

BENJAMIN CORNELL, WSB #49553
ASCENT LEGAL, PLLC
5401 South Tacoma Way, Office 13
Tacoma, WA 98409
Office: (253) 300-6819
ben@ascentlegal.net

Attorney for Petitioner

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

JOSE ZAMBRANO-VAZQUEZ,
Petitioner,

v.

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,

Respondents.

Case No. 2:26-cv-00122-RSM

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

Noted for Consideration: February 2, 2026

I. FACTS

Petitioner does not dispute the factual summary by Respondents, as it is accurately recited. *See* Doc. Entry 5, p. 3-4. Nor does he dispute that, under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), he is to be considered an applicant for admission and thus ineligible for release on bond from the immigration judge. He does note that, on December 17, 2025, he was denied bond as an “alternative finding,” with the immigration judge primarily finding that it lacked jurisdiction but secondarily finding that he is a danger to the community and a flight risk. Doc. Entry 1-9, p. 1.

II. ARGUMENT

A. Petitioner’s continued detention is unconstitutional.

First, Respondents’ reliance on *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 117-118 (W.D. Wash. 2019) is misplaced. The issue here is not one of prolonged detention without a court-ordered bond hearing; on January 14, 2026, Petitioner only alleged that his Due Process rights were violated as he was returned to custody without the benefit of a pre-detention hearing before a neutral decisionmaker. This step should have occurred to determine whether his re-detention was warranted due to his becoming a danger to the community or a flight risk. Doc. Entry 1, p. 15-16. *Banda* is not applicable to Petitioner’s claims, and it is clear on the facts that the Respondents did *not* consider Petitioner to be a danger or flight risk since (a) the DHS jointly moved to administratively close his removal proceedings, (b) no new criminality has occurred since October 31, 2012, and (c) the Tacoma Immigration Court previously granted a bond from immigration detention in 2013, but denied one in 2025 without a negative change to the facts.

It is broadly referenced in Respondents’ return memorandum that 8 U.S.C. § 1225(b) mandates detention for aliens such as Petitioner. Doc. Entry 5, p. 2. That is generally correct, but

1 release can be ordered where violations of the Constitution and/or U.S. laws occur. This Court
 2 has very recently held that ICE re-detention without substantive review violates a
 3 noncitizen's rights under the 5th Amendment. *See, e.g., Tomas Manuel, et. al. v. Hermosillo, et.*
 4 *al*, C25-2353-TL-MLP (W.D. Wash. Dec. 10, 2025); *Bonilla Mejia v. Wamsley*, No 2:25-CV-
 5 02196 (W.D. Wash. Nov. 26, 2025); *Francois et. al v. Wamsley*, Case No. C25-2122-RSM
 6 (W.D. Wash. Dec. 5, 2025); *Lopez Reyes v. Wamsley*, Case No. C25-1868-JLR-MLP (W.D.
 7 Wash. Oct. 15, 2025); *Cabrera Perez c. Hermosillo, et. al*, C25-2542-RSM (W.D. Wash. Jan. 14,
 8 2026).

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

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

16 As previously argued, all *Mathews* factors bend heavily in Petitioner’s favor. To begin,
 17 he has a substantial liberty interest in remaining out of custody. *Mathews v. Eldridge*, 424 U.S.
 18 319, 335 (1976). “Freedom from imprisonment—from government custody, detention, or other
 19 forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects.”
 20 *Zadvydas v. David*, 533 U.S. 678, 690 (2001). The risk of an erroneous deprivation of that
 21 interest was also quite high, especially since Petitioner has a five-year-old son at home. *Mathews*
 22 at 335; Doc. Entry 1, p. 5, ¶ 17.

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
 become a flight risk or danger, such that no other measure but his jailing was required, and it
 took its course of action without providing advance notice. Since Respondents’ manner of re-

1 detaining Petitioner did not comport with procedural due process, he was unlawfully detained in
2 November of 2025.

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

20 Respondents do address Petitioner's re-detention claims by stating that he has not offered
21 evidence that he was released from custody in 2013 pursuant to parole under 8 U.S.C. §
22 1182(d)(5)(A) or an Order of Recognizance. Doc. Entry 5 at p. 9. However, he has provided
23 this Court with evidence that he was granted an \$8,000 bond on October 8, 2013. *See* Doc. Entry

1 1-4. A release on an immigration bond occurs under 8 C.F.R. § 236, which is an immigration
 2 regulation and to which regulatory revocation procedures do apply; just as *Mathews* applies to
 3 re-detention under 8 U.S.C. § 1225(b), it also applies to detention (and re-detention) under 8
 4 U.S.C. § 1226(a)¹. See *Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022). Respondents have cited
 5 to no law supporting the assertion that regulatory revocation procedures apply only to parolees
 6 and those released on recognizance, nor have they offered evidence that the conditions of
 7 Petitioner's bond were breached. *Mathews* remains the governing standard for evaluating
 8 procedural due process in re-detention scenarios, including those involving persons previously
 9 released on an immigration bond.

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

11 The APA explicitly states that all agency actions are reviewable unless another adequate
 12 statutory remedy exists. 5 U.S.C. § 704. While Congress has expressly limited APA review over
 13 individual removal orders, it has not manifested an intent to require those challenging an
 14 unlawful detention policy to seek relief through habeas rather than the APA. *R.I.L-R v. Johnson*,
 15 80 F. Supp. 3d 164, 186 (D.D.C. 2015); see also *J.G.G. v. Trump*, 772 F. Supp. 3d. 18, 31
 16 (D.D.C. 2025). Petitioner's constitutional claims are distinct from his APA claims, even if
 17 arising from the same government behavior.

18 Respondents' reading of the APA is narrow. Pursuant to 8 U.S.C. § 1252(b)(9),
 19 Congress has explicitly authorized judicial review of final orders concerning "all questions of
 20 law and fact, including interpretation and application of constitutional and statutory provisions,
 21 arising from any action take or proceeding brought to remove an alien from the United States."

22
 23 ¹ Further, as indicated by the bond order of December 17, 2025, Petitioner is now considered detained under 8
 U.S.C. § 1225(b) pursuant to *Matter of Yajure Hurtado*; Respondents concede this by stating that the Department
 "lawfully exercised its statutory authority to detain him under 8 U.S.C. § 1225(b)." Doc. Entry 5, p. 9.

1 Here, the lawfulness of Petitioner's custody is appropriately raised to a Court which should find
2 jurisdiction. *See Gonzalez v. United States Immigr. And Customs Enf't*, 975 F.3d 788, 810 (9th
3 Cir. 2020) ("The Supreme Court has since instructed that § 1252(b)(2) is a 'targeted' and
4 'narrow' provision that 'is certainly not a bar where, as here, the parties are not challenging any
5 removal proceedings.'")

6 Respondents are also correct that only final agency actions are subject to APA review.
7 *Evn't Def. Ctr. v. Bureau of Ocean Energy Mgmt.*, 36 F.4th 850, 867-68 (9th Cir. 2022). A
8 "final action," however, is one that (a) "mark(s) the consummation of the agency's decision-
9 making process," and (b) determines "rights or obligations" or "from which legal consequences
10 will flow." *See Bennett v. Spear*, 520 U.S. 154, 177-78 (1997). Courts should consider "whether
11 the 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 recent
17 criminal history, his custodial status is a definitive statement of the DHS' position on him, and it
18 has an immediate effect on his life.

19 **C. Petitioner's arguments pertaining to the right to counsel are moot.**

20 Given the Court Scheduling Order of January 14, 2026, in which Petitioner was ordered
21 48 hours' notice prior to any action being taken to move or transfer him from the Western
22 District of Washington, and the fact that jurisdiction has now vested with this Court, he concedes
23 that his argument regarding his Fifth Amendment Right to Counsel has become moot.

III. CONCLUSION

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

Respectfully submitted,

Dated: February 3rd, 2026

s/ Benjamin Cornell
BENJAMIN CORNELL, WSB #49533
Ascent Legal, PLLC
5401 South Tacoma Way, Office 13
Tacoma, WA 98409
Office: (253) 300-6819
ben@ascentlegal.net
Attorney for Petitioner

I certify that this memorandum conforms with the local rules as it is 1,798 words in length.