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The Honorable Kimberly K Evanson

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

HERNANDEZ-MUNOZ, HUVILIALDO

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-00964-KKE

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

I. INTRODUCTION

Petitioner Huvilialdo HERNANDEZ-Munoz (Petitioner) respectfully submits this traverse in support of his petition for writ of habeas corpus.

Respondents attempt to reframe this case as routine reinstatement detention under 8 U.S.C. § 1231, but that characterization ignores the central issue: **the Government detained first and is now attempting to justify later.** Petitioner was detained after years of full compliance with ICE supervision, at a routine check-in, without notice, without a hearing, and without any meaningful opportunity to be heard. Respondents contend that **Petitioner was not entitled to a pre-detention hearing that complies with 8 C.F.R. § 241.13(i)(3) yet provide no**

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1 **authority to support that claim.** Furthermore, Petitioner has serious medical issues, a non-
2 communicative child with Down syndrome and autism who is bearing the consequences of his
3 unlawful detention, and a pending VAWA application with USCIS.

4
5 This case is not about the existence of a reinstated removal order—it is about whether the
6 Government can detain first and attempt to justify that detention later. It cannot. The Constitution
7 forbids it, and immediate release is required. This Court has already rejected materially
8 indistinguishable conduct and ordered release under those circumstances. See *Torres Ferrera v.*
9 *Scott*, Case No. 2:26-cv-00583-TL (W.D. Wash. Mar. 19, 2026).

10
11 **II. RESPONDENTS FAILED TO FOLLOW REQUIRED PROCEDURES AND OFFER
12 NO AUTHORITY FOR DETENTION WITHOUT PROCESS**

13 Respondents confirm Petitioner was not provided the informal interview required under
14 8 C.F.R. §§ 241.4(l) and 241.13(i) prior to revocation of his release. In defense of this,
15 Respondents state, **“Due process does not mandate a pre-detention hearing here.”** (*DHS*
16 *Return at 8:9–10.*) yet offer no caselaw or authority to support this assertion. 8 C.F.R.
17 241.13(i)(3) (emphasis added) says:

18
19 Upon revocation, the alien will be notified of the reasons for revocation of his or her
20 release. The Service will conduct an **initial informal interview** promptly after his or her
21 return to Service custody to afford the alien an opportunity to respond to the reasons for
22 revocation stated in the notification. The alien may submit any evidence or information
23 that he or she believes shows there is no significant likelihood he or she be removed in
24 the reasonably foreseeable future, or that he or she has not violated the order of
25 supervision. The revocation custody review will include an evaluation of any contested
26 facts relevant to the revocation and a determination whether the facts as determined
27 warrant revocation and further denial of release.

28 Under *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267 (1954), the
Government must follow its own regulations. Detention imposed in disregard of those
procedures is unlawful. Here, Petitioner’s liberty was restrained without compliance with
mandatory procedural safeguards, rendering the detention constitutionally defective.

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

7 Because Petitioner’s deprivation of liberty without due process has been unlawful from
8 its inception, it cannot be cured through subsequent proceedings, and his immediate release is
9 required.
10

11 **III. DETENTION WAS UNLAWFUL FROM ITS INCEPTION AND CANNOT BE** 12 **CURED AFTER THE FACT**

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

17 Respondents’ own Return confirms that Petitioner was detained after appearing for a
18 routine ICE check-in, following years of full compliance with an Order of Supervision.
19 Respondents do not identify any prior notice, any interview, or any opportunity for Petitioner to
20 respond before his liberty was restrained, confirming that Petitioner was re-detained in violation
21 of DHS’s own regulations and without due process. Due process requires adequate procedural
22 safeguards before a deprivation of liberty. See *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).
23 Here, there were none.
24

25 Because the Government failed to follow its own regulations and deprived Petitioner of
26 liberty without due process at the outset, the detention is unlawful and immediate release is
27 required.
28

**IV. DHS IGNORES THE UNLAWFUL CHECK-IN DETENTION AND RELIES ON
IRRELEVANT PAST CONDUCT**

Respondents attempt to frame this case solely as a reinstatement detention. That framing omits the critical fact that Petitioner was not encountered during enforcement activity—he was taken into custody at a routine check-in. Petitioner was following the rules of his OSUP when Respondents revoked his release and detained him. This was not a lawful enforcement arrest. It was a custodial seizure following government-induced compliance.

Respondents assert that a 2000 reinstatement justifies Petitioner’s detention. Respondents emphasize multiple times that Petitioner used a different name to enter the United States in 2000, attempting to justify his current detention. However, if that conduct justified detention, DHS had **more than two decades** to act on it. Instead, DHS reinstated the removal order in 2017, released Petitioner on an Order of Supervision, and allowed him to live and work in the community for years while fully complying with ICE reporting requirements.

Only in 2025—after years of compliance—did DHS abruptly detain him at a routine check-in. The Government cannot now treat decades-old conduct as justification for detention it previously chose not to impose, nor credibly claim that reinstatement suddenly justified detention in 2025 when it previously elected supervised release under the same legal posture.

**V. CONTINUED DETENTION IS NOT REASONABLY RELATED TO REMOVAL
AND HAS BECOME PUNITIVE**

Contrary to Respondents’ assertions, Petitioner’s detention is not reasonably related to removal and has become punitive.

Petitioner has now been detained for more than six months with no clear endpoint. Removal is currently stayed, and Respondents present no evidence of any concrete steps toward

1 effectuating removal—no travel documents, no scheduled removal, and no realistic timeline.
2 Instead, Respondents rely on speculative future events outside their present authority.

3 Meanwhile, Petitioner suffers from serious medical conditions, is the primary caregiver
4 to a medically vulnerable child who depends on his presence and support, and is actively
5 pursuing humanitarian relief through a pending VAWA petition with USCIS.
6

7 Under these circumstances, detention no longer serves its regulatory purpose. Civil
8 immigration detention is permissible only so long as it is reasonably related to effectuating
9 removal and does not become arbitrary or excessive. *Zadvydas v. Davis*, 533 U.S. 678, 690–91
10 (2001). Where removal is not practically attainable in the reasonably foreseeable future,
11 continued detention is constitutionally suspect. *Id.* at 701; see also *Prieto-Romero v. Clark*, 534
12 F.3d 1053, 1062–63 (9th Cir. 2008).
13

14 Due process further requires that continued detention be supported by adequate
15 procedural safeguards and individualized justification. *Mathews v. Eldridge*, 424 U.S. 319, 335
16 (1976). Where, as here, detention continues without compliance with required procedures,
17 without a foreseeable endpoint, and without meaningful review, and where the Petitioner has
18 serious medical issues and a non-communicative child with Down syndrome and autism who
19 relies on him, it becomes arbitrary and unconstitutional.
20

21 **Humanitarian Considerations**

22 The Government argues that Petitioner has not provided evidence regarding his own
23 medical condition or that of his daughter, but that argument is misleading. These records were
24 provided to DHS in connection with his Reasonable Fear proceedings before the Asylum Office
25 and are part of the Government's own record. Respondents have access to this information and
26 cannot credibly claim otherwise.
27
28

1 Nonetheless, Petitioner supplements this traverse with limited redacted medical
2 documentation to this Court confirming these diagnoses, while preserving necessary privacy
3 protections.

4
5 These materials are not presented to relitigate medical findings, but to underscore the
6 significant humanitarian considerations at stake and to further demonstrate that continued
7 detention is unnecessary and excessive under the circumstances. Nevertheless, these
8 considerations are secondary to the Government's failure to provide constitutionally required
9 process, which alone renders the detention unlawful.

10
11 **VI. RESPONDENTS MISAPPLY MATHEWS V. ELDRIDGE —THE COMPLETE**
12 **ABSENCE OF PROCESS REMAINS UNCONSTITUTIONAL**

13 Respondents rely on *Mathews v. Eldridge* to argue that no pre-detention hearing was
14 required, but that argument misinterprets the purpose of *Mathews*.

15 *Mathews* does not stand for the proposition that the Government may dispense with
16 process altogether. It requires that the Government provide **adequate procedural safeguards**
17 **before or promptly after depriving an individual of liberty**. Here, Respondents provided
18 none. Under the *Mathews* framework, that failure alone establishes a due process violation.

19
20 First, Petitioner's liberty interest is substantial. He was not newly encountered or evading
21 enforcement—he was living in the community under Government supervision and complied with
22 all reporting requirements.

23 Second, the risk of erroneous deprivation is at its highest where detention occurs without
24 any procedural safeguards. The very protections required by regulation—notice and an informal
25 interview—were not provided. Their absence creates precisely the risk of arbitrary detention that
26 *Mathews* is designed to prevent.

1 Third, the Government offers no justification for the complete absence of process. There
2 was no emergency, no violation of supervision, and no individualized determination requiring
3 immediate detention without procedural safeguards.
4

5 Even under Respondents' own reliance on *Mathews*, the complete absence of process
6 cannot be justified. At minimum, *Mathews* requires **some meaningful opportunity to be heard**.
7 Here, there was none. That failure alone renders Petitioner's detention unconstitutional.

8 **VII. EXHAUSTION IS NOT REQUIRED**

9 Petitioner should not be made to have a custody hearing before an Immigration Judge.

10 Petitioner does not challenge the conditions of otherwise lawful detention, he challenges
11 the legality of the detention itself. A bond hearing assumes that someone is being held in lawful
12 custody. It cannot cure detention that was unconstitutional from the moment it began, as is the
13 case here. Where detention is unlawful at its inception, immediate release—not a future
14 hearing—is the required remedy. See *Ex parte Endo*, 323 U.S. 283, 304 (1944).
15

16 **A. An IJ Bond Hearing is Futile**

17 If some form of administrative review were available, requiring Petitioner to seek relief
18 before an Immigration Judge would be futile and would not provide meaningful review.
19 Immigration Judges lack authority to remedy the statutory and constitutional violations at issue
20 here, including Respondents' failure to follow their own procedures, as admitted in their return.
21

22 In practice, custody proceedings in the Tacoma Immigration Court do not offer a realistic
23 opportunity for release under these circumstances. The current situation in Tacoma includes the
24 following:
25

- 26 • **High Denial Rates:** Court records noted that Tacoma IJs granted bond in only **3% of**
27 **cases** in fiscal year 2023, the lowest rate in the nation.
28

- 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. As a
9 result, findings of flight risk are frequently reduced to untested, one-sided determinations rather
10 than meaningful, evidence-based adjudications. This undermines the purpose of habeas review
11 by stripping it of any practical effect and leaving Petitioner exactly where he started—detained
12 without meaningful review.
13

14 Exhaustion is not required where it would be futile or incapable of providing adequate
15 relief. See *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). An Immigration Judge will not
16 provide a meaningful review of this case, therefore Petitioner should not be required to have a
17 bond hearing with an Immigration Judge.
18

19 **VIII. THIS COURT HAS ALREADY REJECTED IDENTICAL GOVERNMENT** 20 **CONDUCT**

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

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

3 Most importantly, the Court ordered immediate release, holding that where detention is
4 imposed without required process, the appropriate remedy is release—not additional
5 administrative proceedings. The same result is required here.
6

7 IX. REQUEST FOR RELIEF

8 Petitioner respectfully requests that this Court:

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

14 X. CONCLUSION

15 This Petition should be granted and Petitioner should be released because Respondents'
16 own filings confirm that Petitioner was detained after complying with ICE instructions, without
17 adherence to required procedures, and remains confined despite the absence of a reasonably
18 foreseeable removal.
19

20 This Court has already rejected materially indistinguishable conduct. In *Torres Ferrera v.*
21 *Scott*, Case No. 2:26-cv-00583-TL (W.D. Wash. Mar. 19, 2026), the Court held that re-detention
22 following compliance with ICE supervision, without the required procedural safeguards, violates
23 due process and requires release. **The same constitutional defects are present here, and the**
24 **same result is warranted.**
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1 The Government cannot detain first and justify later. Nor can it cure constitutional
2 violations through post hoc proceedings or speculative future events. Allowing such conduct
3 would eliminate any meaningful constraint on executive detention.
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5 Petitioner's continued detention is further unjustified in light of his documented medical
6 condition, his role as a caregiver to a medically vulnerable child, and his active pursuit of
7 humanitarian relief through a pending VAWA petition, all of which underscore the absence of
8 any legitimate basis for continued confinement.

9 Because Petitioner's detention was unlawful from its inception and remains
10 constitutionally deficient, and because this Court has already ordered release under materially
11 identical circumstances, the Court should grant the Petition and order Petitioner's immediate
12 release.
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15 Respectfully submitted this 12th day of April 2026.
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17 /s/Vicky J Currie

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19 Attorney for Petitioner
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