

The Honorable Brian A. Tsuchida

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

E A T-B, an adult,

Petitioner,

v.

DREW BOSTICK, et al.,

Respondent.

No. 2:25-cv-01192-KKE-BAT

Reply in Support of Amended Habeas
Petition and Response in Opposition to
Motion to Dismiss

Noting Date: August 5, 2025¹

**ORAL ARGUMENT AND
EXPEDITED CONSIDERATION
REQUESTED**

Introduction

E A T-B has lived in Vancouver, Washington since entering the United States in 2023 to seek asylum, after being released on his own recognizance by immigration officials at the border. In Vancouver, he joined his mother, stepfather, and younger siblings, who are also seeking asylum. In the almost two years of E A T-B's release and integration into the community, E A T-B applied for asylum, received work authorization, and attended all his immigration court dates. But on June 18, 2025, masked, plainclothed Immigration and Customs Enforcement (ICE) agents arrested E A T-B after he left his immigration court hearing, even though the immigration judge had set a future court date and neither the immigration judge nor the government attorney sought (or even mentioned) the revocation of E A T-B's release. E A T-B is now imprisoned for the first time in his life. He is separated from his family, sleeps in a dorm with 100 other

¹ For the reasons discussed *infra* at argument section A, the Court should reach these matters immediately.

1 immigrant-detainees, and has “access to the sky” only through two small enclosed areas. Ex. 2 at
2 3. E A T-B reports trying to keep his negative feelings at bay, but feels very sad and worried for
3 his family. Ex. 2 at 3. Because re-arrest without cause violates both the Administrative Procedure
4 Act (APA) and the Fifth Amendment’s guarantee of due process, E A T-B, through counsel,
5 petitioned this Court for a writ of habeas corpus ordering his release.

9 In response, the Respondents now argue that two minor alleged violations within ICE’s
7 Alternatives to Detention (ATD) program, that allegedly occurred six months before his arrest,
8 were the true cause of his re-arrest. It also contends that asylum applicants like E A T-B have no
9 right to continued release, even when they abide by the conditions of their release.
10

11 Respondents are wrong on both counts. Respondents’ own documents show that ICE
12 arrested E A T-B because of a change in immigration policy that favored detention and
13 apprehension over release, and not because of any individualized information showing that
14 E A T-B had become a flight risk or a danger. Indeed, ICE could not have concluded that stale
15 violations transformed E A T-B into an increased risk of flight because, after the alleged
16 violations, ICE *reduced* E A T-B’s supervision requirements. And contrary to Respondents’
17 suggestion, the law does not give ICE a free-floating privilege to re-imprison immigrants without
18 cause. Indeed, the Constitution would not permit it.
19

20 The questions raised in this petition are fundamental to the rule of law and the rights
21 enshrined in our Constitution. As one court recently stated, in a case involving a challenge to
22 similar detention:
23

24 This case’s underlying question, then, asks whether parolees who escaped
25 oppression will have the chance to plead their case within a system of rules. Or,
26 alternatively, will they be summarily removed from a country that—as they are
swept up at checkpoints and outside courtrooms, often by plainclothes officers

without explanation or charges []—may look to them more and more like the countries from which they tried to escape?

Coalition for Humane Immigrant Rights, et al. v. Noem, No. 25-cv-872 (JMC), 2025 WL 2192986, at *2 (D.D.C. Aug. 1, 2025). The Court should deny the Respondents’ motion to dismiss, grant the habeas petition, and order Petitioner’s immediate release.

Background Facts and Procedural History

A. Petitioner fled Colombia due to threats to him and his family.

E A T-B fled his native country of Colombia when armed militant groups threatened him and his family. E A T-B’s father was killed by these militant groups years before. His mother was a council member and nurse who owned a pharmacy, and she and E A T-B faced retribution for not giving into the demands of the militants. Ex. 1.

B. Petitioner was arrested within the United States and released after an individualized determination that he did not pose a flight risk or a danger to the community and was placed into removal proceedings under 8 U.S.C. § 1226(a).

E A T-B entered the United States without permission and turned himself into immigration authorities. In response to turning himself in, on September 6, 2023, a warrant for his arrest was issued, which stated that he was “within the country in violation of the immigration laws and is therefore liable to being taken in custody as authorized by section 236 of the Immigration and Nationality Act.” ECF 18-1. After spending two days in immigration custody, he was determined to be suitable for release on his own recognizance subject to conditions and ordered to report to the Portland ICE office on November 10, 2023. ECF 18-3. He was served with a Notice to Appear in immigration court in Portland, Oregon on December 3, 2024. ECF 18-2 at 2. That notice categorized him as “an alien present in the United States who has not been admitted or paroled” (as opposed to an “arriving alien” or a person admitted but removable). *Id.* The notice contained a list of procedural protections to which Petitioner was

entitled, which included “sufficient time to secure counsel,” a hearing at which he could call witnesses, present evidence, cross examine Government witnesses, and a right to appeal any adverse finding by the immigration judge. ECF 18-2 at 3. The form additionally advised Petitioner that he should file a Form I-589, Application for Asylum and for Withholding of Removal, within one year of arrival. *Id.*

C. Petitioner’s release was conditioned on reporting to immigration hearings, to the immigration office, and enrollment and successful participation in the Alternatives to Detention program.

Petitioner’s “conditional parole” required him to abide by several conditions, including that he not violate laws, commit any crimes, or associate with known gang members or criminal associates. ECF 18-3 at 2, 4. Other release conditions required Petitioner to report for immigration hearings, report at a stated time at the immigration office, and enroll and successfully participate in the Alternatives to Detention (ATD) program. *Id.*

At the time of his release, Petitioner was given a phone loaded with the ISAP (Intensive Supervision Appearance Program) application through which he participated in the ATD program. Ex. 2 at 2. According to an agency description of ATD, a participant may only be enrolled in this program after being “thoroughly vetted by officers.” Ex. 7 at 2. The factors considered by officers include: “Criminal, immigration and supervision history; Family and/or community ties; Status as a caregiver or provider; Humanitarian or medical considerations.” *Id.*

On August 20, 2024, consistent with the instruction on the Notice to Appear, Petitioner filed an I-589 Application for Asylum and for Withholding of Removal and requested Convention Against Torture protections in immigration court. Ex. 1.

D. Petitioner attended each of his two scheduled court appearances where the Government first moved for dismissal and then withdrew the motion to dismiss.

Petitioner's initial December 3, 2024, court appearance was rescheduled for June 5, 2024. Petitioner appeared *pro se* at that hearing and the Government orally moved to dismiss the removal proceedings. Petitioner requested and received time to obtain counsel, and his case was rescheduled for June 18, 2025. Petitioner engaged immigration attorney Yessenia Martinez. On June 12, 2025, Martinez filed a motion to consolidate Petitioner's asylum claim with that of his mother, stepfather, and younger siblings. Ex. 3 at 4. On June 18, 2025, Martinez filed a 17-page response to the Government's motion to dismiss and appeared with Petitioner at court. Ex. 3. The Government withdrew their motion to dismiss and requested additional time to respond to the motion to consolidate. Ex. 5 at 2. The immigration judge allowed the Government until June 30, 2025, to respond to the motion. *Id.*

E. Petitioner was arrested on the street in Portland shortly after his immigration court proceeding.

After Petitioner left immigration court on June 18, 2025, he was followed by ICE agents and arrested. Ex. 2 at 3. Ms. Martinez arrived quickly after the encounter with agents began, and she objected to his arrest. Ex. 5 at 2. The agent told Martinez that Petitioner had missed his ISAP check-ins. *Id.* She asked Petitioner to give her his phone, so she could show the agent through the app that there was no notification that he had missed his appointment. *Id.* The masked immigration officer then told her that his arrest was because of their "enforcement priorities." Ex. 5 at 3. Agents quickly removed Petitioner from the area and told Martinez that she could see him at the ICE office in Portland on Macadam Avenue. *Id.* at 3. Martinez went directly there but was told she could not meet with her client because the office was closed. *Id.* at 3-4. Petitioner was transferred to the Northwest Detention Center in Tacoma where he remains in custody.

Also on the day of Petitioner's arrest, a warrant for his arrest was signed by an immigration officer stating that he is removable from the United States on grounds that he had ongoing removal proceedings and that he lacked immigration status. ECF 19-1 at 2. A Notice of Custody Determination was also completed by an immigration officer noting that Petitioner is to be detained under section 236 of the INA (8 U.S.C. § 1226) and part 236 of title 8 of the C.F.R. ECF 19-2 at 2.

F. Petitioner filed a habeas petition and amended habeas petition on the same day of his arrest, challenging his detention as unlawful under the Administrative Procedure Act and unconstitutional under the Due Process Clause.

Hours after his arrest on June 18, 2025, Petitioner filed a petition for writ of habeas corpus under 28 U.S.C. § 2241, and shortly thereafter filed an amended petition. ECF 1 and 4. The amended petition claimed that his arrest was contrary to the Administrative Procedure Act in that there was no individualized determination warranting departure from the initial release decision and that his revocation exceeded the agency's authority under law. ECF 4. The amended petition also claimed that his detention violated his rights to Due Process under the Fifth Amendment. *Id.*

G. Respondents now contend that Petitioner's arrest and detention were prompted by violations of the ATD program that occurred in December of 2024 and January of 2025.

The Court ordered the Respondents to "file a return and status report, explaining why the Court should not grant petitioner's petition." ECF 12. Respondents filed a motion to dismiss and return memorandum, arguing that Petitioner was detained because he violated his release conditions, that he has no due process right to participate in the ATD program, and that the APA does not allow the Court to review Petitioner's detention. ECF 17.

H. After Petitioner's alleged violations, his check-in requirements were lessened and he was given a work permit that was valid until 2030.

When Petitioner first was released, his check-in requirements called for him to report to the ICE office and report via the ISAP application on his phone. Ex. 2 at 2. Initially, these ISAP check-ins, which involved taking and transmitting a photo of himself, were required weekly. *Id.* Respondents now allege that Petitioner violated the terms of this program in December of 2024 and January of 2025. Just weeks following the alleged violations, ICE reduced Petitioner's check-in requirements, eliminating the requirement that he appear in person at the ICE office, no longer requiring him to participate in telephone calls, and reducing the frequency of his ISAP check-ins from weekly to monthly. Ex. 2 at 2; Ex. 5 at 4. Screenshots from the ISAP application show that in the month following the second alleged violation, Petitioner received a message from his ATD case officer informing him that his supervision plan had changed and he now only needed to report once a month with a check-in photo that will only be taken at home. Ex. 5 at 5-6.

On February 15, 2025, also after the two alleged violations, Petitioner received a work authorization document from U.S. Citizenship and Immigration Services. Ex. 4. The document expires on February 15, 2030. *Id.* at 1. Additionally, Petitioner appeared at both his scheduled court appearances in June of 2025. During these court dates, the Government attorney did not raise any alleged violations of Petitioner's reporting requirements, did not argue that Petitioner was a risk of flight or a danger, and did not argue that there were any changed circumstances relevant to Petitioner's release. Ex. 5 at 2.

Approximately seven weeks have passed since Petitioner was rearrested. He remains in custody and has not been given a bond hearing before a neutral decisionmaker to determine whether he poses a flight risk or a danger to the community.

Relevant Statutory and Regulatory Authority and Policy

When Petitioner was released on his own recognizance, respondents placed him into removal proceedings under 8 U.S.C. § 1226. This is evidenced by the Order of Release on Recognizance (ECF 18-3), which stated that his release was “[i]n accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations.” Section 236.1(c)(8) of the INA provides that:

Any officer authorized to issue a warrant of arrest may, in the officer’s discretion, release an alien not described in section 236(c)(1) of the Act, under the conditions at section 236(a)(2) and (3) of the Act; *provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.*

8 C.F.R. § 236.1(c)(8). This regulation governs the release decision contemplated in 8 U.S.C. § 1226(a). That section authorizes the arrest of an “alien” pending a removal decision, and provides that the Attorney General:

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

A. bond of at least \$1,500 with security approved by, and

containing conditions prescribed by, the Attorney General; or

B. conditional parole, but

(3) may not provide the alien with work authorization (including an

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1 *See also Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (explaining that
 2 8 C.F.R. § 236.1(c)(8) governs the initial custody determination under 8 U.S.C. § 1226(a));
 3 *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, (D. Mass. July 24, 2025) (finding that
 4 an Order of Release which was “[i]n accordance with section 236 of the Immigration and
 5 Nationality Act” to be “explicitly premise[d] . . . on section 1226.”); *Ortega-Cervantes v.*
 6 *Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) (“It is apparent that the INS used the phrase
 7 ‘released on recognizance’ as another name for ‘conditional parole’ under § 1226(a).”).
 8 Accordingly, Petitioner’s release falls under subsection 1226(a)(2)(B) or “conditional parole.”
 9 The procedures described above, including arrest of a noncitizen present in the United States, are
 10 distinct from the Government’s mandatory authority under 8 U.S.C. § 1225.

12 Once an officer has concluded that non-citizen does not pose a danger or risk of flight
 13 and releases the person on their own recognizance under § 1226, ICE maintains authority to
 14 revoke release and detain the noncitizen. *See* 8 C.F.R § 236.1(c)(9) (providing that “release may
 15 be revoked at any time in the discretion of the district director, acting district director, deputy
 16 district director, assistant district director for investigations, assistant district director for
 17 detention and deportation, or officer in charge (except foreign), in which event the alien may be
 18 taken into physical custody and detained”). However, the BIA has interpreted ICE’s rearrest
 19 authority to limited to circumstances where there has been a “material” change in circumstance.
 20 *Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *2 (N.D. Cal. Aug. 23, 2020)
 21 (quoting *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981)).

23 Many non-citizens released under § 1226 are required to participate in ICE’s Alternatives
 24 to Detention (ATD) Intensive Supervision Appearance Program (ISAP). ICE’s ATD policies are
 25 contained in the Alternatives to Detention Handbook—Intensive Supervision Appearance
 26

1 Program. ICE ATD Handbook (attached as Exhibit 8); *see also* U.S. Gov't Accountability Off.,
 2 GAO-22-104529, *Alternatives to Detention: ICE Needs to Better Assess Program Performance*
 3 *and Improve Contract Oversight* 27 (June 22, 2022) (hereinafter "GAO Report") ("the ATD
 4 Handbook, published in 2017, outlines these policies and procedures, which ATD headquarters
 5 officials stated they consider the program's standard operating procedure."). The ATD
 9 Handbook outlines the following policy for handling noncompliance with conditions of release:

7 In the event that a participant does not comply with his or her conditions of
 8 release or program rules, the ATD officer first thoroughly reviews the violation to
 9 understand the circumstances that led to it. Following this review, the ATD
 officer considers:

- 10 • Giving the participant a warning and documenting the warning in the
- 11 participant's working file and EARM;
- 12 • Changing the participant's reporting frequency;
- 13 • Changing the type of technology to which the participant is assigned;
- 14 • Arresting and taking the participant into custody, or changing custody
- 15 conditions; and/or
- 16 • Pursuing a referral for prosecution under 8 U.S.C. § 1253(b).

17 In all cases, the ATD officer allows the participant an opportunity to explain how
 18 or why the violation occurred and to present supporting documentation, if
 available.

19 Ex. 8 at 17.

20 Argument

21 A. The motion to dismiss is improper, the Government failed to show cause for 22 Petitioner's detention, and the Court should order Petitioner's immediate release.

23 Habeas corpus is a "speedy remedy, entitled by statute to special, preferential
 24 consideration to insure expeditious hearing and determination." *Van Buskirk v. Wilkinson*,
 25 216 F.2d 735, 737-38 (9th Cir. 1954). "The Framers viewed freedom from unlawful restraint as a
 26

1 fundamental precept of liberty, and they understood the writ of habeas corpus as a vital
 2 instrument to secure that freedom.” *Boumediene v. Bush*, 553 U.S. 723, 739 (2008). “[A]bsent
 3 suspension, the writ of habeas corpus remains available to every individual detained within the
 4 United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (plurality opinion) (citing U.S.
 5 Const., art. I, § 9, cl. 2). The writ is available to E A T-B as he is physically in the United States
 9 and challenging his unlawful detention.

7 28 U.S.C. § 2243 sets forth the order of pleadings in a habeas proceeding brought, like
 8 this one, under 28 U.S.C. § 2241.² First, upon receipt of the petition, the Court orders an Order
 9 to Show Cause why it should not be granted. *Id.* The respondent then files a “return certifying
 10 the true cause of the detention.” *Id.* The petitioner then may “traverse” the return by denying,
 11 under oath, “any of the facts set forth in the return or allege any other material facts.” At that
 12 point, without further filings, “[t]he court shall summarily hear and determine the facts, and
 13 dispose of the matter as law and justice require.”

15 28 U.S.C. § 2243 further provides that the hearing to “hear and determine the facts” must
 16 occur within “five days after the return unless for good cause additional time is allowed.”
 17 Because 28 U.S.C. § 2243 sets its own deadlines and requires a finding of good cause, petitions
 18 filed pursuant to 28 U.S.C. § 2241 should not be subject to Local Rule 7(C)(8), which extends
 19 the noting date for petitions by detainees, unless “otherwise provided by rule”

21 The motion to dismiss and the existing briefing schedule conflict with 28 U.S.C. § 2243.
 22 First, although Respondent styles its response in part a “motion to dismiss,” 28 U.S.C. § 2241
 23 does not authorize the custodian to respond by way of a motion to dismiss. *See Browder v. Dir.*,
 24

26 ² Different rules now apply to 28 U.S.C. § 2254 and 28 U.S.C. § 2255 petitions.

1 *Dep't of Corr. of Illinois*, 434 U.S. 257, 269 (1978) (“The custodian’s response to a habeas
 2 corpus petition is not like a motion to dismiss. The procedure for responding to the application
 3 for a writ of habeas corpus, unlike the procedure for seeking correction of a judgment, is set forth
 4 in the habeas corpus statutes and, under Rule 81(a)(2), takes precedence over the Federal
 5 Rules.”). Having argued its “true cause of detention” in its return memorandum, Respondents’
 9 filings are complete, absent further request from the court.

7 Second, the current noting date extends 28 U.S.C. § 2243’s five-day requirement without
 8 a finding of good cause. The pleadings are now complete, and under the expedited timeline that
 9 Congress established in 28 U.S.C. § 2243, the Court should immediately schedule the hearing
 10 section 2243 requires, “hear and determine” any contested facts, and order Petitioner’s release.

12 **B. Respondents’ contention that Petitioner was arrested because he violated his ATD**
 13 **conditions is unsubstantiated, pretextual, and disproven by other evidence.**

14 One of Petitioner’s release conditions was that he enroll and successfully participate in
 15 the ATD program. ECF 18-3 at 2. The Respondents ask the Court to dismiss the petition on
 16 grounds that Petitioner violated the ATD program rules. Respondents have not offered
 17 competent or convincing evidence that Petitioner violated the rules of that program, or if he did
 18 that the alleged violations rendered his participation “unsuccessful.” Instead, other evidence
 19 supports a finding that Petitioner was successful in the ATD program, and Respondents’ reliance
 20 on stale allegations is a post-hoc effort to justify Petitioner’s illegal detention and arrest.

22 **1. Respondents do not offer competent or convincing evidence of the alleged**
 23 **violations.**

24 Respondents allege that Petitioner violated ATD program rules because he failed to
 25 complete a required home visit on December 18, 2024, and failed to complete a check-in and
 26 was outside of geographical limitations without permission on January 2, 2025. ECF 17 at 2.

1 The Respondents submitted no evidence from December 18, 2024, or January 2, 2025, or near
 2 those dates, establishing that these alleged violations occurred. Likewise, the Respondents
 3 submitted no evidence from the ATD program at all, which uses contractors to monitor
 4 participants. *See Ahmed v. Tate*, No. 4:19-cv-4889, 2020 WL 3402856, *7 (S.D. Tex. June 19,
 5 2020). The only evidence of the alleged violations is hearsay in the form of a declaration by ICE
 9 Deportation Officer Christopher Hubbard, and an arrest report drafted six days after Petitioner's
 7 arrest and the filing of his habeas petition.

8
 9 In fact, there are two I-213 reports of Petitioner's arrest, and the Respondents only filed
 10 one in this habeas proceeding. The report not filed in this proceeding was drafted the day of
 11 Petitioner's arrest and submitted to the immigration court. The report filed in this case was
 12 drafted six days after Petitioner's arrest and after the habeas petition was filed. The differences
 13 between the two reports suggests that Petitioner's arrest was not based on his individual
 14 circumstances, but rather broad executive directives to detain immigrants in large numbers.

15
 16 The I-213 form completed on the day of Petitioner's arrest contained the following
 17 narrative regarding the arrest:

18 ICE encountered the subject at after the subject attended his court hearing in
 19 Portland, Oregon on 6/18/2025. *Under the current guidance*, at large³ cases *will*
 20 *have their custody status redetermined and return to custody*. The subject, [E A
 T-B] had a couple of violations while on ISAP dated 12/20/2024 and 01/02/2025.
 ICE arrested the subject without incident in near the federal building in Portland.

21 The subject is a citizen and native of Colombia and last entered the US at Eagle
 22 Pass, TX on 09/06/2023. The subject initially encountered by the Border Patrol
 23 and was processed for NTA. *Due to change in directive, the subject is remanded*
 24 *to custody pending outcome of his immigration case.*

25
 26 ³ The agency appears to use the term "at large" to distinguish from cases along the border, or "at
 entry." *See* U.S. Customs and Border Protection, "Nationwide Encounters,"
<https://www.cbp.gov/newsroom/stats/nationwide-encounters> (last accessed Aug. 2, 2025).

1 Record checks do not review the subject to have criminal history based on name
2 search. Immigration history consist of BP arrest on 2023-09-06 near Eagle Pass,
TX.

3 Ex. 6 at 4 (emphasis added, errors in original). The “current guidance” or “change in directive”
4 appear to be the administration’s emphasis on increasing the number of individual immigration
5 arrests.

6
7 On January 20, 2025, President Trump issued an Executive Order titled “Protecting the
8 American People Against Invasion.” Exec. Order No. 14159, 90 Fed. Reg. 8443-48 (Jan. 20,
9 2025). This Executive Order directs the Secretary of Homeland Security to “promptly take action
10 to use all other provisions of the immigration laws or any other Federal law, including but not
11 limited to sections 238 and 240(d) of the INA (8 U.S.C. 1228 and 1229a(d)), to ensure the
12 efficient and expedited removal of aliens from the United States.” *Id.* at Sec. 9. The Executive
13 Order also instructs the Secretary of Homeland Security to “take all appropriate actions to ensure
14 the detention of aliens apprehended for violations of immigration law pending the outcome of
15 their removal proceedings or their removal from the country, to the extent permitted by law.” *Id.*
16 at Sec. 10.

17
18 On May 5, 2025, Respondent Homeland Security Secretary Noem Shortly issued a press
19 released claiming “Secretary Noem is fulfilling President Trump’s promise to carry out mass
20 deportations.” Homeland Security, “100 Days of Secretary Noem: Making America Safe Again,”
21 May 5, 2025 (available at [https://www.dhs.gov/news/2025/05/05/100-days-secretary-noem-](https://www.dhs.gov/news/2025/05/05/100-days-secretary-noem-making-america-safe-again)
22 [making-america-safe-again](https://www.dhs.gov/news/2025/05/05/100-days-secretary-noem-making-america-safe-again)) (last visited Aug. 4, 2025). Shortly before DHS moved to dismiss
23 Petitioner’s removal case, news outlets reported that during a May 21, 2025 meeting at the White
24 House with ICE officials, Stephen Miller, White House Deputy Chief of Staff, and Respondent
25 Noem “expressed their frustrations with the current level of arrests to ICE leadership” and
26

1 “reportedly demanded that ICE triple daily arrest totals to 3,000 per day.” ICE shakes up
 2 leadership amid push for 3,000 migrant arrests per day, N.Y. Post (May 29, 2025),
 3 [https://nypost.com/2025/05/29/us-news/ice-shakes-up-leadership-amidpush-for-3000-migrant-](https://nypost.com/2025/05/29/us-news/ice-shakes-up-leadership-amidpush-for-3000-migrant-arrests-per-day)
 4 [arrests-per-day](https://nypost.com/2025/05/29/us-news/ice-shakes-up-leadership-amidpush-for-3000-migrant-arrests-per-day) (last visited Aug. 4, 2025). Miller himself repeated the call for “a minimum” of
 5 3,000 immigration arrests a day on Fox News on May 29, 2025. Fox News, *Stephen Miller*
 9 *reveals Trump admin’s ‘daily goal’ for illegal migrant arrests*, at 00:20 (YouTube, May 29,
 7 2025), <https://www.youtube.com/watch?v=MJNXsOqFSZs>.

8 And just three days before Petitioner’s arrest, President Trump wrote on the social media
 9 platform Truth Social: “ICE Officers are herewith ordered, by notice of this TRUTH, to do all in
 10 their power to achieve the very important goal of delivering the single largest Mass Deportation
 11 Program in History.” Donald J. Trump, June 15, 2025,
 12 <https://truthsocial.com/@realDonaldTrump/posts/114690267066155731> (last accessed Aug. 4,
 13 2025). His message continued that the “efforts to detain and deport Illegal Aliens” should be
 14 expanded in cities that are the “core of the Democrat Power Center,” and implored ICE “to
 15 FOCUS on our crime ridden and deadly Inner Cities, and those places where Sanctuary Cities
 16 play such a big role.” *Id.*

17 Read in light of the foregoing, the report filed the morning of Petitioner’s arrest which
 18 called for petitioner’s arrest under “current guidance” and due to a “change in directive,”
 19 supports a finding that Petitioner was arrested in order to fulfill a broader numeric goal, and not
 20 because of his individual circumstances—other than the circumstance that he attended court in
 21 Portland, Oregon, a well-known Democratic-led and sanctuary city.

1 The arrest report that was drafted six days after the arrest, and after the habeas petition
 2 was filed, omits mention of this guidance and change in directive, and details two alleged
 3 violations:

4 Alternative to Detention Violations:

5 12/18/2024 – T failed to complete a home visit as required by the ATD program.
 9 T started the reason he missed his home appointment was because he went to buy
 a chicken after his doctor’s appointment.

7 01/02/2025 – T failed to complete a biometric check in on the Smartlink
 8 application. The application’s GPS showed T was outside on the geographical
 9 limitation, he did not have prior approval which is required by ICE.

10 ECF 18-4 at 4.

11 While the Petitioner offers the earlier report to demonstrate pretext and the unreliability
 12 of the later report, neither report is admissible to prove Petitioner actually violated ATD program
 13 rules. First, the reports themselves are hearsay. Fed. R. Evid. 802. While Federal Rule of
 14 Evidence 803(8) contains an exception for public records, an arrest report does not fall under that
 15 exception. The exception does not apply to a law enforcement report in a criminal case. Fed. R.
 16 Evid. 803(8)(A)(ii). And although this is not a criminal case, the exception is not meant to allow
 17 admission of a report made in an adversarial setting. As the Ninth Circuit explained in holding
 18 that an INS investigative report did not fall under the public records exception, because
 19 “Congress ‘intended to [exclude] observations made by law enforcement officials at the scene of
 20 a crime or the apprehension of the accused and not ‘records of routine, nonadversarial matters’
 21 made in nonadversarial setting.’” *United States v. Pena-Gutierrez*, 222 F.3d 1080, 1087 (9th Cir.
 22 2000) (quoting *United States v. Wilmer*, 799 F.2d 495, 501 (9th Cir. 1986)).

24 Second, even if the reports themselves are admissible, the hearsay within them is not.
 25 Fed. R. Evid. 805. The arresting officer was not involved in Petitioner’s ATD supervision, so the
 26

1 information regarding the alleged violation comes from another unidentified source. The portions
2 of the reports which discuss the violations are hearsay that do not fall under another exception.
3 Not only is the Petitioner and the Court unable to assess the credibility of the source of the
4 information about the alleged violations, particularly for the latter alleged violation, critical
5 information is missing. The report does not explain what geographical limitation ATD imposed
9 on Petitioner, that Petitioner had notice of that geographical limitation, and where Petitioner was
7 when he allegedly exceeded the limitation. Nor does any other document submitted by the
8 Respondents contain this information critical to understanding the reliability of the asserted
9 violation and the seriousness of the alleged behavior.
10

11 The Respondents' only other support for its contention that Petitioner's arrest and re-
12 detention was based on ATD violations, is more layered hearsay. Hubbard's declaration purports
13 to be based on "personal knowledge and review of the alien registration file, DHS databases, and
14 notes from the previous and current officers in charge of the case relating to Petitioner." ECF 19
15 at 1. Surely, Hubbard does have personal knowledge of some of the statements in his declaration,
16 such as when Petitioner was transferred to Tacoma, where Hubbard is based. But Hubbard's
17 declaration does not establish a basis for personal knowledge of the alleged violations, rendering
18 this portion of his statement inadmissible under Federal Rule of Evidence 602. And the files,
19 databases, and notes that Hubbard refers to also are hearsay, and thus inadmissible under Federal
20 Rule of Evidence 802. Additionally, Hubbard does not explain that those documents substantiate
21 the alleged violations and if so, how. Indeed, Hubbard's declaration does not offer any additional
22 information from the I-213 form drafted after the habeas petition was filed. Compare 19-1 at 2
24 *with* ECF 18-4 at 4. And as for the files, databases, and notes that Hubbard reviewed,
25
26

1 Respondents only introduced portions of Petitioner’s alien registration file and an arrest report,
2 and did not offer reports from the DHS databases or notes that prove the violations.

3 If the Court does consider these documents as substantive evidence, they should be
4 “viewed critically” to ensure that the agency’s action “is not upheld on the basis of
5 impermissible ‘*post hoc* rationalization.’” *Dep’t of Homeland Sec. v. Regents of the Univ. of*
6 *Cal.*, 591 U.S. 1, 21 (2020). The Supreme Court has cautioned that agencies or their lawyers
7 should not be able to “invoke belated justifications” as “convenient litigating positions.” *Id.* at 23
8 (citation and quotation marks omitted); *see also* Ex. 11 at 36 (*OJM v. Bostock, et al.*, No. 3-25-
9 cv-944 at 36 (Oral argument and oral decision, July 14, 2025) (finding that the government
10 “arrested first, they sought to justify later, and then they changed the alleged basis for the arrest
11 and detention”)). The Respondents have not introduced a single piece of admissible evidence
12 proving that Petitioner committed the alleged violations, much less any piece of evidence that
13 predates his arrest.
14

15
16 **2. ATD and Government action after the alleged violations prove that
Petitioner was successfully participating in the ATD program.**

17 In the six months between the alleged violations and Petitioner’s arrest on the street in
18 Portland, his ATD reporting requirements were lessened, he continued to conduct his required
19 check-ins, he received permission from the government to work, and he made his court dates.
20 These facts, weighed against the unsubstantiated and pretextual evidence of the alleged
21 violations, call for a conclusion that Petitioner was successfully participating in ATD at the time
22 of his arrest.
23

24 As discussed above, although Respondents allege that Petitioner violated his conditions
25 on December 18, 2024, and January 2, 2025, weeks later, his conditions changed to require less
26 frequent check-ins through the ISAP program. Ex. 5 at 4–6. The ATD program is meant to

1 reduce the risk that a person absconds, and if Petitioner's behavior demonstrated such a risk, his
2 reporting requirements would have increased. That they were instead lessened indicates either
3 that the circumstances did not rise to a violation or that leniency was appropriate. *See* Ex. 8 at
4 17–18; Ex. 5 at 4. The ATD Handbook provides that if a participant does not comply with their
5 conditions, the ATD officer may give a warning, change the frequency or type of reporting, take
6 the person into custody, or refer for prosecution. *Id.* The handbook also provides that “[i]n all
7 cases, the ATD officer allows the participant an opportunity to explain how or why the violation
8 occurred and to present supporting documentation, if available.” Ex. 8 at 17. That Petitioner's
9 supervision requirements were eased after the alleged violations, shows either that he did not
10 actually violate his conditions, that Petitioner's actions were justified, or leniency was applied.
11 Indeed, the belatedly created I-213 alleges that Petitioner's missed his home visit because he
12 went to buy a chicken after a doctor's appointment. In light of Petitioner's reporting
13 requirements being lessened, it is reasonable to conclude that Petitioner's ATD agent found this
14 an acceptable explanation that warranted leniency and continued participation in the program. In
15 whatever manner the ATD supervisor viewed the alleged conduct, it is apparent that the
16 violations did not interfere with the condition of Petitioner's release, which was his “successful
17 participation” in the ATD program, as demonstrated by his continued use and compliance with
18 the program up to his arrest.

19
20
21 Additionally, on February 16, 2025, a little more than a month after Petitioner allegedly
22 went beyond his geographical limitation without permission, United States Citizenship and
23 Immigration Services (USCIS) granted Petitioner an employment authorization document. Ex. 4.
24 That he was granted permission to work undermines the Respondents' contention that he had
25 violated his conditions of release or was not in good standing with ATD. Indeed, an ICE website
26

1 advises applicants that “[t]o get work authorization, you must be in good standing with ICE. This
2 includes doing your check-ins, changing your address, etc.” Ex. 10.

3 Accordingly, the Court should find that the Respondents have not supplied competent or
4 convincing evidence that Petitioner violated his release conditions, and that other evidence
5 establishes that in fact he was successfully participating in the ATD program.

6
7 **C. The Court should grant Petitioner’s immediate release because his detention
violates the Due Process Clause.**

8 Petitioner turned himself in at the border, was temporarily detained, and was released
9 after an immigration agent determined he was not a danger to persons or property and was likely
10 to appear at his court hearings. His arrest and detention violates his substantive due process
11 rights because absent evidence that he is a risk of flight or a danger to the community, there is no
12 legitimate government interest in his detention. Additionally, his sudden arrest, without notice,
13 and without an opportunity to argue that he was not a flight risk or a danger to the community,
14 violates his procedural due process rights. He must be immediately released.

15
16 The Due Process Clause of the Fifth Amendment to the United States Constitution prohibits the
17 federal government from depriving any person of “life, liberty, or property, without due process
18 of law.” U.S. Const. Amend. V. The right to due process extends to “all ‘persons’ within the
19 United States, including [non-citizens], whether their presence here is lawful, unlawful,
20 temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). The Supreme Court’s
21 due process decisions in the criminal context “provide useful guidance in determining what
22 process is due non-citizens in immigration detention” because “[i]mmigration cases . . . are set
23 ‘apart from mine run civil actions’ and ‘involve the awesome authority of the State’ to take
24 ‘devastatingly adverse action’—here, the power to remove individuals from their homes,
25
26 separate them from their families, and deport them to countries they may have last seen many

years ago.” *Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir. 2017) (citing *Zadvydas*, 533 U.S. at 690-91 and quoting *M.L.B. v. S.L.J.*, 519 U.S. 102, 125 (1996) and *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010)).

1. Petitioner’s detention violates his substantive due process rights.

“[S]ubstantive due process prevents the government from engaging in conduct that shocks the conscience, or interferes with rights implicit in the concept of ordered liberty.” *United States v. Salerno*, 481 U.S. 739, 746 (1987). “A due process violation occurs when detention becomes punitive rather than regulatory, meaning there is no regulatory purpose that can rationally be assigned to the detention or the detention appears excessive in relation to its regulatory purpose.” *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021); *accord Padilla v. U.S. Immigr. & Customs Enf’t.*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) (“Due process protects against immigration detention that is not reasonably related to the legitimate purpose of effectuating removal or protecting against danger and flight risk.”). The regulatory purpose of immigration detention is to hold a person that is a flight risk or a danger to the community. *In re Guerra*, 24 I.&N. Dec. 37 (B.I.A. 2006). And the regulations governing Petitioner’s initial release list only those two factors for consideration in the release decision. 8 C.F.R. § 236.1(c)(8). “[T]he government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions.” *Hernandez*, 872 F.3d at 994.

Petitioner’s arrest and detention stripped him of liberty without any legitimate countervailing government interest. Plainly, Petitioner’s detention is not necessary either to protect the community or to assure his appearance at immigration proceedings. Indeed, while

1 Respondents assert that Petitioner had violations in the ATD program, they do not contend that
2 he is a danger to the community or a flight risk. They cannot credibly do so. Petitioner has strong
3 family connections to Vancouver, Washington where his mother, stepfather, and younger
4 siblings also live. There is no allegation that he has ever participated in any criminal activity.
5 After being released from detention, he appeared as required at the Portland ICE office and
9 submitted his asylum application within a year of his entry as instructed. He regularly checked in
7 on the ISAP application and, due to his good record, his reporting requirements were reduced.
8 His application for work authorization was approved and is valid through 2030. He made both of
9 his court dates in immigration court. He is earnestly pursuing an asylum claim as shown by his
10 engagement of an immigration attorney, her lengthy response to deny the Government's motion
11 to dismiss his removal case, and the motion to consolidate his asylum case with his family's.
12 Moreover, Petitioner's behavior during his arrest demonstrated he was compliant with officers.
13 He readily showed his driver's license when asked and did not deny his identity or otherwise try
14 to flee.
15

16
17 **2. Petitioner's arrest and detention violates his procedural due process rights.**

18 "Procedural due process imposes constraints on governmental decisions which deprive
19 individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of
20 the Fifth or Fourteenth Amendment." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). In
21 *Rodriguez Diaz*, 53 F.4th at 1207, the Ninth Circuit assumed without deciding that *Mathews* test
22 applies in the context of immigration detention. This Court has also applied the test in
23 determining whether sufficient procedures were provided to detained noncitizens seeking
24 asylum. *Padilla*, 704 F. Supp. 3d at 1173. Many other courts have considered similar cases under
25
26

1 the *Mathews* framework. *See, e.g., Valdez*, 2025 WL 1707737, at *3 (applying *Mathews* test to
 2 immigration detention); *see also infra* at 36-37.

3 Procedural due process requires notice and an opportunity to be heard. *Mathews*, 424
 4 U.S. at 333–34. To state a claim for a violation of procedural due process rights, a petitioner
 5 must establish 1) a protected property or liberty interest, and 2) a denial of adequate procedural
 6 protections. *ASSE Int’l, Inc. v. Kerry*, 803 F.3d 1059, 1073 (9th Cir. 2015). The Court must also
 7 consider “the Government’s interest, including the function involved and the fiscal and
 8 administrative burdens that the additional or substitute procedural requirement would entail.”
 9 *Rodriguez Diaz*, 53 F.4th at 1207 (quoting *Mathews*, 424 U.S. at 335). Under the *Mathews* test,
 10 and as established by recent cases applying that test in similar situations, Petitioner states a valid
 11 and compelling claim that his re-arrest and detention violated his procedural due process rights.
 12

13 *i. Petitioner has a protected interest in his liberty.*

14 Petitioner’s protected interest is “the most significant liberty interest there is—the interest
 15 in being free from imprisonment.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Petitioner’s
 16 liberty has been unnecessarily restrained since June 18, 2025, and “[e]very day that a person is
 17 detained is a significant injury.” *Mahdawi v. Trump*, No. 2:25-cv-389, 2025 WL 1243135, *39
 18 (D. Vt. Apr. 30, 2025); *see also Rosales-Mireles v. United States*, 585 U.S. 129, 139–40 (2018)
 19 (“‘Any amount of actual jail time’ is significant, and ‘has exceptionally severe consequences for
 20 the incarcerated individual and for society which bears the direct and indirect costs of
 21 incarceration.’”) (cleaned up).
 22

23 Respondents argue that Petitioner does not have a protected liberty interest because his
 24 “[p]articipation in the ATD program is at ICE’s discretion.” ECF 17 at 4. This is wrong for three
 25 reasons. First, “the fact that a decision-making process involves discretion does not prevent an
 26

individual from having a protectable liberty interest.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (granting petition for writ of habeas corpus, rejecting the government argument that petitioner had no liberty interest in a benefit granted in the government’s discretion, and finding the petitioner had a liberty interest in remaining out of immigration custody on bond) (citing *Young v. Harper*, 520 U.S. 143, 150 (1997)). Second, the cases which Respondents cite for this proposition do not involve physical custody and are therefore distinct. Compare *Ortega*, 415 F. Supp 3d at 970 (“The cases the government cites deal with different contexts than the one at issue here, namely release from detention.”) with ECF 17 at 4 (citing *Bd. of Regents v. Roth*, 408 U.S. 564 (1972) (wrongful termination); *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005) (police enforcement of a restraining order). As one district court explained: “Just as people on preparole, parole, and probation status have a liberty interest, so too does Ortega have a liberty interest in remaining out of custody on bond.” *Ortega*, 415 F. Supp. 3d at 969–70 (citing *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (parolee); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (probation)). Finally, “the government’s discretion to incarcerate non-citizens is always constrained by the requirements of due process.” *Hernandez*, 872 F.3d at 981.

ii. *There is a risk of an erroneous deprivation of Petitioner’s liberty.*

The second *Mathews* factor considers “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards.” *Mathews*, 424 U.S. at 335. Essentially, the Court must consider whether the process used to arrest and detain Petitioner, which involved picking him up in the street after immigration court, without notice, and without an opportunity to be heard, after he had earlier

1 been determined not to be a flight risk or a danger to the community, risked his unnecessary
2 detention.⁴ The Court should find that there is such a risk here.

3 Petitioner voluntarily appeared at his immigration court proceedings. At the court hearing
4 the morning of his arrest, the DHS attorney withdrew the motion to dismiss his removal case,
5 and in fact requested additional time to respond to his attorney's motion to consolidate. Minutes
9 before his arrest, he was before an immigration judge, with his attorney, and a representative
7 from DHS. But there was no mention of any alleged violations of his release conditions, and he
8 had no opportunity to explain the circumstances of any alleged violations or demonstrate that he
9 was not a risk of flight or a danger to the community. Ex. 5 at 2. As the Southern District of New
10 York recently found in a similar case, "[o]nce immigration court proceedings are underway,
11 decisions regarding continued release are to be made by the Immigration Judge with the
12 protections of judicial due process." *Valdez v. Joyce*, 25-CV-4627, 2025 WL 1707737, *4
13 (S.D.N.Y. June 18, 2025).
14

15 With no prior notice of his arrest, his attorney rushed to his side and attempted to provide
16 information to the agents on the street showing Petitioner had complied with his release
17 conditions. However, she was not given sufficient time or opportunity to do so. In fact, agents
18 told her that she would be able to speak with her client at the ICE office in Portland, but after
19 driving directly there to do so, she was told it was closed. Ex. 5 at 3–4. Agents did not allow
20 Martinez an opportunity to demonstrate that Petitioner was not a flight risk or a risk to the
21 community.
22
23

24
25 ⁴ A video of his arrest taken by a bystander was published online by The Oregonian and is
26 available at <https://www.oregonlive.com/pacific-northwest-news/2025/06/witness-video-shows-immigration-arrest-of-man-in-downtown-portland-like-he-was-just-snatched-off-the-street.html>
(last accessed Aug. 2, 2025).

1 Further, the report completed the day of Petitioner’s arrest (as opposed to six-days later
2 as the report filed by the Government in this case), mentions a “couple of violations while on
3 ISAP” but does not link the arrest to those alleged violations or reflect a determination that he is
4 a flight risk or a danger to the community. Ex. 6 at 4. Instead, the report shows that he would
5 have been arrested regardless of his individual circumstances. The report stated: “Under the
9 current guidance, at large cases *will* have their custody status redetermined *and return to*
7 *custody.*” *Id.* (emphasis added). The report goes on to state that Petitioner “was processed for
8 NTA [Notice to Appear]. *Due to change in directive*, the subject is remanded to custody pending
9 outcome of his immigration case.” *Id.* (emphasis added).

11 Additionally, as already discussed, the alleged violations were several months old and
12 were followed by a decrease in his reporting requirements. *See Doe v. Becerra*, No. 2:25-cv-647,
13 2025 WL 691664, at *5 (E.D. Cal. Mar. 3, 2025) (Noting that the “change in circumstances”
14 argued by the Respondent, “seem to substantially predate Petitioner’s present detention and may
15 have been known by ICE and the Immigration Court for some time,” and concluding that
16 because “Petitioner was previously found to not be a danger or risk of flight and the unresolved
17 questions about the timing and reliability of the new information, the risk of erroneous
18 deprivation remains high.”). For the change in circumstances to justify Petitioner’s detention,
19 they needed to be material, meaning, they needed to establish that he was a flight risk or a danger
20 to the community. Finally, the facts show that Petitioner was not a flight risk, as evidenced by
21 many months of successful participation in ATD, his earnest pursuit of his asylum claim, his
22 family connections to Vancouver, Washington, and his appearances at court.

25 Under these circumstances the Court should find that the risk of erroneous deprivation of
26 his protected liberty interest is high. *Valdez*, 2025 WL 1707737, at *4 (finding Petitioner’s

1 re-detention when Petitioner had made his immigration court dates and there was “no notice,
 2 explanation, or opportunity for Petitioner to be heard” to establish a high risk of erroneous
 3 deprivation of his protected liberty interest).

4 *iii. There is no legitimate government interest in the civil detention of a*
 5 *person who does not pose a risk of flight or danger to the community.*

6 “Turning to the third *Mathews v. Eldridge* prong, ‘the Attorney General’s discretion to
 7 detain individuals under 8 U.S.C. § 1226(a) is valid where it advances a legitimate government
 8 purpose.” *Valdez*, 2025 WL 1707737 at *4 (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 854
 9 (2d Cir. 2020)). “The Government has identified its regulatory interests in detaining noncitizens
 10 under § 1226(a) as (1) ensuring that noncitizens do not abscond and (2) ensuring they do not
 11 commit crimes.” *Velasco Lopez*, 978 F.3d at 854. In considering the government interest, the
 12 Court should ask not just what interest the government may have in detaining a non-citizen under
 13 1226(a), but rather what interest the government may have in re-detaining a non-citizen
 14 previously determined suitable for release under 1226(a) without notice or process to determine
 15 whether there are material changes warranting the re-detention. *See Ortega*, 415 F. Supp. 3d at
 16 970 (“[T]he government’s interest in re-arresting Ortega without a hearing before an IJ is low.”).

17 Accordingly, the Government’s interest in re-detaining Petitioner without process is low.
 18 Petitioner has not committed any crimes, was still participating in the ATD program, indeed with
 19 eased reporting requirements, and he was arrested immediately after he appeared for his court
 20 appearance. *See Clavijo v. Kaiser*, No. 25-cv-06248-BLF, 2025 WL 2097467, at *7 (N.D. Cal.
 21 July 25, 2025) (the “government’s interest in re-detaining Petitioner without a hearing is ‘low,’
 22 particularly in light of the fact that Petitioner has appeared for her prior immigration hearings
 23 and she does not have a criminal record.”). As discussed *supra* in section B, the Respondents
 24 allege that he violated a condition of ATD by being outside a permissible geographic area
 25
 26

(without identifying what that geographic area was), but there is no allegation that he attempted to abscond. Even if there was, such allegation would not be credible in light of the fact that Petitioner had been living in Vancouver, maintaining close contacts with his immediate family, continuing to report to ISAP, and appearing in court when required.

3. The Court should order the Petitioner’s immediate release rather than some other remedy.

The Court should order Petitioner’s immediate release, rather than a lesser remedy, such as a bond hearing. *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 656–57 (D. Mass. 2018) (finding it “most appropriate” for the federal court in habeas to “exercise its equitable authority to remedy the violations of petitioners’ constitutional rights to due process by promptly deciding itself whether each should be released”). Release, rather than a bond hearing, is the appropriate remedy because “[s]uch a hearing is no substitute for the requirement that ICE engage in a ‘deliberative process prior to, or contemporaneous with,’ the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause.” *Chipantiza-Sisalema*, 2025 WL 1927931, at *3 (internal quotation and citation omitted). The District Court for the Southern District of New York held that it “offends the ordered system of liberty that is the pillar of the Fifth Amendment” to suggest that “government agents may sweep up any person they wish, for any reason . . . without consideration of dangerousness or flight risk so long as the person will, at some unknown point in time, be allowed to ask some other official for his or her release.” *Id.* Instead, the Court should order Petitioner’s release, and his return to Vancouver, Washington, so that he may be “restored to the state of freedom [he] enjoyed immediately following the June [18], 2025 hearing, just prior to [his] arrest.” *Martinez*, 2025 WL 2084238, at *9.

Additionally, because “DHS’s policies regarding detention pending removal and the procedures it will afford noncitizens in such proceedings are in flux and uncertain,” the Court

1 should find that any “post-detention procedural safeguards” would be “inadequa[te] and
 2 unreliab[le].” *Pinchi v. Noem*, 5:25-cv-05632, 2025 WL 2084921, at *5 (N.D. Cal. July 24,
 3 2025); *see also Vazquez v. Bostock*, 3:25-cv-05240, 2025 U.S. Dist. LEXIS 84365, at *7–10
 4 (W.D. Wash. May 2, 2025) (certifying a class and describing the practice of Tacoma
 5 immigration judges to deny bond hearings for individuals who arrived in the United States
 9 without inspection and the low rate of bond grants for hearings that are held in Tacoma in
 7 comparison with other jurisdictions). Not only that, but it would be “particularly unfair” for
 8 Petitioner to suffer “unjustified loss of liberty for even one more day” “while ICE attempts to
 9 remedy its failure to follow its regulations and to provide [Petitioner] due process.” *Jimenez*,
 10 317 F. Supp. 3d at 656–57.

12 The Court should also order that the Respondents may not re-arrest Petitioner, “unless
 13 and until a hearing, with adequate notice, is held in Immigration Court to determine whether his
 14 [conditional release] should be revoked or altered.” *Ortega*, 415 F. Supp. 3d at 970; *see also Y-Z-*
 15 *L-H v. Bostock*, --- F. Supp. ---, 2025 WL 1898025 at *14 (D. Or. July 8, 2025) (ordering that the
 16 Respondents “shall not cause Petitioner to be re-detained during the pendency of his removal
 17 proceedings without prior leave of this Court”).

19 **D. The Court should grant Petitioner’s immediate release because Petitioner’s re-**
 20 **arrest and detention violates the Administrative Procedure Act.**

21 The revocation of Petitioner’s release was arbitrary and capricious and inconsistent with
 22 existing agency regulations and rules. Therefore, in addition to a violation of Petitioner’s due
 23 process rights, his detention violates the Administrative Procedures Act (APA).

1 **1. A claim that the government’s detention decision violated the APA is**
 2 **appropriately brought in habeas.**

3 A claim that a petitioner’s detention violated the APA is cognizable in habeas
 4 proceedings. Section 2241(c)(3) provides that habeas is a remedy for a claim that a person is “is
 5 in custody in violation of the Constitution or laws or treaties of the United States.” The Supreme
 6 Court recently reinforced that habeas is the appropriate method for an immigrant-detainee to
 7 challenge the validity of their detention. *Trump v. J.G.G.*, 145 S. Ct. 1003, 1005 (2025). And the
 8 Supreme Court has previously recognized that claims under the APA are cognizable in habeas.
 9 *Zadvydas*, 533 U.S. at 687 (explaining the historic relationship between the APA and habeas and
 10 concluding that habeas remained available to challenge the constitutional and statutory basis of
 11 post-deportation custody). Additionally, the APA itself “establishes a basic presumption of
 12 judicial review for one suffering legal wrong because of agency action,” that can only be
 13 rebutted by a showing that the relevant statute precludes review, or the challenged action is one
 14 committed to agency discretion. *Regents of the Univ. of Cal.*, 591 U.S. at 16-17 (cleaned up).
 15 “Further, the Supreme Court has read the ‘committed to agency discretion’ exception ‘quite
 16 narrowly, restricting it to ‘those rare circumstances where the relevant statute is drawn so that a
 17 court would have no meaningful standard against which to judge the agency’s exercise of
 18 discretion.’” *Y-Z-L-H*, 2025 WL 1898025 at *6 (citing *Dep’t of Com. v. New York*, 588 U.S. 752,
 19 772 (2019)).

20
 21 The Government argues that a claim under the APA is not colorable when there is a right
 22 to review in habeas and cites in support Justice Kavanaugh’s concurrence in *Trump v. J.G.G.*
 23 ECF 17 at 4–5. The Government’s argument appears to confuse the basis of the claim with the
 24 procedural vehicle. As explained above, Petitioner alleges in this habeas proceeding that the
 25 Government violated the terms of the APA (asserting that his custody violates the Constitution
 26

1 and “laws” of the United States, and the APA is a “law” of the United States). *J.G.G.* is
2 distinguishable because those petitioners sought relief through the APA and “quickly abandoned
3 their habeas claims.” *J.G.G. v. Trump*, No. 25-5067, 2025 WL 914682, at *5 (D.C. Cir. Mar. 26,
4 2025) (Henderson, J., concurring).

5 This very summer, this Court and others in the Ninth Circuit have concluded that the
6 violation of the APA is colorable in habeas. *Nguyen v. Scott*, No. 2:25-cv-01398, 2025 U.S. Dist.
7 LEXIS 142875 (W.D. Wash. July 25, 2025) (order granting a temporary restraining order in a
8 habeas case in part on grounds that “Petitioner has also raised serious questions going to the
9 merits of his claim that the Government has failed to carry out a non-discretionary duty under the
10 Administrative Procedure Act and relevant regulations”); *Y-Z-L-H*, 2025 WL 1898025, at *11-14
11 (granting habeas petition on grounds of violation of the APA). Petitioner’s claim here that his
12 detention violated the APA is proper.

13
14 This Court ordered that the Respondents should address the Petitioner’s allegations of
15 unlawful detention by July 18, 2025, yet the Respondents failed to provide any substantive
16 response to the merits of Petitioner’s APA claim. ECF 12. This Court should decline to grant
17 Respondents the additional “opportunity to file a motion to dismiss that claim” at some later
18 point. ECF 17 at 5. Petitioner has been unlawfully detained for approximately seven weeks since
19 he filed his habeas petition. He should not have the consideration of the merits of his petition
20 further delayed while Respondents take a second bite at the apple. The APA claim is properly
21 raised through Petitioner’s habeas petition and the Respondents have been given, and passed up,
22 the opportunity to respond. The Respondent’s motion to dismiss on the APA claim should be
23 denied.
24
25
26

2. **The APA limits an agency’s ability to exceed its statutory authority, abuse its discretion, or act arbitrarily and capriciously.**

“The APA ‘sets forth the procedures by which federal agencies are accountable to the public and their actions subject to review by the courts.’” *Regents of the Univ. of Cal.*, 591 U.S. at 16 (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992)). The APA “requires agencies to engage in ‘reasoned decisionmaking,’” and agency actions are to be “‘set aside’ if they are ‘arbitrary’ or ‘capricious.’” *Id.* (quoting *Michigan v. EPA*, 576 U.S. 743, 750 (2015) and 5 U.S.C. § 706(2)(A)). Agency action is

arbitrary or capricious if the agency relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983). For an agency action to survive arbitrary and capricious review, it must have “articulated a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Alliance for the Wild Rockies v. Petrick*, 68 F.4th 475, 493 (9th Cir. 2023) (cleaned up). Furthermore, “an administrative agency is not allowed to change direction without some explanation of what it is doing and why.” *Int’l Union, UAW v. NLRB*, 802 F.2d 969, 973-74 (7th Cir. 1986). An “unexplained inconsistency between agency actions” is a reason for holding an agency’s action “to be an arbitrary and capricious change.” *Organized Vill. Of Kake v. U.S. Dep’t of Agric.*, 795 F.3d 956, 966 (9th Cir. 2015) (quotation marks omitted).

Agencies are bound to follow their own rules that affect the fundamental rights of individuals, even self-imposed policies and procedures. *See Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than

otherwise would be required.”). Additionally, “[i]t is a ‘foundational principle of administrative law’ that judicial review of agency action is limited to ‘the grounds that the agency invoked when it took the action.’” *Regents of the Univ. of Cal.*, 591 U.S. at 20 (quoting *Michigan*, 576 U.S. at 758). Accordingly, in review of the agency decision to revoke Petitioner’s release, the Court must consider the agency’s reasons at the time of his arrest, not “impermissible *post-hoc* rationalizations.” *Id.*

3. The revocation of Petitioner’s release was arbitrary and capricious and failed to comply with agency regulations and policy.

In 2023, when ICE released Petitioner on his own recognizance, an ICE officer made an individualized determination that Petitioner was not a flight risk or a danger. 8 C.F.R. § 236.1(c)(9) (stating that in order release an alien, the alien must demonstrate that “release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceedings”). Since his release, Petitioner has been actively participating in the ATD program and has appeared at two immigration court proceedings where neither the immigration judge nor the DHS attorney expressed any concern that Petitioner was a flight risk or a danger to the community. ICE’s decision to change their initial position and revoke Petitioner’s release without an individualized determination that changed circumstances now demonstrate that he is a flight risk or a danger to the community lacks the “reasoned decisionmaking” necessary to survive “arbitrary and capricious” review.

As discussed above, the agency justification for Petitioner’s detention has evolved since the filing of his habeas petition. A I-213 report authored on the same day as the arrest, mentioned a “couple of violations while on ISAP” but linked the re-detention to “current guidance” that “at large cases will have their custody statues redetermined and return to custody.” Ex. 6 at 4.

Approximately a week later, on June 25, 2025, after the habeas petition was filed, an ICE officer

1 authored a new I-213 report, making no mention of the new agency guidance, and focusing
2 instead on two alleged violations of Petitioner's release conditions that occurred approximately
3 six months before his arrest. ECF 18-4 at 4.

4 Both of the Respondents' asserted justifications for re-arrest amount to arbitrary and
5 capricious agency action. First, the Respondents' justification that Petitioner was arrested
9 because of two stale alleged violations that occurred six months earlier is "implausible" and
7 "runs counter to the evidence." *Motor Vehicle Mfrs.*, 463 U.S. at 43. The ATD Handbook
8 articulates the options for an ATD officer when an alleged violation of conditions has occurred.
9 If the ATD officer was concerned about the alleged incidents in December 2024 and early
10 January 2025, they could have increased the frequency of reporting, changed the conditions, or
11 revoked release. Ex. 8 at 17. Yet in the month following the alleged violations, ATD *decreased*
12 the frequency of Petitioner's check-in requirements. Ex. 5 at 3, 5–6. ICE would not have
13 decreased the frequency or intensity of Petitioner's supervision if it believed Petitioner to be a
14 flight risk or danger to the community. Ex. 5 at 4. By reversing course and suggesting that these
15 alleged violations warrant revocation now, the agency has not "articulated a satisfactory
16 explanation for its action including a rational connection between the facts found and the choice
17 made." *Alliance For the Wild Rockies*, 68 F.4th at 493.

20 Second, an agency decision to detain all non-citizens like Petitioner is also arbitrary and
21 capricious because it involved an unexplained change in agency policy with no individualized
22 consideration of the factors that the ICE regulations direct immigration officials to consider
23 when determining release—danger and risk of flight. 8 C.F.R. § 236.1(c)(8) (to be released under
24 § 1226, alien must demonstrate that "release would not pose a danger to property or persons, and
25 that the alien is likely to appear for any future proceeding"); *Y-Z-L-H*, 2025 WL 1898025, at *7
26

1 (“Common sense suggests . . . that parole given only on a case-by-case basis is to be terminated
 2 only on such basis.”). Respondents have provided no evidence of an “articulation by the agency
 3 of *any* reason” for this change of policy, “let alone a ‘rational basis for its decision.’” *Y-Z-L-H*,
 4 2025 WL 1898025, at *14. “The law requires a change in relevant facts, not just a change in
 5 attitude.” *Valdez*, 2025 WL 1707737, at *3 n.6 (rejecting the respondents’ argument that a
 9 change in government administration, with the present administration taking on different
 7 enforcement priorities, was sufficient to make the petitioner a flight risk). This “unexplained
 8 inconsistency” between the agency’s actions related to Petitioner in 2023 and the “current
 9 guidance” is an additional reason to hold that the decision to detain Petitioner is arbitrary and
 10 capricious. *See Organized Vill. Of Kake*, 795 F.3d at 966 (9th Cir. 2015) (concluding that an
 11 unexplained and conflicting position by the agency was arbitrary and capricious).

13 Finally, Respondents’ revocation of Petitioner’s release is inconsistent with their own
 14 internal regulations and policies. 8 C.F.R. § 236.1(c)(9) provides that for non-citizens released
 15 under § 1226(b), release “may be revoked” at the discretion of certain explicitly enumerated
 16 officers, specifically, “the district director, acting district director, deputy district director,
 17 assistant district director for investigations, assistant district director for detention and
 18 deportation, or officer in charge (except foreign).” Petitioner’s Notice of Custody Determination
 19 and warrant were signed by a SDDO (Supervisory Detention and Deportation Officer). ECF 19-2
 20 at 2. The SDDO is not one of the enumerated agency actors with authority to revoke Petitioner’s
 21 release under the regulations. *See United States v. Gemmill*, 535 F.2d 1145, 1152 (9th Cir. 1976)
 22 (holding that an agency actor not explicitly granted authority in an enumerated list of agency
 23 actors in the regulation could not be deemed to have implicit authority to act); *see also United*
 24 *States v. True*, 946 F.2d 682, 684 (9th Cir. 1991) (declining to find that subordinate officials had
 26

1 authority absent explicit delegation). ICE acted outside its authority by revoking Petitioner's
 2 release at the discretion of an officer who has not be explicitly designated the authority to so act.
 3 This amounts to a further violation of the APA.

4 **E. Recently, many district courts across the country have confronted similar facts and**
 5 **found the re-detention of individuals who had been released on parole to violate the**
 6 **Due Process Clause or the Administrative Procedure Act.**

7 Unfortunately, Petitioner is one of many non-citizens, recently arrested without notice
 8 and without process, after being earlier determined to be suitable for release. The Court should
 9 join district courts across the country and find that Petitioner's detention is unlawful, and order
 10 his immediate release:

11 *Benitez v. Francis, et al.*, 25-CV-5937 (DEH) (S.D.N.Y. July 28, 2025): Granting habeas
 12 petition after concluding that ICE violated due process rights of petitioner who had originally
 13 been released under § 1226 in 2023, but was then rearrested without individualized
 14 determination of why release should be revoked.

15 *Clavijo v. Kaiser*, 2025 WL 2097467, *7 (N.D. Cal. July 25, 2025): The *Mathews*
 16 balancing tests "require that Petitioner be immediately released from custody, and that she be
 17 given notice and a pre-detention hearing before a neutral decisionmaker before being taken back
 18 into custody.

19 *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, (D. Mass. July 24, 2025):
 20 Denying motion for reconsideration of its order, that the Petitioner, who had been released on her
 21 own recognizance and then arrested after immigration court, be released with no additional
 22 conditions beyond those imposed by the immigration judge, in order to "make clear the
 23 Petitioner was to be restored to the state of freedom she enjoyed immediately following the June
 24 3, 2025 hearing, just prior to her arrest."
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1 *Mata Velasquez v. Kurzdorfer*, 25-cv-493-LJV, 2025 WL 1953796 (W.D.N.Y. July 16,
2 2025): Granting preliminary injunction and ordering release after concluding that petitioner was
3 likely to succeed on the merits of his claim that, after having been lawfully granted parole, his
4 detention by “about-face” policy violates his rights to procedural due process.

5 *OJM v. Bostock*, 3:25-cv-00944-AB (D. Or. July 14, 2025): Granting release after
6 concluding that petitioner’s detention under § 1226, after having previously been released under
7 § 1226, violated the due process clause. Ex. 11 at 35–39.

8 *Chipantiza-Sisalema v. Francis*, No. 25-cv-5528, 2025 U.S. Dist. LEXIS 132841, at *9
9 (S.D.N.Y. July 13, 2025): Granting the immediate release of twenty-year-old high school student
10 arrested after her immigration hearing, holding that “because Respondents’ ongoing detention of
11 Chipantiza-Sisalema with no process at all, much less prior notice, no showing of changed
12 circumstances, or an opportunity to respond, violates her due process right, her petition must be
13 granted.” (Cleaned up).

14 *Y-Z-L-H v. Bostock*, --- F. Supp. ---, 2025 WL 1898025 (D. Or. July 7, 2025): Granting
15 habeas petition and ordering release after concluding that ICE’s arrest and unlawful revocation
16 of petitioner’s parole violated the APA.

17 *Gomes v. Hyde*, 1:250CV-11571-JEK, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025):
18 Granting habeas petition for noncitizen detained after having previously been released under
19 § 1226 and ordering a bond hearing where government must prove that the petitioner poses a
20 danger to the community or a flight risk if it seeks to continue detaining him.

21 *Valdez v. Joyce*, 2025 WL 1707737 (S.D.N.Y. June 18, 2025): Ordering the immediate
22 release of a man who, after he entered the country without inspection, was released on his
23 recognizance and ordered to appear at immigration court. The Court found his subsequent arrest,
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1 after he voluntarily appeared at immigration court, without notice or process, violated the Due
2 Process Clause.

3 *Morales Jimenez v. Bostock*, 3:25-cv-00570-MTK (D. Or. May 13, 2025) (attached as Ex.
4 13); Granting habeas petition and concluding that the revocation of Petitioner's conditional
5 parole without an individualized determination was unlawful.

9 **Conclusion**

7 E A T-B, an asylum seeker with no criminal history, was arrested out of his family car by
8 masked agents after he and his family peacefully left his immigration court date where neither
9 the immigration judge nor government attorney asked for his release to be revoked. He has now
10 been in custody for seven weeks without an opportunity to be heard. In 2023, when E A T-B
11 entered the United States, ICE determined that he was not a flight risk or the danger to the
12 community, and his actions since 2023 only provide more support for this fact. E A T-B's
13 detention violates the Due Process Clause and the APA. This Court should deny the motion to
14 dismiss, grant the petition, and order Petitioner's immediate release.
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16

17 DATED: August 5, 2025.

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21 /s/ Jessica Snyder
22 Jessica Snyder, OSB 134911
23 Attorney for Petitioner
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