

The Honorable Kymberly K. Evanson

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

WILLIAM A. BACHES ROCA,

Petitioner,

v.

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

Respondents.

Case No.: 2:25-cv-02551-KKE

PETITIONER'S TRAVERSE

Agency File Number:



INTRODUCTION

Petitioner, William Baches Roca, urges this Court to see through the Federal Respondents' post hoc rationalization for failing to follow their own regulations and violating Petitioner's due process rights, grant this petition, and order Mr. Baches Roca's immediate release without payment of bond.

Petitioner is a noncitizen of Guatemala who Respondents initially released from immigration custody on an Order of Supervision (OSUP). Respondents subsequently re-arrested

1 him without providing him with notice of the alleged violations of his OSUP or an informal
2 interview to challenge those violations, as Respondents concede is required by the regulations,
3 Dkt. 6 at 6, or holding a hearing before a neutral decisionmaker to determine if Petitioner had
4 violated his conditions of release and now presents a flight risk or danger to the community.

5 Respondents attempt to justify this unlawful and unconstitutional conduct by claiming
6 that detention was necessary for adjudication of his reasonable fear claim and pointing to alleged
7 release violations by Petitioner. Dkt. 6 at 3, 6. However, because Respondents' manner of re-
8 detaining Petitioner did not comport with the regulations governing the revocation of Petitioner's
9 OSUP or procedural due process, Petitioner has been unlawfully detained since his re-detention
10 in July 2025. Petitioner accordingly requests that the Court grant this petition.

11 **RESPONSIVE STATEMENT OF FACTS**

12 In addition to Petitioner's statement of facts as alleged in its petition, Dkt. 1 at ¶¶15-22,
13 Petitioner agrees with *most* of the facts presented in Respondents' return memorandum, Dkt. 6 at
14 2-5, and Officer Hubbard's Declaration, *see* Dkt. 8. However, Petitioner contests Officer
15 Hubbard's statements regarding Petitioner's alleged release violations. Dkt. 8 at ¶¶15-17. As
16 Officer Hubbard admits, ERO internally recorded these alleged release violations, but neither
17 provided Petitioner with any written notice that these violations were the reasons for revoking his
18 OSUP nor provided him with an informal interview following notice of revocation. *Id.* at ¶¶15-
19 17, 32. Since Petitioner was never given any written notice of these alleged violations, there is no
20 way for Petitioner to confirm their veracity.

21 To the extent that Respondents now claim that Petitioner's violations were the basis for
22 revoking his OSUP and re-detention, Petitioner notes that his claim focuses solely on whether
23 Respondents violated their own regulations in revoking Petitioner's release and whether his re-
detention procedures complied with the Fifth Amendment's Due Process Clause.

1 **ARGUMENT**

2 **A. Respondents violated their own regulations in revoking Petitioner’s release.**

3 Petitioner claims that prior to re-detention, the regulations required Respondents to
4 provide Petitioner with notice specifying the grounds for revoking his OSUP and the opportunity
5 to respond to the alleged violations in an informal interview. Dkt. 6 at 6. Government agencies
6 are required to follow their own regulations. *United States ex rel. Accordi v. Shaughnessy*, 347
7 US. 260, 268 (1954); *Nat’l Ass’n of Home Builders v. Norton*, 340 F.3d 835, 852 (9th Cir. 2003).
8 Courts across the country have determined that where ICE fails to follow its own regulations in
9 revoking release, the detention is unlawful, and the petitioner’s release must be ordered. *See*,
10 *e.g., Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025) (finding that “because
11 ICE did not follow its own regulations in deciding to re-detain [petitioner], his due process rights
12 were violated, and he is entitled to release”); *Orellana v. Baker*, No. 25-1788-TDC, 2025 WL
13 2444087, at *25-26 (D. Md. Aug. 25, 2025); *M.S.L. v. Bostock*, No. 6:25-cv-1204-AA, 2025 WL
14 2430267, at *10 (D. Or. Aug. 21, 2025). The Court should find the same principle applies here.

15 Respondents outline in detail the process ERO should have taken with respect to
16 revocation of Petitioner’s OSUP and re-detention, but didn’t. Dkt. 6 at 6 (citing 8 C.F.R. §§
17 241.13(i), 241.4(l)). Most alarmingly, Respondents attempt to comply with the regulations—
18 serving Petitioner with a notice of his OSUP revocation and providing him with a revocation
19 interview—over five months after they unlawfully re-detained him, and while he remains
20 unlawfully detained. Dkt. 8 at 5. However, Respondents do not even try to argue ERO was
21 justified in not following its own regulations. Rather, Respondents attempt to distract the Court’s
22 attention away from their unlawful conduct by pointing to Petitioner’s alleged violations of his
23 OSUP. Dkt. 6 at 3. However, the Court should see this for what it truly is a “post hoc
rationalization[] of past agency action” that should not be given deference.” *Ceesay*, 781 F.

1 Supp. 3d at 163 (citing *Lockheed Martin Corp. v. Morganti*, 412 F.3d 407, 411 (2d Cir. 2005)).

2 What good are the procedural steps prescribed by the regulations, if ERO can simply ignore
3 them, re-detain a noncitizen, and then seek to comply months after the noncitizen was detained?

4 Because the Court should find that Respondents violated their own regulations in re-detaining

5 Petitioner without notice of revocation or an informal interview, the Court should grant

6 Petitioner's immediate release on this basis alone and not require payment of the alternative bond

7 amount. *See* Dkt. 7 at 2-3.

8 **B. Respondents violated Petitioner's right to procedural due process.**

9 Petitioner further claims that prior to his re-detention, due process required Respondents

10 provide him with notice and a pre-detention hearing during which Respondents must

11 demonstrate by clear and convincing evidence that he had violated his conditions of release so as

12 to now pose a flight risk or danger to the community. In the past six months, courts around the

13 country, including this one, have repeatedly and resoundingly held that due process requires the

14 procedural safeguard of adequate notice and a pre-deprivation hearing. *See, e.g., Y.M.M. v.*

15 *Wamsley*, No. 2:25-CV-02075, 2025 WL 3101782 (W.D. Wash. Nov. 6, 2025) (granting habeas

16 petition, ordering immediate release due to lack of pre-deprivation hearing, and requiring

17 adequate notice and an immigration court hearing prior to any future re-detention); *Ledesma*

18 *Gonzalez v. Bostock*, No. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at *8 (W.D. Wash.

19 Oct. 7, 2025) (same); *Duong v. Kaiser*, No. 25-CV-07598-JST, 2025 WL 2689266, at *7 (N.D.

20 Cal. Sept. 19, 2025) (same); *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316 (W.D. Wash.

21 2025)(same); *Hernandez v. Wofford*, No. 1:25-CV-00986-KES-CDB (HC), 2025 WL 2420390,

22 at *8 (E.D. Cal. Aug. 21, 2025) (same); *Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT,

23 2025 WL 2677089, at *3 (W.D. Wash. Sept. 17, 2025) (granting TRO and ordering immediate

release due to lack of pre-deprivation hearing); *Garro Pinchi v. Noem*, No. 5:25-CV-05632-

1 PCP, 2025 WL 2084921, at *7 (N.D. Cal. July 24, 2025) (granting preliminary injunction and
2 ordering that petitioner not be re-detained without a pre-deprivation hearing before a neutral
3 immigration judge where the government must demonstrate by clear and convincing evidence
4 that she is a flight risk or danger); *Valdez v. Joyce*, No. 25-cv-4627-GBD, 2025 WL 1707737, at
5 *4 (S.D.N.Y. June 18, 2025) (same).

6 Even in cases where the federal respondents have alleged that re-detention without notice
7 or a hearing was justified by alleged release violations, like this one, courts have rejected these
8 post hoc justifications and granted habeas relief because the re-detention was unlawful without
9 adequate notice and a hearing. *Ramirez Tesara v. Wamsley*, No. 2:25-cv-01723, 2025 WL
10 2637663 (W.D. Wash. Nov. 25, 2025). This case is no different, and accordingly, the Court
11 should grant the habeas petition.

12 To determine whether Petitioner's re-detention conforms with constitutional due process
13 requirements, the Court must apply the three-part test articulated by the Supreme Court in
14 *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). The fact that Respondents do not even attempt
15 to argue that Petitioner's re-detention complied with procedural due process is further evidence
16 that this re-detention was unconstitutional. Instead, Respondents allege that Petitioner is now
17 subject to mandatory detention under 8 U.S.C. § 1225(b), as an applicant for admission, but
18 provide no justification for this detention authority. Dkt. 6 at 5, Dkt. 8 at 5; *see also Matter of*
19 *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

20 As argued below, the Court should find that the Respondents' re-detention and ongoing
21 detention of Petitioner with no process at all, much less prior notice or an opportunity to respond,
22 violates his due process rights.
23

1 **C. Mr. Baches Roca's private interest is substantial.**

2 Petitioner's interest in not being detained is "the most elemental of liberty interests[.]"
3 *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S. Ct. 2633, 159 L. Ed. 2d 578 (2004). Immigration
4 authorities released Petitioner from custody on an OSUP within days of his re-entry in May
5 2019. Dkt. 8 at ¶14. For nearly six years, Petitioner complied with his order of supervision,
6 worked with valid employment authorization from USCIS, and supported his minor children and
7 U.S. citizen partner. Dkt. 1 at ¶22. Petitioner has undoubtedly been deprived of an established
8 liberty interest when he was re-arrested without notice, detained for months, and remains at risk
9 of being transferred to another immigration detention facility out of state without this Court's
10 intervention. Even though noncitizen released on an OSUP enjoy only a "conditional liberty,"
11 the Supreme Court has held that termination of that liberty constitutes a "grievous loss" requiring
12 "some orderly process." *Morrissey v. Brewer*, 408 U.S. 471, 480, 482 (1972). The fact that
13 Petitioner was subject to conditional liberty does not diminish his interest in his continued
14 liberty. Dkt 1 at ¶26.

15 In its return, Respondents' do not refute that Mr. Baches Roca has a constitutionally-
16 protected liberty interest. Instead, Respondents' attempt to distract the Court by focusing on
17 Petitioner's alleged violations and claiming that he is subject to mandatory detention under 8
18 U.S.C. § 1225(b) Dkt. 6 at 3, 6; Dkt. 8 at 3, 5. However, Respondent's argument misses the
19 point because Petitioner does not contest ICE's authority to detain noncitizens or revoke an
20 OSUP based on verified violations. Rather, Petitioner emphatically challenges the process by
21 which Respondents re-detained him. *See Francois v. Wamsely*, No. 2:25-cv-02122-RSM-GJL,
22 2025 WL 3063251, at *3 (W.D. Wash. Nov. 3, 2025) ("Any argument that ICE acted within its
23 authority has no affect [sic] on a claim contending that detention violates Constitutional Due
Process." (citation omitted)). Respondents want the Court to completely ignore the significant

1 ties to the community that Petitioner developed in the nearly six years that he was released on
2 parole. *Bd. of Pardons v. Allen*, 482 U.S. 369, 377–81 (1987) (Governmental action can create a
3 liberty interest protected by the Due Process Clause).

4 Most importantly, during the same time that Mr. Baches Roca was under an OSUP with
5 ERO, another component agency of the Department of Homeland Security, the U.S. Citizenship
6 and Immigration Services, had granted Mr. Baches Roca deferred action following approval of
7 his I-360 self-petition under the Violence Against Women Act. Dkt. 1 at ¶ 19. Deferred action
8 means that the Government will take “no action ... against an apparently deportable alien, even
9 on grounds normally regarded as aggravated.” *Sepulveda Ayala v. Bondi*, No. 25-cv-01063, 2025
10 WL 2084400, at *7 (W.D. Wash. July 24, 2025) (internal quotations omitted). Accordingly, the
11 Court should find that for several years, in reliance on more than one agency’s positive exercise
12 of discretion, Petitioner continued to accumulate a liberty interest in the United States.

13 Lastly, continuing to argue that Petitioner is subject to mandatory detention as an
14 “applicant for admission,” over six years from his last arrival and after regular removal
15 proceedings under 8 U.S.C. § 1229a have been reopened is an impermissibly expansive
16 interpretation of its detention authority. Not only is this Court not bound by the Board of
17 Immigration Appeals’ interpretation of sections 1225, “courts must exercise independent
18 judgment in determining the meaning of statutory provisions.” *Loper Bright Enters. v.*
19 *Raimondo*, 603 U.S. 369, 394, 413 (2024). Indeed, federal district courts across the country have
20 resoundingly rejected the current administration’s interpretation of 8 U.S.C. 1225(b)(2) requiring
21 mandatory detention for noncitizens who are present and have been residing in the United States
22 for several years prior to detention. *See, e.g., Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025
23 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL
2403827 (D. Mass. Aug. 19, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal.

1 Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379 (E.D. Mich.
2 Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025);
3 *Benitez v. Noem*, No. 5:25cv-02190 (C.D. Cal. Aug. 26, 2025); *Leal-Hernandez v. Noem*, No.
4 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Aguilar Maldonado v. Olson*,
5 No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025).

6 Accordingly, the Court should find that the first *Mathews* factor weighs strongly in Mr.
7 Baches Roca's favor.

8 **D. The risk of erroneous deprivation of that liberty interest is high.**

9 The Court should find that the risk of erroneous deprivation of Petitioner's protected
10 liberty interest without notice, informal interview, or a pre-deprivation hearing is unacceptably
11 high. Again, Respondents do not meaningfully argue any of the *Mathews* factors to justify their
12 unconstitutional conduct. Instead, Respondents claim that the reason Petitioner was taken back
13 into custody was for consideration of his reasonable fear claim, Dkt. 6 at 3, but then go on to
14 argue that due to "documented" violations of his OSUP, ERO now "intends to revoke
15 Petitioner's OSUP." *Id.* Yet Respondents' post hoc rationale for re-detaining petitioner "does
16 not eliminate [the Government's] obligation to effectuate the detention in a manner that
17 comports with due process." *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1322 (W.D. Wash.
18 2025). The Court should find that only adequate notice, an informal interview, and a hearing
19 before a neutral decisionmaker, during which ICE must prove that Mr. Baches Roca's re-
20 detention is justified, can ensure that Petitioner's liberty interest is adequately protected.

21 First, as Respondents concede in their return, the express terms of the regulation
22 regarding revocation of an OSUP "requires notice of the reasons for revocation of his or her
23 release" and will receive an "initial informal interview promptly" after being detained, to "afford
the alien an opportunity to respond to the reasons for revocation stated in the notification." Dkt. 6

1 at 6 (citing 8 C.F.R. § 241.13(i)(3)). However, as Respondents acknowledge, they did not
2 provide Petitioner with any notice stating the basis for revoking his OSUP. Rather, ICE agents
3 arrested Petitioner without any notice at all when he presented himself at his scheduled check-in.
4 Indeed, Respondents admit that “Petitioner reported in person to ERO where he was arrested and
5 transported for processing” the same day. Dkt. 8 at ¶ 19. Petitioner had no reason to suspect that
6 at any moment he was going to be detained by ICE, and Respondents denied Petitioner any
7 meaningful opportunity to review the alleged basis for revoking his OSUP or to respond to these
8 allegations when he was re-detained.

9 Second, Respondents never provided Mr. Baches Roca with a hearing before a neutral
10 decisionmaker where ICE was required to show that he violated the conditions of release and is
11 now a flight risk or danger. Instead, Respondents attempt to provide Mr. Baches Roca with
12 notice of the revocation of his OSUP over five months after they re-arrested him. Indeed,
13 Respondents’ post hac justifications for re-detention only reinforce the high risk of erroneous
14 deprivation that exists absent a hearing before a neutral decisionmaker. *Cf. Ledesma Gonzalez*,
15 2025 WL 2841574, at *6 (agency rationale that “‘runs counter to the evidence’ before the
16 agency” is “arbitrary and capricious” (citation omitted)). Petitioner does not have any criminal
17 history anywhere in the world.

18 Moreover, most of Petitioner’s alleged violations occurred over the course of several
19 years. Accordingly, Respondents had years to address these alleged violations with Mr. Baches
20 Roca by providing him with proper notice, but chose not to. In sum, the record makes clear that
21 Respondents did not provide Mr. Baches Roca with adequate notice or a pre-deprivation hearing,
22 and any notion that Mr. Baches Roca should have anticipated his detention based on his
23 violations of his OSUP is unavailing because ERO continued to extend his OSUP annually
despite the violations. As a result, the record before the Court continues to demonstrate that the

1 second *Mathews* factor weighs in favor of Mr. Baches Roca's petition for a writ of habeas
2 corpus.

3 **E. The government's interest in re-detaining Petitioner without notice or a hearing is**
4 **low.**

5 In their return, Respondents do not even attempt to identify a legitimate governmental
6 interest that warranted re-detaining Mr. Baches Roca without following the proper procedures
7 for revoking an OSUP required by the regulation or providing notice or a hearing. Respondents'
8 lack of legal argument is indicative of just how low the Government's interest in re-detaining
9 noncitizens previously released on an OSUP without notice and a hearing is. Petitioner can only
10 surmise that by highlighting Petitioner's alleged release violations, Respondents believe the
11 Government has an interest in enforcing compliance with conditional release terms and detaining
12 individuals who violate those terms. Dkt. 6 at 6. But again, Petitioner does not disagree.

13 Petitioner is only arguing that in pursuing that interest, the Government must adhere to
14 the basic principles of due process that require it provide adequate notice and an opportunity to
15 be heard before taking that person into custody. The regulations already require Respondents to
16 provide Petitioner with notice stating the basis for revocation of the OSUP and an informal
17 interview to present evidence and contest those allegations, *see* 8 C.F.R. 241.4(l). The Court
18 should find that the additional cost and governmental resources needed to provide Petitioner with
19 a pre-deprivation hearing are far outweighed by the risk of erroneous deprivation of the liberty
20 interest at issue. *Ledesma Gonzalez*, 2025 WL 2841574, at *8 (concluding government interest to
21 be low even assuming "requiring pre-detention process would present some administrative
22 burden"); *Garro Pinchi*, 2025 WL 2084921, at *6 ("[I]t is likely that the cost to the government
23 of detaining [petitioner] pending any bond hearing would significantly exceed the cost of
providing her with a pre-detention hearing.").

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CONCLUSION

In sum, each *Mathews* factor favors Mr. Baches Roca. The Court should accordingly grant the petition for a writ of habeas corpus, order his immediate release so that Mr. Baches Roca can continue to pursue his applications for relief before the non-detained immigration court, and order that Respondents not re-detain him “until after an immigration court hearing is held (with adequate notice) to determine whether detention is appropriate.” *E.A. T.-B.*, 795 F. Supp. 3d at 1324. Lastly, Petitioner should not be required to pay a bond when the initial re-detention was in violation of the government’s own regulations and in violation of the Due Process Clause.

Dated: December 30, 2025.

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WORD COUNT CERTIFICATION

Pursuant to Local Civil Rule 7, I certify that the foregoing response has 3040 words and complies with the word limit requirements of Local Civil Rule 7(e).

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