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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

Emirhan ASLAN

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 2698

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

Noting Date: Jan. 13, 2026

TRAVERSE IN SUPPORT OF PETITION FOR WRIT  
OF HABEAS AND RESPONSE TO ANSWER  
Case No. 2:25 cv 2698

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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 over a year and a half after being released by DHS. He filed his asylum application and was complying with the conditions of his release as best he could, yet he was arrested while attending an ERO check-in with his wife.

The petitioners claim Mr. Aslan missed a check-in appointment in September of 2024. The petitioner denies this allegation and insists that no such appointment was ever communicated to him. The petitioners have not provided any evidence that such an appointment was ever provided to Mr. Aslan.

Despite trying his best to comply, Mr. Aslan was detained in December and has remained in the respondent’s custody since that time. He was not provided written notice or the chance to present his 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. *Zadydas 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.

1 Sept. 12, 2025); *Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089 (W.D.  
2 Wash. Sept. 17, 2025).

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

## 6 ARGUMENT

### 7 I. Respondents Re-Detained Petitioner Without the Process the Constitution 8 Requires—and They Do Not Dispute That Failure.

9 This case turns on a straightforward constitutional defect.

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

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

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

23 Courts applying *Morrissey* in the immigration context have reached the same  
conclusion: release from immigration detention gives rise to a constitutionally protected

1 liberty interest inherent in the Due Process Clause itself. See *Guillermo M. R. v. Kaiser*, No.  
2 25-cv-05436-RFL, 2025 WL 1983677, at \*4 (N.D. Cal. July 17, 2025); *Ortega v. Kaiser*, No. 25-  
3 cv-05259-JST, 2025 WL 1771438, at \*3 (N.D. Cal. June 26, 2025).

4 The petitioner's experience fits squarely within this framework. He lived in the  
5 community for a year and a half without incident and did his best to comply with all the  
6 conditions set by respondents. Whenever there was an issue he would reach out to  
7 communicate with ERO. Nevertheless, he was detained and remains in custody.

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

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

- 11 (1) Private interest affected;  
12 (2) Risk of erroneous deprivation and the value of additional safeguards; and  
13 (3) Government's interest.

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

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

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

19 Courts in this District have repeatedly recognized that re-detention after release  
20 deprives a noncitizen of an already-vested liberty interest. *E.A. T.-B. v. Wamsley*, 2025 WL  
21 2402130, at \*3 (W.D. Wash. Aug. 19, 2025); *Ramirez Tesara v. Wamsley*, 2025 WL 2637663, at  
22 \*3 (W.D. Wash. Sept. 12, 2025). That interest is particularly weighty where, as here,  
23 Petitioner had been living openly in the community in compliance with all government  
requirements.

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

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

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

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

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

16 The Ninth Circuit has similarly recognized that DHS’s internal custody assessments  
17 are not an adequate substitute for neutral adjudication. *Diouf v. Napolitano*, 634 F.3d 1081,  
18 1092 (9th Cir. 2011).

19 Petitioner’s case illustrates the problem. ICE provided no contemporaneous  
20 explanation for re-detention, no assessment of flight risk or danger, and no opportunity for  
21 Petitioner to contest the deprivation before it occurred. They cannot even document that  
22 Mr. Aslan was provided notice of the alleged appointment that he missed.

23 **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,

1 administratively modest, and already embedded in the system. See *Ortega v. Bonnar*, 415 F.  
2 Supp. 3d 963, 970 (N.D. Cal. 2019); *Doe v. Becerra*, 2025 WL 691664, at \*6 (E.D. Cal. Mar.  
3 3, 2025).

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

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

#### 10 CONCLUSION

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

19 Dated: Monday Jan. 12, 2026

20 s/ Stephen C. Robbins  
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23