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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Giny FRANCOIS, Hector Moises
DAVILA ZURITA, Jean Carlos
PINTO BAUTISTA,

Petitioners,

v.

Cammilla WAMSLEY, et al.,

Respondents.

Case No. 2:25-cv-2122-RSM-GJL

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

Note on Motion Calendar:
October 31, 2025

INTRODUCTION

Petitioners seek a temporary restraining order (TRO) requiring Respondents to return Petitioner Jean Carlos Pinto Bautista to this district and for the immediate release from detention of all Petitioners. While Petitioners initially sought expedited consideration of this petition, they now seek a TRO in light of actions taken by Respondents in the three days since the filing of their Petition for Writ of Habeas Corpus, Dkt. 1: namely, the abrupt transfer of Mr. Pinto from the Northwest Immigration and Customs Enforcement (ICE) Processing Center (NWIPC) to New Mexico on October 30, 2025.

The requested TRO is warranted because Petitioners are likely to succeed on their underlying claims for immediate release. The law makes clear that none of the three Petitioners should be in detention currently. As several judges in this district have recently held—including in granting TRO motions—individuals who have lived in the United States after their initial

1 release by the Department of Homeland Security (DHS) and who are then re-detained without a
2 pre-deprivation hearing or showing by ICE that they now constitute a flight risk or danger must
3 be released immediately. *See E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, -- F. Supp. 3d --, 2025
4 WL 2402130, at *6 (W.D. Wash. Aug. 19, 2025) (ordering immediate release because “a post-
5 deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact
6 and cannot prevent an erroneous deprivation of liberty”); *Ledesma Gonzalez v. Bostock*, No.
7 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at *9 (W.D. Wash. Oct. 7, 2025) (converting
8 TRO motion into ruling on the merits and ordering immediate release where noncitizen was re-
9 detained without due process and a prior hearing); *Phetsadakone v. Scott*, No. 2:25-CV-01678-
10 JNW, 2025 WL 2579569, at *5 (W.D. Wash. Sept. 5, 2025) (ordering immediate release on TRO
11 motion in order to secure status quo of liberty prior to alleged unlawful re-detention); *Ramirez*
12 *Tesara v. Wamsley*, No. 2:25-CV-01723-MJP-TLF, -- F. Supp. 3d --, 2025 WL 2637663 (W.D.
13 Wash. Sept. 12, 2025) (ordering immediate release on TRO motion to restore Petitioner to the
14 status quo prior to his unlawful arrest without a hearing); *Kumar v. Wamsley*, No. 2:25-CV-
15 01772-JHC-BAT, 2025 WL 2677089 (W.D. Wash. Sept. 17, 2025) (same, on TRO motion).

16 In light of Respondents’ abrupt transfer of Mr. Pinto to a facility outside of Washington
17 after Petitioners filed their habeas petition, Petitioners respectfully request the Court grant the
18 following relief in order to protect and vindicate their right to liberty under the Fifth
19 Amendment’s Due Process Clause:

- 20 (1) At Respondents’ expense, the immediate transfer of Mr. Pinto back to Washington State
21 and his immediate release from detention upon return to this district;
- 22 (2) The immediate release of the remaining petitioners, Mr. Francois and Mr. Davila, as
23 provided in the accompanying proposed order.

24 STATEMENT OF FACTS

25 Petitioners are three noncitizens who were each released shortly after their entry into this
26 country and later rearrested by Immigration and Customs Enforcement (ICE) between May and
27 October 2025. Dkt. 3 ¶¶ 1, 5–6; Dkt. 4 ¶¶ 2, 6; Dkt. 5 ¶¶ 3, 14. All three Petitioners had timely

1 filed their asylum applications, obtained employment authorization, attended ICE check-ins, and
2 attended all scheduled hearings at the Seattle Immigration Court. *Id.* Despite Petitioners' diligent
3 compliance with the requirements for their immigration matters, Respondents suddenly re-
4 detained them, without first justifying this re-detention before a neutral decisionmaker where
5 ICE was required to demonstrate why each were now a flight risk or danger to the community.

6 Petitioners filed this case on October 28, 2025. Dkt. 1. At the time of filing, all three
7 Petitioners were detained at the NWIPC in Tacoma, Washington. Dkt. 3 ¶ 7; Dkt. 4 ¶ 8; Dkt. 5
8 ¶ 14. Petitioners also filed an Ex Parte Motion to Issue Order to Show Cause and Issue Expedited
9 Briefing Schedule (Motion for OSC). Dkt. 2.¹ In that motion, Petitioners specifically requested,
10 *inter alia*, an order that Respondents not transfer any of them from the Western District of
11 Washington while the Court considers their Petition, so as not to impede their access to counsel
12 while pursuing their claims. *Id.* at 7. On October 29, after this case was docketed, and pursuant to
13 a request from the U.S. Attorney's Office for the Western District of Washington, Petitioners
14 provided their immigration identification number, known as "A" number, to that office. Decl. of
15 Amanda Ng ¶ 4.

18 ¹ In other cases, undersigned counsel have filed similar motions in lieu of burdening the
19 court with TRO motions, which the court has granted. *See, e.g.,* Order, *Kumar v. Wamsley*, No.
20 2:25-cv-2055-KKE (W.D. Wash. Oct. 22, 2025), Dkt. 7 (requiring return to petition within eight
21 days); Order, *Lopez Reyes v. Wamsley*, No. 2:25-cv-01868-JLR-MLP (W.D. Wash. Oct. 1, 2025),
22 Dkt. 5 (same, within six days); Order, *Scott v. Wamsley*, No. 2:25-cv-01819-TMC-BAT (W.D.
23 Wash. Sept. 22, 2025), Dkt. 9 (same, within ten days). In cases where transfer appeared likely or
24 imminent, undersigned counsel have additionally requested, and the district court has granted, an
25 OSC restraining Respondents from transferring petitioners without advance notice permitting
26 them to seek appropriate emergency relief. *See Kumar*, No. 2:25-cv-2055-KKE (W.D. Wash.
27 Oct. 22, 2025), Dkt. 7 at 2 (ordering government to provide advance notice "prior to any action
to move or transfer [Petitioner] from the [NWIPC]" in order to preserve the status quo while the
court determines its subject-matter jurisdiction); *Y.M.M. v. Wamsley*, No. 2:25-cv-2075-TMC
(W.D. Wash. Oct. 28, 2025), Dkt. 8 at 2 (same); *cf. Del Valle Castillo v. Wamsley*, No. 2:25-cv-
2054-TMC (W.D. Wash. Oct. 30, 2025), Dkt. 14 (granting TRO prohibiting government from
"transferring any of the Petitioners from this district pending further order" of the court after one
of the petitioners was transferred from the NWIPC while his habeas petition was pending, in
order to "preserve the status quo and prevent immediate harm").

1 On October 29, 2025, at or around 11:30 pm, Mr. Pinto's wife, Yerly Ortega Pinerez,
2 received a call from her husband. Decl. of Yerly Ortega Pinerez (Ortega Decl.) ¶ 7. On the call,
3 Ms. Ortega learned that Respondents were transferring Mr. Pinto to an unknown location. *Id.* Mr.
4 Pinto was not given any information about where he was being taken. *Id.* ¶¶ 7–8. This transfer
5 occurred despite the fact that Mr. Pinto is scheduled for his next hearing before the Tacoma
6 Immigration Court on November 17, 2025. Ng Decl., Ex. A.

7 Ms. Ortega has not heard from her husband since that call. *Id.* ¶ 9. She did not get
8 confirmation that he had been transferred until the next morning, when she received a call from
9 the family member of another person who had befriended Mr. Pinto at the NWIPC. *Id.* ¶ 8. The
10 family member informed Ms. Ortega that her husband had been included in a group for transfer
11 out of Tacoma. *Id.* The person also confirmed that no-one had been told where they were being
12 moved and the group was crying as they left. *Id.* Since the transfer, Mr. Pinto has yet to make
13 contact with either his wife or his counsel. *See id.* ¶ 9; Ng. Decl. ¶ 6. Ms. Ortega does not know
14 how to reach her husband, whether he is safe, or when he may be able to call her. Ortega Decl.
15 ¶ 9.

16 On the morning of October 30, Ms. Ortega notified the Northwest Immigrant Rights
17 Project that Mr. Pinto had been transferred out of the NWIPC. Ng Decl. ¶ 5. The same morning,
18 undersigned counsel also received word that at least one other client in another habeas petition
19 before this Court had been moved from this district. After learning this information, shortly after
20 12:00 pm, counsel reached out to Michelle Lambert, who is counsel for Respondents in another
21 habeas petition. Decl. of Aaron Korthuis ¶ 5. Counsel requested that ICE return Mr. Pinto to
22 Washington State, where he lived with his family prior to detention and where he has counsel. *Id.*
23 ¶ 6. Counsel also requested that ICE provide notice prior to transfer of any other petitioner, in
24 order to allow time for counsel to seek relief if necessary. *Id.* Counsel noted that the
25 undersigned's preference was to avoid the need to seek relief via a motion for a TRO from the
26 Court, and requested a response to these requests by 3:00 pm. *Id.* Ms. Lambert stated that she
27 would consult with her clients, and responded at 2:49 pm, advising that Mr. Pinto and another of

1 counsel’s clients were in the process of being transferred to the Otero ICE Processing Center in
2 New Mexico. *Id.* ¶¶ 7–8. Ms. Lambert further stated that her clients were not willing to return
3 Mr. Pinto to this district or to provide notice as to the other petitioners in this case. *Id.* ¶ 7. This is
4 despite the fact that Mr. Pinto has a hearing scheduled before the Tacoma Immigration Court on
5 November 17, 2025. Ng Decl. ¶ 7; *id.* at Ex. A. Counsel then informed Ms. Lambert that they
6 would seek emergency relief from this Court. Korthuis Decl. ¶ 9.

7 The harm that Mr. Pinto and other Petitioners face is significant. As reflected in
8 documents submitted to this Court, two of the three Petitioners—Messrs. Pinto and Davila—
9 reside in Washington. Dkt. 5 ¶ 4; Dkt. 4 ¶ 2. All three have family or other community support in
10 the state. *See* Dkt. 4 ¶ 9; Dkt. 5 ¶ 18; Ortega Decl. ¶¶ 2–3; Dkt. 3 ¶ 2. In Mr. Pinto’s case, his
11 detention and now abrupt transfer out of Washington are the first time he has been parted from
12 his wife and five-year-old daughter since they fled Venezuela together. *See* Ortega Decl. ¶¶ 2–3.
13 Given Mr. Pinto’s transfer to New Mexico, he is now outside the economic reach of his wife and
14 young daughter, who lack the financial means to travel to him. *Id.* ¶¶ 3, 10. Even if Respondents
15 release Mr. Pinto from his unlawful detention, his family has no way of bringing him back to
16 their home in Washington without incurring significant financial hardship. *Id.* ¶ 11.

17 As of the filing of the instant motion, to undersigned counsel’s knowledge and belief,
18 Messrs. Francois and Davila remain detained at the NWIPC in Tacoma, Washington.

19 ARGUMENT

20 On a motion for a TRO, the movant “must establish that he is likely to succeed on the
21 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
22 balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat.*
23 *Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*,
24 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and TRO standards are
25 “substantially identical”). A TRO may issue where “serious questions going to the merits [are]
26 raised and the balance of hardships tips sharply in [plaintiff’s] favor.” *All. for the Wild Rockies v.*
27 *Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citation modified). To succeed under the “serious

1 question” test, Petitioners must also show that they are likely to suffer irreparable injury and that
2 an injunction is in the public’s interest. *Id.* at 1132.

3 **I. Petitioners are likely to succeed on the merits of their petition.**

4 Due process requires Respondents to afford Petitioners a hearing before a neutral
5 decisionmaker where ICE is required to justify re-detention *before* it occurs. In recent months, as
6 DHS has detained other noncitizens in similar situations, courts in this district have so held in
7 multiple separate cases and ordered the immediate release of noncitizens who had been re-
8 detained by DHS without a pre-deprivation hearing. *See Ledesma Gonzalez*, 2025 WL 2841574
9 (granting immediate release where petitioner’s order of release on recognizance was arbitrarily
10 revoked without notice or a hearing); *E.A. T.-B.*, 2025 WL 2402130 (granting immediate release
11 due to lack of pre-deprivation hearing); *Ramirez Tesara*, 2025 WL 2637663 (same); *Kumar*,
12 2025 WL 2677089 (same); *cf. Phetsadakone*, 2025 WL 2579569 (ordering release because DHS
13 failed to follow procedures required by regulation).

14 Many other courts across the country have similarly ordered the immediate release of
15 persons with ongoing proceedings who are re-detained without a hearing. *See, e.g., Valdez v.*
16 *Joyce*, 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of
17 pre-deprivation hearing); *Mata Velasquez v. Kurzdorfer*, -- F. Supp. 3d --, 2025 WL 1953796
18 (W.D.N.Y. July 16, 2025) (similar); *Garro Pinchi v. Noem*, -- F. Supp. 3d --, 2025 WL 2084921,
19 at *7 (N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, 2025 WL 2299376, at *10 (E.D.
20 Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews*, 2025 WL 2420068, at *13 (E.D. Cal. Aug. 21,
21 2025) (similar); *Hernandez v. Wofford*, 2025 WL 2420390 (E.D. Cal. Aug. 21, 2025).

22 As demonstrated by these many cases rejecting similar arrests, Petitioners are likely to
23 succeed on their claim and the Court should thus order the immediate return of Mr. Pinto and
24 immediate release of all three Petitioners. Notably, if Respondents continue to assert that
25 Petitioners’ detention is justified after their release, they may thereafter schedule a hearing where
26 they bear the burden of presenting clear and convincing evidence that each re-detention is
27 warranted.

1 As this Court recently explained in *E.A. T.-B.*, the three-factor test established in *Mathews*
2 *v. Eldridge*, 424 U.S. 319 (1976), is the controlling framework for determining what process
3 Petitioners are due. *E.A. T.-B.*, 2025 WL 2402130, at *3. *Mathews* requires the Court to evaluate
4 (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous
5 deprivation of such interest through the procedures used, and the probable value, if any, of
6 additional or substitute procedural safeguard” and (3) “the Government’s interest, including the
7 function involved and the fiscal and administrative burdens that the additional or substitute
8 procedural requirement would entail.” 424 U.S. at 335; *see also Ramirez Tesara*, 2025 WL
9 2637663, at *2–4 (applying *Mathews* factors to assess right to pre-deprivation hearing); *Ledesma*
10 *Gonzalez*, 2025 WL 2841574, at *7-9 (same); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050,
11 1055 (N.D. Cal. 2021) (same); *Morrissey v. Brewer*, 408 U.S. 471, 482–84 (1972) (assessing
12 parolee’s liberty interests and the state’s interests to determine what process is due a parolee).
13 Here, those factors strongly favor Petitioners.

14 A. Petitioners have a Weighty Private Interest.

15 Petitioners have an exceptionally strong interest in freedom from physical confinement
16 and in a hearing prior to any revocation of their liberty. Indeed, the “interest in not being
17 detained is ‘the most elemental of liberty interests[.]’” *E.A. T.-B.*, 2025 WL 2402130, at *3
18 (alteration in original) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)); *see also Ramirez*
19 *Tesara*, 2025 WL 2637663, at *3 (stating that the petitioner “has an exceptionally strong interest
20 in freedom from physical confinement”). “Freedom from imprisonment . . . lies at the heart of
21 the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
22 Thus, “[d]etention, including that of a non-citizen, violates due process if there are not ‘adequate
23 procedural protections’ or ‘special justification[s]’ sufficient to outweigh one’s ‘constitutionally
24 protected interest in avoiding physical restraint.’” *Perera v. Jennings*, 598 F. Supp. 3d 736, 742
25 (N.D. Cal. 2022) (second alteration in original) (quoting *Zadvydas*, 533 U.S. at 690). Similarly,
26 the Ninth Circuit has held that “[i]n the context of immigration detention, it is well-settled that
27 ‘due process requires adequate procedural protections to ensure that the government’s asserted

1 justification for physical confinement outweighs the individual’s constitutionally protected
2 interest in avoiding physical restraint.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017)
3 (quoting *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)). The Supreme Court has long
4 underscored this point. *See, e.g., Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (“It is clear that
5 commitment for any purpose constitutes a significant deprivation of liberty that requires due
6 process protection.” (citation omitted)).

7 This principle applies with significant force given all three Petitioners’ initial release
8 from detention on their own recognizance. “The Supreme Court has repeatedly held that in at
9 least some circumstances, a person who is in fact free of physical confinement—even if that
10 freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due
11 process before he is re-incarcerated.” *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir.
12 2017). This includes cases of “pre-parole conditional supervision,” *id.* (citing *Young v. Harper*,
13 520 U.S. 143, 152 (1997)); “probation,” *id.* (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 782
14 (1973)), and “parole,” *id.* (citing *Morrissey*, 408 U.S. at 482).

15 These principles apply with even more force here, where civil immigration detention is
16 concerned, than in cases involving renewed incarceration in the criminal context. As one court
17 has explained, “[g]iven the civil context, [a noncitizen’s] liberty interest is arguably greater than
18 the interest of parolees in *Morrissey*.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal.
19 2019). Parolees and probationers have a diminished liberty interest because of their underlying
20 convictions. *See, e.g., United States v. Knights*, 534 U.S. 112, 119 (2001) (“Probation is one point
21 on a continuum of possible punishments . . .” (citation modified)); *Griffin v. Wisconsin*, 483 U.S.
22 868, 874 (1987) (“To a greater or lesser degree, it is always true of probationers (as we have said
23 it to be true of parolees) that they do not enjoy the absolute liberty to which every citizen is
24 entitled . . .” (citation modified)). Nonetheless, even in the criminal parole and supervised release
25 context, courts have held that parolees cannot be re-arrested without a due process hearing
26 affording them the opportunity to contest the legality of their re-incarceration. *See, e.g., Hurd*,
27 864 F.3d at 684.

1 Critically, in recent months and years, courts—including courts in this district—have
2 repeatedly applied these principles to hold that noncitizens have a strong liberty interest in cases
3 involving re-detention. As Judge Evanson explained in *E.A. T-B.*, a person re-detained after a
4 prior release from ICE custody is “undoubtedly deprive[d] . . . of an established interest in his
5 liberty.” 2025 WL 2402130, at *3. Other courts have reached the same conclusion. *See, e.g.*,
6 *Ramirez Tesara*, 2025 WL 2637663, at *3 (“When he was released from his initial detention on
7 parole, Petitioner took with him a liberty interest which is entitled to the full protections of the
8 due process clause.”); *Kumar*, 2025 WL 2677089, at *3 n.3 (listing cases where “courts
9 throughout the Ninth Circuit have concluded that non-citizens who are released from ICE
10 custody have a protected liberty interest under the Due Process Clause in remaining out of
11 custody while their cases proceed”); *Garcia*, 2025 WL 2420068, at *10 (“[P]arole allowed [the
12 petitioner] to build a life outside detention, albeit under the terms of that parole. [Petitioner] has a
13 substantial private interest in being out of custody, which would allow him to continue in these
14 life activities, including supporting his family.”); *Garro Pinchi*, 2025 WL 2084921, at *4
15 (“[Petitioner] has a substantial private interest in remaining out of custody. She has an interest in
16 remaining in her home, continuing her employment, providing for her family, obtaining
17 necessary medical care, maintaining her relationships in the community, and continuing to attend
18 her church.”); *Maklad*, 2025 WL 2299376, at *8 (similar).

19 Just as in these cases, Petitioners have a strong interest in their liberty. Prior to their re-
20 detention, Petitioners had each lived in the United States for over a year without incident. All
21 three had timely filed asylum applications, obtained employment authorization, found gainful
22 employment, complied with the various conditions of their releases, attended immigration court
23 hearings, and otherwise built stable lives in this country that included attending church, living
24 with family, and enrolling a child in school. Dkt. 3 ¶¶ 3–4, 9, 11; Dkt. 4 ¶¶ 3–5, 9; Dkt. 5 ¶¶ 4–
25 12, 16. These facts demonstrate that Petitioners had a significant due process interest in not being
26 re-detained without notice and a hearing, and that they are in fact entitled to freedom from
27 confinement, other than complying with their immigration proceedings and conditions of release.

1 B. The Risk of Erroneous Deprivation Is High.

2 Second, “the risk of erroneous deprivation of [Petitioners’] liberty interest in the absence
3 of a pre-detention hearing is high.” *E.A. T.-B.*, 2025 WL 2402130, at *4. “That the Government
4 may believe it has a valid reason to detain Petitioner[s] does not eliminate its obligation to
5 effectuate the detention in a manner that comports with due process.” *Id.* Their re-detention must
6 still “bear[] [a] reasonable relation” to a valid government purpose—here, preventing flight or
7 protecting the community from dangerous individuals. *Zadvydas*, 533 U.S. at 690 (second
8 alteration in the original) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

9 Only a hearing before a neutral decisionmaker—where ICE must prove that re-detention
10 is justified and that each Petitioner poses a flight risk or danger—can ensure that this “reasonable
11 relation” to a valid government purpose exists. But to date, only a “government enforcement
12 agent” has made any decision about the propriety of Petitioners’ detention, *Coolidge v. New*
13 *Hampshire*, 403 U.S. 443, 450 (1971), a far cry from the hearing before a neutral decisionmaker
14 that due process requires, *see, e.g., Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972)
15 (“Whatever else neutrality and detachment might entail, it is clear that they require severance
16 and disengagement from activities of law enforcement.”); *Gerstein v. Pugh*, 420 U.S. 103, 112
17 (1975) (similar). Indeed, as another court analyzing the lawfulness of Respondents’ re-detention
18 of a noncitizen recently observed, “[t]he government’s unilateral determination that re-detention
19 is warranted is far less likely to be correct than the decision reached by a neutral adjudicator in a
20 bond hearing.” *Duong v. Kaiser*, No. 25-CV-07598-JST, --- F. Supp. 3d ---, 2025 WL 2689266, at
21 *7 (N.D. Cal. Sept. 19, 2025). In fact, Petitioners did not (and have not) even received actual,
22 meaningful notice of the basis for their re-detention, much less an opportunity to respond to any
23 allegations purporting to justify that re-detention or a hearing before a neutral decisionmaker.

24 The arbitrary nature of Petitioners’ re-detention is illustrated in each of their
25 circumstances. In Mr. Francois’s case, he was granted humanitarian parole immediately upon
26 entry and made efforts to move his court hearing to Georgia before flying across the country in
27 order to attend his May 28, 2025, court hearing in Seattle, Washington. Dkt. 3 ¶¶ 1, 4. Despite his

1 diligence and objection to the dismissal of his case, ICE re-detained him in the corridor outside
2 of the courtroom. *Id.* ¶¶ 5–6. There was no allegation that Mr. Francois was a flight risk or
3 danger to the community, and no reason given for the sudden revocation of his parole. *Id.* ¶ 6. In
4 Mr. Davila’s case, he had complied with all conditions of his release—sending weekly photos of
5 himself, attending monthly video calls, being at home for in-person visits, and presenting himself
6 at ICE appointments whenever called. Dkt. 4 ¶¶ 3, 5. The arbitrary nature of his re-detention is
7 underscored by the way that he was taken into custody: when he voluntarily presented himself at
8 an ICE office on the first available day after being instructed to come in on short notice. *Id.* ¶¶ 5–
9 6. Like Mr. Francois, he never received any explanation for why his parole was revoked. *Id.* ¶ 6.
10 Finally, in Mr. Pinto’s case, the arbitrary nature of the arrest is even more blatant: he was re-
11 arrested for allegedly missing a court hearing that had been *rescheduled*. Dkt. 5 ¶¶ 11–14. In fact,
12 he had appeared with his family at the court on the original date of his hearing, only to learn that
13 the court had sua sponte rescheduled his case for a later date. *Id.* ¶¶ 11–12. Indeed, Respondents’
14 own records show that his October 10, 2025 hearing had been cancelled and rescheduled for
15 October 29, 2025. Dkt. 6–12. Respondents’ incorrect rationale for having re-detained Mr. Pinto
16 “underscore[s] rather than undermine[s] the need for robust procedural safeguards before a
17 deprivation of liberty occurs.” *E.A. T.-B.*, 2025 WL 2402130, at *4. His re-detention and now
18 transfer to New Mexico is all the more egregious given his faithful compliance with all
19 requirements of his asylum process and his close family attachments in Eastern Washington. *See*
20 Dkt. 5 ¶¶ 16–18.

21 As the court explained in *Ramirez Tesara*, “[o]nce established, [a] Petitioner’s interest in
22 liberty is a constitutional right which may only be revoked through methods that comport with
23 due process, such as a hearing in front of a neutral party to determine whether Petitioner’s re-
24 detainment is warranted.” 2025 WL 2637663, at *3 (citing *Padilla v. U.S. Immigr. & Customs*
25 *Enf’t*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023)). This is true regardless of the statutory
26 basis for Petitioners’ detention, as they do “not claim to be entitled to a hearing consistent with a
27 particular statute: [they] argue[] that the Due Process Clause requires it.” *E.A. T.-B.*, 2025 WL

1 2402130, at *4. And due process requires such a hearing because “Petitioner[s]’ circumstances
2 have changed materially” since their initial releases in August 2024 (Mr. Francois), September
3 2023 (Mr. Davila), and August 2024 (Mr. Pinto). *Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762,
4 777 (N.D. Cal. 2019). Apart from their core interests in being free from imprisonment,
5 Petitioners’ ties to this country have deepened over the time that each has resided here. “These
6 facts show that a[] pre-deprivation] hearing provide[s] additional safeguards under these
7 circumstances.” *Id.*; *see also, e.g., Jorge M.F.*, 534 F. Supp. 3d at 1055 (“In any pre-detention
8 hearing, the IJ would be required to consider any additional evidence from the eight-plus months
9 since Petitioner was released.”); *Garcia*, 2025 WL 2420068, at *10 (“[P]arole allowed
10 [Petitioner] to build a life outside detention.”).

11 C. The Government’s Interest Is Minimal.

12 Finally, “the government’s interest in detaining [Petitioners] or re-detaining [them]
13 without a hearing is slight.” *Maklad*, 2025 WL 2299376, at *8; *Ortega*, 415 F. Supp. 3d at 970
14 (“If the government wishes to re-arrest Ortega at any point, it has the power to take steps toward
15 doing so; but its interest in doing so without a hearing is low.”). “[A]lthough [a pre-deprivation
16 hearing] would have required the expenditure of finite resources (money and time) to provide
17 Petitioner[s] notice and hearing on [ISAP] violations before arresting and re-detaining [them],
18 those costs are far outweighed by the risk of erroneous deprivation of the liberty interest at
19 issue.” *E.A. T.-B.*, 2025 WL 2402130, at *5; *see also id.* (“[W]here ICE was previously
20 persuaded that Petitioner would not abscond nor would he pose a danger to his community, and
21 those factors were not re-assessed before his June 2025 arrest and detention, the Court must
22 consider the Government’s interest in detaining Petitioner in this context *without a hearing.*”
23 (emphasis added)). Notably, since their releases, Petitioners continued to demonstrate that they
24 posed neither a flight risk nor a danger to the community, as none have any criminal history, all
25 had timely filed for asylum, all had been granted employment authorization, all had faithfully
26 complied with all conditions of release, and all had attended court hearings as they were
27 scheduled. *See* Dkt. 3 ¶¶ 3–5, 9, 11; Dkt. 4 ¶¶ 3–7, 9; Dkt. 5 ¶¶ 4–12, 16–17.

1 The government may claim that its interest in enforcing immigration laws weighs heavily
2 in its favor. But any such “heightened interest” is not “implicated here,” *Kumar*, 2025 WL
3 2677089, at *4, where Petitioners have complied with the immigration laws: they timely filed for
4 asylum, as the Immigration and Nationality Act (INA) expressly permits. 8 U.S.C. § 1158. Any
5 claimed “enforcement” instead amounts to punishing and deterring people like Petitioners from
6 asserting the statutory rights that the INA expressly provides, rather than enforcing those laws.
7 Even more fundamentally, the government’s interest in immigration enforcement “is not at stake
8 here; instead, it is the much lower interest in detaining [Petitioners] pending removal without a
9 bond hearing.” *Perera*, 598 F. Supp. 3d at 746. Many other courts have observed the same. *See*,
10 *e.g.*, *Zagal-Alcaraz v. ICE Field Office*, 2020 WL 1862254, at *7 (D. Or. Mar. 25, 2020) (“The
11 government interest at stake here is not the continued detention of Petitioner, but the
12 government’s ability to detain him without a bond hearing”), *report and recommendation*
13 *adopted*, 2020 WL 1855189 (D. Or. Apr. 13, 2020).

14 In addition, the government’s interest is not limited to enforcement of the law; it also
15 encompasses the interest of the “public,” including the administrative or financial burdens
16 additional process requires. *Mathews*, 424 U.S. at 348. Here, any cost in holding a hearing,
17 should the government choose to do so, is minimal. Moreover, any financial burden is
18 outweighed by the costs of detaining Petitioners—or detaining and transferring, in Mr. Pinto’s
19 case—during such proceedings. *See Garro Pinchi*, 2025 WL 2084921, at *6 (“[I]t is likely that
20 the cost to the government of detaining [petitioner] pending any bond hearing would
21 significantly exceed the cost of providing her with a pre-detention hearing.”). In addition,
22 “[s]ociety’s interest lies on the side of affording fair procedures to all persons, even though the
23 expenditure of governmental funds is required.” *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir.
24 1983); *see also Morrissey*, 408 U.S. at 484 (“Society . . . has an interest in not having parole
25 revoked because of erroneous information or because of an erroneous evaluation of the need to
26 revoke parole, given the breach of parole conditions.”). This consideration also “cuts strongly in
27 favor” of Petitioners because “[w]hen the Government incarcerates individuals it cannot show to

1 be a poor bail risk for prolonged periods of time, as in this case, it separates families and
2 removes from the community breadwinners, caregivers, parents, siblings and employees.”
3 *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020).

4 In sum, Petitioners are able to demonstrate that each “has a protected liberty interest in
5 his continuing release from custody, and that due process requires that Petitioner[s] receive a
6 hearing before an immigration judge before [they] can be re-detained.” *E.A. T.-B.*, 2025 WL
7 2402130, at *5.

8 **II. Petitioners will suffer irreparable harm absent an injunction.**

9 Petitioners must also show they are “likely to suffer irreparable harm in the absence of
10 preliminary relief.” *Winter*, 555 U.S. at 20. Irreparable harm is the type of harm for which there
11 is “no adequate legal remedy, such as an award of damages.” *Ariz. Dream Act Coal. v. Brewer*,
12 757 F.3d 1053, 1068 (9th Cir. 2014).

13 Here, Petitioners’ unlawful detention constitutes “a loss of liberty that is . . . irreparable.”
14 *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff’d*
15 *in part, vacated in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th
16 821 (9th Cir. 2022); *cf. Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (irreparable
17 harm is met where “preliminary injunction is necessary to ensure that individuals . . . are not
18 needlessly detained” because they are neither a danger nor a flight risk). This is particularly true
19 here, where Petitioners’ detention also violates the Constitution. “Civil [immigration] detention
20 violates due process outside of certain special and narrow nonpunitive circumstances.”
21 *Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018) (citation modified). As detailed above,
22 Petitioners’ detention is outside of those “special and narrow nonpunitive circumstances,” as the
23 Due Process Clause forbids their re-detention without a pre-deprivation hearing. These
24 constitutional concerns also counsel in favor of finding that Petitioners have demonstrated
25 irreparable harm, for they have shown that their detention violates due process. *See Baird v.*
26
27

1 *Bonta*, 81 F.4th 1036, 1048 (9th Cir. 2023) (declaring that “in cases involving a constitutional
2 claim, a likelihood of success on the merits usually establishes irreparable harm”).²

3 Detention also prevents Petitioners from working to not just sustain themselves and, in
4 Mr. Pinto’s case, his family, but to earn savings for their future, including raising necessary funds
5 to retain counsel to represent them in removal proceedings. *See, e.g.*, Dkt. 4 ¶¶ 8; Ortega Decl. ¶¶
6 3–4. This type of “potential economic hardship” supports a finding of irreparable harm. *Leiva-*
7 *Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011) (per curiam); *see also Gonzalez Rosario v*
8 *USCIS*, 365 F. Supp. 3d 1156, 1162 (W.D. Wash. 2018) (recognizing a “negative impact on
9 human welfare” when noncitizens “are unable to financially support themselves or their loved
10 ones”).

11 Moreover, detention also inflicts substantial harm on Mr. Pinto by separating him from
12 his wife and five-year-old daughter. Dkt. 5 ¶¶ 14, 18 (explaining that his detention “is really
13 tough on [his] family” and is causing his wife much stress as she “struggl[es] to maintain” their
14 household as the sole breadwinner with a young child to care for); *see also* Ortega Decl. ¶¶ 4–6
15 (describing emotional and financial toll on her since Mr. Pinto was detained, as well as the
16 emotional distress it is causing their young daughter). Mr. Pinto’s transfer from the NWIPC has
17 only compounded this harm. *See* Ortega Decl. ¶¶ 9–11 (discussing her concern over Mr. Pinto’s
18 well-being, inability to visit him, difficulties in “get[ting] him home” even if he is released, and
19 the fact that upon learning of the transfer, their daughter “was crying and begging not to go to
20 school” because she “wanted to see her father”). Absent a TRO, Mr. Pinto has no hope of being
21 reunited with his wife and daughter, from whom he had never been previously separated. *Id.*
22 ¶¶ 5–6. Such “separation from family members” is an important irreparable harm factor. *Leiva-*

23 ² Respondents may argue that Petitioners cannot demonstrate irreparable harm because the
24 harm they are suffering assumes their detention is unlawful. But any such contention would be
25 misplaced because the court will also be assessing the merits question, which “is a threshold
26 inquiry and is the most important factor” when deciding a TRO motion. *Baird*, 81 F.4th at 1040;
27 *see also Env’t Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 989 (9th Cir. 2020) (same); *California by*
and through Becerra v. Azar, 950 F.3d 1067, 1083 (9th Cir. 2020) (en banc) (similar). And as
Petitioners have demonstrated, *supra* Sec. I, that inquiry weighs strongly in Petitioners’ favor.

1 *Perez*, 640 F.3d at 969–70 (citation omitted); *see also, e.g., Washington v. Trump*, 847 F.3d 1151,
2 1169 (9th Cir. 2017) (per curiam) (finding “separated families” to be a “substantial injur[y] and
3 even irreparable harm[.]”); *cf. Hernandez*, 872 F.3d at 996 (recognizing that “government-
4 compelled [family] separation” causes family members “trauma” and “other burdens”).

5 In sum, the unlawful deprivation of liberty to which Petitioners are subject causes them
6 direct and immediate irreparable harms that warrant a TRO.

7 **III. The balance of hardships and public interest weigh heavily in Petitioners’ favor.**

8 The final two factors for a TRO—the balance of hardships and public interest—“merge
9 when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here,
10 Petitioners face weighty hardships: loss of liberty, deprivation of the right to earn a living, and
11 separation from their family. *See supra* Sec. I.A.; Sec. II. The government, by contrast, faces no
12 hardship as to Petitioners detained in Tacoma, as all it must do is release persons it previously
13 determined should be released, and who have since lawfully resided in this country and have no
14 criminal history. As to Mr. Pinto, Respondents do face the expense of returning him to
15 Washington. Nonetheless, it is Respondents who chose to move forward with transferring him
16 across the country *after* the habeas petition had been filed with a request that he not be
17 transferred, and *after* Petitioners’ counsel reached out and requested that Respondents stop his
18 transfer. In fact, Respondents had the opportunity to avoid any expenses of transfer; at the time
19 of undersigned’s request to Respondent’s counsel, Mr. Pinto was still “in the process of being
20 transferred to the Otero ICE Processing Center in New Mexico.” Korthuis Decl. ¶ 8. Instead,
21 Respondents proceeded with transferring him hundreds of miles away from his family and legal
22 counsel. These actions are especially egregious here, where Respondents are well aware that
23 Petitioners are likely to prevail on the merits of the case given other recent rulings issued by the
24 Western District of Washington, ordering that similarly situated petitioners be immediately
25 released. Despite that, Respondents decided to move Mr. Pinto elsewhere, taking him away from
26 his home, his family, and his counsel. Avoiding such “preventable human suffering” strongly tips
27 the balance in favor of Petitioners. *Hernandez*, 872 F.3d at 996 (quoting *Lopez*, 713 F.2d at

1 1437). What is more, “the public interest benefits from an injunction that ensures that individuals
2 are not deprived of their liberty and held in immigration detention because of . . . a likely
3 [illegal] process.” *Id.* Indeed, “in cases involving a constitutional claim, a likelihood of success
4 on the merits . . . strongly tips the balance of equities and public interest in favor of granting a
5 preliminary injunction.” *Baird*, 81 F.4th at 1048.

6 Accordingly, the balance of hardships and the public interest favor a temporary
7 restraining order to ensure that Respondents return Mr. Pinto to this district and release all
8 Petitioners unless and until Respondents provide a hearing with a neutral decisionmaker where
9 the government must demonstrate that each Petitioner poses a flight risk or danger before any re-
10 detention.

11 **IV. Return of Mr. Pinto to Washington and the immediate release of all Petitioners is**
12 **warranted.**

13 As in *Ramirez Tesara*, *Phetsadakone*, *Kumar*, *Ledesma Gonzalez*, and *E.A. T.-B.*, this
14 Court should order Petitioners’ immediate release. “[A] post-deprivation hearing cannot serve as
15 an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous
16 deprivation of liberty.” *E.A. T.-B.*, 2025 WL 2402130, at *6. In other words, Petitioners’ unlawful
17 detention without a pre-deprivation hearing is *already* occurring, and only immediate release
18 remedies that issue. *See Garro Pinchi*, 2025 WL 2084921, at *5 (declaring, in the case of a
19 detained noncitizen who was re-detained without pre-deprivation hearing, that “there is a
20 significant risk that even the two-day curtailment of liberty that [she] already suffered upon her
21 re-detention by ICE was not justified by any valid interest” and concluding that “[p]roviding her
22 with the procedural safeguard of a pre-detention hearing will have significant value in helping
23 ensure that any future detention has a lawful basis”).

24 Moreover, as the court explained in *Ramirez Tesara*, Petitioners’ “immediate release is
25 necessary to restore the status quo ante litem. This ‘refers not simply to any situation before the
26 filing of a lawsuit, but instead to the last uncontested status which preceded the pending
27 controversy.’” 2025 WL 2637663, at *5 (quoting *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d

1 1199, 1210 (9th Cir. 2000)); *see also Phetsadakone*, 2025 WL 2579569, at *5 (“The last
2 uncontested status here was Phetsadakone’s release on supervision, which he maintained without
3 incident for decades. The Government’s July 2025 re-detention—allegedly without following
4 required procedures—created the current controversy. Restoring Phetsadakone to his prior
5 supervised release status maintains the status quo ante litem and prevents irreparable harm while
6 allowing full adjudication of his claims for injunctive relief and on the merits.”). As in those
7 cases, the pending controversy here stems from Petitioners’ re-detention.

8 In similarly situated cases, Respondents have asserted that granting immediate release via
9 a TRO inappropriately grants “ultimate relief.” Not only is this incorrect because Petitioners seek
10 only to restore the status quo, but this principle is also at odds with Supreme Court and Ninth
11 Circuit precedent. In fact, the Supreme Court long ago explained that for temporary relief to be
12 proper, it *should* be akin in nature to the final relief sought: “[a] preliminary injunction is always
13 appropriate to grant intermediate relief of the same character as that which may be granted
14 finally.” *De Beers Consol. Mines v. United States*, 325 U.S. 212, 220 (1945). This principle
15 remains the law. *Pac. Radiation Oncology, LLC v. Queen’s Med. Ctr.*, 810 F.3d 631, 636 (9th Cir.
16 2015) (“A preliminary injunction is appropriate when it grants relief of the same nature as that to
17 be finally granted.”). Moreover, “absent ‘permanent’ relief from unlawful detention in the form
18 of a final judgment” from this Court clarifying the procedural protections required before any
19 future re-detention, Petitioners will continue to suffer “collateral consequences” in the form of
20 the “threat of re-arrest and mandatory detention.” *Ortiz Martinez v. Wamsley*, No. 2:25-CV-
21 01822-TMC, 2025 WL 2899116, at *3–4 (W.D. Wash. Oct. 10, 2025) (explaining that
22 petitioners’ release on bond pursuant to the court’s earlier TRO did not moot their habeas
23 petition) (quoting and citing, *inter alia*, *Nielsen v. Preap*, 586 U.S. 392, 403 (2019) (plurality),
24 and *Abdala v. INS*, 488 F.3d 1061, 1064 (9th Cir. 2007)). Granting this TRO would thus not grant
25 “ultimate relief.”

26 Lastly, the principles that govern this case are now well-established. In the past two
27 months, courts in this district have repeatedly affirmed that it is unlawful for Respondents to re-

1 detain persons like Petitioners without first providing a hearing where the detained person can
2 demonstrate that they present a flight risk or a danger to the community if not taken back into
3 custody. This is consistent with many other district court decisions across the country.

4 Accordingly, Petitioners respectfully seek a TRO requiring Mr. Pinto's return to this
5 district and the immediate release of all three Petitioners.

6 **CONCLUSION**

7 For the foregoing reasons, Petitioners respectfully request the Court grant their motion
8 for a temporary restraining order.

9 Respectfully submitted this 31st day of October, 2025.

10
11 s/ Matt Adams
12 Matt Adams, WSBA No. 28287
13 matt@nwirp.org

s/ Leila Kang
Leila Kang, WSBA No. 48048
leila@nwirp.org

14 s/ Glenda M. Aldana Madrid
15 Glenda M. Aldana Madrid,
16 WSBA No. 46987
17 glenda@nwirp.org

s/ Aaron Korthuis
Aaron Korthuis, WSBA No. 53974
aaron@nwirp.org

18 s/ Amanda Ng
19 Amanda Ng, WSBA No. 57181
20 amanda@nwirp.org

21 NORTHWEST IMMIGRANT RIGHTS PROJECT
22 615 Second Ave., Suite 400
23 Seattle, WA 98104
24 (206) 957-8611

25 *Counsel for Petitioners*

WORD COUNT CERTIFICATION

I certify that this memorandum contains 6,894 words, in compliance with the Local Civil Rules.

s/ Amanda Ng

Amanda Ng, WSBA No. 57181
Northwest Immigrant Rights Project
615 Second Ave., Ste 400
Seattle, WA 98104
(206) 816-3897
amanda@nwirp.org

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