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

ALEXANDER MOISES LUCENA-OJEDA,

Petitioner,

v.

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

Respondents.

Case No. 2:26-CV-00085

**PETITION FOR WRIT OF HABEAS
CORPUS UNDER 28 U.S.C. § 2241**

INTRODUCTION AND FACTUAL ALLEGATIONS

1. This case challenges the unlawful re-detention of the Petitioner, Mr. Alexander Moises Lucena-Ojeda. Petitioner is a twenty-seven-year-old Venezuelan citizen and is currently held in the Respondents' custody at the Northwest ICE Processing Center in Tacoma, Washington.

2. Petitioner last entered the United States on July 26, 2023, near Eagle Pass, Texas. Exh. "A" (Notice to Appear). Upon his entry into the United States, Petitioner was encountered by Texas state troopers and arrested for criminal trespass. Exh. "B" (Trespassing Record). around August 31, 2023, Petitioner was transferred by Texas authorities into the custody of the Department of Homeland Security ("DHS") and issued a Notice to Appear ("NTA"). Exh. A at 1. Although DHS provided the Petitioner an NTA, it had never filed the document with the Executive Office for Immigration Review ("EOIR"), and, as such, Removal Proceedings have yet to be initiated. Exh. "C" (EOIR Case Information).

3. Petitioner was released by DHS under an Order of Release on Recognizance ("ORR") issued August 31, 2023. Exh. "D" (ORR) at 1. The DHS released the Petitioner under INA § 236. *Id.* The DHS ORR notified Petitioner of certain requirements that must be obeyed. Among them are that he must report for any hearing or interview as directed by ICE or EOIR, surrender for removal if ordered to do so, report with a duty officer by October 3, 2023, not change residence without prior authorization, not violate local, state, or federal laws or ordinances or commit crimes, and assist ICE with obtaining any necessary travel documents. *Id.* By and large, Petitioner fulfilled these conditions, as Petitioner's only criminal law violation occurred prior to the issuance of the DHS Order of Release on Recognizance, and DHS was aware of that violation when it released Petitioner.

1 4. On October 3, 2023, Petitioner complied with the DHS orders and appeared for
2 his check-in without incident. Exh. D at 2. On October 10, 2023, Petitioner entered a plea of nolo
3 contendere to Criminal Trespass under Texas Penal Code 30.05(d)(1), a Class B misdemeanor.
4 Exh. B at 3. Petitioner was sentenced to 34 days' credit for time served and was not required to
5 pay any fees or court costs. *Id.*

6 5. On April 22, 2024, Petitioner again appeared for his DHS check-in, without
7 incident, after which he was provided a notification of his next reporting date, which stated that
8 “[s]ystem check show no new/derogatory information. No wants, no warrants.” Exh. “E” (I-
9 220R). Petitioner's sole criminal law violation occurred prior to receiving his ORR from DHS.
10 Apart from that, he had no further arrests or criminal law violations after being released on ORR
11 and had complied with the requirements imposed by DHS.

12 6. On October 31, 2024, Petitioner attended a biometrics appointment with USCIS
13 based on a previously filed I-589 Asylum Application. Exh. F (Biometrics Notice) at 1.
14 Petitioner was fingerprinted, and his background was checked; no arrest occurred at this
15 appointment.

16 7. On December 10, 2024, Petitioner married Mr. Adrian Bolden, a U.S. citizen. Mr.
17 Bolden filed an I-130 Petition for Alien Relative on behalf of the Petitioner on November 4,
18 2025. Exh. G (I-130 Receipt Notice) at 1.

19 8. Petitioner appeared for another check-in at the DHS Tukwila Field office on April
20 23, 2025, where the system provided a follow up appointment date for December 18, 2025.

21 9. On December 18, 2025, Petitioner showed up to his check-in, whereupon he was
22 taken to a separate room by DHS ICE agents, and was informed that he would be detained on
23 account of his Texas criminal trespass violation. Petitioner was provided a telephonic Spanish

1 interpreter at this appointment. Petitioner was provided a Spanish interpreter, but was never
2 given an opportunity to provide any evidence rebutting the allegations. Petitioner attempted to
3 tell the officers that the violation occurred before his release by ICE, but he received no response
4 or consideration to that statement. Petitioner was never provided an opportunity to rebut the
5 allegation by ICE that he violated his parole, contrary to ICE's own regulations.

6 10. Regulations mandate that "[u]pon revocation, the alien will be notified of the
7 reasons for revocation of his or her release. The Service will conduct an initial informal
8 interview promptly after his or her return to Service custody to afford the alien an opportunity to
9 respond to the reasons for revocation stated in the notification. The alien may submit any
10 evidence or information that he or she believes shows there is no significant likelihood he or she
11 be removed in the reasonably foreseeable future, or that he or she has not violated the order of
12 supervision. The revocation custody review will include an evaluation of any contested facts
13 relevant to the revocation and a determination whether the facts as determined warrant
14 revocation and further denial of release." 8 C.F.R. § 241.13(i)(3).

15 11. Here, DHS failed to follow its own regulations, as they did not conduct an
16 informal interview, they did not afford the Petitioner an opportunity to respond or an opportunity
17 to submit evidence showing that he has not violated the order, no review was provided
18 evaluating any contested facts relevant to the revocation, and no determination was made
19 whether the facts as determined warranted revocation. Respondent's decision to detain the
20 Petitioner violates due process, with no material changes to the facts or circumstances giving rise
21 to the notion that he is a danger to the community or a flight risk. Petitioner thus files this lawsuit
22 to seek an immediate release from ICE detention, as his ongoing detention violates his rights
23 under the federal Constitution and those guaranteed by the Administrative Procedure Act

1 (“APA”). The total and substantial deprivation of his liberty, without the slightest consideration
2 for his right to due process, is in clear violation of the Fifth Amendment.

3 12. Despite the many positive equities in this case, ICE made the decision to arrest
4 Petitioner on December 18, 2025 – ostensibly for a violation committed before the agency chose
5 to release the Petitioner on his own recognizance. The DHS was well aware of these violations,
6 as the Petitioner was transferred from State of Texas custody directly into DHS custody.
7 Furthermore, DHS could have detained the Petitioner on April 22, 2024, when it conducted a
8 background check, but instead the Petitioner was released because he had no new criminal law
9 violations. Exh. E. Similarly, DHS could have detained Petitioner on October 31, 2024, when he
10 appeared for a biometrics appointment, had his fingerprints processed, and had his background
11 checked yet again. Exh. F. DHS only chose to detain the Petitioner after a change in
12 administration, which espoused a more aggressive policy on detention.

13 13. Petitioner is currently detained in Tacoma, WA, at the Northwest ICE Processing
14 Center (NWIPC). Despite Petitioner's detention since December 18, 2025, DHS has not yet filed
15 Petitioner's NTA with EOIR, and removal proceedings have not yet been initiated. Exh. C.

16 14. Petitioner has a strong claim to relief from removal from the United States,
17 through his previously filed application for asylum, on account of 
18  Petitioner also has a strong claim for relief outside of immigration court based on his
19 marriage to Mr. Bolden, a U.S. citizen, who has already filed an immigrant petition on behalf of
20 the Petitioner.

21 15. In sum, the Petitioner fled Venezuela and arrived in the United States on July 26,
22 2023. Through little fault of his own, after crossing into the United States, Petitioner walked
23 through private property and was arrested for trespassing. Petitioner spent 34 days in jail and was

1 transferred directly to DHS custody. The DHS, aware of the Petitioner's trespass violation,
2 decided to release the Petitioner on his own recognizance. Petitioner complied with all the
3 requirements of his release. Yet, years after his trespass conviction, the DHS suddenly decides to
4 re-detain Petitioner for a violation that occurred prior to Petitioner's release on recognizance, a
5 violation that DHS was aware of.

6 16. As this Court has recently held, due process demands a hearing *prior* to the
7 government's decision to terminate a person's liberty. *See, e.g., E.A. T.-B. v. Wamsley*, --- F.
8 Supp. 3d --- No. C25-1192-KKE, 2025 WL 2402130, at *2–6 (W.D. Wash. Aug. 19, 2025);
9 *Ramirez Tesara v. Wamsley*, --- F. Supp. 3d ---, No. 2:25-CV-01723-MJP-TLF, 2025 WL
10 2637663, at *2–4 (W.D. Wash. Sept. 12, 2025); *Ledesma Gonzalez v. Bostock*, No. 2:25- CV-
11 01404-JNW-GJL, 2025 WL 2841574, at *7–9 (W.D. Wash. Oct. 7, 2025); *Kumar v. Wamsley*,
12 No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089, at *2–4 (W.D. Wash. Sept. 17, 2025);
13 Report & Recommendation, *Lopez Reyes v. Wamsley*, No. 2:25-cv-01868-JLR-ML (W.D. Wash.
14 Oct. 15, 2025), Dkt. 13; *Y.M.M. v. Wamsley*, No. 2:25-CV-02075-TMC, 2025 WL 3101782, at
15 *2 (W.D. Wash. Nov. 6, 2025). Many other U.S. District Courts have made similar holdings.

16 17. Accordingly, this Court should grant a petition for a writ of habeas corpus and
17 order the Petitioner's immediate release. *E.A. T.-B.*, 2025 WL 2402130, at *6 (ordering
18 immediate release because “a post-deprivation hearing cannot serve as an adequate procedural
19 safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty”);
20 *Ramirez Tesara*, 2025 WL 2637663, at *4 (similar); *Kumar*, 2025 WL 2677089, at *3–4
21 (similar); *Ledesma Gonzalez*, 2025 WL 2841574, at *9 (similar); *Y.M.M.*, 2025 WL 3101782, at
22 *2–3 (similar).

PARTIES

18. Petitioner, Mr. Alexander Moises Lucena-Ojeda, is a Venezuelan citizen and national presently held at the Northwest ICE Processing Center in Tacoma, Washington.

19. Respondent, Ms. Kristi Noem, is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security ("DHS"). Ms. Noem is sued as the cabinet-level secretary responsible for all immigration enforcement in the United States and implements enforcement of the Immigration and Nationality Act ("INA"). She also oversees the operations of Immigration and Customs Enforcement ("ICE").

20. Respondent, Mr. Todd Lyons, is sued in his capacity as the Acting Director of ICE, which is tasked with executing all immigration law enforcement in the United States.

21. Respondent, Ms. Laura Hermosilla, is sued in her official capacity as the Field Office Director of Seattle's ICE Field Office, which exercises control over the Spokane Field Office. She bears responsibility for the apprehension, detention, and removal of noncitizens within her Field Office's jurisdiction. Ms. Hermosilla is the immediate legal custodian of the Petitioner, for purposes of a federal habeas petition.

22. Respondent, Mr. Bruce Scott, is sued in his official capacity as the Warden of the Northwest ICE Processing Center, the privately-operated immigration detention facility where Petitioner is being held in custody. He exercises direct custody over the Petitioner.

JURISDICTION

23. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"). 8 U.S.C. § 1101 et. seq.; *see also Reno v. Flores*, 507 U.S. 292, 306 (1993) (affording immigrants Due Process under the Fifth Amendment).

24. The Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

25. The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

26. Venue is appropriate because the Petitioner is detained in this judicial district. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973).

27. Venue is also properly with this Court under 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and a substantial part of the events or omissions giving rise to this petition have occurred in the Western District of Washington.

28. For the same reasons, divisional venue is proper under Local Rule 3-2.

REQUIREMENTS OF 28 U.S.C. §§ 2243, 2241

29. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . as it [affords] a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it, and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

30. Petitioner is “in custody” for the purpose of 8 U.S.C. § 2241 because he is currently held at the Northwest ICE Processing Center. “[T]he Supreme Court has repeatedly

1 held that the in-custody requirement is met where the Government restricts a petitioner's
2 freedom of action or movement." *Doe v. Barr*, 479 F. Supp. 3d 20, 26 (S.D.N.Y. 2020), citing
3 *Jones v. Cunningham*, 371 U.S. 236 (1963) and *Spencer v. Kemna*, 523 U.S. 1, 7 (1998); see
4 also, e.g., *Devitri v. Cronen*, 290 F. Supp. 3d 86, 90 (D. Mass. 2017) (finding the same); *Alvarez*
5 *v. Holder*, 454 F. App'x 769, 772-72 (11th Cir. 2011) (same).

6 LEGAL FRAMEWORK RE: DUE PROCESS

7 31. Due process requires that if the DHS seeks to re-arrest a person like Petitioner —
8 i.e., a person who was previously released attended several previous ICE check-ins without
9 incident, has lived in the United States without incident, and has otherwise materially complied
10 with the terms of their release —the government must provide a hearing before a neutral
11 decisionmaker to determine whether any re-detention is justified. Typically, re-detention is only
12 justifiable when that person may be considered a flight risk or danger to the community.
13 Moreover, courts require a material change in circumstances in the danger/flight risk analysis
14 before revocation of release is justified.

15 32. Noncitizens in immigration proceedings are entitled to Due Process under the
16 Fifth Amendment of the U.S. Constitution. "Freedom from imprisonment—from government
17 custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected
18 by the Due Process Clause." *Zachrydas v. Davis*, 533 U.S. 678, 690 (2001). As this Court recently
19 recognized, this is the "the most elemental of liberty interests." *E.A. T.-B.*, 2025 WL 2402130, at
20 *3 (citation modified); see also *Ramírez Tesara*, 2025 WL 2637663, at *3 (stating that the
21 petitioner had "an exceptionally strong interest in freedom from physical confinement").

33. Consistent with this principle, those released on an ORR or other forms of conditional release have a liberty interest in their “continued liberty.” *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

34. Such liberty is protected by the Fifth Amendment because, “although indeterminate, [it] includes many of the core values of unqualified liberty,” such as the ability to be gainfully employed and live with family, “and its termination inflicts a ‘grievous loss’ on the [released individual] and often on others.” *Id.*

35. To protect against arbitrary re-detention and to ensure the right to liberty, due process requires “adequate procedural protections” that test whether the government’s asserted justification for a noncitizen’s physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zachrydas*, 533 U.S. at 690 (citation modified).

36. Due process thus guarantees notice and an individualized hearing before a neutral decisionmaker to assess danger or flight risk before the revocation of an individual’s release. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) (“The fundamental requisite of due process of law is the opportunity to be heard . . . at a meaningful time in a meaningful manner”); see also, e.g., *Morrissey*, 408 U.S. at 485 (requiring a “preliminary hearing to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed a violation of parole conditions” and holding that such determination be made by someone not directly involved in the case).

37. Although DHS may have discretion to revoke a prior custody determination, “courts require ‘a material change in circumstances as to whether the noncitizen poses a danger to the community or an unreasonable risk of flight’ before revoking release.” *Dunierov v. Noem*, No. 2:25-cv-01215-KG-KRS, 2026 U.S. Dist. LEXIS 2924, at *6 (D.N.M. Jan. 7, 2026), *citing*

1 *Cuyas-Fruiate v. Castro*, 2025 WL 3564145, at *2 (D.N.M.) (Gonzales, J.). When DHS makes no
 2 such assessment regarding the Petitioner, the agency creates “a substantial risk of erroneous
 3 deprivation of his liberty interest.” *Id.* When the Government re-detains a person previously
 4 released into the community, the question of “what process is due” is evaluated under *Mathews*
 5 *v. Eldridge*, 424 U.S. 319 (1976) —considering the private interest, the risk of erroneous
 6 deprivation and value of additional safeguards, and the Government’s interest. *Id.*

7 38. Many courts, including this one, have recognized that such principles apply with
 8 respect to the re-detention of noncitizens — especially those the DHS has arbitrarily begun taking
 9 back into custody, often after they have been released for months or even years.

10 39. For example, in *E.A. T.-B.*, this Court applied the *Mathews* framework to hold
 11 that, even in a case where the government asserted that mandatory detention initially applied, a
 12 person’s re-detention could not occur absent a hearing on their custody. The Court reached the
 13 same conclusion in *Ramirez Tesoro*, *Kumar*, and *Ledesma Gonzalez*. See *Ramirez Tesoro*, 2025
 14 WL 2637663, at *2–3; *Kumar*, 2025 WL 2677089, at *2–3; *Ledesma Gonzalez*, 2025 WL
 15 2841574, at *7–8.

16 40. In applying the three *Mathews* factors, the *E.A. T.-B.* Court held that the petitioner
 17 had “undoubtedly [been] deprive[d] of an established interest in his liberty,” 2025 WL 2402130,
 18 at *3, which, as noted, “is the most elemental of liberty interests,” *id.* (citation modified). The
 19 Court explained that, even if detention was mandatory, the risk of erroneous deprivation of
 20 liberty without a hearing was high because a hearing serves to ensure that the purposes of
 21 detention—the prevention of danger and flight risk—are properly served. *Id.* at *4–5.

22 41. Moreover, the *E.A. T.-B.* Court explained that “the Government’s interest in re-
 23 detaining non-citizens previously released without a hearing is low: although it would have

1 required the expenditure of finite resources (money and time) to provide Petitioner notice and
 2 hearing on violations before arresting and re-detaining him, those costs are far outweighed by the
 3 risk of erroneous deprivation of the liberty interest at issue.” *Id.* at *5. As a result, this Court
 4 ordered the petitioner’s immediate release. *Id.* at *6.

5 42. This Court applied a similar analysis in *Ramirez Tesara*. There, it reasoned that
 6 the petitioner had a “weighty” interest in his liberty and was entitled to the “full protections of the
 7 due process clause.” 2025 WL 2637663, at *3. When examining the value of additional
 8 safeguards, the Court further noted that, despite the government’s allegations of violations, a
 9 belief that it has “a valid reason to detain Petitioner does not eliminate its obligation to effectuate
 10 the detention in a manner that comports with due process.” *Id.* at *4 (quoting *E.A. T.-B.*, 2025
 11 WL 2402130, at *4). The Court concluded that any government interest in re-detention without a
 12 hearing was “minimal.” *Id.* Once again, the Court ordered the petitioner’s immediate release. *Id.*
 13 at *5.

14 43. The *Kumar* and *Ledesma Gonzalez* courts reached the same decision, holding that
 15 all three factors weighed in favor of affording the petitioner a proper hearing on his or her re-
 16 detention. 2025 WL 2677089, at *3–4; 2025 WL 2841574, at *7–9; *see also* Report &
 17 Recommendation, *Lopez Reyes*, No. 2:25-cv-01868-JLR-MLP (W.D. Wash. Oct. 15, 2025), Dkt.
 18 13 (same). The decisions in *E.A. T.-B.*, *Ramirez Tesara*, *Kumar*, and *Ledesma Gonzalez* are
 19 consistent with many other district court decisions addressing similar situations. *See, e.g., Valdez*
 20 *v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering
 21 immediate release due to lack of pre-deprivation hearing); *Garro Pinchi v. Noem*, --- F. Supp. 3d
 22 ---, No. 5:25-CV-05632-PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (similar); *Maklad v.*
 23 *Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025) (similar);

1 *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025)
2 (similar).

3 44. No statutory requirement of administrative exhaustion applies to Petitioner's case.
4 Moreover, the judicially created "general rule that parties exhaust prescribed administrative
5 remedies before seeking relief from the federal courts" does not apply to Petitioner's present
6 challenge, as there are no prescribed administrative remedies to which he could resort. *McCarthy*
7 *v. Madigan*, 503 U.S. 140, 144–45 (1992), *superseded by statute on other grounds as recognized*
8 *in Woodford v. Ngo*, 548 U.S. 81 (2006).

9 **CLAIMS FOR RELIEF**

10 **COUNT ONE**

11 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)**

Abuse of Discretion

12 **Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)**

13 45. Petitioner repeats, re-alleges, and incorporates by reference each allegation in the
14 preceding paragraphs as if fully set forth herein.

15 46. Under the APA, a court shall "hold unlawful and set aside agency action" that is
16 an abuse of discretion. 5 U.S.C. § 706(2)(A).

17 47. An action is an abuse of discretion if the agency "entirely failed to consider an
18 important aspect of the problem, offered an explanation for its decision that runs counter to the
19 evidence before the agency, or is so implausible that it could not be ascribed to a difference in
20 view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551
21 U.S. 644, 658 (2007) (citing *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto.*
22 *Ins. Co.*, 463 U.S. 29, 43 (1983)).

1 48. To survive an APA challenge, the agency must articulate “a satisfactory
2 explanation” for its action, “including a rational connection between the facts found and the
3 choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

4 49. By categorically revoking Petitioner’s freedom and bringing him into federal
5 custody, without written notification outlining the reasons for the revocation, nor making a
6 consideration of the individualized facts and circumstances, Respondents have violated the APA.

7 50. By continuing to detain Petitioner, Respondents have further abused their
8 discretion as there were no changes to the facts or circumstances since the agency made its initial
9 custody determination, which supports his current period of administrative custody.

10 51. Respondents previously considered Petitioner’s facts and circumstances and
11 determined that he was neither a flight risk nor a danger to the community. The agency was
12 correct in its assessment; Petitioner fulfilled all requirements set by ICE. The Petitioner was
13 transferred directly into DHS custody from the state of Texas. DHS was well aware of
14 Petitioner’s violation of criminal trespass before releasing him on no bond. No material changes
15 occurred to justify DHS’s sudden redetermination of the Petitioner’s release.

16 **COUNT TWO**

17 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(B)-(D)**

18 **Not in Accordance with Law and in Excess of Statutory Authority**

19 **Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)**

20 52. Petitioner restates and realleges all paragraphs as if fully set forth here.

21 53. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is
22 “contrary to constitutional right,” “in excess of statutory jurisdiction, authority, or limitations,”
23 or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A)-(D).

54. 8 U.S.C. § 1226(b) authorizes that “[t]he Attorney General at any time may revoke . . . parole authorized under [8 U.S.C. § 1226(a)]” and rearrest a noncitizen under the initial warrant. In implementing this statutory provision, 8 C.F.R. § 1236.1(c)(9) clarifies that such revocations of release from custody may only be carried out in the “discretion of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign).”

55. It is a well-established administrative principle that “agency action taken without lawful authority is at least voidable, if not void *ab initio*.” *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); see also *Hooker v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by unauthorized official).

56. Respondents have revoked Petitioner’s ability to live freely in the United States because of a categorical policy prepared by and implemented by government officials in Washington D.C., not by the individual exercise of discretion required by law or by the individuals enumerated by regulation to do so.

57. Respondents’ detention of Petitioner is not in accordance with the law and exceeds their statutory authority.

COUNT THREE

Violation of the Fifth Amendment Right to Procedural Due Process

58. Petitioner restates and realleges all paragraphs as if fully set forth here.

59. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of “life, liberty, or property, without

due process of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

60. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). While the government has discretion to detain individuals under 8 U.S.C. § 1226(a) and to revoke custodial decisions under 8 U.S.C. § 1226(b), this discretion is not “unlimited” and must comport with constitutional due process. *Zadvydas* at 698.

61. Although the initial decision to detain or release an individual may be at government’s discretion, “the government’s decision to release an individual from custody creates ‘an implicit promise,’ upon which that individual may rely, that their liberty ‘will be revoked only if [they] fail to live up to the ... conditions [of release].’” *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). Thus, even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that person is released from custody, they have a protected liberty interest in remaining out of custody. *Id.* (citing *Romero v. Kaiser*, No. 22-cv-20508, 2022 WL 1443250 (N.D. Cal. May 6, 2022)) (emphasis added).

62. The Due Process Clause generally “requires some kind of a hearing before the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). For cases involving re-detention, the guiding authority on the process stems from *Mathews*, *supra*. Under *Mathews*, a reviewing court must consider “(1) the private interest that will be affected by the official action, (2) the risk of an erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, and (3) the

1 Government's interest, including the function involved and the fiscal and administrative burdens
2 that an additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 325.

3 63. Given the facts and arguments outlined above, we predict that all *Mathews* factors
4 in this case will weigh heavily in Petitioner's favor (e.g., he has serious private interest in his
5 liberty, there was a severe lack of individualized review by the DHS, and nearly no changes in
6 material circumstances since his initial release). There is simply no reason for his continued
7 detention.

8 64. The revocation of Petitioner's ability to live freely in the United States was done
9 in an arbitrary and incoherent manner and was not based on a rational and individualized
10 determination of whether he is a safety or flight risk. This constitutes a violation of due process.

11 **COUNT FOUR**

12 **Violation of the Fifth Amendment Right to Counsel**

13 65. Upon information and belief, the Department of Homeland Security may intend to
14 move Petitioner to a remote facility far from Tacoma. Counsel can attest that many other
15 detainees have been moved in this manner, which makes communication with counsel extremely
16 difficult.

17 66. The constitutional right to counsel includes the ability to communicate effectively
18 with one's attorney and to prepare a defense. 8 U.S.C. § 1362; *Usubakunov v. Gonzales*, 16 F.4th
19 1299, 1304-1305 (9th Cir. 2021); *Gomez-Velazco v. Sessions*, 879 F.3d 989, 993 (9th Cir. 2018).

20 67. The Ninth Circuit has found that transferring detainees to remote locations
21 without notifying their attorney or providing access to legal representation is a violation of the
22 right to counsel. *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 565-66 (9th Cir. 1990); see
23 also *Innovation Law Lab v. Nielsen*, 342 F.Supp.3d 1067, 1080 (D. Or. 2018).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to:

- 1) Assume jurisdiction over this matter;
- 2) Issue an Order to Show Cause ordering Respondents to demonstrate why this Petition should not be granted within three days;
- 3) Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;
- 4) Declare that Petitioner's re-detention was made in violation of statute and regulation;
- 5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody; or in the alternative, find bond jurisdiction under 8 U.S.C. § 1226(a) as the record indicates Petitioner was detained under the same statute.
- 6) Issue an Order prohibiting the Respondents from transferring Petitioner outside the district without 48 hours' advance notice to the undersigned and the Court;
- 7) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- 8) Grant any further relief this Court deems just and proper.

Respectfully submitted,

Dated: January 9th, 2026

s/ Octaviano Jumanca
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Attorney for Petitioner

PETITION FOR WRIT OF HABEAS CORPUS
UNDER 28 USC § 2241

[Case No. 2:26-CV-00085] - 17

WESTLAKE LAW PLLC
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1
2 **VERIFICATION OF PETITIONER**

3
4 On behalf of Alexander Moises Lucena-Ojeda, the party in custody, I verify the facts
5 contained in the Petition for Writ of Habeas Corpus, upon information and belief and having
6 reviewed the relevant records and pleadings. Mr. Lucena-Ojeda has not verified the petition
7 himself as he is currently held in ICE custody.

8 Dated: January 9th, 2026

s/ Octavian Jumanca
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11
12 *Attorney for Petitioner*

CERTIFICATE OF SERVICE

The undersigned hereby certifies I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following

CM/ECF participant(s):

US Attorneys

Email: usawaw.habeas@usdoj.gov

Dated: January 9th, 2026

s/ Octavian Jumanca

Octavian Jumanca, WSB #46618