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 PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

I. INTRODUCTION

On April 17, 2026, this Court ordered Petitioner to file a brief addressing (1) whether Respondents needed both a valid Revocation of Release and valid Warrant of Removal to detain Petitioner, or just one of them; and (2) whether and how these forms were deficient such that Petitioner's detention is unlawful. Petitioner filed a Reply Brief in Support of Petition for Writ of Habeas Corpus on May 1, 2026. *See* ECF #8: Brief in Support. This Court also ordered Respondents to file a response. Petitioner's Order of Supervision was properly revoked, she is properly detained under 8 U.S.C. § 1231(a) because she is subject to a final order of removal, and APA claims and violations of the *Accardi* doctrine cannot be brought in a habeas petition. Even if these claims were properly asserted, Respondents followed its regulations when it revoked Petitioner's Order of Supervision and detained her.

II. LAW AND ARGUMENT

In her reply brief, Petitioner states that "no particular form itself, standing alone, is sufficient to detain Petitioner. The government may exercise its discretion to detain a Petitioner previously released on an Order of Supervision only by fully complying with 8 C.F.R. § 241.4 and 8 C.F.R. § 241.13." *See* ECF #8, PageID 99.

As stated in more detail in Respondents' Response to Petition for Writ of Habeas Corpus, the Notice of Revocation provided to Petitioner was signed by a person with proper authority to do so, Acting Field Office Director Kevin Raycraft. *See* ECF #6, PageID 72-73. 8 C.F.R. § 241.4(l)(2) allows the Acting Field Office Director to revoke release of an alien when, in the Acting Field Office Director's opinion, "revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner."[1] 8 C.F.R. § 241.4(l)(2) 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 . . . ." *Doe v. Smith*, No. CV 18-11363-FDS, 2018 WL 4696748, at *11 (D. Mass. Oct. 1, 2018).

Here, while not formally documented, Acting Field Office Director Kevin Raycraft made the determination that revocation of Petitioner's Order of Supervision was in the public interest, and it was not reasonable to refer the matter to the Executive Associate Director. *See* Exhibit A: Declaration of Kevin Raycraft. 8 C.F.R. § 241.4(l)(2) does not require a written finding that revocation is in the public interest and that circumstances do not reasonably permit referral of the

[1] After the transfer of the functions of the former Immigration and Naturalization Service to the Department of Homeland Security and ICE, the "Executive Associate Commissioner" now refers to the "Executive Associate Director."

case to the Executive Associate Director. Therefore, the Notice of Revocation of Supervision was signed by the appropriate person, and the form is not deficient.

Acting Field Office Director Kevin Raycraft properly revoked Petitioner's Order of Supervision to enforce the final order of removal issued by an immigration judge on December 18, 2008. ICE is actively working to obtain travel documents to effectuate Petitioner's removal. *See* Exhibit A: Declaration of Kevin Raycraft. Petitioner has been detained for approximately 60 days. Her continued detention while ICE secures travel documents does not violate due process. *See* ECF #6, PageID 80-81.

Petitioner continues to argue that notice and an informal interview is required to revoke release pursuant to 8 C.F.R. § 241.4(l)(1). 8 C.F.R. § 241.4(l)(2) applies in this case. *See* ECF #6, PageID 78-80. 8 C.F.R. § 241.4(l)(2) does not require ICE to provide advance notice of its intent to revoke release, and it provides significant discretion to revoke release. 8 C.F.R. § 241.4(l)(2) also does not require an interview to be conducted. Under controlling law, courts must apply the plain text of a statute unless a party can identify an ambiguity requiring additional analysis. *See BedRoc Ltd. v. U.S.*, 541 U.S. 176,183. To resolve statutory ambiguity, courts must apply the recognized canons of statutory construction to resolve the dispute. *See Facebook, Inc. v. Duguid*, 592 U.S. 395, 404 n.5 (2021). Applying the statutory canon of construction *expressio unius est exclusio alterius*, the United States Supreme Court has stated that "[w]hen Congress includes particular language in one section of a statute and omits it from a neighbor, the Court normally understands that difference in language to convey a difference in meaning...." *Bittner v. United States*, 598 U.S. 85 (2023); *see also Russello v. United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and

purposely in the disparate inclusion or exclusion."). This Court should apply this same canon of construction to agency regulations. *Cremeens v. City of Montgomery*, 602 F.3d 1224, 1227 (11th Cir. 2010) ("We apply the canons of construction to regulations as well as to statutes."); *see also New Mexico v. Gen. Elec. Co.*, 335 F.Supp.2d 1185, 1207 (D.N.M. 2004) (discussing the application of statutory canons of construction to the interpretation of agency rules and regulations). The Department of Homeland Security provided for notice and interview in 8 C.F.R. § 241.4(l)(1) when an alien violates the terms of supervision. It did not provide for the same in subsection (2). Therefore, if the Department of Homeland Security intended for these to be requirements upon revocation of supervision in other contexts, it would have stated so.

Here, however, while not required by statute, ICE provided Petitioner with notice of the reasons for her revocation and an informal interview. *See* ECF# 6, Exhibit A: Notice of Revocation and Alien Informal Interview.

Petitioner also continues to argue that Respondents violated the APA and the *Accardi* doctrine. As fully addressed in Respondents' Response to Petition for Writ of Habeas Corpus, Petitioner cannot bring APA claims and violations of the *Accardi* doctrine in a habeas petition. Even if these claims were properly alleged, Respondents followed the applicable regulations when they revoked Petitioner's Order of Supervision and detained her pursuant to 8 U.S.C. § 1231(a). *See* ECF #6, PageID 82-83.

Finally, this Court ordered the parties to identify which witnesses are necessary for the evidentiary hearing on May 26, 2026. It is Respondents' position that because Petitioner is subject to a final order of removal, and Acting Field Office Director Kevin Raycraft exercised his significant discretion in revoking Petitioner's order of supervision to effectuate her removal, the documentary evidence is sufficient to show that Petitioner's detention is lawful.

III. CONCLUSION

For the above reasons and the reasons set forth in Respondents' Response to Petition for Writ of Habeas Corpus, this Court should deny Petitioner's 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