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The Honorable Judge Richard A. Jones

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

BRAMBILA SANCHEZ, NOLBERTO

Petitioner,

v.

BRUCE SCOTT, Warden of the Northwest ICE
Processing Center;
KRISTI NOEM, Secretary of the U.S.
Department of Homeland Security

Respondents.

CIVIL ACTION NO. 2:26-CV-00948-RAJ

**REPLY IN SUPPORT OF PETITION FOR
WRIT OF HABEAS CORPUS**

I. INTRODUCTION

COMES NOW, Petitioner Nolberto Brambilla Sanchez, and submits this reply in support of his Petition for Writ of Habeas Corpus.

Petitioner has been detained for nine months, and Respondents concede that his detention is prolonged, but fail to justify its continued legality. Instead, they attempt to reframe this case as a routine reinstatement detention under 8 U.S.C. § 1231. That characterization ignores the central issue: **Petitioner was detained after complying with ICE instructions, without adherence to required procedures, and remains confined despite a stay of removal and no reasonably foreseeable endpoint.**

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1 This case is not about whether reinstatement exists, it is about whether the Government
2 may detain first and justify later. This is not permitted by the Constitution.

3 **II. THIS COURT HAS ALREADY REJECTED IDENTICAL GOVERNMENT**
4 **CONDUCT**

5 This Court has already addressed materially indistinguishable facts and rejected the
6 Government's position. In *Torres Ferrera v. Scott*, Case No. 2:26-cv-00583-TL (W.D. Wash.
7 Mar. 19, 2026), the petitioner—like Petitioner here—was detained after reporting to ICE under
8 an Order of Supervision, without being afforded the procedural protections required prior to re-
9 detention.
10

11 The Court held that re-detention under those circumstances, without the required
12 interview and opportunity to respond, violated due process. The Court further rejected the
13 Government's argument that such violations could be cured after the fact, explaining that post
14 hoc procedures do not remedy an initial deprivation of liberty without due process.
15

16 Most importantly, the Court ordered immediate release, holding that where detention is
17 imposed without required process, the appropriate remedy is release—not additional
18 administrative proceedings. The same result is required here.
19

20 **III. DHS MISCHARACTERIZES THIS CASE AND IGNORES THE UNLAWFUL**
21 **CHECK-IN ARREST**

22 Respondents attempt to frame this case solely as a reinstatement detention. That framing
23 omits the critical fact that Petitioner was not encountered during enforcement activity—he was
24 summoned by ICE, appeared as required, and was then taken into custody.

25 On June 21, 2025, ICE issued a call-in notice directing Petitioner to report in person on
26 July 8, 2025. Petitioner complied. While he was present at ICE's direction, Respondents revoked
27
28

1 his release and detained him. This was not a lawful enforcement arrest. It was a custodial seizure
2 following government-induced compliance.

3 Respondents assert that a 2009 reinstatement justified Petitioner's detention, as if it were
4 newly discovered. However, Petitioner's Form I-213 dated July 8, 2025 reflects that DHS was
5 already aware of the reinstated removal order, and DHS had already processed Petitioner under
6 reinstatement and released him under an Order of Supervision in 2020. The Government cannot
7 plausibly claim that reinstatement suddenly justified detention in 2025 when it previously chose
8 supervised release under the same legal posture.
9

10 **IV. RESPONDENTS ADMIT THEY FAILED TO FOLLOW REQUIRED** 11 **PROCEDURES**

12 Respondents concede that Petitioner was not provided the informal interview required
13 under 8 C.F.R. §§ 241.4(l) and 241.13(i) prior to revocation of his release. (*DHS Return at 5:9--*
14 *11.*)
15

16 This admission is critical. Under *United States ex rel. Accardi v. Shaughnessy*, 347 U.S.
17 260, 267 (1954), the Government must follow its own regulations. Detention imposed in
18 disregard of those procedures is unlawful.

19 Here, Petitioner's liberty was restrained without compliance with mandatory procedural
20 safeguards. That failure renders the detention constitutionally defective.
21

22 **Where a noncitizen on an OSUP is re-detained without an interview that complies**
23 **with 8 C.F.R. § 241.13(i)(3), “[t]he remedy for Respondents’ misconduct is Petitioner’s**
24 **immediate release from custody, ‘thereby returning [Petitioner] to the status quo before his**
25 **release was improperly revoked.’** *Alfonso v. Bondi*, No. C25-2748, 2026 WL 395326, at *6
26 (W.D. Wash. Feb. 12, 2026), which was decided in this honorable court.
27

28 Because Petitioner's deprivation of liberty without due process has been unlawful from
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1 its inception, it cannot be cured through subsequent proceedings and his immediate release is
2 required.

3 **V. DETENTION WAS UNLAWFUL FROM ITS INCEPTION AND CANNOT BE**
4 **CURED AFTER THE FACT**

5 The Constitution requires that the Government possess lawful authority at the moment it
6 restrains an individual's liberty—not that it develop one later. Allowing post hoc justification
7 would eliminate any meaningful constraint on executive detention. See *Zadvydas v. Davis*, 533
8 U.S. 678, 690 (2001); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

10 After DHS's own admittance in their return, Petitioner's detention reflects a discretionary
11 enforcement action imposed without any individualized determination of necessity, raising
12 serious due process concerns. See *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (requiring
13 adequate procedural safeguards before deprivation of liberty).

15 This confirms that Petitioner was re-detained in violation of DHS's own regulations and
16 without due process.

17 **VI. THE ALLEGED "CUSTODY DETERMINATION" WAS NOT MEANINGFUL**

18 In their return, Respondents state Petitioner asserts that no custody determination was
19 provided, but Petitioner actually asserted that he "has not received a **meaningful** custody
20 determination, and no individualized findings justify his continued detention." See *Petition for*
21 *Writ of Habeas Corpus, Docket #1, at 11:4*. Respondents rely on a January 2026 bond
22 proceeding to claim that due process was satisfied, but that argument fails.

24 The record reflects only a conclusory determination that Petitioner is a "flight risk,"
25 without articulated reasoning or individualized analysis. An arbitrary finding does not satisfy due
26 process. Meaningful review requires individualized consideration and a reasoned
27 determination—not a checkbox conclusion.

Moreover, the record affirmatively contradicts the finding of flight risk. Petitioner was placed on an Order of Supervision in 2020 and complied with ICE reporting requirements for years. Most notably, on July 8, 2025, Petitioner appeared in person at ICE's direction after being issued a call-in notice. He presented himself voluntarily and as required. **This conduct is the opposite of flight risk.**

Respondents cannot rely on a conclusory label while ignoring undisputed evidence of compliance. A determination that disregards Petitioner's history of cooperation—particularly his voluntary appearance at a scheduled ICE check-in—cannot constitute meaningful or constitutionally sufficient review.

Under these circumstances, the January 2026 proceeding does not cure the defects in Petitioner's detention and does not provide the procedural safeguards required by due process.

VII. EXHAUSTION IS NOT REQUIRED

Petitioner does not challenge the conditions of otherwise lawful detention. He challenges the legality of the detention itself.

A bond hearing assumes that someone is being held in lawful custody. It cannot cure detention that was unconstitutional from the moment it began, as is the case here. Where detention is unlawful at its inception, immediate release—not a future hearing—is the required remedy. See *Ex parte Endo*, 323 U.S. 283, 304 (1944).

A. Appeal with the Board of Immigration Appeals is Futile

Respondent's suggest that Petitioner should exhaust administrative remedies through a bond appeal to the Board of Immigration Appeals ("BIA"). However, this would be futile and incapable of providing meaningful relief.

1 The BIA's own data reflects that bond appeals take, on average, approximately 204
2 days—nearly seven months—to resolve, with many taking significantly longer. Such delays are
3 incompatible with the constitutional requirement that review of detention be timely and effective.
4 See *Stack v. Boyle*, 342 U.S. 1, 4 (1951) (relief from detention must be “speedy if it is to be
5 effective”); *United States v. Salerno*, 481 U.S. 739, 752 (1987) (upholding detention scheme in
6 part because it provided for immediate appellate review).
7

8 Here, requiring Petitioner to pursue a BIA appeal would result in months of continued
9 detention while his constitutional claims remain unaddressed. During that time, Petitioner would
10 remain incarcerated without meaningful access to evidence, counsel, or family support,
11 compounding the very harms this habeas petition seeks to remedy. Because such review is
12 neither timely nor capable of correcting the constitutional defects at issue, exhaustion is excused.
13 See *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).
14

15 **B. Another IJ Bond Hearing is Futile**

16 If some form of administrative review were available, requiring Petitioner to seek relief
17 before an Immigration Judge would be futile and would not provide meaningful review.
18 Immigration Judges lack authority to remedy the statutory and constitutional violations at issue
19 here, including Respondents' failure to follow their own procedures, as admitted in their return.
20

21 In practice, custody proceedings in the Tacoma Immigration Court do not offer a realistic
22 opportunity for release under these circumstances. The current situation in Tacoma includes the
23 following:
24

- 25 • **High Denial Rates:** Court records noted that Tacoma IJs granted bond in only 3% of
26 cases in fiscal year 2023, the lowest rate in the nation.
27

- 1 • **Willful Defiance:** Advocates have accused Tacoma IJs of "willful defiance" of federal
2 orders by finding ways to deny bond.
- 3 • **Burden of Proof:** In these hearings, the burden is often on the noncitizen to prove they
4 are *not* a danger or flight risk.
5

6 Furthermore, in the current political climate under the present administration, Tacoma
7 Immigration Judges are arbitrarily making individualized findings of "flight risk" across the
8 board without genuine independent review, therefore deeming them ineligible for release.
9 (Which was the case at Petitioner's custody hearing in January 2026). As a result, findings of
10 flight risk are frequently reduced to untested, one-sided determinations rather than meaningful,
11 evidence-based adjudications. This undermines the purpose of habeas review by stripping it of
12 any practical effect and leaving Petitioner exactly where he started—detained without
13 meaningful review.
14

15 Exhaustion, whether it be with the BIA or a custody hearing before an IJ, is not required
16 where it would be futile or incapable of providing adequate relief. See *Laing v. Ashcroft*, 370
17 F.3d 994, 1000 (9th Cir. 2004).
18

19 **VIII. RESPONDENTS' "DETENTION WILL CEASE WHEN REMOVAL OCCURS"**
20 **ARGUMENT IS LEGALLY INSUFFICIENT**

21 Respondents argue that detention remains lawful because Petitioner may be removed if
22 his petition for review is denied, asserting that "if Petitioner's petition for review is denied,
23 Petitioner will be removed to Mexico... and his detention will then cease." That argument fails
24 as a matter of law.
25

26 A stay of removal is currently in effect. As a result, Respondents lack present authority to
27 remove Petitioner unless and until that stay is lifted. Removal is therefore not reasonably
28 foreseeable at this time.

Under *Zadvydas v. Davis*, detention is permissible only where removal is significantly likely in the reasonably foreseeable future. 533 U.S. 678, 701 (2001). That requires a present, realistic likelihood of removal—not a chain of speculative future events.

Respondents' position depends on possibilities outside their present authority: that the Ninth Circuit will deny the petition for review, that the stay will be lifted, and that removal will then occur. Those possibilities do not establish a reasonably foreseeable removal—they underscore its absence.

The Government must show that removal is practically attainable, not merely possible at some undefined point in the future. Where, as here, removal is legally barred and dependent on unresolved appellate proceedings, continued detention is no longer reasonably related to its purpose and is therefore unconstitutional.

IX. CONTINUED DETENTION IS NOT REASONABLY RELATED TO REMOVAL

Petitioner has now been detained for an extended period—nine months—with no clear endpoint. Removal is stayed. Required procedures were not followed by DHS. No **meaningful** custody determination has occurred.

Under these circumstances, detention no longer serves its regulatory purpose. Civil immigration detention is permissible only so long as it is reasonably related to effectuating removal and does not become arbitrary or excessive. *Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001). Where removal is not practically attainable in the reasonably foreseeable future, continued detention is constitutionally suspect. *Id.* at 701; see also *Prieto-Romero v. Clark*, 534 F.3d 1053, 1062–63 (9th Cir. 2008).

Due process further requires that continued detention be supported by adequate procedural safeguards and individualized justification. *Mathews v. Eldridge*, 424 U.S. 319, 335

1 (1976). Where, as here, detention continues without a foreseeable endpoint, without compliance
2 with required procedures, and without meaningful review, it becomes arbitrary and
3 unconstitutional.

4 **X. REQUEST FOR RELIEF**

5 Petitioner respectfully requests that this Court:

- 6
- 7 1. GRANT the Petition for Writ of Habeas Corpus;
 - 8 2. ORDER Respondents to release Petitioner within 24 hours, as he was before he was
9 detained;
 - 10 3. Order that Respondents are PROHIBITED from re-detaining Petitioner after release; and
11

12 **XI. CONCLUSION**

13 This Petition should be granted and Petitioner should be released because Respondents'
14 own filings confirm that Petitioner was detained after complying with ICE instructions, without
15 adherence to required procedures, and remains confined despite the absence of a reasonably
16 foreseeable removal.

17
18 This Court has already rejected materially indistinguishable conduct. In *Torres Ferrera v.*
19 *Scott*, the Court held that re-detention following compliance with ICE supervision, without the
20 required procedural safeguards, violates due process and requires release. The same
21 constitutional defects are present here, and the same result is warranted.

22
23 The Government cannot detain first and justify later. Nor can it cure constitutional
24 violations through post hoc proceedings or speculative future events. Allowing such conduct
25 would eliminate any meaningful constraint on executive detention.

26 Because Petitioner's detention was unlawful from its inception and remains
27 constitutionally deficient, and because this Court has already ordered release under materially

1 identical circumstances, the Court should grant the Petition and order Petitioner's immediate
2 release.

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4 Respectfully submitted this 8th day of April 2026.
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6 /s/Vicky J Currie

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8 Vicky J Currie, WSBA #24192
9 Attorney for Petitioner
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