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

MARK STRAZH,

Petitioner,

Case No. 2:26-cv-00064-SKV

v.

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

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

Noted for Consideration: January 27, 2026

Respondents.

1 **I. INTRODUCTION**

2 Petitioner is a twenty-two-year-old Russian national who, after passing a credible fear
3 screening, was released from immigration custody on January 11, 2024. Doc. Entry 8-4, 8-1. He
4 was then placed into 8 U.S.C. § 1229a removal proceedings and enrolled in Alternatives to
5 Detention (“ATD”) monitoring. Petitioner’s supervision involved taking a weekly photo using BI
6 SmartLINK, a tracking application that pings his location to ICE officers. Doc. Entry 8-3, 8-4.
7 Despite what he perceived as compliance with the program, he was arrested and returned to
8 administrative detention on December 27, 2025.

9 Respondents allege that Petitioner “missed” thirty ATD check-ins, which was cause for
10 ICE to terminate his supervised release. *See* Doc. Entry 6, p. 2; Doc. Entry 7 (Declaration of
11 Robert Andron), p. 2-4. He was not given the opportunity to contest or explain those charges, nor
12 does his Deportation Officer’s affidavit adequately describe what constitutes a “missed” check-
13 in. Petitioner admits that he occasionally uploaded photos later than the 11:00 A.M. timeline he
14 was subject to, but is adamant that he never outright failed to provide a photograph. *See* Exh. A,
15 Declaration of Mark Strauss at p. 4, ¶ 6. The DHS has not provided a record corroborating his
16 Deportation Officer’s statement, and has only offered a declaration making the blanket assertion
17 that thirty check-ins were missed.

18 Respondents maintain that their choice to re-detain Petitioner – without allowing him the
19 opportunity to respond, and without individualized review explaining how he became a danger to
20 the community or a flight-risk – is lawful under 8 U.S.C. § 1225(b). Doc. Entry 6, p. 2. We
21 contest the accuracy of that allegation, countering that any noncompliance was typically by mere
22 hours or a single day at most, which is minimal considering that Petitioner was required to
23 submit a photograph each week and ICE (presumably) had constant access to his GPS location.

1 Further, reporting by news organizations have indicated that the app consistently malfunctions,
2 with users having trouble confirming their reports were received and ICE consistently failing to
3 follow up or request re-submission. *See* Exhs. “B,” “C,” “D.”

4 Petitioner had been awaiting a final non-detained hearing on the merits of his asylum
5 application, in a case joined with his parents and siblings. For his family members, that hearing
6 remains set for October, 26, 2026. Petitioner is now separated from his family and has had his
7 proceedings severed from theirs; his case also largely relates to his father’s employment as a
8 Seventh-Day Adventist pastor. He has no criminal history in the United States. *See* Doc. Entry 8-
9 1, 8-6.

10 Even if the Respondents’ allegations were all true, due process under the U.S.
11 Constitution requires substantially more than what was afforded here. This Court has very
12 recently held that ICE re-detention without substantive review violates a noncitizen’s
13 rights under the 5th Amendment. *See, e.g., Tomas Manuel, et. al. v. Hermosillo, et. al*, C25-2353-
14 TL-MLP (W.D. Wash. Dec. 10, 2025); *Bonilla Mejia v. Wamsley*, No 2:25-CV-02196 (W.D.
15 Wash. Nov. 26, 2025); *Francois et. al v. Wamsley*, Case No. C25-2122-RSM (W.D. Wash. Dec.
16 5, 2025); *Lopez Reyes v. Wamsley*, Case No. C25-1868-JLR-MLP (W.D. Wash. Oct. 15, 2025);
17 *Cabrera Perez c. Hermosillo, et. al*, C25-2542-RSM (W.D. Wash. Jan. 14, 2026).

18 II. ARGUMENT

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

20 Respondents broadly state that 8 U.S.C. § 1225(b) mandates detention for arriving aliens
21 such as Petitioner. Doc. Entry 6, p. 3. They are generally correct, but release can be ordered (as
22 noted above) where violations of the constitution and/or U.S. laws occur. Indeed, Respondents
23 then go on to concede that this Court and other districts have held that the revocation of pre-

1 detention release does generally require a pre-detention hearing to determine whether a
2 noncitizen is a flight risk or a danger to the community. Doc. Entry 6, p. 5. They disagree with
3 that analysis – without much explanation as to why – and refer only to the “flexibility” of due
4 process under *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976).

5 In granting similar re-detention habeas petitions, the Court has held:

6 “To the extent that the Government’s briefing suggests that Section 1225(b) should be the
7 beginning and end of the Court’s inquiry, this position is emphatically rejected. In
8 determining the lawfulness of Petitioner’s detention, the Court will focus not on the
9 Government’s claimed authority to detain, but the process by which Petitioner was
10 detained.” *P.T. v. Hermosillo*, No. 2:25-cv-02249-KKE, 2025 WL 3294988, at *2, n.1
11 (W.D. Wash. Nov. 26, 2025)

12 Here, all *Mathews* factors bend heavily in Petitioner’s favor, just as they have in the cases
13 of similarly-situated litigants. *See, e.g., Ramirez Tesara v. Wamsley*, C25-1723-KKE-TLF (W.D.
14 Wash. Nov. 25, 2025) (forty violations of release conditions alleged in 2024 and 2025, habeas
15 granted). To begin, he has a substantial liberty interest in remaining out of custody, especially
16 since he was previously preparing for non-detained merits hearing in the Portland Immigration
17 Court. *Mathews*, 424 U.S. at 335. “Freedom from imprisonment—from government custody,
18 detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process
19 Clause] protects.” *Zadvydas v. David*, 533 U.S. 678, 690 (2001). The risk of an erroneous
20 deprivation of that interest was also quite high, given that Petitioner’s detention has now
21 separated his asylum case with his parents’, and under circumstances where his father was the
22 principal applicant. *Mathews* at 335.

23 Comparatively, the Government’s interest in Petitioner’s confinement was low. *See id.*;
24 *Goldberg v. Kelly*, 397 U.S. 254, 263-71 (1970). The DHS has not articulated how he has
25 become a flight risk or danger, such that no other measure but his jailing is required, and it took

1 its course of action without providing advance notice. Since Respondents' manner of re-
2 detaining Petitioner did not comport with procedural due process, he was unlawfully detained in
3 December of 2025.

4 The Western District of Washington is not alone in its assessment of the issue. A number
5 of other district and circuit courts have recently held that, in matters of re-detention, a pre-
6 detention hearing before a neutral decisionmaker should typically occur. This should happen
7 before someone is brought *back* into federal custody, as re-detention emphasizes due process
8 protections not typically afforded during initial detention under § 1225(b). *See Pinchi v. Noem*,
9 792 F. Supp. 3d 1025, 1037 (N.D. Cal. Jul. 24, 2025); *Diaz v. Garland*, 53 F.4th 1189, 1206-07
10 (9th Cir. 2022); *Euceda Martinez v. Larose*, Case No. 25-CV-3308 JLS, at *8-11 (S.D. Cal. Dec.
11 18, 2025) (paroled Honduran re-detained after missed master calendar hearing, parole revoked,
12 motion to rescind *in absentia* order of removal granted at later date; immediate release from
13 custody granted upon evaluation of *Mathews* factors); *Gonzalez Camarona v. Ripa, et al*, Case
14 No. 2:25-cv-1128-SPC-DNF, at *13 (M.D. Fla. Dec. 17, 2025) (re-detention of Cuban citizen
15 without a criminal record, parole revoked without cause; petition for habeas corpus granted and
16 release ordered within 24 hours); *Diaz Martinez v. Chestnut*, 1:25-cv-1826 TLN CKD P, at *6
17 (E.D. Cal. Jan. 16, 2026) ("Even if petitioner failed to properly check in with ICE officials on two
18 occasions as suggested, such violations of terms of release warrant a pre-detention hearing rather
19 than automatic detention. Such minimal violations do not, by themselves, suggest dangerousness or
20 flight risk in any respect").

21 **B. Petitioner's APA claims may be reviewed by this Court.**

22 The APA explicitly states that all agency actions are reviewable unless another adequate
23 statutory remedy exists. 5 U.S.C. § 704. While Congress has expressly limited APA review over

1 individual removal orders, it has not manifested an intent to require those challenging an
2 unlawful detention policy to seek relief through habeas rather than the APA. *R.I.L.-R v. Johnson*,
3 80 F. Supp. 3d 164, 186 (D.D.C. 2015); *see also J.G.G. v. Trump*, 772 F. Supp. 3d. 18, 31
4 (D.D.C. 2025). Petitioner's constitutional claims are distinct from his APA claims, even if
5 arising from the same government behavior.

6 Respondents are correct that only final agency actions are subject to APA review. *Envt'l*
7 *Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 36 F.4th 850, 867-68 (9th Cir. 2022). A "final
8 action," however, is one that (a) "mark(s) the consummation of the agency's decision-making
9 process," and (b) determines "rights or obligations" or "from which legal consequences will
10 flow." *See Bennett v. Spear*, 520 U.S. 154, 177-78 (1997). Courts should consider "whether the
11 action amounts to a definitive statement of the agency's position, [and] whether it has a direct
12 and immediate effect on the day-to-day operations of the subject." *Prutehi Litekyan: Save*
13 *Ritidian v. Dep't of Airforce*, 128 F.4th 1089, 1108 (9th Cir. 2025). Only four days ago, the
14 District of Oregon found that, under this rubric, an arrest by ICE constituted a "final agency
15 action." *A.B.D., C.C.S. v. Wamsley, et. al*, 6:25-cv-02014-AA, at *32 (D. Ore. Jan. 22, 2026).

16 The same must be true of the decision to re-detain Petitioner. Given his lack of criminal
17 history, his custodial status is a definitive statement of the DHS' position on him, and it has an
18 immediate effect on his life.

19 III. CONCLUSION

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

Respectfully submitted,

Dated: January 26th, 2026

s/ Benjamin Cornell
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I certify that this memorandum conforms with the local rules as it is 1,673 words in length.