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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

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ALEJANDRO JOSE PETIT POLEO,

Petitioner,

v.

PAMELA BONDI, U.S. Attorney General;  
KRISTI NOEM, Secretary U.S.  
Department of Homeland Security;  
RUBEN LEYVA, Acting Field  
Office Director, Salt Lake City  
Enforcement and Removal Operations,  
U.S. Immigration and Customs  
Enforcement; BRIAN HENKE, Field Office  
Director for Las Vegas/Salt Lake City;  
RYAN ARBON, Weber County  
Sheriff,

Respondents.

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

Case No. 1:26-cv-32

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Alejandro Jose Petit Poleo, through counsel, petitions for a writ of habeas corpus under the authority of 28 U.S.C. § 2251 as he has been illegally detained by immigration authorities and asks for his release.

**Relevant Background**

1. Petitioner's full name is Alejandro Jose Petit Poleo.
2. Petitioner is currently confined at the Weber County Jail.
  - a. The jail is located at 1400 Depot Dr, Ogden, UT 84404.
  - b. Petitioner is in the physical custody of the Weber County Sheriff Ryan Arbon pursuant to a contractual arrangement with the federal immigration authorities.
3. Petitioner is confined based on civil, immigration matters and not criminal charges.
4. Petitioner is held on orders of U.S. Immigration and Customs Enforcement.

**Nature of Challenge**

5. Petitioner is challenging is present detention under color of U.S. immigration law.
6. Petitioner was allowed into the United States on February 14, 2024, at Progress, Texas, based on his request for asylum.
7. According to the Executive Office for Immigration Review's Automated Case Information website, Petitioner's asylum case was docketed on March 19, 2024. The site further reports that Petitioner has a "master" hearing set for December 14, 2028 in Dallas, Texas.
8. Petitioner was arrested on March 3, 2026. On that date, Utah state authorities encountered Petitioner and cited him for a traffic code offense. However, he was not arrested nor is he presently detained for that offense. Rather, he is held on orders of U.S. Immigration and Customers Enforcement.

**Prior Challenges to this Detention**

9. This case concerns immigration proceedings, which are on-going.

10. Petitioner has not been provided any process before or since his arrest and so is not currently aware of the basis for his detention.

**Jurisdiction and Venue**

11. This case arises under the Consist

12. This Court has subject matter jurisdiction under 28 U.S.C. § 2241, et seq. (habeas corpus); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1346 (United States as Respondent); and 28 U.S.C. § 1651 (All Writs Act). Respondents have waived sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.

13. 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.; the All Writs Act, 28 U.S.C. § 1651; the Due Process Clause of the Fifth Amendment; and the Court's inherent equitable powers.

14. Venue is proper in this district under 28 U.S.C. § 1391(e)(1) because Respondents are agencies or officers of agencies of the United States and because Petitioner was and is currently detained in this district.

**Parties**

15. Alejandro Jose Petit Poleo is a citizen of Venezuela. Petitioner is detained in custody of Respondents at Weber County Jail. Thus, Petitioner is a resident of Ogden, Utah.

16. Respondent Pamela Bondi is the Attorney General of the United States. In this capacity, Respondent Bondi is the legal custodian of Petitioner. Respondent Bondi is sued in her official capacity.

17. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (“DHS”). In this capacity, Respondent Noem is the legal custodian of Petitioner. Respondent Noem is sued in her official capacity.
18. Respondent RUBEN LEYVA is the Acting Field Office Director, Salt Lake City Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement (ICE/ERO). In this capacity, Respondent Leyva is the legal custodian of Petitioner. He is named in his official capacity.
19. Respondent BRIAN HENKE is the Salt Lake City Field Office Director of ICE/ERO, and the individual presently in charge of Petitioner’s custody. He is named in his official capacity.
20. Respondent RYAN ARBON is the Weber County Sheriff, and under contract with the Department of Homeland Security, is the current physical custodian of Petitioner.


**Legal Framework**

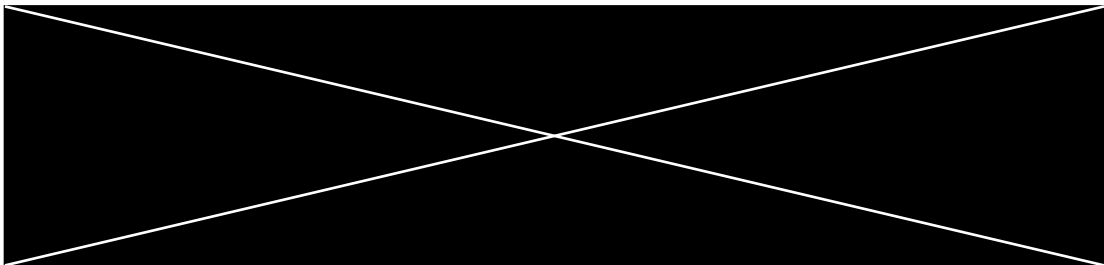
21. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292,306 (1993).
22. Removal proceedings described in section 240 of the INA are used to determine whether individuals, such as Petitioner, should be removed from the United States. See 8 U.S.C. § 1229a.
23. Immigration detention is a form of civil confinement that “constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 4253 (1979).

24. Custody determinations for individuals in 1229a removal proceedings are governed by 8 U.S.C. § 1226. Under § 1226(a), an individual may be released if he does not present a danger to persons or property and is not a flight risk. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).
25. Custody determinations under § 1226(a) are individualized and based on the facts presented in those cases. Unlike § 1226(c), which can provide for categorical determinations for detention regardless of flight risk or safety risks, § 1226(a) requires a case-by-case review of the facts and circumstances.
26. Once a determination to release an individual from custody is made, the release order may be revisited when the facts or circumstances warrant revocation or reconsideration. 8 U.S.C. § 1226(b). For an individual who was once in custody, the Attorney General may take that individual back into custody by revoking the individual's release when the facts and circumstances warrant it.
27. Revocation and return to custody is authorized only based on individualized determination of facts and circumstances. 8 C.F.R. § 1236.1(c)(9). By regulation, revocation decisions are limited in nature and may only be made by certain authorized officials. 8 C.F.R. § 1236.1(c)(9).
28. The decision to revoke and return to custody must be based on materially changed circumstances. In *Matter of Sugay*, the BIA held that "where a previous bond determination has been made by an immigration judge, no change should be made by a District Director absent a change of circumstance," explaining that this limitation is necessary to ensure that custody decisions are not exercised in an "arbitrary or capricious" manner. 17 I. & N. Dec. 637, 640 (BIA 1981).

**Petitioner's Current Immigration Status**

29. On information and belief, Petitioner was inspected and paroled into the United States under the authority of § 1226(a)(2). Petitioner presented himself for inspection at the border on February 14, 2024, and no other relevant authority would seem to allow his parole into the United States.

30. Petitioner's claim to asylum was based 



31. Since his parole into the United States, Petitioner is not aware of any materials change in circumstances that would justify his detention.

32. On information and believe, Petitioner avers that the decision to detain him was not made by someone so authorized by regulation.

**Claim 1: Violation of the Administrative Procedure Act (5 U.S.C. § 706(2)(A)) — Abuse of Discretion in Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)**

33. This claim incorporates paragraphs 1 through 32 above.

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

35. An action is an abuse of discretion if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be

ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

36. To survive an APA challenge, the agency must articulate “a satisfactory explanation” for its action, “including a rational connection between the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).
37. On information and belief, Petitioner avers that he has been detained in violation of immigration regulations as there has not been an individualized determination that a material change in facts justifies his detention.

**Claim 2: Violation of the Administrative Procedure Act (5 U.S.C. § 706(2)(A)) — Not in Accordance with Law and in Excess of Statutory Authority in Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)**

38. This claim incorporates paragraphs 1 through 32 above.
39. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in accordance with law;” “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).
40. Section 1226(b) authorizes that “[t]he Attorney General at any time may revoke a bond or 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).”

41. Courts can set aside an agency action that is contrary to controlling law. *See, e.g., Smith v. Bd. of Governors of the Fed. Rsrv. Sys.*, 73 F.4th 815, 820 (10th Cir. 2023); *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).
42. On information and belief, Petitioner avers that the decision to detain him and revoke his release was not made by someone authorized to exercise that authority.

**Claim 3: Violation of Fifth Amendment Right to Procedural Due Process**

43. This claim incorporates paragraphs 1 through 32 above.
44. 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; accord *Flores*, 507 U.S. at 306.
45. Inasmuch as Petitioner was detained without notice, hearing, or identification of any violation of release conditions, his detention is in violation of his right to procedural due process.

**Claim 4: Violation of Fifth Amendment Right to Substantive Due Process**

46. This claim incorporates paragraphs 1 through 32 above.
47. Besides the right to substantive due process “guarantees that the state will not deprive a person of those rights for an arbitrary reason regardless of how fair the procedures

are that are used in making the decision.” *Hennigh v. City of Shawnee*, 155 F.3d 1249, 1253 (10th Cir. 1998) quoting *Archuleta v. Colorado Dep’t of Insts., Div. of Youth Servs.*, 936 F.2d 483, 490 (10th Cir. 1991))

48. The decision to detain Petitioner without a material change in circumstances renders that decision arbitrary and contrary to what due process allows.

#### **PRAYER FOR RELIEF**

WHEREFORE, petitioner prays that this Court will grant the following relief:

1. Issue an order, consistent with 28 U.S.C. § 2243, directing the respondent to show cause why the writ should not be granted.
2. Declare that Petitioner’s detention was ordered in violation of the law and regulation, and thus unlawful under the Administrative Procedures Act; further declare that Petitioner’s detention was done without the required procedure and is arbitrary, in violation of Petitioner’s due process rights.
3. Order Petitioner released from custody based on the violations of the law.
4. Grant any other, further relief consistent with his claims or as necessary to ensure that justice is done.

**Verification**

Counsel verifies that this petition is authorized by Petitioner. It does not personally bear Petitioner's signature because of the significant difficulty for counsel in meeting with Petitioner in person and because the delay seeking his signature would likely result in his transportation out of the district, defeating jurisdiction. Counsel knows the facts asserted above or alleges them on information and belief, based on information obtained from the government and Petitioner.

DATED: March 6, 2026.

/S/ Nathan Phelps  
Assistant Federal Public Defender  
Attorney for Petitioner