprivation would be relatively small." *Rodriguez Diaz v. Garland*, 53 F.3d 1189, 1210 (9th Cir. 2022)(quotations removed).

In contrast, the Government has strong historical and practical interests in seeing Congress's will is given effect. "The Supreme Court has...specifically instructed that in a *Mathews* analysis, we '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.'" *Rodriguez Diaz*, 53 F.4th at 1208 *citing Plasencia*, 459 U.S. at 34. 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*, 163 U.S. at 235 ("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.").

This is especially true for convicted rapists and sex offenders who have failed to remain law-abiding, like Petitioner. To deny Respondents' right to detain and remove criminals like Petitioner is to deny them any functional prerogative over immigration at all.

**IV. Petitioner's claim under § 1357 is meritless**

Petitioner raises a claim that he was subject to warrantless arrest. Because Petitioner was detained under an I-205 warrant and 8 C.F.R. § 241.13(i), his claim is without merit.

Petitioner was issued an I-205 warrant in 2015. Draves Decl. Ex. B. The I-205 is justification for detention and removal of an alien once he is subject to an order of removal. 8 C.F.R. § 241.3(a). A warrant of removal is issued after the conclusion of proceedings in removal court, and is "based on the final administrative removal order." *Id.* The warrant of removal is the permission to arrest and detain following the issuance of a removal order. "Once the removal period defined in [8 U.S.C. § 1231(a)(1)] begins, an alien in the United States will be taken into custody *pursuant to* the warrant of removal." § 241.3(a)(emphasis added); *Arizona v. U.S.*, 567 U.S. 387, 408 (2012)("[I]f an alien is ordered removed after a hearing, the Attorney General will issue a warrant [under 8 CFR § 241.2(a)(1)]."). Warrants of removal may be served by any officer authorized to serve administrative warrants of arrest. § 241.2(b).

An agent's arrest powers under a warrant of removal are much broader than those acting without a warrant under § 1357(a). *Arizona*, 567 U.S. at 408, *citing* § 1357(a)(2)("If no federal warrant has been issued, those officers have more limited authority. They may arrest an alien for being 'in the United States in violation of any [immigration] law or regulation,' for example, but only where the alien 'is likely to escape before a warrant can be obtained.'"). The contradistinction is clear: A warrant of removal does not require any finding of probable cause that an individual is in the United States in violation of immigration law (though, of course, a warrant of removal establishes *more than* probable cause that this is the case), and a warrant of removal requires no finding that that individual is "likely to escape." A deportation warrant remains enforceable, no matter the lapse of time. *Spector v. Landon*, 209 F.2d 481 (9th Cir. 1954). Nor is there any requirement a

deportation warrant be served upon an alien before he is deported. *Sulit v. Schiltgen*, 213 F.3d 449, 453 (9th Cir. 2000).

An alien ordered removed subject to conditions of release may be re-detained when he violates conditions of release or when changed circumstances create a likelihood of removal in the foreseeable future. 8 C.F.R. § 241.13(i)(1)-(2). No additional warrant is required for re-detention. *Id.*

Here, Petitioner does not contest that he has been subject to a warrant of removal since 2015. Though he has been released on conditions, he is still entirely subject to his order of removal. His conditions include prohibition against leaving the State of Minnesota and turning himself over to regular ICE examination. It is no stretch to say he was "in custody" for purposes of the habeas corpus statute, even when not detained. 28 U.S.C. § 2241; *Jones v. Cunningham*, 371 U.S. 236, 241-43 (1963)(parolee was still "in custody" where still subject to conditions, including arrest for violation of parole).

Both § 1231 and § 241.13(i) authorize the detention of aliens subject to removal orders, such as Petitioner. "During the removal period, the Attorney General shall detain the alien." 8 U.S.C. § 1231(a)(2)(A). And after the mandatory and presumptively-reasonable detention period have passed, "[t]he Service may revoke an alien's release under this section and return the alien to custody[.]" 8 C.F.R. § 241.13(i)(2). There is no doubt that statutes and rules allow re-detention of aliens subject to removal orders.

A statute that mandates custody necessarily mandates seizure and/or arrest.[2] An "arrest" is the a "seizure or forcible restraint," or the "taking or keeping in custody by legal authority." Blacks's Law Dictionary (7th Ed. 1999). To "return…to custody" requires seizures. There is no way to place a person in custody but to seize him. To claim otherwise is to violate common sense. It also violates the Predicate-Act Canon, i.e., that authorization of an act authorizes the necessary predicate acts to put it into effect. See Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 192 (2012); *see also Novartis Pharmaceuticals Corp. v. Johnson*, 102 F.4th 451, 462 (D.C. Cir. 2024). "Whenever a power is given by a statute, everything necessary to making it effectual or requisite to attaining the end is implied." *Id.* citing James Kent, *Commentaries on American Law* *464 (Charles M. Barnes ed., 13th ed. 1884).

Clearly, all *statutory* permission for re-detention is given in the statute and regulation. Had Congress wanted to require an additional warrant before re-detention, it could have required one—just as it required a warrant in, e.g., § 1226(a). But the power of placing one in detention is clearly part of the power to detain under a warrant of removal conferred in § 1231. And as described above, a removal order *is* the permission to detain, and thereby the permission to place an alien into detention.

Even if Petitioner's re-detention had been without a warrant, he would have no

[2] The Eighth Circuit has distinguished between using "arrest" in a criminal and civil context. *Graham v. Barnette*, 5 F.4th 872, 886 n.5 (8th Cir. 2021). But the exact terms are not important. Both constitute "seizures" and must meet Fourth Amendment standards of reasonableness.

remedy under the Fourth Amendment. Petitioner's arrest was entirely reasonable. Warrantless arrests are never a valid basis for release. "[W]hile the Court has expressed a preference for the use of arrest warrants when feasible, it has never invalidated an arrest supported by probable cause solely because the officers failed to secure a warrant." *Gerstein v. Pugh*, 420 U.S. 103, 113 (1975)(citations removed). If warrantless arrests cannot justify release in criminal cases, where constitutional protections are at their highest, release cannot be a proper remedy in immigration cases, where "Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79–80 (1976).

This point is driven home by the fact that in criminal cases, not even an *unlawful* arrest will result in automatic release of a defendant. "An illegal arrest, without more, has never been viewed as a bar to subsequent prosecution, nor as a defense to a valid conviction." *United States v. Crews*, 445 U.S. 463, 474 (1980). Instead, exclusion of evidence is the proper remedy for unlawful arrest in criminal cases. *Weeks v. U.S.*, 232 U.S. 383 (1914); *Wong Sun v. U.S.*, 371 U.S. 471 (1963). "Our numerous precedents ordering the exclusion of such illegally obtained evidence assume implicitly that the remedy does not extend to barring the prosecution altogether. So drastic a step might advance marginally some of the ends served by exclusionary rules, but it would also increase to an intolerable degree interference with the public interest in having the guilty brought to book." *United States v. Blue*, 384 U.S. 251, 255 (1966).

In any event, the exclusionary rule is not an appropriate remedy in most immigration cases. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1039-42 (1984). "Important as it is to protect

the Fourth Amendment rights of all persons, there is no convincing indication that application of the exclusionary rule in civil deportation proceedings will contribute materially to that end. On the other side of the scale, the social costs of applying the exclusionary rule in deportation proceedings are both unusual and significant." *Id.* at 1046.

A plurality of the justices in *Lopez-Mendoza* left open the possibility that exclusion might be a remedy for "egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained." *Id.* at 1039; *Puc-Ruiz v. Holder*, 629 F.3d 771, 778 (8th Cir. 2010). The Eighth Circuit has not decided the issue, but has raised doubts "that even an egregious violation by a state officer would justify suppression of evidence in a federal immigration proceeding." *Lopez-Gabriel v. Holder*, 653 F.3d 683, 686 (8th Cir. 2011)(noting the court in *Puc-Ruiz*, 771 F.3d at 778, deemed it unnecessary to decide the issue); *Garcia-Torres v. Holder*, 660 F.3d 333, 336 (8th Cir. 2011).

If suppression of evidence is not an appropriate remedy for a Fourth Amendment violation, it follows, *a fortiori*, that release from custody cannot be either. To hold otherwise is to suggest aliens ordered removed have Fourth Amendment rights above and beyond those of American citizens. But this cannot hold in the immigration contest, where "Congress regularly makes rules that would be unacceptable if applied to citizens." *Mathews v. Diaz*, 426 U.S. 67, 79–80 (1976). To claim that the Fourth Amendment requires release of a detainee where the Fourth Amendment does not even require suppression of evidence is to make mincemeat of the Constitutional standards.

And even if the standards of § 1357 applied, Petitioner's arrest would be justified. There was clear probable cause that he was in the country unlawfully and had violated the terms of his supervised release. There was just as much evidence that he was likely to escape once officers made him aware he was to be detained.

In sum, even if Petitioner's Fourth Amendment claims had merit, he would be owed no relief in habeas, because there is no remedy in the Fourth Amendment that would justify his release. But because he was arrested under an I-205 warrant and had his release validly revoked under § 241.13(i), his claims are baseless.[3]

**V. Petitioner has no claim in *Accardi***

Respondents properly followed all requirements of 8 C.F.R. § 241.13(i). As such, Petitioner has no basis for a claim in *Accardi*. However, even if Petitioner were to raise issue with the validity of the warrant (say), he is not owed a habeas remedy as a result.

Petitioner's last claim lies in an application of the "*Accardi* doctrine" requiring administrative agencies to observe their own regulations. *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). The *Accardi* doctrine does not lie in constitutional law or any principle of equity; rather, it is a "judicially evolved rule of administrative law." *Vitarelli v. Seaton*, 359 U.S. 535, 547 (1959) (Frankfurter, J., concurring in part, dissenting in part). Hence, the Court has confirmed, *Accardi* "enunciate[s] principles of federal administrative law rather than constitutional law[.]" *Board of Curators of the University of*

[3] Petitioner complains that at the time of his arrest, the warrant "was read to Petitioner in Spanish, a language he does not speak and which is not an official language of Liberia." ECF No. 1 ¶ 23. The official language of Liberia is English.

*Missouri v. Horowitz*, 435 U.S. 78, 92 n. 8 (1978). As a principle in administrative law, it is grounded in procedural due process. *C.G.B. v. Wolf*, 464 F.Supp.3d 174, 226 (D.D.C. 2020). This must be the case, because "agency regulations do not create substantive due process rights." *Id.*; *see also U.S. v. Caceres*, 440 U.S. 741, 754 (1979) (IRS's failure to follow its own regulation on recording procedures did not require Fourth Amendment exclusion of evidence in criminal case.)

Because administrative procedures create no substantive rights, the mere failure to follow these procedures cannot, standing alone, constitute a substantive deprivation of rights. A showing of prejudice is necessary. This legal rule holds in immigration proceedings. "Violation of a regulation does not invalidate a deportation proceeding unless the regulation serves a purpose of benefit to the alien. Violation of a regulation renders a deportation unlawful only if the violation prejudiced interests of the alien which were protected by the regulation." *U.S. v. Calderon-Medina*, 591 F.2d 529, 530 (9th Cir. 1979); s*ee also U.S. v. Barraza-Leon*, 575 F.2d 218, 221-22 (9th Cir. 1978) (Immigration Judge's failure to make inquiry required by C.F.R. was harmless absent credible showing from alien that he was entitled to relief from deportation).

The Eighth Circuit has held the same. Hence, a regulatory violation will not serve to exclude evidence or invalidate deportation proceedings unless the "regulation in question serves a purpose of benefit to the alien and the violation prejudiced interests of the alien which were protected by the regulation." *Puc-Ruiz v. Holder*, 629 F.3d 771, 780 (8th Cir. 2010) *applying In Matter of Garcia-Flores*, 17 I.&N. Dec. 325, 329 (BIA 1980)(adopting "prejudice" test put forth by the 9th Circuit in *Calderon-Medina*). Prejudice

must be specifically demonstrated unless compliance with the regulation is mandated by the Constitution, in which case prejudice will be presumed. *Id.* But for a regulation that is not constitutionally mandated, the burden lies on the petitioner to show the "regulatory violations potentially affected the outcome of his deportation proceeding." *Id.*

Recent uses of the *Accardi* doctrine are a novelty. While *Accardi* has been around for decades, few habeas petitioners citing *Accardi* recognize any of the caselaw that has refined the "doctrine" since 1954. This haphazard application of *Accardi* raises grave concerns, especially in the realm of immigration law.[4] 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."). *See also Nguyen v. Noem*, 797 F.Supp.3d 651 (N.D. Tex. 2025).

In the present case, Petitioner has not been harmed at all. His detention is reasonable.

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[4] "The doctrine seems proof of the adage that hard cases make bad law." *Accardi*, 347 U.S. at 268 (J. Jackson dissenting). Such a statement from a man of Justice Jackson's legal insight and moral integrity must be taken seriously.

## EVIDENTIARY HEARING

Respondents believe the Court can resolve the Petition without an evidentiary hearing. The material facts necessary to decide this case are established by the Petition, the declaration submitted with Respondents' response, and the attached immigration records. The remaining issues are legal ones.

## CONCLUSION

All habeas relief must be denied.

Dated: June 29, 2026

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