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

YUNIOR ALEXANDER GUTIERREZ NAVARRO,

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-00334

**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. Yunior Alexander Gutierrez Navarro. Petitioner is a thirty-five-year-old Venezuelan citizen and is currently held in the Respondents' custody at the Northwest ICE Processing Center in Tacoma, Washington.

2. Petitioner applied to enter the United States through the CBP One mobile application and received an appointment to come to the United States to present his application. Exh. A ("Petitioner's Declaration") at 1.

3. On July 27, 2023, Petitioner presented at the border for his prescheduled appointment and told the immigration official that he was seeking asylum. Exh. A at 1. Petitioner was inspected, searched, fingerprinted, photographed, questioned, and detained for about 6 hours before a border official permitted Petitioner entry into the United States, allowing him to pursue his asylum application out of custody. *Id.*

4. That same day, the Department of Homeland Security ("DHS") issued Petitioner a Form I-862, Notice to Appear ("NTA"), charging him with inadmissibility pursuant to INA § 212(a)(7)(A)(i)(I) (8 U.S.C. § 1182(a)(7)(A)(i)(I)). Exh. B ("Notice to Appear") at 4. Petitioner was also issued an I-94 by DHS, providing him with an admission record number, the date of his admission, and listing "N/A" in the "Admit Until Date" field. Exh. C ("I-94").

5. After being released by DHS, Petitioner moved to Washington State and updated his address with the immigration court. Petitioner then filed his asylum application and appeared for a biometrics appointment. Exh. A at 1, Exh. F.

1 6. Petitioner also filed an application for Temporary Protected Status (“TPS”) in
2 2024. The Petitioner was also granted Temporary Protected Status by DHS on October 12, 2024.
3 Exh. E (TPS Approval Notice).

4 7. On March 5, 2025, DHS approved the Petitioner’s request for work authorization
5 renewal tied to his pending asylum application before the Immigration Court. Exh. H
6 (Employment Authorization Approval Notice).

7 8. On April 1, 2025, DHS informed the Petitioner that he did not need to show up
8 for an additional biometrics appointment because they were able to reuse his previously captured
9 fingerprints and biometrics. Exh. G (“USCIS Biometrics Reuse Notice”).

10 9. On January 2, 2026, Petitioner was loading groceries in his vehicle after leaving a
11 supermarket when three DHS vehicles surrounded him. DHS agents exited the vehicles and
12 detained the Petitioner. DHS agents took Petitioner’s wallet, which contained his social security
13 card and an unexpired employment authorization document. At that point, no explanation was
14 given to the Petitioner for his arrest. Exh. A at 1-2.

15 10. Petitioner was transported to a local ICE office, where he was processed by DHS.
16 He was held at the ICE office for approximately 8 hours. Petitioner was placed in a room with
17 other detainees, and then had his biometrics and fingerprints taken again. Hours after being
18 arrested, a DHS employee at the ICE office told the Petitioner that he was detained because his
19 TPS had expired, and that he would now receive a faster court date while being detained. No
20 other justification was provided by DHS for its decision to detain Petitioner. Exh. A. at 1-2.

21 11. Petitioner has never been arrested for any crime in the United States. Washington
22 State criminal records check reveals no criminal convictions or arrests for the Petitioner. Exh. I
23 (“Washington State Patrol Criminal Background Search Results.”)

12. DHS has failed to provide any valid reason for the Petitioner's detention. DHS's position that the expiration of Venezuelan TPS grounds re-detention is not valid. Petitioner lost TPS status because DHS has decided to terminate TPS for all Venezuelans. Therefore, this justification is invalid because it is not tailored to the Petitioner and has nothing to do with the Petitioner being a flight risk or a danger to the community. Furthermore, the Petitioner didn't have TPS when DHS first released the Petitioner shortly after admitting him to pursue asylum in the United States.

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

14. Here, DHS failed to follow its own regulations, as they did not conduct an informal interview, they did not afford the Petitioner an opportunity to respond or an opportunity to submit evidence showing that he has not violated the terms of his release, no review was provided evaluating any contested facts relevant to the revocation, and no determination was made whether the facts as determined warranted revocation. Respondent's decision to detain the Petitioner violates due process, with no material changes to the facts or circumstances giving rise to the notion that he is a danger to the community or a flight risk. Petitioner thus files this lawsuit

1 to seek an immediate release from ICE detention, as his ongoing detention violates his rights
2 under the federal Constitution and those guaranteed by the Administrative Procedure Act
3 (“APA”). The total and substantial deprivation of his liberty, without the slightest consideration
4 for his right to due process, is in clear violation of the Fifth Amendment.

5 15. Petitioner has a strong claim to relief from removal from the United States,
6 through his previously filed application for asylum, on account of his political opinion.

7 16. In sum, the Petitioner fled Venezuela and arrived in the United States on July 27,
8 2023. Petitioner was thoroughly vetted by DHS, admitted, and paroled into the United States as
9 an arriving alien to seek Asylum in Immigration Court. Petitioner filed his asylum application
10 with the Immigration Court, and DHS issued him work authorization and a Social Security
11 number. DHS further vetted the Petitioner when it approved his TPS for Venezuela. Petitioner
12 has done nothing to warrant re-detention. He has committed no crimes, and has not violated any
13 conditions imposed upon him. The rationale given by DHS that they can now arbitrarily detain
14 the Petitioner because of the end of Venezuelan TPS is not a valid reason, and violates the
15 Petitioner’s constitutional rights, as well as his rights under the APA.

16 17. As this Court has recently held, due process demands a hearing *prior* to the
17 government’s decision to terminate a person’s liberty. *See, e.g., E.A. T.-B. v. Wamsley*, --- F.
18 Supp. 3d --- No. C25-1192-KKE, 2025 WL 2402130, at *2–6 (W.D. Wash. Aug. 19, 2025);
19 *Ramirez Tesara v. Wamsley*, --- F. Supp. 3d ---, No. 2:25-CV-01723-MJP-TLF, 2025 WL
20 2637663, at *2–4 (W.D. Wash. Sept. 12, 2025); *Ledesma Gonzalez v. Bostock*, No. 2:25- CV-
21 01404-JNW-GJL, 2025 WL 2841574, at *7–9 (W.D. Wash. Oct. 7, 2025); *Kumar v. Wamsley*,
22 No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089, at *2–4 (W.D. Wash. Sept. 17, 2025);
23 Report & Recommendation, *Lopez Reyes v. Wamsley*, No. 2:25-cv-01868-JLR-ML (W.D. Wash.

Oct. 15, 2025), Dkt. 13; *Y.M.M. v. Wamsley*, No. 2:25-CV-02075-TMC, 2025 WL 3101782, at *2 (W.D. Wash. Nov. 6, 2025). Many other U.S. District Courts have made similar holdings.

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

PARTIES

19. Petitioner, Mr. Yunior Alexander GUTIERREZ NAVARRO, is a Venezuelan citizen and national presently held at the Northwest ICE Processing Center in Tacoma, Washington.

20. 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 for implementing the Immigration and Nationality Act ("INA"). She also oversees the operations of Immigration and Customs Enforcement ("ICE").

21. 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.

22. Respondent, Ms. Laura Hermosillo, 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

1 within her Field Office's jurisdiction. Ms. Hermosilla is the immediate legal custodian of the
2 Petitioner, for purposes of a federal habeas petition.

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

6 JURISDICTION

7 24. This action arises under the Constitution of the United States and the Immigration
8 and Nationality Act ("INA"). 8 U.S.C. § 1101 et. seq.; *see also Reno v. Flores*, 507 U.S. 292,
9 306 (1993) (affording immigrants Due Process under the Fifth Amendment).

10 25. The Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus),
11 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution
12 (Suspension Clause).

13 26. The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et.
14 seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., and the All Writs Act, 28 U.S.C. §
15 1651.

16 VENUE

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

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

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

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

30. 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).

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

LEGAL FRAMEWORK RE: DUE PROCESS

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

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

34. 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).

35. 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.*

36. 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.” *Zadvydas*, 533 U.S. at 690 (citation modified).

37. 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

1 probable cause or reasonable ground to believe that the arrested parolee has committed a
2 violation of parole conditions” and holding that such determination be made by someone not
3 directly involved in the case).

4 38. Although DHS may have discretion to revoke a prior custody determination,
5 “courts require ‘a material change in circumstances as to whether the noncitizen poses a danger
6 to the community or an unreasonable risk of flight’ before revoking release.” *Danierov v. Noem*,
7 No. 2:25-cv-01215-KG-KRS, 2026 U.S. Dist. LEXIS 2924, at *6 (D.N.M. Jan. 7, 2026), *citing*
8 *Cuya-Priale v. Castro*, 2025 WL 3564145, at *2 (D.N.M.) (Gonzales, J.). When DHS makes no
9 such assessment regarding the Petitioner, the agency creates “a substantial risk of erroneous
10 deprivation of his liberty interest.” *Id.* When the Government re-detains a person previously
11 released into the community, the question of “what process is due” is evaluated under *Mathews*
12 *v. Eldridge*, 424 U.S. 319 (1976) —considering the private interest, the risk of erroneous
13 deprivation and value of additional safeguards, and the Government’s interest. *Id.*

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

17 40. For example, in *E.A. T.-B.*, this Court applied the *Mathews* framework to hold
18 that, even in a case where the government asserted that mandatory detention initially applied, a
19 person’s re-detention could not occur absent a hearing on their custody. The Court reached the
20 same conclusion in *Ramirez Tesara, Kumar, and Ledesma Gonzalez*. *See Ramirez Tesara*, 2025
21 WL 2637663, at *2–3; *Kumar*, 2025 WL 2677089, at *2–3; *Ledesma Gonzalez*, 2025 WL
22 2841574, at *7–8.

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

42. Moreover, the *E.A. T.-B.* Court explained that “the Government’s interest in re-detaining non-citizens previously released without a hearing is low: although it would have required the expenditure of finite resources (money and time) to provide Petitioner notice and hearing on violations before arresting and re-detaining him, those costs are far outweighed by the risk of erroneous deprivation of the liberty interest at issue.” *Id.* at *5. As a result, this Court ordered the petitioner’s immediate release. *Id.* at *6.

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

44. The *Kumar* and *Ledesma Gonzalez* courts reached the same decision, holding that all three factors weighed in favor of affording the petitioner a proper hearing on his or her re-

detention. 2025 WL 2677089, at *3–4; 2025 WL 2841574, at *7–9; *see also* Report & Recommendation, *Lopez Reyes*, No. 2:25-cv-01868-JLR-MLP (W.D. Wash. Oct. 15, 2025), Dkt. 13 (same). The decisions in *E.A. T.-B.*, *Ramirez Tesara*, *Kumar*, and *Ledesma Gonzalez* are consistent with many other district court decisions addressing similar situations. *See, e.g., Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation hearing); *Garro Pinchi v. Noem*, --- F. Supp. 3d ---, No. 5:25-CV-05632-PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar).

45. Although 28 U.S.C. § 2241 "does not specifically require petitioners to exhaust direct appeals before filing petitions for habeas corpus," the Ninth Circuit "require[s], as a prudential matter, that habeas petitioners exhaust available judicial and administrative remedies before seeking relief under § 2241." *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). The Court "may waive the prudential exhaustion requirement if administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017).

46. Additionally, considering Petitioner's due process challenges to their detention without the opportunity for release on bond, this matter falls into the futility exception to the exhaustion requirement "carved for constitutional challenges to ... [DHS] procedures." *Iraheta-Martinez v. Garland*, 12 F.4th 942, 949 (9th Cir. 2021) (*quoting Sola v. Holder*, 720 F.3d 1134, 1135 (9th Cir. 2013) (*per curiam*)) (alterations in original). As to procedural due process claims

1 in particular, "[t]he key is to distinguish the procedural errors, constitutional or otherwise, that
2 are correctable by the administrative tribunal from those that lie outside the BIA's ken." *Sola*,
3 720 F.3d at 1135; *see also In re G--- K---*, 26 I. & N. Dec. 88, 96-97 (BIA 2013) (explaining that
4 "[n]either the [BIA] nor the Immigration Judges have the authority to rule on the
5 constitutionality of the statutes we administer.")

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

12 CLAIMS FOR RELIEF

13 COUNT ONE

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

15 Abuse of Discretion

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

17 48. Petitioner repeats, re-alleges, and incorporates by reference each allegation in the
18 preceding paragraphs as if fully set forth herein.

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

21 50. An action is an abuse of discretion if the agency "entirely failed to consider an
22 important aspect of the problem, offered an explanation for its decision that runs counter to the
23 evidence before the agency, or is so implausible that it could not be ascribed to a difference in
24 view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551

1 U.S. 644, 658 (2007) (citing *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto.*
2 *Ins. Co.*, 463 U.S. 29, 43 (1983)).

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

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

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

12 54. Respondents previously considered Petitioner’s facts and circumstances and
13 determined that he was neither a flight risk nor a danger to the community. The agency was
14 correct in its assessment; Petitioner fulfilled all requirements set by ICE. DHS vetted and
15 admitted the Petitioner into the United States for the purpose of seeking asylum before an
16 Immigration Judge. The Petitioner followed all instructions, updated his address with the
17 immigration court, filed his asylum application, and was even granted TPS by DHS. The
18 Petitioner did nothing to warrant re-detention. DHS failed to provide Petitioner with any
19 rationale as to why his re-detention is justified or constitutional.

20 **COUNT TWO**

21 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(B)-(D)**
22 **Not in Accordance with Law and in Excess of Statutory Authority**
Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)

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

24 PETITION FOR WRIT OF HABEAS CORPUS
UNDER 28 USC § 2241

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

57. 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).”

58. 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 Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by unauthorized official).

59. 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.

60. 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

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

62. 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.

63. 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.

64. 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).

65. 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*.

1 Under *Mathews*, a reviewing court must consider “(1) the private interest that will be affected by
2 the official action, (2) the risk of an erroneous deprivation of that interest through the procedures
3 used, and the probable value, if any, of additional or substitute procedural safeguards, and (3) the
4 Government’s interest, including the function involved and the fiscal and administrative burdens
5 that an additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 325.

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

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

14 COUNT FOUR

15 Violation of the Fifth Amendment Right to Counsel

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

20 69. The constitutional right to counsel includes the ability to communicate effectively
21 with one’s attorney and to prepare a defense. 8 U.S.C. § 1362; *Usubakunov v. Gonzales*, 16 F.4th
22 1299, 1304-1305 (9th Cir. 2021); *Gomez-Velazco v. Sessions*, 879 F.3d 989, 993 (9th Cir. 2018).

70. The Ninth Circuit has found that transferring detainees to remote locations without notifying their attorney or providing access to legal representation is a violation of the right to counsel. *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 565-66 (9th Cir. 1990); *see 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 28th, 2026

s/ Octavian Jumanca

PETITION FOR WRIT OF HABEAS CORPUS
UNDER 28 USC § 2241

[Case No. 2:26-cv-00334] - 17

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VERIFICATION OF PETITIONER

On behalf of Yunion Alexander GUTIERREZ NAVARRO, the party in custody, I verify the facts contained in the Petition for Writ of Habeas Corpus, upon information and belief and having reviewed the relevant records and pleadings. Mr. Gutierrez Navarro has not verified the petition himself as he is currently held in ICE custody.

Dated: January 28th, 2026

s/ Octavian Jumanca
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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 28th, 2026

s/ Octavian Jumanca
Octavian Jumanca, WSB #46618