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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

JOSE LABRADOR ABADIN,
Petitioner,

v.

KRISTI NOEM, Secretary for the Department
of Homeland Security; TODD LYONS, Acting
Director, Immigration and Customs
Enforcement; CAMILLA WAMSLEY, Field
Office Director, Immigration and Customs
Enforcement Seattle Field Office; BRUCE
SCOTT, Warden, Northwest ICE Processing
Center,

Respondents.

Case No. 2:25-cv-02411-JLR

**PETITIONER'S TRAVERSE TO
FEDERAL RESPONDENTS' RETURN
MEMORANDUM**

Noted for Consideration: December 23,
2025

I. BACKGROUND

Petitioner is a 26-year-old Cuban national who filed a petition for writ of habeas corpus on November 27, 2025. *See* Pet., Doc. Entry 1. On April 19, 2021, he was paroled into the United States to attend immigration court proceedings, and on July 3, 2025, he properly filed Form I-485 with U.S. Citizenship & Immigration Services (“USCIS”). Petitioner is lawfully eligible to adjust his status to lawful permanent resident under the Cuban Refugee Adjustment Act (“CAA”), an application the Tacoma Immigration Court holds no jurisdiction over. PL 89-732, 80 Stat. 1161 (Nov. 2, 1966); *Matter of Martinez-Montalovo*, 24 I&N Dec. 778 (BIA 2009). He has no criminal history in the United States. *See* Form I-213, Doc. Entry 11-2 at p. 4.

On November 16, 2025, Petitioner’s vehicle was stopped by Enforcement and Removal (“ERO”) Detention Officers in Portland, Oregon. *Id.* at p. 3. There were no traffic violations that occurred; he was stopped because his girlfriend – the car’s registered owner – also lacks legal status. *Id.* Despite showing evidence of a pending Form I-485, which would likely result in his future permanent resident status, Petitioner was nonetheless arrested, handcuffed, and transported to the Northwest ICE Processing Center in Tacoma. As of today, he has been held in custody for 37 days.

Petitioner’s parole expired on or about April 17, 2022. *See* Yeski Decl., Doc. Entry 10 at ¶ 10. Officer David Yeski (who performed the arrest) affirms that Petitioner missed a check-in with DHS on April 18, 2022; however, Form I-213, which was generated on November 16, 2025, does not mention this. The DHS has not produced a copy of Form I-220, which would independently corroborate Officer Yeski’s written testimony.

In Petitioner’s writ, he charges that his detention is unlawful as it constitutes an abuse of discretion under the Administrative Procedure Act (“APA”) and exceeds the statutory authority

1 afforded by 5 U.S.C. § 706(2)(C). He further argues that his Fourth and Fifth Amendment rights
2 have been violated, as his arrest was warrantless, his seizure was unreasonable, and he has not
3 been afforded procedural due process from the federal government.

4 II. LEGAL STANDARD

5 Under 28 U.S.C. § 2241(c)(3), a writ of habeas corpus extends to anyone who is held in
6 custody “in violation of the Constitution of laws or treaties of the United States.” The “in
7 custody” requirement explicitly extends to immigration detention. *I.N.S. v. St. Cyr*, 533 U.S.
8 289, 305-307 (2001). “[T]he writ of habeas corpus has served as a means of reviewing the
9 legality of Executive detention, and it is in that context that its protections have been the
10 strongest.” *Id.* at 301.

11 Petitioner bears the burden of demonstrating by a preponderance of the evidence that his
12 detention is unlawful. *Maldonado v. Olson*, 795 F. Supp. 3d 1143, 2025 U.S. Dist. LEXIS
13 158321 at *12 (D. Minn. Aug. 15, 2025). He is to be afforded certain guarantees under the
14 federal constitution, including those regarding due process and protecting against warrantless
15 arrest and unreasonable seizure. *See Demore v. Hyung Joon Kim*, 538 U.S. 510, 523 (2003).
16 Petitioners must generally exhaust administrative remedies before seeking relief under § 2241,
17 unless exhaustion would be futile. *Vazquez-Rodriguez v. Garland*, 7 F.4th 888, 895-96 (9th Cir.
18 2021). Here, Mr. Labrador Abadin is ineligible to seek release through the Tacoma Immigration
19 Court under 8 U.S.C. § 1225(b)(2)(A), and the position of DHS appears already set regarding the
20 notion of a supervised release. *Sun v. Ashcroft*, 370 F.3d 932, 942-43 (9th Cir. 2004).

21 Moreover, a motion for discretionary termination was recently denied by the Tacoma
22 Immigration Court, on the simple basis that Petitioner conceded removability. This occurred
23 despite a prima facie application for permanent residency pending with USCIS, which has been

the case for nearly six months. Further, DHS counsel has preemptively filed a motion to pretermitt any application for relief made under 8 U.S.C. § 1158 and direct removal to Ecuador – a country Petitioner has never been to – in accordance with the *Agreement Between the Government of the United States of America and the Government of the Republic of Ecuador Relating to the Transfer of Third-Country Nationals to Ecuador*, 90 Fed. Reg. 51,376 (Nov. 17, 2025). *See* Exhs. “A” and “B,” attached. There are clearly no administrative remedies Petitioner could seek in favor of release, and he therefore turns to this Court.

III. ARGUMENT

A. Petitioner’s detention is unlawful under 8 U.S.C. § 1225(b).

In its Return Memorandum, the government concedes that Petitioner’s case is one of re-detention. *See* Return Memo., Doc. Entry 9 at p. 5. Indeed, DHS materials confirm that he was encountered by Customs and Border Protection on December 14, 2020, served with a Notice to Appear in immigration court, and was later paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A). *See* Form I-94, Exh. “C” at p. 2; Yeski Decl., Doc. 10 at ¶ 7. Respondents cite to *Dep’t of Homeland Sec. v. Thuraissigiam*, 558 U.S. 233, 249 (2010) to illustrate that expedited removal proceedings are designed to “weed out patently meritless claims [for asylum] and expeditiously remove aliens making such claims,” but here, Petitioner is not and has never been subject to expedited removal proceedings; nor has he filed an application for asylum. A Notice to Appear was served on December 15, 2020, but it lacks a notation of him having undergone a credible fear screening¹ and simply places him into “ordinary” removal proceedings under 8 U.S.C. § 1229a.

¹ Officer Yeski has affirmed that Petitioner claimed a fear of return to Mexico (where he was residing for several months in 2020), was interviewed by a DHS asylum officer on December 15, 2020, and was determined to have not established a clear probability of persecution or torture in Mexico. Yeski Decl., Doc. Entry 10 at ¶ 5. However, the

Respondents then broadly state that 8 U.S.C. § 1225(b) mandates detention for arriving aliens such as Petitioner. While this may be true from a mere reading of the statute, this Court has recently ordered the release of many similarly situated litigants. *See, e.g., Francois et. al v. Wamsley*, Case No. C25-2122-RSM, Doc. Entry 22 at *8 (W.D. Wash. Dec. 5, 2025) (re-detention matter concerning two arriving aliens who remained after revocation of parole and had filed applications for lawful status; ordered released from custody); *Lopez Reyes v. Wamsley*, Case No. C25-1868-JLR-MLP, Doc. Entry 13 at *8 (W.D. Wash. Oct. 15, 2025) (re-detention of Cuban national subject to mandatory custody under § 1225(b)(1), adjustment of status pending with USCIS; recommendation of habeas grant by magistrate judge); *Ramirez Tesara v. Wamsley*, Case No. C25-1723-KKE-TLF, Doc. Entry 31 at *1, 11 (W.D. Wash. Nov. 25, 2025) (re-detention of Venezuelan national subject to mandatory custody under § 1225(b)(1), remained after expiration of parole; ordered released after granting of TRO). In matters of re-detention, a pre-detention hearing before a neutral decisionmaker must often occur prior to someone being brought *back* into federal custody, emphasizing due process protections that are not typically afforded during initial detention under § 1225(b). *See Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1037 (N.D. Cal. Jul. 24, 2025); *Diaz v. Garland*, 53 F.4th 1189, 1206-07 (9th Cir. 2022) (citing *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976)).

It should be also noted that District Courts in both California and Florida have ordered the release of similarly situated litigants, too, as recently as five days ago. *Euceda Martinez v. Larose*, Case No. 25-CV-3308 JLS, 2025 WL 3677938, at *8-11 (S.D. Cal. Dec. 18, 2025)

Notice to Appear does not indicate that a “Section 235(b)(1)” order was ever vacated, there is no known record of Petitioner having received an expedited order of removal, and no materials from this interview have ever been produced by Respondents in the subject removal proceedings or this litigation. *See* Doc. Entry 11-1, p. 2. An order of expedited removal would have caused Petitioner to be ineligible for humanitarian parole on April 19, 2021.

1 (paroled Honduran re-detained after missed master calendar hearing, parole revoked, motion to
2 rescind *in absentia* order of removal granted at later date; immediate release from custody
3 granted upon evaluation of *Mathews* factors); *Gonzalez Camarona v. Ripa, et al*, Case No.
4 2:25-cv-1128-SPC-DNF, 2025 WL 3649577, at *13 (M.D. Fla. Dec. 17, 2025) (re-detention of
5 Cuban citizen without a criminal record, parole revoked without cause; petition for habeas
6 corpus granted and release ordered within 24 hours).

7 Regarding the facts of this case, it is hardly material that Petitioner failed to update his
8 address with USCIS or EOIR (i.e., the immigration courts) after moving from Tampa, Florida to
9 Portland, Oregon. Failure to notify the Attorney General of a change of address can result in
10 detention, but not if the noncitizen demonstrates his failure was not willful – which there are
11 certainly no allegations of here. 8 U.S.C. § 1306(b). Although the Notice to Appear states in its
12 fine print that litigants must “immediately” file Form EOIR-33 after relocating, Mr. Labrador
13 Abadin never attended a single hearing in removal proceedings (because he was not scheduled
14 for one), which is when he would have been notified of this requirement in the Spanish language.
15 *See* Notice to Appear, Doc. Entry 11-1 at p. 3. The DOJ is to blame for lengthy delays in
16 adjudicating Petitioner’s removal proceedings; he was simply unaware of the requirements to file
17 Forms EOIR-33 and AR-11 in the event of an address change. Moreover, the Tampa address on
18 file with DHS is a home owned by his family friends, who surely would have notified him
19 should any correspondence be received by the federal government. These facts, on their own,
20 should not be viewed as *justification* for Petitioner’s detention.

21 In short, there is no support to the argument that Petitioner’s current detention is lawful,
22 or that the facts support his arbitrary re-detention.

B. Petitioner's APA claims may be reviewed by this Court, and Respondents' argument regarding the 8 U.S.C. § 1252(b)(9) "zipper clause" is flawed.

Respondents incorrectly argue that this Court lacks subject matter jurisdiction over claims brought under the Administrative Procedure Act ("APA"). The APA explicitly states that all agency actions are reviewable unless another adequate statutory remedy exists. 5 U.S.C. § 704. For alien detainees such as Petitioner, 8 U.S.C. § 1252(b)(9) requires that judicial review of all legal and factual questions be "consolidated" into a single petition for review in the appropriate court of appeals; a challenge to the unlawful re-detention of Petitioner cannot be addressed through the administrative or appellate process, and the immigration court lacks bond jurisdiction under 8 U.S.C. § 1225(b)(2)(A).

The claims in this case all regard Petitioner's unlawful re-detention, which stems from an abuse of discretion by ICE *while also* violating his rights under the Fourth and Fifth Amendments. The Respondents' argument that § 1252(b)(9) bars this Court from hearing those claims is misplaced. Section 1252(b)(9) appears to preclude review of "arising from any action taken or proceeding brought to remove an alien from the United States," but it has built-in limits, specifically, claims that are independent or collateral to the removal process. *See Gonzalez v. United States Immigration and Customs Enforcement*, 975 F.3d 788, 810 (9th Cir. 2020) (citing *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016)). Here, Petitioner is not challenging the DHS' decision to commence removal proceedings or adjudication removability, he is challenging his unlawful custody, which would not strip this Court of jurisdiction under § 1252(b)(9).

Similarly, 8 U.S.C. § 1252(g) strips jurisdiction over claims "arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal

orders against any alien under this chapter.” *Id.* Respondents may charge that Petitioner’s claims are “inextricably linked” to an order of removal or “arise from any action taken or proceeding brought to remove an alien.” Federal Respondent’s Ret., Doc. Entry 9 at p. 9. 8 U.S.C. 1252(g) should be read “narrowly” as to apply only to three discrete actions the Attorney General may take: its decision or action to “(1) commence proceedings, (2) adjudicate cases, or (3) execute removal orders.”” *See Ibarra-Perez v. United States*, 154 F.4th 989, 997 (9th Cir. Aug. 27, 2025) (quoting *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482, 486 (1999)).

Section 1252(g) “does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders.” *Ibarra-Perez*. at 997. Nor does the statute bar due process claims. *Walters v. Reno*, 145 F.3d 1032, 1052– 53 (9th Cir. 1998) (finding that the petitioners’ objective was not to review the merits of their proceeding, but rather “to enforce their constitutional rights to due process in the context of those proceedings”). Here, Petitioner does not challenge a decision to commence his removal proceedings, address legal issues ruled upon by EOIR, or execute a removal order; instead, he is challenging the legality of his wrongful arrest, his unlawful detention, and the violation of due process. He is enforcing his “constitutional rights to due process in the context of removal proceedings—not the legitimacy of the removal proceedings or any removal order.” *Garcia v. Noem*, No. 25-cv-2180-DMS-MMP, 2025 WL 2549431, at *11 (S.D. Cal. Sept. 3, 2025). As such, § 1252(g) does not strip this Court of jurisdiction, nor does § 1252(b)(9). See, e.g., *Navarro Sanchez v. Larose et al.*, 25-cv-2396 JES-MMP, 2025 WL 2770629 at *7-11 (S.D. Cal. Sept. 26, 2025) (finding due process and APA violations in a similar matter; habeas granted); *Noori v. Larose et al.*, 25-cv-1824-GPC-MSB, 2025 WL 2800149, at *18-19 (S.D. Cal. Oct. 1, 2025) (holding that the “zipper clause”

1 cannot be stretched to preclude jurisdiction over claims of unlawful detention; finding both
 2 constitutional and APA violations). This Court is not barred from review of Petitioner's claims.

3 **C. Petitioner's rights under the federal constitution were violated.**

4 First, Petitioner raises that the expiration of his parole does not, on its own, justify or
 5 function as a consideration of his individualized circumstances so as to justify detention. He is
 6 not merely an "applicant for admission" at the border with minimal due process rights; Petitioner
 7 has been present in the U.S. for nearly five years, after being allowed to enter lawfully, and has a
 8 prima facie approvable application for permanent residency pending with USCIS. He thus has a
 9 protected liberty interest in remaining out of custody. *See, e.g., Pinchi*, 792 F. Supp. 3d 1025,
 10 1034 (N.D. Cal. Jul. 24, 2025) ("[Petitioner's] release from ICE custody after [his] initial
 11 apprehension reflects a determination by the government that [he] was neither a flight risk nor a
 12 danger to the community, and [he] has a strong interest in remaining at liberty unless [he] no
 13 longer meets those criteria."); *Noori*, 25-cv-1824-GPC-MSB, 2025 WL 2800149, at *26 (S.D.
 14 Cal. Oct. 1, 2025) ("Petitioner is not an 'arriving' noncitizen but one that has [been] present in
 15 our country for over a year. This substantial amount of time indicates he is afforded the Fifth
 16 Amendment's guaranteed due process before removal."); *Matute v. Wofford*, No. 1:25-cv-1206-
 17 KES-SKO (HC), 2025 WL 2817795, at *7 (E.D. Cal. Oct. 3, 2025) (finding that petitioner has a
 18 protected liberty interest in his release).

19 The Fifth Amendment guarantees that "[n]o person shall be ... deprived of life, liberty, or
 20 property, without due process of law." U.S. Const. amend. V. "[T]he Due Process Clause applies
 21 to all 'persons' within the United States, including aliens, whether their presence here is lawful,
 22 unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (9th Cir. 2001).
 23 "Even individuals who face significant constraints on their liberty or over whose liberty the

1 government wields significant discretion retain a protected interest in their liberty.” *Pinchi*, 792
2 F. Supp. 3d 1025, 1032 (N.D. Cal. Jul. 24, 2025) (citations omitted).

3 Although the initial decision to detain or release an individual may be within the
4 government's discretion, “the government's decision to release an individual from custody
5 creates ‘an implicit promise,’ upon which that individual may rely, that their liberty ‘will be
6 revoked only if [they] fail to live up to the ... conditions [of release].’” *Id.* at 1032 (quoting
7 *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). Thus, even when ICE has the initial discretion
8 to detain or release a noncitizen pending removal proceedings, after that person is released from
9 custody, they have a protected liberty interest in remaining *out* of custody. *Id.* (citing *Romero v.*
10 *Kaiser*, No. 22-cv-20508, 2022 WL 1443250 (N.D. Cal. May 6, 2022)). The Due Process Clause
11 generally “requires some kind of a hearing before the State deprives a person of liberty or
12 property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). The guiding authority on this process is
13 offered in *Mathews v. Eldridge*, 424 U.S. 319 (1976).

14 To determine which procedures are constitutionally sufficient to satisfy Due Process, the
15 Court must apply the *Mathews* factors. *See id.*, 424 U.S. 319, 335. Courts must consider: (1)
16 “the private interest that will be affected by the official action”; (2) “the risk of an erroneous
17 deprivation of such interest through the procedures used, and the probable value, if any, of
18 additional or substitute procedural safeguards”; and (3) “the Government's interest, including the
19 function involved and the fiscal and administrative burdens that the additional or substitute
20 procedural requirement would entail.” *Id.*

21 All three factors weigh heavily in Petitioner’s favor. First, as discussed above, Petitioner
22 has a significant liberty interest in remaining out of custody given both his humanitarian paroled
23 entry and its revocation without written notice. “Freedom from imprisonment—from government

1 custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due
2 Process Clause] protects.” *Zadvydas*, 533 U.S. at 690. He also has an interest in remaining with
3 his partner and continuing to seek permanent residency, which he is eligible for as a statutory
4 matter. *Morrissey*, 408 U.S. at 482 (“Subject to the conditions of parole, he can be gainfully
5 employed and is free to be with family and friends and to form the other enduring attachments of
6 normal life.”) We remind the Court that Petitioner also has a young U.S. citizen daughter. Doc.
7 Entry 1, p. 6 at ¶ 19.

8 Second, the risk of an erroneous deprivation of the interest is quite high, as the Tacoma
9 Immigration Court lacks jurisdiction over Petitioner’s I-485 and will likely order him removed to
10 either Cuba or Ecuador, unless he can demonstrate odds of persecution rising to the burdens
11 required for asylum or withholding of removal. *See* 8 U.S.C. § 1158(b)(1)(B)(i); 8 U.S.C. §
12 1231(b)(3). There is also no probable value of additional procedural safeguards, as DHS’s initial
13 determination was that Petitioner should be paroled into the U.S. as he posed no danger to the
14 community and was not viewed a flight risk; further, there is a lack of evidence in the record that
15 these findings could have changed. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196 (N.D. Cal.
16 2017). Once a noncitizen has been released, the law prohibits federal agents from rearresting him
17 merely because he is subject to removal proceedings. *Id.* at 1176.

18 Rather, federal agents must be able to present evidence of materially changed
19 circumstances – i.e., proof that the noncitizen is in fact dangerous or has become a flight risk.
20 Respondents have failed to highlight any materially changed circumstances that would warrant
21 Petitioner’s re-detention. Where, as here, a person has not received any bond or custody hearing,
22 “the risk of an erroneous deprivation of liberty is high” because neither the government nor
23 movant has even had an *opportunity* to determine whether there is a valid basis for detention.”

1 *Pinchi*, 792 F. Supp. 3d 1025, 1035 (N.D. Cal. Jul. 24, 2025) (quoting *Singh v. Andrews*, No. 25-
2 cv-801-KES-SKO (HC), 2025 WL 1918679, at *20 (E.D. Cal. July 11, 2025)) (emphasis added).

3 Finally, the Government's interest in detaining Petitioner without providing a reason and
4 an opportunity to be heard is low. *Pinchi* at 1036; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970
5 (N.D. Cal. Nov. 22, 2019) ("If the government wishes to re-arrest [Petitioner] at any point, it has
6 the power to take steps toward doing so; but its interest in doing so without a hearing is low.").
7 Respondents cannot point to any burdens placed on the Government in the event that it would
8 have to provide proper notice of Petitioner's detention, reasoning supporting it, and a pre-
9 deprivation hearing before a neutral fact finder.

10 Regarding Petitioner's Fourth Amendment arguments, he highlights that the
11 administrative warrant produced in this case (a) does not include a file number, (b) lists his name
12 only as "Jose," and (c) is dated "11-16-2025," the date of his arrest. *See* Doc. Entry 13-C, p. 2. It
13 is therefore very likely that this document – consistent with Mr. Labrador Abadin's own accord –
14 was produced *after his arrest*. Even if there was cause for his traffic stop (his girlfriend also
15 being present after expiration of her humanitarian parole), his unlawful presence in the United
16 States should not have subjected him to arrest and detention without a reason to think he'd flee
17 before DHS could produce a warrant. *Ramirez Ovando v. Noem*, No. 1:25-cv-03183-RBJ, at *52
18 (D. Colo. Nov. 25, 2025). And, since the arrest was the direct cause of Petitioner's custodial
19 status, a Fourth Amendment violation should be fairly viewed as a valid reason for his release
20 (and in any event, Petitioner only admitted to having a pending I-485 after he was unreasonably
21 detained and told he was not free to leave).

1 The likely unconstitutional deprivation of liberty that Petitioner is now undergoing
2 constitutes an immediate and irreparable harm. "It is well established that the deprivation of
3 constitutional rights 'unquestionably constitutes irreparable injury.'" *Hernandez v. Sessions*, 872
4 F.3d 976, 994 (9th Cir. 2017) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)).
5 In addition to the abuse of discretion and excessive acts committed by ICE agents, Petitioner's
6 constitutional rights have clearly been violated.

7 **IV. CONCLUSION**

8 For the reasons argued above, Petitioner asks this Court to find that his current detention
9 is in violation of the federal constitution and statutes, and requests a Writ of Habeas Corpus
10 ordering his immediate release from ICE custody.

11
12 Respectfully submitted,

13 Dated: December 23, 2025

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22 I certify that this memorandum conforms with the local rules as it is 3,809 words in length.
23
24