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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

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

Noted for Consideration: January 28, 2026.

I. INTRODUCTION

Petitioner Alexander Moises Lucena-Ojeda seeks habeas relief from ICE's re-detention after more than two years of release on recognizance. Petitioner last entered the United States on or about July 26, 2023, and was arrested in Texas for misdemeanor criminal trespass, later receiving a sentence of 34 days' time served. DHS then took custody, issued charging documents, and released Petitioner on an Order of Recognizance ("OREC"). On December 18, 2025, Petitioner reported to ERO as directed; ICE revoked the OREC and re-detained him.

Federal Respondents' Return does not identify any post-release conduct that would justify revocation. Instead, Respondents rely on a categorical theory that Petitioner is an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b), while also invoking the discretionary release-and-revocation framework of 8 C.F.R. § 1236.1(c)(8)-(9). The Return's legal theory does not answer the Petition's core claim: that due process and governing procedures require notice and a neutral hearing before the government may terminate a settled liberty interest by re-detention.

A. Respondents' reliance on 8 U.S.C. § 1225(b) is contrary to DHS's own custody determinations and the prevailing interpretation of the INA; 8 U.S.C. § 1226 governs.

Respondents argue that because Petitioner entered without inspection and was not "admitted," he is an "applicant for admission" and therefore mandatorily detained under 8 U.S.C. § 1225(b). But the Return confirms that DHS released Petitioner on an order of recognizance ("OREC") and later "revoked [it] in the exercise of ICE's discretion," and Respondents expressly cite 8 C.F.R. § 1236.1(c)(8)-(9) as the governing release-and-revocation authority. Those are INA § 236 / 8 U.S.C. § 1226 authorities and regulations, not INA § 235 / 8 U.S.C. § 1225.

Courts, including in this District, have rejected Respondents' interpretation that § 1225(b)(2) authorizes mandatory detention of noncitizens living in the interior of the United States long after entry. In *Rodriguez Vazquez v. Bostock*, the Western District of Washington concluded, after a thorough analysis, that "the government's [interpretation of § 1225] belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice," and courts nationwide have concluded that § 1225(b)(2) applies only to noncitizens "seeking admission," not interior residents. See *Vazquez v. Bostock*, 802 F. Supp. 3d 1297 (W.D. Wash. 2025); *Salcedo Aceros v. Kaiser*, 2025 WL 2637503, at *8 (N.D. Cal. Sept. 12, 2025).

Respondents also invoke "interim parole" concepts and 8 C.F.R. § 212.5(e)(1), while simultaneously stating that Petitioner entered without being "paroled." To the extent Respondents attempt to analogize Petitioner's OREC to parole, the parole regulation governing termination by written notice confirms—at minimum—that a revocation decision is not self-executing and must be communicated. See 8 C.F.R. § 212.5(e)(2).

Because DHS treated Petitioner as eligible for discretionary custody determinations and release under § 1226, Respondents cannot avoid constitutional scrutiny by relabeling the same case as "mandatory detention" under § 1225. The Court should reject Respondents' statutory theory and hold that § 1226 governs Petitioner's custody.

B. Even if Respondents could invoke § 1225(b), due process requires notice and a neutral hearing before re-detention of a compliant person previously released from custody.

The Due Process Clause applies to noncitizens in the United States. See *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). The Supreme Court has recognized that a protected liberty interest may arise from conditional release from physical restraint. See *Young v. Harper*, 520

1 U.S. 143, 147-49 (1997). Once the government releases a person subject to conditions,
2 termination of that “continued liberty” triggers procedural protections. Courts evaluate what
3 process is due under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

4 ICE’s own release regulation reflects why a revocation decision must be individualized:
5 release is authorized only where a noncitizen “demonstrate[s] to the satisfaction of the officer
6 that such release would not pose a danger to property or persons” and is “likely to appear for any
7 future proceeding.” 8 C.F.R. § 1236.1(c)(8). “Release [therefore] reflects a determination by the
8 government that the noncitizen is not a danger to the community or a flight risk.” *Saravia v.*
9 *Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v.*
10 *Sessions*, 905 F.3d 1137 (9th Cir. 2018).

11 Here, the Return does not contend that Petitioner violated a condition of release, became
12 a danger, or became a flight risk after DHS chose to release him. Instead, Respondents state only
13 that ICE revoked the OREC “in the exercise of ICE’s discretion,” and that Petitioner is
14 mandatorily detained under § 1225(b). That conclusory assertion is not a substitute for pre-
15 deprivation notice and a meaningful opportunity to be heard before a neutral decisionmaker on
16 the only legitimate civil-detention predicates: danger and flight risk.

17 *Danierov v. Noem* is instructive. There, the court held that a noncitizen released on
18 recognizance for two years was entitled to procedural safeguards before re-detention and
19 explained that, although DHS may revoke release “at any time,” courts require a “material
20 change in circumstances” related to danger or flight risk before reversing a prior release decision.
21 *Danierov* ordered a prompt bond hearing and required the government to justify re-detention by
22 clear and convincing evidence. *See Danierov v. Noem*, 2026 U.S. Dist. LEXIS 2924, at *6-*8
23 (D.N.M. Jan. 7, 2026).

1 In this District, courts similarly recognize that the government's interest in re-detaining a
 2 previously released person without notice and without a hearing is "low," and that a belief it has
 3 a valid reason to detain does not eliminate its obligation to proceed in a manner that comports
 4 with due process. *See E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1322 (W.D. Wash. 2025).

5 **C. Respondents have not shown compliance with governing revocation procedures; the**
 6 **record as presented mirrors the regulatory failures found unlawful in *Rokhfirooz*.**

7 The Petition alleges that ICE did not provide notice of the reasons for revocation, did not
 8 conduct a prompt informal interview, did not evaluate contested facts, and did not issue any
 9 documented determination justifying revocation. The Return does not rebut those allegations
 10 with any description of a pre-arrest revocation determination, any written notice of reasons, or
 11 any prompt post-arrest process.

12 *Rokhfirooz v. Larose* illustrates why that matters. There, the court held DHS failed to
 13 comply with the revocation procedures in 8 C.F.R. § 241.13(i)(3), emphasized that agencies must
 14 follow their own regulations, and granted habeas relief. The court ordered immediate release
 15 (subject to reinstatement of prior supervision). *See Rokhfirooz v. Larose*, 2025 U.S. Dist. LEXIS
 16 180605, at *8-*12 (S.D. Cal. Sept. 15, 2025). The same result is warranted here, where
 17 Respondents' Return supplies only a conclusory statement of "discretion" rather than a
 18 procedurally valid revocation and individualized justification.

19 **D. Respondents do not address Petitioner's APA and ancillary constitutional claims.**

20 The Petition also raises APA claims challenging ICE's categorical revocation decision as
 21 arbitrary, lacking individualized reasoning, and inconsistent with governing statutes and
 22 regulations, as well as a right-to-counsel claim based on the threat of transfer that would impair
 23 access to counsel. The Return does not address these claims. Respondents' silence on these
 24 independent grounds for relief reinforces that the Petition's core allegations remain unrebutted.

PETITIONER'S TRAVERSE

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1 **II. CONCLUSION**

2 For the foregoing reasons, Petitioner respectfully requests that the Court grant the
3 Petition and order Petitioner's immediate release from ICE custody. In the alternative, consistent
4 with *Danierov*, Petitioner requests that the Court order a bond hearing under 8 U.S.C. § 1226(a)
5 before an Immigration Judge within seven (7) days, at which the government bears the burden to
6 justify re-detention by clear and convincing evidence, and require that Petitioner remain at
7 liberty absent timely compliance. *See Danierov*, 2026 U.S. Dist. LEXIS 2924, at *7-*8.

8 Respectfully submitted,

9 Dated: January 28th, 2026

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18 I certify that this memorandum conforms with the local rules, as it is 1,403 words in length.
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