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DETAINED

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**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE, WASHINGTON**

TOMAS ANTONIO TOMAS LOPEZ,

Petitioner,

v.

KRISTI NOEM, Secretary of U.S.
Department of Homeland Security;
PAMELA BONDI, United States Attorney
General;
TODD LYONS, Acting Director, U.S.
Immigration and Customs Enforcements;
LAURA HERMOSILLO, Acting Seattle Field
Office Director, Immigration and Customs
Enforcement;
BRUCE SCOTT, Warden, Northwest ICE
Processing Center;

Respondents.

Case No.: 2:25-cv-2229

PETITION FOR WRIT OF HABEAS
CORPUS PURSUANT TO
28 U.S.C. § 2241

Agency File Number:



PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. This case challenges the unlawful re-detention of Mr. Tomas Antonio Tomas Lopez, who entered the United States in 2015 as an Unaccompanied Alien Child (UAC). He was released on parole and filed his asylum application with the immigration court, which was dismissed because he was a UAC.

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2. Petitioner was subsequently re-detained on October 29, 2025. Before re-detaining him, Respondents did not provide Petitioner with any written notice explaining the basis for the revocation of his release on parole. Nor did they provide him with a hearing before a neutral decisionmaker where DHS was required to justify the basis for re-detention or explain why Petitioner is a flight risk or a danger to the community. By failing to provide such a hearing, Respondents have violated Petitioner's constitutional right to due process.

3. This Court has recently held in multiple cases that due process demands a hearing *prior* to the government's decision to terminate a person's liberty. *See E.A. T.-B. v. Wamsley*, --- F. Supp. 3d --- No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025); *Ramirez Tesara v. Wamsley*, --- F. Supp. 3d ---, No. 2:25-CV-01723-MJP-TLF, 2025 WL 2637663 (W.D. Wash. Sept. 12, 2025); *Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089 (W.D. Wash. Sept. 17, 2025). Many other courts have recently held the same.

4. Accordingly, this court should grant the instant petition for a writ of habeas corpus and order his immediate release. *See E.A. T.-B.* 2025 WL 2402130, at *6 (ordering immediate release because "a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty"); *Ramirez Tesara*, at *4 (similar); *Kumar*, 2025 WL 2677089, at *3-4 (similar).

PARTIES

5. Petitioner Tomas Antonio Tomas Lopez is a citizen of Guatemala who is presently detained at the Northwest ICE Processing Center in Tacoma, Washington.

6. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. The Immigration Judges who decide removal cases and applications for relief from removal do so as her designees.

7. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security. She is the cabinet-level secretary responsible for all immigration enforcement in the United States and has ultimate custodial authority over Petitioner.

8. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement (“ICE”). He is the head of the federal agency responsible for all immigration enforcement in the United States.

9. Respondent Laura Hermosillo is sued in her official capacity as Acting Field Office Director for the Seattle office of Immigration and Customs Enforcement, an agency of the Department of Homeland Security. She is responsible for overseeing ICE operations pertaining to noncitizens within its territorial jurisdiction, such as Petitioner, including detentions, enforcement, and removal operations. She is the immediate legal custodian of the petitioner for purposes of a federal habeas petition.

10. Respondent, Bruce Scott, is sued in his official capacity as the Warden of the Northwest ICE Processing Center, the privately-operated immigration detention center where the Petitioner is being detained. Mr. Scott has immediate physical custody of Petitioner.

JURISDICTION

11. This Court has jurisdiction over this matter under 18 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1651 (All Writs Act).

12. Further, this Court has jurisdiction under the Suspension Clause of Article I, § 9, cl. 2, of the U.S. Constitution. *See INS v. St. Cyr*, 533 U.S. 289 (2001).

13. No other petitions, appeals, or motions regarding habeas corpus have been filed with any other court.

VENUE

14. Venue in the Western District of Washington is appropriate under 28 U.S.C. § 1391(e)(1) because the Petitioner is currently detained in this judicial district.

15. Venue is further appropriate under 28 U.S.C. § 1391(e)(1) because the Respondents live, work, and/or operate within this judicial district and because the actions which gave rise to this Petition took place in Tacoma, Washington, which falls within this judicial district.

REQUIREMENTS OF 28 U.S.C. § 2243

16. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

17. Habeas corpus is “perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted); *see also Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954)

(Habeas corpus is “a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination.”).

FACTUAL BACKGROUND

18. Due to the emergency nature of this petition, the relevant factual background is included in the Declaration of Hilary Smith submitted with this petition and the accompanying emergency motion for temporary restraining order. *See* Declaration of Hilary Smith.

19. This Petition has been verified by Petitioner. *See* Verification of Petitioner.

MEMORANDUM OF LAW

Due Process Principles

20. Due process requires that if DHS seeks to re-arrest a person like Petitioner—who was determined to be a UAC and has an adjustment of status petition pending with U.S. Citizenship and Immigration Services (USCIS)—the government must afford a hearing before a neutral decisionmaker to determine whether any re-detention is justified, and whether the person is a flight risk or danger to the community.

21. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected by the Due Process Clause.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). As this Court recently recognized, this is the “the most elemental of liberty interests.” *E.A. T.-B.*, 2025 WL 2402130, at *3 (citation modified); *see also Ramirez Tesara*, 2025 WL 2637663, at *3 (stating that the petitioner had “an exceptionally strong interest in freedom from physical confinement”).

22. Consistent with this principle, individuals released on parole or other forms of conditional release have a liberty interest in their “continued liberty.” *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

23. Such liberty is protected by the Fifth Amendment because, “although indeterminate, [it] includes many of the core values of unqualified liberty,” such as the ability to be gainfully employed and live with family, “and its termination inflicts a ‘grievous loss’ on the [released individual] and often on others.” *Id.*

24. To protect against arbitrary re-detention and to ensure the right to liberty, due process requires “adequate procedural protections” that test whether the government’s asserted justification for a noncitizen’s physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (citation modified).

25. Due process thus guarantees notice and an individualized hearing before a neutral decisionmaker to assess danger or flight risk before the revocation of an individual’s release. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) (“The fundamental requisite of due process of law is the opportunity to be heard . . . at a meaningful time in a meaningful manner.” (citation modified)); *see also, e.g., Morrissey*, 408 U.S. at 485 (requiring “preliminary hearing to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed . . . a violation of parole conditions” and that such determination be made “by someone not directly involved in the case” (citation modified)).

26. Several courts, including this one, have recognized that these principles apply with respect to the re-detention of the many noncitizens that DHS has recently begun taking back into custody, often after such persons have been released for months or years.

1 27. For example, in *E.A. T.-B.*, this Court applied the *Mathews v. Eldridge*, 424 U.S. 319
2 (1976), framework to hold that even in a case where the government asserted that mandatory
3 detention applied, a person's re-detention could not occur absent a hearing. The Court did the
4 same in *Ramirez Tesara* and *Kumar*. See *Ramirez Tesara*, 2025 WL 2637663, at *2–3; *Kumar*,
5 2025 WL 2677089, at *2–3.

6 28. In applying the three *Mathews* factors, the *E.A. T.-B.* court held that the petitioner had
7 “undoubtedly [been] deprive[d] . . . of an established interest in his liberty,” 2025 WL 2402130,
8 at *3, which, as noted, “is the most elemental of liberty interests,” *id.* (citation modified). The
9 Court further explained that even if detention was mandatory, the risk of erroneous deprivation of
10 liberty without a hearing was high because a hearing serves to ensure that the purposes of
11 detention—the prevention of danger and flight risk—are properly served. *Id.* at *4–5. Finally, the
12 Court explained that “the Government’s interest in re-detaining non-citizens previously released
13 without a hearing is low: although it would have required the expenditure of finite resources
14 (money and time) to provide Petitioner notice and hearing on [ISAP] violations before arresting
15 and re-detaining him, those costs are far outweighed by the risk of erroneous deprivation of the
16 liberty interest at issue.” *Id.* at *5. As a result, this Court ordered the petitioner’s immediate
17 release. *Id.* at *6.

18 29. This Court applied a similar analysis in *Ramirez Tesara*. There, the Court reasoned that the
19 petitioner had a “weighty” interest in his liberty and was entitled to the “full protections of the
20 due process clause.” 2025 WL 2637663, at *3. When examining the value of additional
21 safeguards, the Court also noted that despite the government’s allegations of ISAP violations, “the
22 fact ‘that the Government may believe it has a valid reason to detain Petitioner does not eliminate
23 its obligation to effectuate the detention in a manner that comports with due process.’” *Id.* at *4

(quoting *E.A. T.-B.*, 2025 WL 2402130, at *4). Finally, the Court reasoned that any government interest in re-detention without a hearing was “minimal.” *Id.* Accordingly, there too, the Court ordered the petitioner’s immediate release. *Id.* at *5.

30. The *Kumar* court reached the same decision, again holding that all three factors weighed in favor of affording the petitioner a bond hearing. 2025 WL 2677089, at *3–4.

31. This Court’s decisions in *E.A. T.-B.*, *Ramirez Tesara*, and *Kumar* are consistent with many other district court decisions addressing similar situations. *See, e.g., Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation hearing); *Pinchi v. Noem*, --- F. Supp. 3d ---, No. 5:25-CV-05632-PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar).

32. Even in cases where a noncitizen has been charged with or convicted of a crime after being granted a bond by an immigration judge, courts in the Northern District of California found that those noncitizens were entitled to a pre-deprivation hearing and ordered the petitioners’ immediate release. *See Guillermo M.R. v. Kaiser*, No. 25-cv-05436-RFL, 2025 U.S. Dist. LEXIS 138205 (N.D. Cal., July 16, 2025); *Domingo v. Kaiser*, No. 25-cv-058933-RFL, 2025 WL 1940179 (N.D. Cal., July 14, 2025).

33. The same framework and principles apply here and compel Petitioner’s immediate release, especially considering USCIS retains jurisdiction over his adjustment of status application because he is both a UAC and classified as an “arriving alien.” *See* 8 C.F.R. § 1245.2(a).

34. This Petition has been verified by Petitioner. *See* Verification of Petitioner.

CLAIM FOR RELIEF
Violation of Fifth Amendment Right to Due Process
Procedural Due Process

35. Petitioner restates and realleges all paragraphs as if fully set forth here.

36. Due process does not permit the government to strip Petitioner of his liberty without written notice and a hearing before a neutral decisionmaker to determine whether re-detention is warranted based on danger or flight risk. *See Morrissey*, 408 U.S. at 487–88. Such written notice and a hearing must occur *prior* to any re-detention.

37. Respondents revoked Petitioner’s release and deprived him of liberty without affording him any written notice or meaningful opportunity to be heard by a neutral decisionmaker prior to his re-detention.

38. Accordingly, Petitioner’s re-detention violates the Due Process Clause of the Fifth Amendment.

IRREPARABLE INJURY

39. Petitioner has suffered irreparable injury as a result of his detention. He has been detained despite the immigration court not having jurisdiction over his application for adjustment of status. His physical liberty continues to be restrained, and no just cause for doing so can be specified. “It is well established that the deprivation of constitutional rights’ unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

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- 1 (1) Assume jurisdiction over this matter;
- 2 (2) Issue an Order to Show Cause ordering Respondents to show cause within three days
- 3 as to why this Petition should not be granted as required by 28 U.S.C. § 2243;
- 4 (3) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner
- 5 from custody and permanently enjoin his re-detention during the pendency of his
- 6 removal proceedings absent written notice and a hearing prior to re-detention where
- 7 Respondent must prove by clear and convincing evidence that he is a flight risk or a
- 8 danger to the community and that no alternatives to detention would mitigate those
- 9 risks;
- 10 (4) Declare that Petitioner's re-detention while removal proceedings are ongoing without
- 11 first proving an individualized determination before a neutral decisionmaker violates
- 12 the Due Process Clause of the Fifth Amendment;
- 13 (5) Issue an order providing for an award of attorney's fees and costs; and
- 14 (6) Grant such other relief as may be just and reasonable.

15
16 Dated: November 7, 2025.

17 /s/ Hilary Smith
18 HILARY SMITH, WSBA #60474
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