

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 0:26-cv-02954-JWB-ECW

Leonard V.M.,

Petitioner,

v.

Todd Blanche, *et al.*,

Respondents.

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

Respondents respectfully submit this brief pursuant to the Court's June 16, 2026 order requiring the Respondents to address the basis for Petitioner's continued detention.

BACKGROUND

Petitioner is a citizen and native of Mexico, who makes no claim to U.S. citizenship or current lawful immigration status. Ganzhorn Decl. Ex. B ("I-213"). He is currently in removal proceedings. *Id.*

Petitioner was arrested in 2018 for Terroristic Threats under Minn. Statute § 609.713.1 and Domestic Assault under Minn. Stat. § 609.2242.1(2). *Id.* He eventually pleaded guilty to and was convicted of the latter charge. *Id.* In his removal proceedings, Petitioner was initially detained and then released on February 14, 2019, subject to conditions and a \$5,000 bond. *See* Ganzhorn Decl. Ex. D.

On September 27, 2023, Petitioner was arrested in Washburn County, Wisconsin, and charged with Operating While under the Influence under Wis. Stat. § 346.63 (1)(A).

Ganzhorn Decl. Ex. B, p. 3 & Ex. F pp. 8-12. On October 30, 2023, he was found guilty of this charge and sentenced to a six-month license revocation. Ganzhorn Decl. Ex. B, p. 3.

On May 7, 2026, Petitioner was arrested for new charges of OWI under Wis. Stat. § 346.63 (1)(A). Ganzhorn Decl. Ex. E pp. 1-6 & Ex. F. According to the police report, Petitioner hit another person's vehicle with his own. Ex. E. p. 2. Petitioner was apparently intoxicated, belligerent, and holding a bottle of alcohol. *Id.*

A detainer and warrant were issued by ICE soon after. Ganzhorn Decl. Ex. B, p. 2 & Ex. G. On May 12, 2026, the \$5,000 bond he had posted in 2019 was revoked. Ex. D.

ARGUMENT

I. Petitioner's pre-removal detention is premised on § 1226(b)

As an initial matter, Petitioner confuses the legal basis for his present detention. Much of Petitioner's argument has to do with detention under § 1225(b)(2). But Petitioner is not being held under 8 U.S.C. § 1225(b)(2)(A). Petitioner is being held under § 1226(b), which provides that the "Attorney General at any time may revoke a bond or parole authorized under [§ 1226(a)] rearrest the alien under the original warrant, and detain the alien." *Id.* Petitioner had previously been released on a \$5,000 bond and conditions under § 1226(a).

Petitioner is correct that his previous release under § 1226(a) was premised on his not being a danger to public safety or a flight risk. 8 U.S.C. § 1226(c)(4)(allowing for conditional release only where the alien "will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding"). But that previous determination was before his two arrests for DUI.

As a matter of law, Petitioner's two DUI arrests are enough to establish that he is a danger to public safety. *Matter of Choc-Tut*, 29 I&N Dec. 48 (BIA 2025). And this is no wonder. "Drunk driving is an extremely dangerous crime." *Begay v. United States*, 553 U.S. 137, 141 (2008), *abrogated on other grounds*, *Johnson v. United States*, 135 S. Ct. 2551 (2015). Drunk driving takes "a grisly toll on the Nation's roads, claiming thousands of lives, injuring many more victims, and inflicting billions of dollars in property damage every year." *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2166 (2016).

Respondents were entirely justified in revoking Petitioner's bond under § 1226(b). Indeed, because of his persistent criminality, he would not even be eligible for bond under § 1226(a) were another hearing to be held. As a matter of law, Petitioner has rendered himself a danger to public safety, and he is no longer entitled to bond.

As Petitioner himself notes: "For decades, however, DHS has had a consistent policy and practice of re-detaining noncitizens in removal proceedings only when the individual circumstances related to their flight risk or danger to the community had materially changed. *See Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981) (holding that the government cannot re-arrest and re-detain a noncitizen released by an immigration judge on bond "absent a change of circumstance" warranting detention)." ECF No. 1 Para. 54. Petitioner's DUI arrest constitutes a "change of circumstance."

Nor can Petitioner make a claim that his bond revocation was procedurally incomplete. The bond was revoked by Chong Vang, an Enforcement and Removal Assistant. Ganzhorn Decl. Ex. D. This satisfies the requirements of 8 C.F.R. § 236.1(c)(9).

All of Petitioner's due process arguments are premised on detention under § 1225(b)(2). None of those arguments have merit here.

Given the foregoing, it is clear how this case differs from those mentioned by the court in its order. *Heriberto R.E.*, Civ. No. 26-2227 (JWB/LIB); et alia, dealt with the distinction between § 1225/1226, *Avila*, and related matters. The present issue is much simpler. Petitioner's bond has been revoked according because of his DUI arrests. He is not entitled to bond. This determination is beyond the scope of judicial review. 8 U.S.C. § 1226(e).

II. Petitioner' Fourth Amendment claim is baseless.

Petitioner claims that his detention is unlawful because he was arrested without a warrant, and Respondents failed to follow the procedures of 8 U.S.C. § 1357(a)(2). ECF No. 1, ¶¶ 94-104. But Petitioner was arrested after the issuance of a detainer and a warrant. *See Ganzhorn Decl. Ex. G.* As such, his arrest did not violate the Fourth Amendment. And because ICE had a warrant to arrest Petitioner, there was no need to follow the warrantless arrest procedures set out in § 1357. Count Three of the petition does not entitle Petitioner to habeas relief.

III. Petitioner's claims under the APA are meritless

As noted above, Respondents followed all relevant statutes and regulations in arresting Petitioner and keeping him in detention. This destroys any claim Petitioner has under the APA, 5 U.S.C. § 706(2)(A).

Even were it otherwise, Petitioner would have no claim here. He is trying to shoehorn APA-style review into a habeas action. But an APA claim falls far outside the relief available under a habeas petition, and relief must be denied.

“[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 485 (1973). Petitions may question the legality of both the fact and duration of their custody. *Id.* at 487. But “[w]here petitioner seeks a writ of habeas corpus and fails to attack the validity of her sentence or the length of her state custody, the district court lacks the power or subject matter jurisdiction to issue a writ.” *Kruger v. Erickson*, 77 F.3d 1071, 1073 (8th Cir. 1996). Where habeas relief is available, remedy under the APA is foreclosed. “Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review.” 5 U.S.C.A. § 704 (1966); *see also Trump v. J. G. G.*, 604 U.S. 670, 674 (2025) (Kavanaugh, J., concurring) (“given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another ‘adequate remedy in a court,’ I agree with the Court that habeas corpus, not the APA, is the proper vehicle here”).

Other factors weigh against backdoor APA claims in habeas petitions. “[H]abeas corpus is, at its core, an equitable remedy.” *Schlup v. Delo*, 513 U.S. 298, 319 (1995). Habeas remedies, especially in prisoner cases, are oriented towards specific circumstances and particular kinds of relief. See BLACK’S LAW DICTIONARY 560 (7th ed. 1999) (“The recourse to principles of justice to correct or supplement the law as applied to

particular circumstances.”) Given this, procedures in habeas cases differ greatly from procedures in the law.

Suits under the Administrative Procedures Act are much different. Whether an agency has acted within the scope of its authority requires a delineation of the scope of the agency’s authority and discretion, and whether the agency adhered to procedural requirements requires a plenary review of the administrative record and consideration of applicable law. *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 415-20 (1971) interpreting 5 U.S.C. § 706(2); *see also Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560 (10th Cir. 1994). As such, APA suits begin by preparing an administrative record of final agency action upon which parties could present cross-motions for summary judgment. For good reason, habeas proceedings almost never commence this way. Petitioner is free to file a new civil action to pursue APA claims if he wants, but his APA Claim is not properly before this Court in a petition for a writ of habeas corpus.

IV. Petitioner has no claim in *Accardi*

Respondents properly followed all legal requirements to put Petitioner under arrest. The bond was revoked by Chong Vang, an Enforcement and Removal Assistant. Ganzhorn Decl. Ex. D. This satisfies the requirements of 8 C.F.R. § 236.1(c)(9), which permits the revocation of release by any (non-foreign) officer in charge. As such, Petitioner has no basis for a claim in *Accardi*. However, even if Petitioner were to raise issue with the revocation, 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 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); *see 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.¹ 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.

¹ “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.

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.”).

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.

COMPLIANCE WITH PRELIMINARY INJUNCTION

Petitioner was provided with the document marked Exhibit H to conform with *Advocates for Human Rights v. U.S. Dep’t of Homeland Security*, Civ. No. 26-749 (NEB/DLM), Doc. No. 178.

CONCLUSION

All habeas relief must be denied.

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