

INTRODUCTION

1. This case challenges the unlawful re-detention of Rosy Fernandes, who entered the United States on November 23, 2023 to seek asylum. Shortly after her entry, she was released on parole and subsequently filed her asylum application which is pending since April 5, 2024.

2. In the year and a half since her release, Ms. Fernandes has faithfully complied with the check-in requirement imposed by Immigration and Customs Enforcement (ICE) as part of her release.

3. Nevertheless, on November 7, 2025, ICE re-detained Ms. Fernandes during a check-in appointment. Ms. Fernandes was transferred to the Montgomery Processing Center in Conroe, Texas, where she remains detained today.

4. Before re-detaining her, Respondents did not provide Ms. Fernandes with any written notice explaining the basis for the revocation of her release. Nor did they provide a hearing before a neutral decisionmaker where ICE was required to justify the basis for re-detention or explain why Ms. Fernandes is a flight risk or danger to the community.

5. Many courts have recently held; due process demands such a hearing prior to the government's decision to terminate a persona's liberty. *E.A.T.B. v. Wamsley*, ---F. Supp. 3s--- No. C25-1192-KKE, 2025 WL 2402130 (W.D. wash. Aug. 19, 2025).

6. By failing to provide such a hearing, Respondents have violated Ms. Fernandes's constitutional right to due process. Accordingly, the Court should grant the instant petition for a writ of habeas corpus and order her immediate release. *See id.* 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").

JURISDICTION

7. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. §1101 et. Seq.

8. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, §9, cl. 2 of the United States Constitution (Suspension Clause).

9. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. Seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. Seq., and the All-Writs Act, 28 U.S.C. § 1651.

VENUE

10. Venue is proper because Ms. Fernandes is in Respondents' custody at the Montgomery Processing Center in Conroe, Texas. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the judicial district in which Ms. Fernandes currently is in custody.

REQUIREMENTS OF 28 U.S.C. §2243

11. 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.*

12. 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 receive prompt

action from him within the four corners of the application. “*Yong v. I.N.C.*, 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.”).

13. Ms. Fernandes is “in custody” for the purpose of 28 U.S.C. § 2241 because she is in Respondents’ custody at Montgomery Processing Center.

PARTIES

14. Rosy Fernandes is an adult citizen of India. She is detained at the Montgomery Processing Center in Conroe, Texas.

15. Respondent Bret Bradford is the Field Office Director of ICE’s Houston Field Office. The Houston Field Office is responsible for local custody decision relating to noncitizens charged with being removable from the United States. The Houston Field Office’s area of responsibility includes Texas. Respondent Bradford is a legal custodian of Ms. Fernandes and is sued in his official capacity.

16. Respondent Randall Tate is employed as Warden of Montgomery Processing Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

17. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (DHS). She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner’s detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

18. Respondent Pamela Bondi is the Attorney General of the United States, and as such has authority over the Department of Justice. She is sued in her official capacity.

19. Respondent U.S. Department of Homeland Security is the federal agency that has the authority over the actions of ICE.

FACTUAL BACKGROUND

20. Ms. Fernandes is a 28-year-old citizen and national of India.

21. Ms. Fernandes fled India to seek asylum and related protection from persecution and torture in the United States.

22. On or about November 23, 2023, Ms. Fernandes came to or near the port of entry at Arizona, to seek asylum. That same day, Respondents arrested and detained Ms. Fernandes and initiated expedited removal proceedings under 8 U.S.C. § 1225(b)(1).

23. Subsequently, Respondents determined that Ms. Fernandes had a credible fear of persecution or torture in India. Accordingly, Respondents rescinded her expedited removal order and commenced removal proceedings under 8 U.S.C. § 1229a.

24. On November 23, 2023, Respondent DHS paroled Ms. Fernandes from its custody into the United States under 8 U.S.C. § 1182(d)(5). As a condition of Ms. Fernandes's release, she was required to enroll in the Intensive Supervision Appearance Program (ISAP), a program operated by a private contractor that ICE uses to monitor released noncitizens.

25. Following his release, on April 5, 2024, Ms. Fernandes timely filed her application for asylum, withholding of removal, and Convention Against Torture Protection with the Houston Immigration Court.

26. Ms. Fernandes appeared at ICE-ERO in Houston before 9:00 a.m. on Friday November 7, 2025. Prior to Ms. Fernandes's re-detention, she did not receive written notice of the reason for her re-detention.

27. Prior to Ms. Fernandes's re-detention, ICE did not provide notice of the revocation of her parole, as required by 8 C.F.R. § 212.5(e)(2).

28. Prior to Ms. Fernandes's re-detention, she never received a hearing before a neutral decisionmaker to determine if her re-detention is justified.

LEGAL FRAMEWORK

29. Under current caselaw that governs the immigration court system, the mandatory detention scheme under 8 U.S.C. § 1225(b)(1) applies to individuals who are placed in expedited removal proceedings, pass a CFI, and are subsequently placed in removal proceedings. *See Matter of M-S*, 27 I. &N. Dec 509 (A.G. 2019). Such individuals are subject to detention without any bond hearing until the conclusion of their proceedings unless DHS release them on parole. *See it.* at 510, 518-19.

30. However, once released, due process requires that a person like Ms. Fernandes receive 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.

31. "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., 2025 WL 2402130, at *3 (citation modified).

32. Consistent with this principle, individuals released on parole or other forms of conditional release have a liberty interest in this "continued liberty." *Morrissey V. Brewer*, 408 U.S. 471, 482 (1972). Such liberty is protected by the Fifth Amendment because, "although indetermination, [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.*

33. To guarantee against arbitrary re-detention and to guarantee the right to liberty, due process requires “adequate procedural protections” that ensure 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).

34. 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)).

35. 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 and years.

36. For example, in *E.A.T.-B*, this Court applied the *Mathews v. Elridge*, 424 U.S. 319 (1976), framework to hold that even in the case where the government argues mandatory detention applied, a person’s re-detention required a hearing.

In applying the three *Mathew* factors, this Court held that the petitioner had “undoubtedly [been] deprive[d] ...of an established interest in his liberty, “*E.A.T.-B.*, 2025 WL 2402130, at *3, which, as noted, “is the most elemental of liberty interests,” *id.* (citation modified). The Court further

explained that even if detention was mandatory, the risk of erroneous deprivation of liberty without a hearing as high because a hearing serves to ensure that the purpose of detention ---- the prevention of danger and flight risk – are properly served. *Id.* at *4-5. Finally, the Court explained that “the Government’s interest in re-detaining non-citizens previously released without a hearing is low: although it would have required the expenditure of finite resources (money and time) to provide Petitioner notice and hearing on [ISAP] violations before arresting and re-detention him, those costs are far outweighed by the risk of erroneous deprivation of the liberty interest at issue.” *Id.* at *5. As a result, this Court ordered the petitioner’s immediate release. *Id.* at *6.

37. This Court’s decision in E.A.T.-B. is 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 8, 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.

38. 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).

39. The same framework and principles apply here and compel Ms. Fernandes’s immediate release.

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

40. Ms. Fernandes restates and realleges all paragraphs as if fully set forth here.

41. Due process does not permit the government to strip Ms. Fernandes of her 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.

42. Respondents revoked Ms. Fernandes's release and deprived her of liberty without affording her any written notice or meaningful opportunity to be heard by a neutral decisionmaker prior to this re-detention.

43. Accordingly, Ms. Fernandes's re-detention violates the Due Process Clause of the Fifth Amendment.

PRAYERS FOR RELIEF

WHEREFORE, Ms. Fernandes respectfully requests that this Court:

- (1) Assum jurisdiction over this matter.
- (2) Issue an Order to Show Cause ordering Respondents to show cause within three days as to why this Petition should not be granted as required y 28 U.S.C. § 2243;
- (3) Issue a Writ of Habeas Corpus ordering Respondents to release Ms. Fernandes from custody immediately and permanently enjoying her re-detention absent written notice and a hearing prior to re-detention where Respondents must prove by clear and convincing evidence that she is a flight risk or danger to the community and that no alternatives to detention would mitigate those risks;
- (4) Declare that Ms. Fernandes's detention without an individualized determination before a neutral decisionmaker violates the Due Process Clause of the Fifth Amendment;
- (5) Award Ms. Fernandes attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (6) Grant any further relief this Court deems just and proper.

Dated: November 20, 2025

Respectfully submitted,

SHARIF & ASSOCIATES, P.C.

A handwritten signature in black ink, appearing to read 'S. Aftab Sharif', with a long horizontal stroke extending to the right.

S. AFTAB SHARIF
SBN: 18114100
6161oy Drive, Suite 1000
Houston, Texas 77036
(713) 789-7500
(713) 774-2423 Facsimile
Email: aftab@ashariflaw.com

ATTORNEY FOR PETITIONER
Rosy Fernandes