

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

ANDERSON RIBEIRO LINS,

Case No. 25-CV-01230-JLS

Petitioner- Plaintiff,

v.

TAMMY MARICH, in her official capacity as Acting Field Office Director, Buffalo Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security;
MICHAEL BALL, in his official capacity as Warden, Buffalo Federal Detention Facility;
PATRICIA HYDE, Acting New England Field Office Director for U.S. Immigration and Customs Enforcement; **KRISTI NOEM**, in her official capacity as Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; and U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,
Respondents-Defendants.

**PETITIONER'S MEMORANDUM OF LAW IN OPPOSITION OF THE MOTION TO
DISMISS THE PETITION**

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. PLAINTIFF HAS STATED A CLAIM FOR RELIEF UNDER FRCP 12(b)(6).....	1
A. Petitioner sufficiently argues his detention violates the Fifth Amendment's due process clause.....	1
B. Petitioner has alleged Respondents violated the APA.....	4
III. CONCLUSION	6

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662, 678 (2009).....	1
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544, 570 (2007).....	1
<i>Dep't of Commerce v. New York</i> , 588 U.S. 752, 772 (2019)	4
<i>Genc v. Renaud</i> , 715 F. Supp. 3d 189 (D. Conn. 2024)	4
<i>Garro Pinchi v. Noem</i> , No. 25-CV-05632-PCP, 2025 WL 3691938 (N.D. Cal. Dec. 19, 2025) ...	5
<i>Jajati v. United States Customs & Border Prot.</i> , 102 F.4th 1011, 1017 (9th Cir. 2024).....	5
<i>Jorge M.F. v. Jennings</i> , 534 F. Supp. 3d 1050, 1052, 1058 (N.D. Cal. 2021)	3
<i>Lopez v. Sessions</i> , No. 18 CIV. 4189 (RWS), 2018 WL 2932726 (S.D.N.Y. June 12, 2018)	3
<i>Mathews v. Eldridge</i> , 424 U.S. 319, 348 (1976)	3
<i>Morrissey v. Brewer</i> , 408 U.S. 471, 484 (1972)	3
<i>Ortega v. Bonnar</i> , 415 F. Supp. 3d 963, 965–66, 970 (N.D. Cal. 2019)	3
<i>Pablo Sequen v. Albarran</i> , No. 25-CV-06487-PCP, 2025 WL 3724878 (N.D. Cal. Dec. 24, 2025)	5
<i>Perez Perez v. Wolf</i> , 943 F.3d 853, 861 (9th Cir. 2019)	4
<i>Pinchi v. Noem</i> , 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025)	3
<i>Rojas v. Almodovar</i> , No. 25-CV-7189 (LJL), 2025 WL 3034183 (S.D.N.Y. Oct. 30, 2025)	3
<i>Saravia v. Sessions</i> , 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017).....	2
<i>Young v. Harper</i> , 520 U.S. 143, 150, 117 S.Ct. 1148, 137 L.Ed.2d 270 (1997)	3
<i>Zadvydas v. Davis</i> , 533 U.S. 678, 693 (2001).....	2
 Statutes	
5 U.S.C. § 701(a)(2)	5
5 U.S.C. § 706(2)(A)	4

Other Authorities

Federal Rule of Civil Procedure 8(a)1
Federal Rule of Civil Procedure 12(b)(6)1,4,5

I. INTRODUCTION

In their Motion to Dismiss, Respondents fail to address Anderson Ribeiro Lins (“Petitioner”) due process arguments. Specifically, Petitioner argues that his detention violates the Fifth Amendment’s due process clause because it bears no reasonable relationship to any legitimate purpose.

Instead, Respondents only address the technical difference between being released on an Order of Release on Recognizance versus being released on an Order of Supervision. The former, Respondents argue, is not subject to any judicial oversight.

For the following reasons, Respondents’ arguments are misplaced. Accordingly, this Court should deny Respondent’s Motion to Dismiss.

II. PETITIONER HAS STATED A CLAIM FOR RELIEF UNDER FRCP 12(b)(6)

Pursuant to Federal Rule of Civil Procedure 12(b)(6), a complaint must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). If that factual content, so taken, “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged,” then the claim has facial plausibility. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); Fed. R. Civ. P. 8(a). Given this standard and the allegations set forth below, Respondents’ motion to dismiss should be denied. Petitioner has set forth sufficient allegations to state a plausible claim.

A. Petitioner sufficiently argues his detention violates the Fifth Amendment’s due process clause

This Court should consider Plaintiff’s well-pled allegations spelling out Respondents’ arbitrary and capricious detention of Petitioner. At the time of his unnoticed detention on or about November 1, 2025, Mr. Lins had been required to upload photographs of himself with his whereabouts once a week. These conditions were communicated to him by his caseworker in

January. During his previous check-in on October 29, 2025, ICE had cleared Mr. Lins as being compliant with the conditions of his release.

However, in advancing their own self-serving narrative that Petitioner violated the conditions of his release, Respondents simply makes the conclusory allegation, without providing any evidentiary basis “DHS records indicate that Petitioner violated the conditions of his release by failing to comply with the ATD program.” *See* ECF No. 9-2, Mulvey Declaration ¶¶ 8. The Exhibits Officer Mulvey references in his Declaration also fail to contain evidentiary support for how “Petitioner violated the conditions of his release.” *See* ECF No. 9-3 p. 9-12. Instead, the documents only echo the conclusory allegations of Officer Mulvey that Petitioner is an “ATD violator,” without going into specifics of why or how Petitioner is one. *Id.*

In *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), DHS assured the federal district court that DHS only re-arrests individuals only after a “material change in circumstances.” Here, for the aforementioned reasons, Respondents have not articulated what such material changes are. Indeed, without such articulable reasons, Respondents have violated the constitutional rights of Petitioner - specifically, the due process right to liberty and, the right to sufficient process.

Specifically, when the government takes an individual into custody, it must do so pursuant to fair procedures that afford adequate notice and a meaningful opportunity to respond, and it must have a legitimate substantive reason for the detention. Indeed, “the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Additionally, Federal courts have often granted habeas relief to re-detained non-citizens. *See*

Ortega v. Bonnar, 415 F. Supp. 3d 963, 965–66, 970 (N.D. Cal. 2019); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1052, 1058 (N.D. Cal. 2021).

In *Ortega*, the Court held due process attaches, even to benefits granted in the government's discretion. *Ortega*, 415 F. Supp 3d at 969; *See Young v. Harper*, 520 U.S. 143, 150, 117 S.Ct. 1148, 137 L.Ed.2d 270 (1997) (rejecting an argument that a pre-parolee does not enjoy the same liberty interest as a parolee because the governor could exercise discretion to deny parole); *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1001 (N.D. Cal. 2018) (Corley, J.) (considering a habeas petition based on due process where the IJ had made a discretionary decision). Similarly, in *Pinchi v. Noem*, the Northern District of California adjudicated the habeas petition of a noncitizen paroled into the United States and held that “even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody.” *Pinchi v. Noem*, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025).

In the Second Circuit, the Southern District of New York in *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726 (S.D.N.Y. June 12, 2018), granted Petitioner’s writ of habeas corpus due to ICE’s arrest of Petitioner in the absence of process. This is because Petitioner’s deprivation of liberty, without a due process determination, violates the Fifth Amendment’s Due Process Clause. *Id.* at 7. Similarly in *Rojas v. Almodovar*, No. 25-CV-7189 (LJL), 2025 WL 3034183 (S.D.N.Y. Oct. 30, 2025), the Court held that a liberty interest, once granted, cannot be revoked without due process. *Id.* at *6. Petitioner is thus entitled to at least a notice of revocation of parole, issued pursuant to the statute and regulations, including an individualized reason for its termination. *See Morrissey v. Brewer*, 408 U.S. 471, 484 (1972); *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976)

Similarly, here, Respondents had previously released Petitioner because they deemed him to lack flight risk or dangerousness. Specifically, Petitioner has never been arrested or had any interactions with the criminal justice system. Petitioner's circumstances have not changed. Nevertheless, Respondents detained Petitioner on November 1, 2025 without giving him an explanation as to the reasons for his detention. Respondents have also not afforded Petitioner due process rights to challenge his detention. Therefore, Respondents' continued detention of the Petitioner violates the Fifth Amendment's due process clause.

For these reasons, this Court should disregard Defendant's unsupported narrative and instead find Petitioner has stated a claim for relief under FRCP 12(b)(6).

B. Petitioner has alleged Respondents violated the APA

The Administrative Procedures Act ("APA") provides that a court "shall . . . hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Here, the government has not established that "courts traditionally have regarded" immigration enforcement decisions "as committed to agency discretion" to such a degree that they are beyond judicial review under the APA. *Dep't of Commerce v. New York*, 588 U.S. 752, 772 (2019) (citation modified). To the contrary, the Ninth Circuit "ha[s] held that there are meaningful standards of review and have declined to apply § 701(a)(2)" in "several immigration cases." *Perez Perez v. Wolf*, 943 F.3d 853, 861 (9th Cir. 2019) (collecting cases and holding that denial of U-visa petitions is subject to judicial review). In the Second Circuit for example, *Genc v. Renaud*, 715 F. Supp. 3d 189 (D. Conn. 2024) has held USCIS violated the APA in denying applicant's U visa application when it acted in an arbitrary and capricious manner.

In the context of immigration enforcement decisions, there are meaningful standards of review and Courts have declined to apply 5 U.S.C. § 701(a)(2). In *Pablo Sequen v. Albarran*, No. 25-CV-06487-PCP, 2025 WL 3724878 (N.D. Cal. Dec. 24, 2025), the District Court held immigration detention at Courthouses is not the “rare circumstance[]” where “there is no law to apply.” Johnson, 145 F.4th at 1163 (citation modified). *Id.* at *9. Rather, ICE and EOIR's prior policies governing courthouse arrests and detention in holding facilities provide a standard. *Id.* Additionally, in *Garro Pinchi v. Noem*, No. 25-CV-05632-PCP, 2025 WL 3691938 (N.D. Cal. Dec. 19, 2025), the District Court also held DHS's prior practice provides a benchmark against which to measure “whether the agency justified its choice on specious grounds, failed to satisfy the general requirements of reasoned agency decisionmaking, or failed to comply with its own regulations.” *Id.* at *24 (*see also Jajati v. United States Customs & Border Prot.*, 102 F.4th 1011, 1017 (9th Cir. 2024)). Therefore, the Court reasoned § 701(a)(2)'s exception does not bar judicial review, and concluded DHS's re-detention policy is likely arbitrary and capricious.

Here, Respondents simply makes the conclusory allegation, without providing any evidentiary basis, how Petitioner violated the conditions of his release. As a matter of fact, on October 29, 2025, just days prior to his re-detention on November 1, 2025, ICE had cleared Mr. Lins as being compliant with the conditions of his release. Given the precedential caselaw, Respondents have not established how their immigration enforcement decision is beyond judicial review under the APA. Rather, this Court should consider Plaintiff's well-pled allegations spelling out Respondents' arbitrary and capricious detention of Petitioner.

For the foregoing reasons, Petitioner has sufficiently alleged Respondents violated the APA. Therefore, Petitioner has stated a claim for relief under FRCP 12(b)(6).

III. CONCLUSION

For the foregoing reasons, this Court should deny Respondent's Motion to Dismiss.

Dated: December 30, 2025

Respectfully submitted,

By: s/ Yifei He

Law Office of Yifei He PLLC
32 Broadway Suite 1710
New York NY 10004
Phone: (917) 477-7818
Fax: (917) 793-4065