

The Honorable Theresa L. Fricke

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-TLF

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

Noted for Consideration:
February 17, 2026.

I. INTRODUCTION

This case involves the arbitrary re-detention of Yunior Alexander Gutierrez Navarro, a Venezuelan asylum seeker who entered the United States through the CBP One application on July 27, 2023, was thoroughly vetted and paroled into the community for over two years, and was suddenly re-arrested on January 2, 2026, without notice or hearing based solely on the

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1 categorical termination of Venezuelan Temporary Protected Status (TPS). Mr. Gutierrez had no
2 criminal record, violated no conditions of his release, and posed no flight risk or danger to the
3 community.

4 Respondent's Return fundamentally mischaracterizes both the legal claims and requested
5 relief in the Petition. Rather than addressing the Petition's core constitutional challenge-that due
6 process requires notice and a pre-deprivation hearing before revoking liberty after lengthy
7 community release-Respondent deflects to irrelevant arguments about mandatory detention
8 statutes, bond hearings that are legally unavailable to arriving aliens, and jurisdictional bars that
9 do not apply to procedural challenges to detention practices. Respondent's Return reveals internal
10 inconsistencies, arguing simultaneously that Petitioner is subject to mandatory detention under §
11 1225(b) while suggesting he should have sought discretionary bond relief under § 1226(a). Most
12 critically, Respondent entirely fails to address the Petition's Administrative Procedure Act (APA)
13 claims challenging ICE's failure to follow required procedures for parole revocation and the
14 unauthorized nature of the categorical re-detention policy.

15 **A. The Court Has Jurisdiction Under § 2241 to Review Due Process Challenges to**
16 **Immigration Detention**

17 Respondent's jurisdictional arguments fundamentally misunderstand the scope of §
18 1252(b)(9), which bars only challenges that "aris[e] from any action taken or proceeding brought
19 to remove an alien." *Johnson v. Guzman Chavez*, 594 U.S. 523, 547, 141 S. Ct. 2271, 210 L. Ed.
20 2d 656 (2021). The Ninth Circuit in *Nadarajah v. Gonzales*, 443 F.3d 1069 (9th Cir. 2006)
21 explicitly held that § 1252(b)(9) "did not bar the district court's review of a challenge to
22 prolonged immigration detention before a final order of removal had issued." *J. E. F.M. v.*
23 *Whitaker*, 908 F.3d 1157, 1160 (9th Cir. 2018). The Supreme Court in *Jennings v. Rodriguez*,
583 U.S. 281, 138 S. Ct. 830, 200 L. Ed. 2d 122 (2018) confirmed this principle, explaining that

1 challenges to detention procedures do not fall within § 1252(b)(9)'s scope when petitioners "are
2 not asking for review of an order of removal; they are not challenging the decision to detain them
3 in the first place or to seek removal; and they are not even challenging any part of the process by
4 which their removability will be determined." *Nielsen v. Preap*, 586 U.S. 392, 402, 139 S. Ct.
5 954, 962 (2019).

6 Section 1252(g) bars review of decisions to commence proceedings, adjudicate cases, or
7 execute removal orders, but does not preclude challenges to the procedures used in detention
8 decisions. The Supreme Court in *Thuraissigiam* recognized that habeas relief remains available
9 for challenges seeking "release from executive detention" rather than challenges seeking "to
10 remain in the United States." *Rauda v. Jennings*, 55 F.4th 773, 775 (9th Cir. 2022). Mr.
11 Gutierrez's challenge to the lack of a pre-deprivation process in his re-detention seeks release
12 from unlawful custody, not review of removal-related decisions.

13 Respondent's reliance on § 1252(e)(3) is misplaced. That provision limits judicial review
14 of "determinations under Section 1225(b)" to constitutional and statutory challenges filed in the
15 D.C. District Court within 60 days, but applies only to systemic challenges to regulations
16 implementing expedited removal procedures. *Singh v. Barr*, 982 F.3d 778 (9th Cir. 2020). The
17 provision "does not grant the appellate court either jurisdiction or venue to review such petitions"
18 because it concerns regulatory challenges, not individual habeas petitions challenging detention
19 procedures. *Id.* Mr. Gutierrez's § 2241 petition challenges the procedures used in his individual
20 case, not the validity of regulations implementing § 1225(b).

21 **B. Due process requires notice and a neutral hearing before re-detention of a
22 compliant person previously released from custody.**

23 "The Due Process Clause applies regardless of whether the noncitizen's presence is
24 lawful, unlawful, temporary, permanent and regardless of whether detention falls under § 1225
or § 1226." *Benitez v. Hermosillo*, No. 2:25-cv-02535-BAT, 2025 LX 631170, at *8 (W.D.

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1 Wash. Dec. 30, 2025) citing *Zadvydas v. Davis*, 533 U.S. at 693; *Hernandez v. Sessions*, 872
2 F.3d 976, 990 (9th Cir. 2017) ("[I]t is well-established that the Due Process Clause stands as a
3 significant constraint on the manner in which the political branches may exercise their plenary
4 authority."). Petitioner's interest in not being detained is "the most elemental of liberty
5 interests[.]" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S. Ct. 2633, 2646 (2004).

6 The Due Process Clause applies to noncitizens in the United States. See *Zadvydas v.*
7 *Davis*, 533 U.S. 678, 693 (2001). The Supreme Court has recognized that a protected liberty
8 interest may arise from conditional release from physical restraint. See *Young v. Harper*, 520
9 U.S. 143, 147-49 (1997). Once the government releases a person subject to conditions,
10 termination of that "continued liberty" triggers procedural protections. Courts evaluate what
11 process is due under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

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

19 Under the three-factor test from *Mathews*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18,
20 courts must balance (1) the private interest that will be affected by the official action; (2) the risk
21 of erroneous deprivation of such interest through the procedures used, and the probable value, if
22 any, of additional or substitute procedural safeguards; and (3) the government's interest. *Shinault*
23 *v. Hawks*, 782 F.3d 1053 (9th Cir. 2015).

1 “As to Petitioner’s situation in which he was initially released upon parole and then
2 redetained numerous courts in this circuit have found such individuals have a protected liberty
3 interest in remaining out of custody.” *Benitez*, 2025 LX 631170, at *8 (W.D. Wash. Dec. 30,
4 2025); *See also Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025) (collecting
5 cases); *Tesara v. Wamsley*, 2025 U.S. Dist. LEXIS 231958, 2025 WL 3288295 at * 4 (W.D.
6 Wash. Nov. 25, 2025) (mandatory detention under § 1225(b) despite noncitizens’ due process
7 rights and with no consideration of their deep financial, community, and familial ties in the
8 country raises constitutional issues) (citing, *Salgado v. Mattos*, No. 2:25-cv-01872-RJB-EJY,
9 2025 U.S. Dist. LEXIS 225122, 2025 WL 3205356, at *20 (D. Nev. Nov. 17, 2025)); *Arias v.*
10 *LaRose*, No. 3:25-CV-02595-BTM-MMP, 2025 U.S. Dist. LEXIS 232840, 2025 WL 3295385
11 (S.D. Cal. Nov. 25, 2025) (When a noncitizen is redetained in violation of due process, the
12 applicability of § 1225 or § 1226 is not before the court because detention is improper regardless
13 of which statute applies).

14 The risk of erroneous deprivation is exceptionally high when ICE makes categorical re-
15 detention decisions based solely on TPS termination without individualized assessment of flight
16 risk or danger. The record shows that Petitioner was issued an I-94 arrival record and paroled
17 into the United States for humanitarian reasons. Further, the record shows that upon entry,
18 Petitioner had no criminal history, and since entry, Petitioner has not committed any law
19 violations and has always responded to requests to appear before the immigration court or to an
20 ICE office. There is no evidence that Petitioner has engaged in any conduct that indicates he is a
21 danger to the community or a risk of fleeing.

1 And lastly, Respondents' interest in continued civil detention is low. Respondents would
2 obviously have an interest in detaining Petitioner if he were a flight risk or had or would commit
3 crimes. This interest is nonexistent. Respondents admitted Petitioner into the United States, and
4 he has lived in the United States for nearly three years. Respondents' interest in suddenly
5 detaining Petitioner is unfounded, especially given that Petitioner took proper steps to lawfully
6 present himself at a port of entry through a government program, lacks any criminal history, and
7 has been law-abiding since he entered the country. The third *Mathews* factor weighs in favor of
8 Petitioner.

9 "Petitioner has a protected liberty interest in release from custody, and due process
10 requires he be released on humanitarian parole just as he was released and permitted to enter the
11 county in [July 2023]." *Benitez*, 2025 LX 631170, at *15 (W.D. Wash. Dec. 30, 2025), *citing*
12 *Tesara v. Wamsley*, 2025 U.S. Dist. LEXIS 231958, 2025 WL 328829 at * 6.

13 **C. Respondent's exhaustion argument fails because no adequate administrative**
14 **remedy exists.**

15 Respondent's exhaustion argument fails because no adequate administrative remedy
16 exists for Mr. Gutierrez's constitutional claims. Under Ninth Circuit precedent in *Castro-Cortez*
17 *v. INS*, 239 F.3d 1037 (9th Cir. 2001), courts may waive the prudential exhaustion requirement if
18 administrative remedies are inadequate or not efficacious, pursuit of administrative remedies
19 would be a futile gesture, irreparable injury will result, or the administrative proceedings would
20 be void.

21 Even if exhaustion were required, Respondent's argument that Mr. Gutierrez should have
22 sought a bond hearing is legally incorrect. As Respondent acknowledges, arriving aliens subject
23 to § 1225(b) detention cannot obtain discretionary bond relief under § 1226(a). The only

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1 available release mechanism is parole under § 1182(d)(5)(A), which immigration judges cannot
2 grant. *Mariscal-Sandoval v. Ashcroft*, 370 F.3d 851 (9th Cir. 2004). Respondent cannot
3 simultaneously argue that Mr. Gutierrez is subject to mandatory detention while faulting him for
4 not pursuing unavailable bond relief.

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

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

11 **II. CONCLUSION**

12 For the foregoing reasons, Petitioner respectfully requests that the Court grant the
13 Petition and order Petitioner's immediate release from ICE custody and not redetain until and
14 unless Petitioner has been afforded, adequate notice of intent to redetain which includes the
15 grounds for redetention; the opportunity to a reapply for parole; and a hearing before a neutral
16 decision maker. *Benitez*, 2025 LEXIS 267678, at *15 (W.D. Wash. Dec. 30, 2025).

17 Respectfully submitted,

18 Dated: February 17, 2026

s/ Octavian Jumanca
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22 *Attorney for Petitioner*

23 I certify that this memorandum conforms with the local rules, as it is 1,756 words in length

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