UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Evangelina HERRERA Gomez

Petitioner,

v.

Cammilla WAMSLEY, Seattle Field Office Director, Enforcement and Removal Operations, United States Immigration and Customs Enforcement (ICE); et al.,

Respondents.

Case No. 2:25-cv-2642

TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS AND RESPONSE TO ANSWER

Noting Date: Jan. 6, 2026

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INTRODUCTION

This is a case about due process—specifically, the Constitution's demand that the government not revoke an individual's established liberty by unilateral fiat.

The petitioner lived in the community for more than two years after being released by DHS. Her "Notice to Appear" indicated that she had to appear for a hearing before the Seattle Immigration Court on October 24, 2023. Ms. Herrera appeared that day, but was told her paperwork was not on file. Indeed, the petitioners admit the Notice never made itsw ay to the Immigration Court. Undeterred, Ms. Herrera filed her asylum application with USCIS, a sister-agency to the respondents here. She maintained contact with that office as they processed her application.

The petitioners claim Ms. Herrera failed to inform them of her address change as required by her Release on Recognizance (OREC). However, her OREC paperwork shows the following:

1.) Form I-220A indicates that Ms. Herrera must report "AS INDICATED ON THE ATTACHED OREC G-56," however, she was never given a G-56 or instructions on how or where to check in. *See,* Exhbit B.

2.) Form I-220A states, "You must not change your place of residence without first securing written permission from the immigration officer listed above." However, there is no immigration officer "listed above," nor are there other instructions on how one would change their address with the respondents.

3.) Form I-220A contains an "Alien's Acknowledgement of Conditions of Release on Recognizance" wherin an officer claims to have interpreted the form in Spanish to Ms. Herrera however the form does not contain a signature of either the officer or Ms. Herrera.

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If the issue was "flight risk," the officers knew exactly where to find Ms. Herrera because her address was listed on her I-589 asylum application that was filed with the Department of Homeland Security. She made no effort to hide or evade enforcement. Nevertheless, she was detained on December 12 and has remained in the respondent's custody since that time. She was not provided written notice or the chance to present her case before a neutral decisionmaker to determine whether re-detention was warranted based on individualized findings of flight or danger.

That is the constitutional defect at the center of this litigation. Due process protects "freedom from imprisonment—from government custody, detention, or other forms of physical restraint," and it requires notice and an individualized hearing before a neutral decisionmaker before the government revokes a person's established liberty. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970); Morrissey v. Brewer, 408 U.S. 471, 485 (1972). Courts in this District have repeatedly applied those principles to immigration re-detention and held that pre-deprivation process is required. *E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025); *Ramirez Tesara v. Wamsley*, 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).

The Court should grant the Petition, order Petitioner's immediate release, and enter prospective relief requiring Respondents to provide constitutionally sufficient pre deprivation procedures before any future effort to re-detain Petitioner.

ARGUMENT

I. Respondents Re-Detained Petitioner Without the Process the Constitution Requires—and They Do Not Dispute That Failure.

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This case turns on a straightforward constitutional defect.

Respondents re-detained Petitioner after a prolonged period of liberty in the community without affording her any pre-deprivation hearing before a neutral decisionmaker at which ICE was required to justify the deprivation of liberty. Respondents do not meaningfully contest that such process is constitutionally required.

The Supreme Court has long held that conditional liberty is liberty nonetheless. When the government confers freedom from physical custody—whether styled as parole, probation, or supervised release—it creates a protected liberty interest that cannot be revoked without due process. *Morrissey v. Brewer*, 408 U.S. 471, 481–84 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973); *Young v. Harper*, 520 U.S. 143, 147–49 (1997).

Morrissey explains why. Conditional liberty permits a person "to live and work in the community," to form relationships, and to rely on the government's implicit assurance that liberty will not be withdrawn absent cause. 408 U.S. at 482. Revocation "inflicts a grievous loss" and therefore triggers the protections of the Due Process Clause. Id. at 481.

Courts applying Morrissey in the immigration context have reached the same conclusion: release from immigration detention gives rise to a constitutionally protected liberty interest inherent in the Due Process Clause itself. See Guillermo *M. R. v. Kaiser*, No. 25-cv-05436-RFL, 2025 WL 1983677, at *4 (N.D. Cal. July 17, 2025); *Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025 WL 1771438, at *3 (N.D. Cal. June 26, 2025).

The petitioner's experience fits squarely within this framework. She lived in the community for more than two years without incident and did her best to file her asylum application in a timely matter and otherwise comply with the conditions of her release.

II. Under Mathews v. Eldridge, Due Process Required a Pre-Deprivation Hearing—and Every Factor Favors Petitioner

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Whether due process requires particular procedures is assessed under Mathews v. Eldridge, 424 U.S. 319 (1976), which weighs the:

(1) Private interest affected;

(2) Risk of erroneous deprivation and the value of additional safeguards; and

(3)Government's interest.

Id. at 335. Each factor points decisively in one direction.

1. Petitioner's Interest in Freedom from Physical Confinement Is Profound

"Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Due Process Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Courts in this District have repeatedly recognized that re-detention after release deprives a noncitizen of an already-vested liberty interest. *E.A. T.-B. v. Wamsley*, 2025 WL 2402130, at *3 (W.D. Wash. Aug. 19, 2025); *Ramirez Tesara v. Wamsley*, 2025 WL 2637663, at *3 (W.D. Wash. Sept. 12, 2025). That interest is particularly weighty where, as here, Petitioner had been living openly in the community in compliance with all government requirements.

The D.C. Circuit has explained that "a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated." Hurd v. District of Columbia, 864 F.3d 671, 683 (D.C. Cir. 2017).

Respondents' Return does not grapple with this interest. The first Mathews factor weighs heavily in Petitioner's favor.

2. Unilateral ICE Re-Detention Creates an Acute Risk of Error—Neutral Review Substantially Reduces That Risk

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The risk of erroneous deprivation is substantial when ICE acts as investigator, prosecutor, and jailer—revoking liberty based on its own unreviewed determinations.

This Court has already identified that precise danger in a series of recent re-detention cases, holding that revocation of release without a pre-deprivation hearing presents an unacceptably high risk of error. *E.A. T.-B.*, 2025 WL 2402130, at *4–5; *Ramirez Tesara*, 2025 WL 2637663, at *3–4; *Kumar v. Wamsley*, 2025 WL 2677089, at *3–4; *Ledesma Gonzalez v. Wamsley*, 2025 WL 2841574, at *7–9 (W.D. Wash. Sept. 29, 2025).

The Ninth Circuit has similarly recognized that DHS's internal custody assessments are not an adequate substitute for neutral adjudication. Diouf v. Napolitano, 634 F.3d 1081, 1092 (9th Cir. 2011).

Petitioner's case illustrates the problem. ICE provided no contemporaneous explanation for re-detention, no assessment of flight risk or danger, and no opportunity for Petitioner to contest the deprivation before it occurred. A neutral hearing would materially reduce the risk of error.

3. The Government's Interest Does Not Justify Dispensing with Fundamental Process

The government's interest in enforcing the immigration laws does not depend on abandoning constitutional safeguards. Immigration custody hearings are routine, administratively modest, and already embedded in the system. See Ortega v. Bonnar, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); Doe v. Becerra, 2025 WL 691664, at *6 (E.D. Cal. Mar. 3, 2025).

Nothing in Petitioner's history suggests that a brief, pre-deprivation hearing would have impaired removal efforts or public safety. To the contrary, such a hearing would have avoided unlawful detention altogether.

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All three Mathews factors converge: due process required a pre-deprivation hearing before a neutral adjudicator at which Respondents bore the burden of justification. Respondents provided none.

CONCLUSION

The Due Process Clause does not permit Respondents to re-detain Petitioner—after years of established liberty in the community—without notice and a pre-deprivation hearing before a neutral decisionmaker at which ICE must justify the deprivation of liberty by individualized findings. Petitioner was seized on December 12, and has remained detained since, without the basic procedures the Constitution requires at the moment liberty is revoked. The Court should grant the writ, order Petitioner's immediate release, and enter prospective relief declaring that Petitioner's re-detention without a neutral, pre-deprivation individualized determination violates the Due Process Clause.

Dated: Tuesday, January 6, 2026

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