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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

Mihail PETROV

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-2647

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

Noting Date: Jan. 6, 2026

1 **INTRODUCTION**

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

4 The petitioner lived in the community for more than two years after being released  
5 by DHS. He and his wife have been in contact with ERO and have tried to fully comply  
6 with all the conditions of their release.

7 The petitioners claim Mr. Petrov has been delinquent on a number of occasions,  
8 failing to be at home for check-in appointments or to report his biometrics in the ISAP app.  
9 The petitioner denies these allegations and offers the following example as a rebuttal to the  
10 accusation:

11 Among the missed appointments listed is an August 25, 2025 “Failed Home Visit.”  
12 However, prior to that date Mr. Petrov requested permission from ERO to travel to  
13 California for vacation. The permission was granted.

14 Despite arranging with respondents to be out of town, Mr. Petrov received a  
15 phone call on August 25, asking him to be at home that day. Mr. Petrov informed the caller  
16 that he had previously requested permission to be out of state. The officer reviewed the  
17 notes and then confirmed with Mr. Petrov that he saw that his absence was excused.  
18 Nevertheless, the respondents here list the encounter simply as a “Failed Home Visit.”

19 Critically, the majority of Mr. Petrov’s communication with ERO was done through  
20 the ISAP application which includes a messenger function. After his detention Mr. Petrov  
21 received an email indicating that his ISAP account was “closed,” and his wife is not able to  
22 log in to access those communications.

1 On other occasions Mr. Petrov waited at home all day, even calling ERO to try and  
2 confirm the check-in or call and never receiving a response. Those incidents are also listed as  
3 failures on Mr. Petrov's part.

4 Despite trying his best to comply, Mr. Petrov was detained in December and has  
5 remained in the respondent's custody since that time. He was not provided written notice or  
6 the chance to present his case before a neutral decisionmaker to determine whether re-  
7 detention was warranted based on individualized findings of flight or danger.

8 That is the constitutional defect at the center of this litigation. Due process protects  
9 "freedom from imprisonment—from government custody, detention, or other forms of  
10 physical restraint," and it requires notice and an individualized hearing before a neutral  
11 decisionmaker before the government revokes a person's established liberty. *Zadvydas v.*  
12 *Davis*, 533 U.S. 678, 690 (2001); *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970); *Morrissey v.*  
13 *Brewer*, 408 U.S. 471, 485 (1972). Courts in this District have repeatedly applied those  
14 principles to immigration re-detention and held that pre-deprivation process is required.  
15 *E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025);  
16 *Ramirez Tesara v. Wamsley*, No. 2:25-CV-01723-MJP-TLF, 2025 WL 2637663 (W.D. Wash.  
17 Sept. 12, 2025); *Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089 (W.D.  
18 Wash. Sept. 17, 2025).

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

## 22 ARGUMENT

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

1 This case turns on a straightforward constitutional defect.

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

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

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

15 Courts applying *Morrissey* in the immigration context have reached the same  
16 conclusion: release from immigration detention gives rise to a constitutionally protected  
17 liberty interest inherent in the Due Process Clause itself. See *Guillermo M. R. v. Kaiser*, No.  
18 25-cv-05436-RFL, 2025 WL 1983677, at \*4 (N.D. Cal. July 17, 2025); *Ortega v. Kaiser*, No. 25-  
19 cv-05259-JST, 2025 WL 1771438, at \*3 (N.D. Cal. June 26, 2025).

20 The petitioner’s experience fits squarely within this framework. He lived in the  
21 community for more than two years without incident and did his best to comply with all the  
22 conditions set by respondents. Whenever there was an issue he would reach out to  
23 communicate with ERO. Nevertheless, he was detained and remains in custody.

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

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

- 5 (1) Private interest affected;  
6 (2) Risk of erroneous deprivation and the value of additional safeguards; and  
7 (3) Government's interest.

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

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

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

13 Courts in this District have repeatedly recognized that re-detention after release  
14 deprives a noncitizen of an already-vested liberty interest. *E.A. T.-B. v. Wamsley*, 2025 WL  
15 2402130, at \*3 (W.D. Wash. Aug. 19, 2025); *Ramirez Tesara v. Wamsley*, 2025 WL 2637663, at  
16 \*3 (W.D. Wash. Sept. 12, 2025). That interest is particularly weighty where, as here,  
17 Petitioner had been living openly in the community in compliance with all government  
18 requirements.

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

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

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

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

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

10                  The Ninth Circuit has similarly recognized that DHS’s internal custody assessments  
11                  are not an adequate substitute for neutral adjudication. *Diouf v. Napolitano*, 634 F.3d 1081,  
12                  1092 (9th Cir. 2011).

13                  Petitioner’s case illustrates the problem. ICE provided no contemporaneous  
14                  explanation for re-detention, no assessment of flight risk or danger, and no opportunity for  
15                  Petitioner to contest the deprivation before it occurred. They cut off access to  
16                  communication records which may have established compliance. A neutral hearing would  
17                  materially reduce the risk of error.

18                   **3. The Government’s Interest Does Not Justify Dispensing with Fundamental**  
19                   **Process**

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

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

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

7 **CONCLUSION**

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

16 Dated: Tuesday, January 6, 2026

17 s/ Stephen C. Robbins  
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