The Honorable Grady J. Leupold

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Francis TSYAMBA, Luis Enrique ARREOLA SERENO, Petitioners, v. Laura HERMOSILLO et al., Respondents.	Case No. 2:25-cv-02623-GJL **PETITIONERS' TRAVERSE AND RESPONSE TO RESPONDENTS' RETURN MEMORANDUM** Note on Motion Calendar: January 7, 2026

INTRODUCTION

Respondents' return and accompanying evidence pertaining to each Petitioner demonstrate that the salient facts in this case are undisputed. Each Petitioner was re-arrested without Respondents first providing notice and a hearing before a neutral decisionmaker where ICE demonstrated by clear and convincing evidence that Petitioners were re-detained because they are now a flight risk or a danger to the community. *Compare* Dkt. 8 at 3, 5, *with* Dkt. 1 ¶¶ 23–26, 36–41. Moreover, Respondents' legal arguments are irrelevant, contrary to this Court's recent rulings, or otherwise unavailing.

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Because due process demands Respondents afford Petitioners meaningful process *before* re-detention, this Court should grant Petitioners' habeas petition and order immediate release.

ARGUMENT

I. Respondents' statutory authority to detain is irrelevant to Petitioners' claim.

Respondents fail to meaningfully contest Petitioners' entitlement to relief. First, Respondents' focus on ICE's statutory detention authority avoids the constitutional issue before the Court: whether Petitioners' re-detention comported with procedural due process. *Compare* Dkt. 8 at 6–8, *with* Dkt. 1 ¶¶ 60–63. In fact, in granting a similar re-detention habeas petition, this Court stated:

> To the extent that the Government's briefing suggests that Section 1225(b) should be the beginning and end of the Court's inquiry, this position is emphatically rejected. In determining the lawfulness of Petitioner's detention, the Court will focus not on the Government's claimed authority to detain, but the process by which Petitioner was detained.

P.T. v. Hermosillo, No. 2:25-cv-02249-KKE, 2025 WL 3294988, at *2 n.1 (W.D. Wash Nov. 26, 2025);[1] *see also, e.g.*, *Francois v. Wamsley*, No. C25-2122-RSM-GJL, 2025 WL 3063251, at *3 (W.D. Wash. Nov. 3, 2025) ("Any argument that ICE acted within its authority has no affect [sic] on a claim contending that detention violates Constitutional Due Process." (citation omitted)).

Similarly unavailing is Respondents' assertion that "[t]here is no statutory or regulatory requirement that a noncitizen be provided with a pre-detention hearing before re-detention." Dkt.

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[1] Although not necessary to decide the merits of the instant petition, it is worth noting that the Court previously rejected the application of 8 U.S.C. § 1225(b) to a petitioner who was similarly apprehended after entering the country, released to continue his removal proceedings, and subsequently re-detained. *See P.T.*, WL 3294988, at *2 n.1 ("Although the Government asserts that Petitioner falls within the mandatory detention scheme under 8 U.S.C. § 1225(b) simply because he has not been 'admitted' to the United States, this Court joins others in rejecting an expansion of the scope of this scheme to include Petitioner." (citation modified)). The same logic holds here.

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1 8 at 7. As Respondents "acknowledge," Dkt. 8 at 2 n.2, courts in this District, and courts around
2 the country, have repeatedly held that such a pre-deprivation hearing is required by the U.S.
3 Constitution. *E.g.*, *Tomas Manuel v. Hermosillo*, No. C25-2353-TL-MLP, 2025 WL 3690778 (W.D.
4 Wash. Dec. 10, 2025) ("Setting aside Respondents' statutory interpretation, which recent decisions of
5 the Court have cast into doubt, the government must still comply with constitutional requirements."),
6 *report and recommendation adopted*, 2025 WL 3697277 (Dec. 19, 2025); *P.T.*, 2025 WL 3294988,
7 at *4 (granting habeas petition, ruling that "absent notice and an opportunity to be heard,"
8 "[p]etitioner's re-detention does not comport with due process," and granting immediate release);
9 *Ramirez Tesara v. Wamsley*, No. 2:25-cv-01723-KKE-TLF, 2025 WL 3288295, at *2 (W.D.
10 Wash. Nov. 25, 2025) ("Petitioner's re-detention without notice and an opportunity to be heard
11 violates his right to due process"); *Y.M.M. v. Wamsley*, No. 2:25-CV-02075-TMC, 2025 WL
12 3101782, at *2–3 (W.D. Wash. Nov. 6, 2025) (same); *Ledesma Gonzalez v. Bostock*, No. 2:25-
13 CV-01404-JNW-GJL, 2025 WL 2841574, at *9 (W.D. Wash. Oct. 7, 2025) (same); *E.A. T.-B. v.*
14 *Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025) (same); *Kumar v. Wamsley*, No. 2:25-
15 CV-01772-JHC-BAT, 2025 WL 2677089, at *3 (W.D. Wash. Sept. 17, 2025) (granting TRO and
16 ordering immediate release due to lack of pre-deprivation hearing); *Francois*, 2025 WL 3063251
17 (same); *Hernandez v. Wofford*, No. 1:25-CV-00986-KES-CDB (HC), 2025 WL 2420390, at *8
18 (E.D. Cal. Aug. 21, 2025) (same); *Duong v. Kaiser*, No. 25-CV-07598-JST, 2025 WL 2689266,
19 at *7 (N.D. Cal. Sept. 19, 2025) (granting preliminary injunction and ordering that petitioner not
20 be re-detained without a pre-deprivation hearing before a neutral immigration judge where the
21 government must demonstrate by clear and convincing evidence that she is a flight risk or
22 danger); *Garro Pinchi v. Noem*, 792 F.Supp.3d 1025 (N.D. Cal.) (same). Respondents fail to
23 provide a valid basis for their "disagree[ment] with these holdings." Dkt. 8 at 2 n.2.

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II. Procedural due process requires the government to provide notice and a hearing prior to re-detention.

The *Mathews* factors weigh in favor of granting Petitioners' petition for a writ of habeas corpus and immediate release.[2] *See* Dkt. 1 ¶¶ 47–63. First, Respondents assert that noncitizens' liberty interests are less than those of U.S. citizens. *See* Dkt. 8 at 10. However, this "does not negate Petitioner[s'] liberty interest" in avoiding arbitrary re-detention. *Kumar*, 2025 WL 2677089, at *3; *see also, e.g.*, *P.T.*, 2025 WL 3294988, at *2 (citing *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1093 (E.D. Cal. 2025) ("[I]ndividuals who have been released from custody, even where such release is conditional, have a liberty interest in their continued liberty.")). The undisputed facts demonstrate that Respondents previously released each Petitioner from immigration custody under parole,[3] that both Petitioners timely-filed for asylum, and that both Petitioners were actively participating in their immigration check-ins when Respondents took them into immigration custody without notice and a hearing prior to their re-detention. *See* Dkt. 8 at 3, 5; Dkt. 1 ¶¶ 23–26, 36–41.

Second, Respondents' assertion that "existing procedures are constitutionally sufficient" is starkly inconsistent with this Court's caselaw. *Compare* Dkt. 8 at 10, *with supra* p. 3 (collecting cases). Respondents' claim that Petitioner Arreola was taken into custody due to alleged parole violations shows that the risk of erroneous deprivation of liberty is high when ICE fails to provide notice and a hearing prior to re-detention. *See* Dkt. 8 at 5. To begin with,

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[2] Though Respondents do not contest the *Mathews* test's applicability here, their substantive due process arguments are misplaced. *See* Dkt. 8 at 8–9. Respondents' Petitioners claim only procedural due process violations. Dkt. 1 ¶¶ 47–63.

[3] Regulations implementing 8 U.S.C. § 1182(d)(5) require DHS to release an individual under parole after determining that they "present neither a security risk nor a risk of absconding." 8 C.F.R. § 212.5(b).

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Respondents do not contest that Petitioner Arreola communicated with his ISAP officer following difficulties with his mobile check-ins, and that he had previously received assurances that such technical issues were "fine." Dkt. 4 ¶ 5; *see* Dkt. 8-2 ¶ 7.[4] In fact, this Court has previously found "no reason to assume the accuracy of the Government's records of Petitioner's ATD violations, or to assume that they alone justify detention." *P.T.*, 2025 WL 3294988, at *3; *see also* Order, *Francois v. Wamsley*, No. 2:25-cv-02122-RSM-GJL (W.D. Wash. Dec. 5, 2025), Dkt. 22 at 6 ("[N]or do [Respondents] address that one of his check-ins failed due to the app being faulty, potentially the same alleged 'failure to report,' which the Government acknowledged and cleared."). Regardless, "factual disputes" as to any alleged violations of Petitioner Arreola's initial release conditions "should [have been] resolved at a pre-deprivation hearing, rather than resolved after the fact by this Court." *Ramirez Tesara*, 2025 WL 3288295 at *5; *see also P.T.*, 2025 WL 3294988, at *3 ("[A]ny factual dispute about the validity of the [alleged] violations should have been resolved at a pre-deprivation hearing.") This Court has now repeatedly held that even assuming parole violations or valid reasons for re-detention, Respondents are not permitted to ignore their "obligation to effectuate the detention in a manner that comports with due process." *P.T.*, 2025 WL 3294988, at *3; *see also Ramirez Tesara*, 2025 WL 3288295, at *5 ("Even if the Government accurately counted Petitioner's [alleged forty]

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[4] Respondents' submission of declarations from deportation officers Paul Correa, Dkt. 8-2, and Robert Andron, Dkt. 8-1, should be given limited weight if even considered by the Court. For example, Petitioner Arreola has provided a first-hand account of his compliance with check-in requirements and close communication with his assigned officer regarding any technical difficulties. Dkt. 4 ¶¶ 3–5. In contrast, neither officers' assertions are based on personal knowledge of Petitioners' circumstances of re-detention. *See* Dkt. 8-1 ¶ 2; Dkt. 8-2 ¶ 2; Fed. R. Evid. 602. Instead, the declarations contain inadmissible hearsay in violation of Federal Rule of Evidence 801(c). Moreover, the best evidence rule requires that Respondents produce the "various records and systems maintained by ICE[,]" Dkt. 8-1 ¶ 2; Dkt. 8-2 ¶ 2, rather than rely on the officers' summaries of them, *see* Fed. R. Evid. 1002.

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parole violations . . . it is clear that Petitioner was not provided notice and an opportunity to be heard on them if, even now, the Government cannot fully describe the violations that purportedly triggered Petitioner's re-detention.").

Third, Respondents' assertion that the government possesses a "strong" interest "re-detaining non-citizens with alleged parole violations remains unavailing. *See* Dkt. 8 at 11. Courts in this District have now repeatedly recognized that (1) the government's interest in re-detaining non-citizens is "low," *e.g.*, *Ramirez Tesara*, 2025 WL 3288295, at *5; *P.T.*, 2025 WL 3294988, at *3; Order, *Francois*, No. 2:25-cv-02122-RSM-GJL, Dkt. 22 at 7; (2) any interest in ensuring conditions for release are followed "are not threatened if a pre-deprivation is required," *P.T.*, 2025 WL 3294988, at *4; and (3) the "finite" costs of providing such notice and a hearing "are far out-weighed by the risk of erroneous deprivation" of Petitioners' liberty interests, *id.*, at *3. Because Respondents' manner of re-detaining Petitioners did not comport with procedural due process, Petitioners have been unlawfully detained since their re-detentions in June and November 2025. Accordingly, Petitioners request the Court grant this petition.

CONCLUSION

Respondents' return and supporting documents do not contest the material facts nor pose new legal arguments that undermine this Court's recent rulings in similar habeas cases. As each of the *Mathews* factors favor Petitioners, the Court should grant their habeas petition for immediate release, and order that Respondents not re-detain Petitioners "until after an immigration court hearing is held (with adequate notice) to determine whether detention is appropriate." *E.A. T.-B.*, 795 F. Supp. at 1324.

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1 Respectfully submitted this 7th day of January, 2026.

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** I certify that this memorandum contains 1,712 words, in compliance with the Local Civil Rules.*

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