IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BINTOU BARRO, Petitioner, v. MARKWAYNE MULLIN, SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY, et al., Respondents.	Case No. 3:26-cv-00854 JUDGE DAN AARON POLSTER **RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

I. INTRODUCTION

On April 10, 2026, this Court ordered Respondents to produce an arrest warrant signed by the District Director (administrative or otherwise) revoking Petitioner's release and directing her detention. ECF No. 4. When Petitioner was taken into custody on March 17, 2026, she was provided with a Notice of Revocation of Release and Alien Informal Interview (Exhibit A), a Warrant of Removal/Deportation, a Warrant for Arrest of Alien, and a Warning for Failure to Depart (combined as Exhibit B).

The Notice of Revocation of Release is signed by Acting Field Office Director Kevin Raycraft. *See* Exhibit A: Notice of Revocation of Release and Alien Informal Interview. 8 C.F.R. § 241.4(l)(2) provides that "[a] district director may also revoke release of an alien when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner." This section further provides that "[r]elease may be revoked in the exercise of its discretion when, in the

opinion of the revoking official… (iii) [i]t is appropriate to enforce a removal order or to commence removal proceedings against an alien…" 8 C.F.R. § 241.4(l)(2)(iii). 8 C.F.R. § 1.2 states that "[d]irector or district director prior to March 1, 2003, means the district director or regional service center director, unless otherwise specified." It further states that "[o]n or after March 1, 2003. . . the terms mean, to the extent that authority has been delegated to such official: asylum office director; director, field operations; district director for interior enforcement; district director for services; ***field office director***; service center director; or special agent in charge." 8 C.F.R. § 1.2 (emphasis added). Because 8 C.F.R. § 241.4(l)(2) delegates authority to revoke supervision to the "district director," which post-March 2003 includes field office director, the Notice of Revocation was signed by a person with proper authority, i.e., Acting Field Office Director Kevin Raycraft. *See Ceesay v. Kurzdorfer*, 781 F.Supp.3d 137, 159-61 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2 and 241.4(l)(2) while discussing authority to revoke release and finding that "under 241.4(l)(2), the officials with the power to revoke release after making certain findings include field office directors and any other official 'delegated the function or authority ... for a particular geographic district, region, or area.'").

As stated above, Petitioner was also provided with a Warrant of Removal/Deportation, a Warrant for Arrest of Alien, and a Warning for Failure to Depart. *See* Exhibit B: Warrant Documents. These documents direct that Petitioner be taken into custody and removed from the United States because she has a final order of removal issued by an immigration judge on December 18, 2008. Because Petitioner is subject to a final order of removal, she is detained pursuant to 8 U.S.C. § 1231(a). As discussed in further detail below, ICE complied with its statutory and regulatory authority to arrest and detain her because ICE is prepared to effectuate her removal order.

This Court also ordered Respondents to notify the Court how this case is materially different from *Rodriguez v. Greene*, Case No. 4:26-cv-333, 2026 WL 574961 (N.D. Ohio Mar. 2, 2026), *Garcia Rodriguez v. Raycraft*, Case No. 4:26-cv-302, 2026 WL 656956 (N.D. Ohio Mar. 9, 2026), and *Kumar v. Warden of Corr. Ctr. of Nw. Ohio*, Case No. 3:26-cv-569, 2026 WL 787937 (N.D. Ohio Mar. 20, 2026). Unlike those cases, Petitioner here is subject to detention under 8 U.S.C. § 1231(a) because she has a final order of removal. Neither 8 U.S.C. § 1225(b) nor § 1226(a) govern her detention. While, like *Garcia Rodriguez*, Petitioner moved to reopen her removal proceedings, that motion was denied by an immigration judge. ECF No. 1, ¶ 23. The appeal of that denial remains pending before the Board of Immigration Appeals ("BIA"). *Id.*

Further, unlike *Mbonga v. Raycraft*, 809 F.Supp.3d 762 (N.D. Ohio 2025), Petitioner's Notice of Revocation was signed by Acting Field Office Director Kevin Raycraft. Petitioner was also presented with a Warrant of Removal/Deportation, a Warrant for Arrest of Alien, and a Warning for Failure to Depart, which indicate the reason for her arrest. *See* Exhibit B: Warrant Documents. She was also given an informal interview. *See* Exhibit A: Notice of Revocation of Release and Alien Informal Interview. While this Court in *Mbonga* found that Respondents failed to follow their own regulations in detaining Petitioner because they did not provide any specific reason for Petitioner's detention and did not give Petitioner an informal interview, Petitioner here was provided a reason for her detention and given an informal interview.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. IMMIGRATION HISTORY

Petitioner claims to be a native and citizen of Mauritania. ECF No. 1-3, PageID 27. However, Petitioner entered the United States in 1999 on a tourist visa issued under the name,

Mariama Barro, a Senegalese national. *Id.* at PageID 35. She was placed in removal proceedings. *Id.* at PageID 27. On December 18, 2008, Petitioner's application for asylum was denied, and she was ordered removed. *Id.* at PageID 38. She was released on an Order of Supervision in 2009. ECF No. 1, ¶ 21. On January 8, 2025, Petitioner filed a motion to reopen removal proceedings based on an approved I-130 Petition. *Id.* at ¶ 23. The immigration judge denied her motion to reopen on April 28, 2025. *Id.* She appealed this denial to the BIA which remains pending.

On March 17, 2026, ICE revoked Petitioner's order of supervision and detained her to begin the removal process.

B. PROCEDURAL HISTORY

Petitioner filed this petition on April 10, 2026. ECF No. 1. Petitioner asserts that her right to due process was violated when ICE revoked the Order of Supervision (Count One); that her right to due process was violated when she did not have an opportunity to respond to the revocation of the Order of Supervision (Count Two); that the revocation violates the Administrative Procedure Act (Counts Three, Four, and Five); that the revocation was *ultra vires* (Count Six); and that the revocation violates the *Accardi* Doctrine (Count Seven). *Id.* Petitioner requests that the Court declare her detention unlawful and order her release from custody. *Id.*

III. ARGUMENT

Petitioner's detention is authorized by statute and regulation and comports with the Constitution. Furthermore, because there is a valid removal order against Petitioner, this Court lacks jurisdiction to limit the execution of that order. Finally, Petitioner's ancillary claims are improperly asserted with this habeas petition. This Court must therefore deny the Petition and dismiss all remaining claims.

A. PETITIONER IS LAWFULLY DETAINED PURSUANT TO 8 U.S.C. § 1231

ICE's detention authority stems from 8 U.S.C. § 1231, which provides for the detention and removal of aliens with final orders of removal. Section 1231(a)(1)(A) directs immigration authorities to remove an individual with a final order of removal within a period of 90 days—this is known as the "removal period." During the removal period, § 1231(a)(2) commands that ICE "shall detain" the final order alien. If, however, the removal period has expired, ICE can either release an individual pursuant to an Order of Supervision as directed by Section 1231(a)(3) or continue detention under Section 1231(a)(6). Section 1231(a)(6) permits ICE to continue detention beyond the removal period for three categories of individuals:

- Those who are inadmissible to the United States pursuant to 8 U.S.C. § 1182;
- Those who are subject to certain grounds of removability from the United States pursuant to 8 U.S.C. § 1227; or
- Those whom immigration authorities have determined to be a risk to the community or "unlikely to comply with the order of removal."

Because Petitioner's prior order of removal was final in 2008, Petitioner is now outside of the 90-day removal period during which the government "shall detain" the individual. 8 U.S.C. § 1231(a)(2). However, 8 U.S.C. § 1231(a)(6) allows ICE to detain Petitioner because she is inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) because Petitioner was neither admitted nor paroled in the United States upon entry. ICE therefore has statutory authority to detain Petitioner to effectuate her removal order from the United States, and she is not entitled to a bond hearing or release because Section 1231(a)(6) does not contemplate such process.

The Supreme Court, in *Johnson v. Arteaga-Martinez*, answered the question of "whether the text of § 1231(a)(6) requires the Government to offer detained noncitizens bond hearings

after six months of detention in which the Government bears the burden of proving by clear and convincing evidence that a noncitizen poses a flight risk or a danger to the community." 596 U.S. 573, 574 (2022). The Court answered that question definitively, holding that Section 1231(a)(6)'s plain text, which "says nothing about bond hearings before immigration judges or burdens of proof . . . directs that we answer this question in the negative." *Id.* at 581. Petitioner's claim that she is entitled to release is therefore foreclosed by statute and Supreme Court precedent.

B. ICE'S REVOCATION OF RELEASE COMPORTS WITH REGULATION AND THE CONSTITUTION

Petitioner's allegation that her arrest and detention violates the Constitution because Respondents "had no legitimate, non-punitive objective in revoking Petitioner's order of supervision . . ." and that such revocation occurred "without providing notice and a meaningful opportunity to respond . . ." is wholly without merit. ICE exercised its significant discretion in revoking Petitioner's order of supervision for the purpose of enforcing Petitioner's removal order. 8 C.F.R. § 241.4(l)(2).

1. The Post-Order Custody Regulations Provide for Revocation of Release at ICE's Discretion to Effectuate a Removal Order.

While 8 U.S.C. § 1231(a)(3) is silent as to revocation procedures for an individual released pursuant to an Order of Supervision, ICE issued Post-Order Custody Regulations ("POCR"), which set forth mechanisms concerning custody reviews, release from ICE custody, and revocation of release for individuals with final orders of removal. 8 C.F.R. § 241.4.

The regulatory provisions concerning revocation of release provide significant discretion to ICE to revoke release. 8 C.F.R. § 241.4(l); s*ee Leybinsky v. U.S. Immigr. & Customs Enf't*, 553 F. App'x 108, 110 (2d Cir. 2014) (remarking on the "broad discretionary authority the regulation grants ICE" to revoke release"); *Rodriguez v. Hayes*, 591 F.3d 1105, 1117 (9th Cir.

2010) (explaining that while the revocation regulation "provides the detainee some opportunity to respond to the reasons for revocation, it provides no other procedural and no meaningful substantive limit on this exercise of discretion").

The regulation provides for revocation when the revoking official determines that "[t]he purposes of release have been served," or when "[i]t is appropriate to enforce a removal order . . . against an alien," or when "[t]he conduct of the alien, *or any other circumstance*, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2)(i)-(iv) (emphasis added).

If ICE determines in its "judgment [that] travel documents can be obtained, or such document is forthcoming, the alien will not be released unless immediate removal is not practicable or in the public interest." 8 C.F.R. § 241.4(g)(3).

2. ICE Complied with the POCR Regulations to Arrest Petitioner.

Pursuant to 8 C.F.R. § 241.4(l)(2)(iii), ICE has the authority to terminate Petitioner's order of supervision for the purpose of enforcing an order of removal against Petitioner. When ICE "determine[s] that revocation [i]s necessary to initiate [] removal . . . [n]o further justification [i]s required." *Doe v. Smith*, No. CV 18-11363-FDS, 2018 WL 4696748, at *11 (D. Mass. Oct. 1, 2018). The regulation does not require the Field Office Director "to make a formal determination that her revocation was in the public interest[,]" instead, the Field Office Director has "discretion to determine when revocation is appropriate . . . ." *Id.* The regulation provides a "short and straight path for immigrants whom the government is ready and able to remove." *Alam v. Nielsen*, 312 F. Supp. 3d 574, 582 (S.D. Tex. 2018).

Petitioner relies on the incorrect subsection of the regulations in claiming that "[u]pon revocation of an order of supervision, ICE must give a non-citizen notice of the reasons for revocation and prompt interview to respond. 8 C.F.R. § 241.4(l)(1)." ECF No. 1, ¶ 54. Subsection (l)(1) only applies to aliens who have violated the conditions of their release. By

contrast, and applicable here, subsection (2) of the regulation allows ICE to use its discretion to revoke release and does not provide for notice or an interview. 8 C.F.R. § 241.4(l)(2). ICE revoked Petitioner's supervision because the purpose of Petitioner's release has been served, and "[i]t is appropriate to enforce the removal order entered against [Petitioner] as ICE has the ability and means to effectuate [Petitioner's] removal. *See* Exhibit A: Notice of Revocation of Release and Alien Informal Interview.

ICE is not required to provide advance notice of its intent to revoke release for the obvious reason that could encourage flight or increase law enforcement safety concerns. *Doe*, 2018 WL 4696748, at *7 (explaining that the "regulation does not require that a petitioner or her counsel be given 30 days' notice prior to the initial informal interview."); *Reyes v. King*, No. 19 CIV. 8674 (KPF), 2021 WL 3727614, at *10 (S.D.N.Y. Aug. 20, 2021) (explaining that "the Due Process Clause of the Fifth Amendment does not entitle [p]etitioner to such a [pre-detention] hearing at this specified time"); *Moran v. U.S. Dep't of Homeland Sec.*, No. EDCV2000696DOCJDE, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) (expressing skepticism about "the source of any due process right to advance notice of revocation of supervised release or other removal-related detention"); *Gutierrez-Soto v. Sessions*, 317 F. Supp. 3d 917, 929 (W.D. Tex. 2018) (finding no "due process right to not be snatched off the street without warning" when ICE revoked discretionary parole and returned individual to custody).

Courts routinely conclude that compliance with the POCR regulations protects an individual's Constitutional rights while detained. *See, e.g.*, *Moses v. Lynch*, No. 15-cv-4168, 2016 WL 2636352, at *4 (D. Minn. Apr. 12, 2016) ("When immigration officials reach continued-custody decisions for aliens who have been ordered removed according to the custody-review procedures established in the Code of Federal Regulations, such aliens receive

the process that is constitutionally required."); *Portillo v. Decker*, No. 21 CIV. 9506 (PAE), 2022 WL 826941, at *6 (S.D.N.Y. Mar. 18, 2022) (collecting cases supporting conclusion that the POCR framework has routinely been deemed constitutional and noting that petitioner had not "cite[d] legal authority in support of his generalized laments about the administrative process.").

Because Petitioner does not allege that ICE violated any specific procedures under the applicable regulation, her petition should be denied. *See, e.g.*, *Doe*, 2018 WL 4696748, at *7 (dismissing habeas claim where "there was no regulatory violation" in connection with custody reviews); *Perez v. Berg*, No. 24-CV-3251 (PAM/SGE), 2025 WL 566884, at *7 (D. Minn. Jan. 6, 2025), *report and recommendation adopted*, No. CV 24-3251 (PAM/ECW), 2025 WL 566321 (D. Minn. Feb. 20, 2025) (finding no due process violation "[a]bsent an indication that ICE failed to comply with its regulatory obligations in some more specific way").

Petitioner's claim that ICE's arrest and detention of Petitioner violated statute and regulation fails because ICE properly exercised its ample discretion in revoking Petitioner's release.

C. PETITIONER'S STATUTORILY AUTHORIZED DETENTION IS CONSTITUTIONAL

As recognized by the Supreme Court, "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). When evaluating "reasonableness" of detention, the touchstone is whether an alien's detention continues to serve "the statute's basic purpose, namely, assuring the alien's presence at the moment of removal." *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). Here, it does.

To set forth a Constitutional violation for Section 1231 detention, an individual must satisfy the *Zadvydas* test. *See Chen v. Holder*, 389 F.App'x 468, 475 (6th Cir. 2010) (citing *Zadvydas* when explaining that due process "requires aliens in deportation hearings receive a full

and fair hearing."); *Smith v. Simon*, Case No. 1:19CV41, 2019 WL 4143088, at *3-4 (N.D. Ohio July 17, 2019) (discussing the reasonable time limit for detentions as set forth in *Zadvydas*), report and recommendation adopted, 2019 WL 4142325 (N.D. Ohio Aug. 30, 2019); *Castaneda v. Perry*, 95 F.4th 750, 760 (4th Cir. 2024) (explaining that "*Zadvydas*, largely, if not entirely forecloses due process challenges to § 1231 detention apart from the framework it established"); *Wang v. Ashcroft*, 320 F.3d 130, 146 (2d Cir. 2003).

In *Zadvydas*, the Supreme Court held that the government cannot detain an alien "indefinitely" beyond the 90-day removal period. 533 U.S. at 682. The Supreme Court "read an implicit limitation into the statute . . . in light of the Constitution's demands" and held that Section 1231(a)(6), "limits an alien's post-removal-period detention to a period reasonably necessary to bring about the alien's removal from the United States." *Id.* at 689. The *Zadvydas* Court held that post-removal detention for six months is "presumptively reasonable." *Id.* at 701. The "*Zadvydas* due process analysis applies only if a danger of indefinite detention exists and there is no significant likelihood of removal in the reasonably foreseeable future." *Jiang Lu v. U.S. ICE*, 22 F. Supp. 3d 839, 843 (N.D. Ohio 2014).

Here, ICE is seeking a travel document to effect Petitioner's expeditious removal to Mauritania. *See* Exhibit A: Notice of Revocation of Release and Alien Informal Interview. In the alternative, ICE was ordered to remove Petitioner to Senegal. ECF No. 1-3, PageID 38. Therefore, Petitioner's detention is not in violation of the Constitution.

D. THERE IS NO JURISDICTION FOR THIS COURT TO PREVENT THE EXECUTION OF THE REMOVAL ORDER AGAINST PETITIONER

To the extent Petitioner seeks this Court to enter an order enjoining ICE's effectuation of Petitioner's removal order, even for the duration of time that these habeas proceedings are pending before this Court, 8 U.S.C. § 1252(g) precludes this Court from enjoining orders of

removal. Section 1252(g) states that "no court shall have jurisdiction to hear any cause or claim by . . . any alien arising from the decision or action by [ICE] to . . . *execute removal orders against any alien.*" (emphasis added). This provision applies "notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title." *Id.* Section 1252(g) is directed against efforts "to impose judicial constraints upon [certain categories of] prosecutorial discretion." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 485 n.9 (1999).

The Sixth Circuit is clear: the decision to execute a removal order is not reviewable under the jurisdiction-stripping provisions of section 1252(g). *Hamama v. Adducci*, 912 F.3d 869, 874-75 (6th Cir. 2018) ("Under a plain reading of the text of the statute, the Attorney General's enforcement of long-standing removal orders falls squarely under the Attorney General's decision to execute removal orders and is not subject to judicial review.") (citations omitted); *Karki v. Jones*, Case No. 1:25-cv-281, 2025 WL 1638070, at *5 (S.D. Ohio June 9, 2025).

E. PETITIONER CANNOT BRING OTHER CLAIMS IN A HABEAS PETITION

Petitioner improperly attempts to shoehorn ancillary claims into a habeas action. ECF #1, ¶¶ 63-108. She alleges that ICE's decision to revoke the Order of Supervision and detain her to execute the Order of Removal is contrary to the Constitution, is arbitrary and capricious, in excess of statutory authority, is *ultra vires*, and violates the *Accardi* Doctrine. ECF No. 1, ¶¶ 63-108.

This is not an APA case. It is black-letter law that habeas petitioners are limited to challenging the fact or duration of their confinement, not the agency policies governing it. *Munaf v. Green*, 553 U.S. 674, 693 ("Habeas is at its core a remedy for unlawful executive detention.") (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 536 (2004)); *Hamama*, 912 F.3d at 875-76 (holding that habeas relief is limited to a challenge to detention); *Hernandez Meza*, 2019 WL

233616 at *3 ("According to *Hamama*, the relief available under the common-law writ is confined to 'release from custody.'"). And, as a prudential matter, courts in this circuit have not permitted "combined habeas corpus and other civil claims to proceed together in one case." *J.O.B. v. United States*, No. 3:23-CV-217, 2024 WL 4011825, at *7 (S.D. Ohio Aug. 30, 2024) (collecting cases), *report and recommendation adopted*, No. 3:23-CV-217, 2024 WL 4223636 (S.D. Ohio Sept. 18, 2024); *Ruza v. Michigan*, No. 1:20-CV-504, 2020 WL 4670556, at *2 (W.D. Mich. Aug. 12, 2020), *aff'd*, No. 20-1841, 2021 WL 3856305 (6th Cir. Apr. 7, 2021) (same). Habeas petitions and civil actions "have distinct purposes and contain unique procedural requirements that make a hybrid action difficult to manage." *Ruza*, 2020 WL 4670556, at *2. Thus, Petitioner's APA claims improperly are pleaded, and the Court should not consider them alongside his petition for writ of habeas corpus.

In addition, APA claims are unavailable where habeas relief presents an adequate alternative remedy. *Trump v. J.G.G.*, 604 U.S. 670, 674 (2025) (Kavanaugh, J., concurring). Habeas relief would be an adequate remedy for Petitioner's claims, by addressing whether she is entitled to release from unlawful custody. That "fall[s] within the 'core' of the writ of habeas corpus and thus must be brought in habeas." *Id.* at 672 (per curium).

The agency action is neither *ultra vires* nor in violation of the *Accardi* Doctrine. As discussed above, Petitioner is currently being detained consistent with the INA and its implementing regulations. Furthermore, as explained above, other civil claims are not properly combined with a habeas action. *E.g.*, *J.O.B.*, 2024 WL 4011825, at *7. As a result, Plaintiff's claims of *ultra vires* agency action and violation of the *Accardi* Doctrine must be denied.

IV. CONCLUSION

For the above reasons, Petitioner's assertion of unlawful detention in violation of statute, regulation, and the Constitution fails. Petitioner's APA claims are not properly before the Court. This Court should therefore deny her request for relief.

Respectfully submitted,

DAVID M. TOEPFER
United States Attorney

By: */s/ Kathryn G. Andrachik*
Kathryn G. Andrachik (OH 93998)
Assistant U.S. Attorney
801 W. Superior Ave., Suite 400
Cleveland, Ohio 44113
216-622-3804
216-522-4982 (Facsimile)
Kathryn.Andrachik@usdoj.gov

CERTIFICATE OF COMPLIANCE WITH RULE 7.1(f)

I certify that this Response to Petition for Writ of Habeas Corpus comports with the page limitations identified in Local Rule 7.1(f). This case is unassigned, and the Response is under twenty pages in length.

/s/ Kathryn G. Andrachik
Kathryn G. Andrachik