

Hilary Smith
GIBBS HOUSTON PAUW
1000 Second Avenue, Suite 1600
Seattle, WA 98104-1003
(206) 929-3880
hilary.smith@ghp-law.net

Attorney for Petitioner

DETAINED

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

Francisco DIEGO FRANCISCO;

Petitioner,

v.

Kristi NOEM, Secretary of U.S. Department
of Homeland Security;
Palmela BONDI, United States Attorney
General;
Todd LYONS, Acting Director, U.S.
Immigration and Customs Enforcements;
Laura HERMOSILLO, Acting Seattle Field
Office Director, Immigration and Customs
Enforcement;
Bruce SCOTT, Warden, Northwest ICE
Processing Center;

Respondents.

Case No.: 2:26-cv-25

PETITION FOR WRIT OF HABEAS
CORPUS PURSUANT TO
28 U.S.C. § 2241

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. This case challenges the unlawful re-detention of Petitioner Francisco Diego Francisco, who last entered the United States in April 2019. He expressed a fear of return to Guatemala and

1 was released by the Department of Homeland Security (DHS) on an order of supervision on April
2 21, 2019.

3 2. Petitioner filed for withholding of removal and fulfilled the conditions of his release as set
4 by Immigration and Customs Enforcement (ICE). He does not have criminal record in the United
5 States.

6 3. Despite Petitioner's compliance while released, including court attendance in removal
7 proceedings, he was abruptly and unlawfully re-detained by the Department of Homeland
8 Security (DHS) on November 7, 2025.

9 4. Prior to re-detaining Petitioner, Respondents did not provide any written notice explaining
10 the basis for the revocation of his release. Likewise, Respondents did not assess whether Petitioner
11 presented a flight risk or danger to the community prior to his rearrests. Nor did Respondents
12 provide a hearing before a neutral decisionmaker, where ICE was required to justify the basis for
13 re-detention or to explain why Petitioner is a flight risk or danger to the community.

14 5. This Court has recently held in multiple cases that due process demands a hearing *prior* to
15 the government's decision to terminate a person's liberty. *See E.A. T.-B. v. Wamsley*, --- F. Supp.
16 3d --- No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025); *Ramirez Tesara v.*
17 *Wamsley*, --- F. Supp. 3d ---, No. 2:25-CV-01723-MJP-TLF, 2025 WL 2637663 (W.D. Wash.
18 Sept. 12, 2025); *Ledesma Gonzalez v. Bostock*, No. 2:25-CV01404-JNW-GJL, 2025 WL
19 2841574, at *7-9 (W.D. Wash. Oct. 7, 2025); *Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT,
20 2025 WL 2677089 (W.D. Wash. Sept. 17, 2025). Many other courts have also held the same.

21 6. By failing to provide such a hearing, Respondents have violated Petitioner's constitutional
22 right to due process.

7. Accordingly, this court should grant the instant petition for a writ of habeas corpus and order Petitioners' immediate release. *See E.A. T.-B.* 2025 WL 2402130, at *6 (ordering immediate release because "a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty"); *Ramirez Tesara*, at *4 (similar); *Kumar*, 2025 WL 2677089, at *3-4 (similar).

PARTIES

8. Petitioner Francisco Diego Francisco is a citizen of Guatemala who is presently detained at the Northwest ICE Processing Center in Tacoma, Washington.

9. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security. She is the cabinet-level secretary responsible for all immigration enforcement in the United States and has ultimate custodial authority over Petitioners.

10. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States. The Immigration Judges who decide removal cases and applications for relief from removal do so as her designees.

11. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"). He is the head of the federal agency responsible for all immigration enforcement in the United States.

12. Respondent Laura Hermosillo is sued in her official capacity as Acting Field Office Director for the Seattle office of Immigration and Customs Enforcement, an agency of the Department of Homeland Security. She is responsible for overseeing ICE operations pertaining to noncitizens within its territorial jurisdiction, such as Petitioners, including detentions,

1 enforcement, and removal operations. She is the immediate legal custodian of the petitioner for
2 purposes of a federal habeas petition.

3 13. Respondent, Bruce Scott, is sued in his official capacity as the Warden of the Northwest
4 ICE Processing Center, the privately-operated immigration detention center where the Petitioners
5 are being detained. Mr. Scott has immediate physical custody of Petitioners

6
7 **JURISDICTION**

8 14. This Court has jurisdiction over this matter under 18 U.S.C. § 1331 (federal question
9 jurisdiction); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1651 (All Writs Act).

10 15. Further, this Court has jurisdiction under the Suspension Clause of Article I, § 9, cl. 2, of
11 the U.S. Constitution. *See INS v. St. Cyr*, 533 U.S. 289 (2001).

12 16. No other petitions, appeals, or motions regarding habeas corpus have been filed with any
13 other court.

14
15 **VENUE**

16 17. Venue in the Western District of Washington is appropriate under 28 U.S.C. § 1391(e)(1)
17 because the Petitioner is currently detained in this judicial district.

18 18. Venue is further appropriate under 28 U.S.C. § 1391(e)(1) because the Respondents live,
19 work, and operate within this judicial district and because the actions which gave rise to this
20 Petition took place in Tacoma, Washington, which falls within this judicial district.

21
22 **FACTUAL BACKGROUND**

23 19. Petitioner is a 32-year-old citizen and national of Guatemala.

20. Petitioner last entered that United States in April 2019 with his son.

21. He was detained by ICE and released on an order of supervision shortly after entering the United States, on April 21, 2019.

22. Petitioner complied with the conditions on his order of release from detention and attended every ICE check-in. However, he was re-detained by ICE on November 7, 2025, when he was pulled over by ICE on the way to work. The ICE officers smashed the window of his car which resulted in Petitioner getting glass in his eye and needing medical attention.

23. Petitioner has no criminal record in the United States or any other country.

24. Prior to Petitioner's re-detention, he did not receive written notice of the reason for his re-detention.

25. Prior to Petitioner's re-detention, ICE did not assess whether he presented a flight risk or danger to the community, or was justified for some other reason.

26. Prior to Petitioner's re-detention, he never received a hearing before a neutral decisionmaker to determine if his re-detention is justified.

27. Petitioner has been detained for nearly two months.

MEMORANDUM OF LAW

Due Process Principles

28. Due process requires that if DHS seeks to re-arrest a people like Petitioner—who has lived in the United States without incident after DHS first released him from custody, has submitted an application for relief from removal and received work authorization, and otherwise complied with the terms of his release—the government must afford a hearing before a neutral decisionmaker to

1 determine whether any re-detention is justified, and whether they are a flight risk or danger to the
2 community.

3 29. “Freedom from imprisonment—from government custody, detention, or other forms of
4 physical restraint—lies at the heart of the liberty protected by the Due Process Clause.” *Zadvydas*
5 *v. Davis*, 533 U.S. 678, 690 (2001). As this Court recently recognized, this is the “the most
6 elemental of liberty interests.” *E.A. T.-B.*, 2025 WL 2402130, at *3 (citation modified); *see also*
7 *Ramirez Tesara*, 2025 WL 2637663, at *3 (stating that the petitioner had “an exceptionally strong
8 interest in freedom from physical confinement”).

9 30. Consistent with this principle, individuals released on parole or other forms of conditional
10 release have a liberty interest in their “continued liberty.” *Morrissey v. Brewer*, 408 U.S. 471, 482
11 (1972).

12 31. Such liberty is protected by the Fifth Amendment because, “although indeterminate, [it]
13 includes many of the core values of unqualified liberty,” such as the ability to be gainfully
14 employed and live with family, “and its termination inflicts a ‘grievous loss’ on the [released
15 individual] and often on others.” *Id.*

16 32. To protect against arbitrary re-detention and to ensure the right to liberty, due process
17 requires “adequate procedural protections” that test whether the government’s asserted
18 justification for a noncitizen’s physical confinement “outweighs the individual’s constitutionally
19 protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (citation modified).

20 33. Due process thus guarantees notice and an individualized hearing before a neutral
21 decisionmaker to assess danger or flight risk before the revocation of an individual’s release.
22 *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) (“The fundamental requisite of due process of law
23 is the opportunity to be heard . . . at a meaningful time in a meaningful manner.” (citation

1 modified)); *see also, e.g., Morrissey*, 408 U.S. at 485 (requiring “preliminary hearing to determine
2 whether there is probable cause or reasonable ground to believe that the arrested parolee has
3 committed . . . a violation of parole conditions” and that such determination be made “by someone
4 not directly involved in the case” (citation modified)).

5 34. Several courts, including this one, have recognized that these principles apply with respect
6 to the re-detention of the many noncitizens that DHS has recently begun taking back into custody,
7 often after such persons have been released for months or years.

8 35. For example, in *E.A. T.-B.*, this Court applied the *Mathews v. Eldridge*, 424 U.S. 319
9 (1976), framework to hold that even in a case where the government asserted that mandatory
10 detention applied, a person’s re-detention could not occur absent a hearing. The Court did the
11 same in *Ramirez Tesara* and *Kumar*. *See Ramirez Tesara*, 2025 WL 2637663, at *2–3; *Kumar*,
12 2025 WL 2677089, at *2–3.

13 36. In applying the three *Mathews* factors, the *E.A. T.-B.* court held that the petitioner had
14 “undoubtedly [been] deprive[d] . . . of an established interest in his liberty,” 2025 WL 2402130,
15 at *3, which, as noted, “is the most elemental of liberty interests,” *id.* (citation modified). The
16 Court further explained that even if detention was mandatory, the risk of erroneous deprivation of
17 liberty without a hearing was high because a hearing serves to ensure that the purposes of
18 detention—the prevention of danger and flight risk—are properly served. *Id.* at *4–5. Finally, the
19 Court explained that “the Government’s interest in re-detaining non-citizens previously released
20 without a hearing is low: although it would have required the expenditure of finite resources
21 (money and time) to provide Petitioner notice and hearing on [ISAP] violations before arresting
22 and re-detaining him, those costs are far outweighed by the risk of erroneous deprivation of the
23

1 liberty interest at issue.” *Id.* at *5. As a result, this Court ordered the petitioner’s immediate
2 release. *Id.* at *6.

3 37. This Court applied a similar analysis in *Ramirez Tesara*. There, the Court reasoned that the
4 petitioner had a “weighty” interest in his liberty and was entitled to the “full protections of the
5 due process clause.” 2025 WL 2637663, at *3. When examining the value of additional
6 safeguards, the Court also noted that despite the government’s allegations of ISAP violations, “the
7 fact ‘that the Government may believe it has a valid reason to detain Petitioner does not eliminate
8 its obligation to effectuate the detention in a manner that comports with due process.’” *Id.* at *4
9 (quoting *E.A. T.-B.*, 2025 WL 2402130, at *4). Finally, the Court reasoned that any government
10 interest in re-detention without a hearing was “minimal.” *Id.* Accordingly, there too, the Court
11 ordered the petitioner’s immediate release. *Id.* at *5.

12 38. The *Kumar* court reached the same decision, again holding that all three factors weighed
13 in favor of affording the petitioner a bond hearing. 2025 WL 2677089, at *3–4.

14 39. This Court’s decisions in *E.A. T.-B.*, *Ramirez Tesara*, and *Kumar* are consistent with many
15 other district court decisions addressing similar situations. *See, e.g., Valdez v. Joyce*, No. 25 CIV.
16 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to
17 lack of pre-deprivation hearing); *Pinchi v. Noem*, --- F. Supp. 3d ---, No. 5:25-CV-05632-PCP,
18 2025 WL 2084921 (N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, No. 1:25-CV-00946
19 JLT SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews*, No. 1:25-
20 CV-01006 JLT SAB, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar).

21 40. The same framework and principles apply here and compel both Petitioners’ immediate
22 release.

23 41. This Petition has been verified by Petitioner. *See* Verification of Petitioner.

CLAIM FOR RELIEF
Violation of Fifth Amendment Right to Due Process
Procedural Due Process

42. Petitioner restates and realleges all paragraphs as if fully set forth here.

43. Due process does not permit the government to strip Petitioner of his liberty without written notice and a hearing before a neutral decisionmaker to determine whether re-detention is warranted based on danger or flight risk. *See Morrissey*, 408 U.S. at 487–88. Such written notice and a hearing must occur *prior* to any re-detention.

44. Respondents revoked Petitioner’s release and deprived him of his liberty without affording him any written notice or meaningful opportunity to be heard by a neutral decisionmaker prior to re-detention.

45. Accordingly, Petitioner’s re-detention violates the Due Process Clause of the Fifth Amendment.

IRREPARABLE INJURY

46. Petitioner has suffered irreparable injury as a result of detention. He has been in custody for nearly two months, despite being released on his own recognizance from ICE/DHS detention upon entry into the country. His physical liberty continues to be restrained, and no just cause for doing so can be specified. “It is well established that the deprivation of constitutional rights’ unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court grant the following relief:

- (1) Assume jurisdiction over this matter;
- (2) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody and permanently enjoin his re-detention during the pendency of his removal proceedings absent written notice and a hearing prior to re-detention where Respondents must prove by clear and convincing evidence that Petitioner is a flight risk or a danger to the community and that no alternatives to detention would mitigate those risks;
- (3) Enjoin Respondents from placing GPS ankle monitors on Petitioner upon his release, absent clear and convincing evidence that Petitioner is a flight risk or danger a danger to the community and that no other alternatives would mitigate those risks;
- (4) Declare that Petitioner's re-detention while removal proceedings are ongoing without first proving an individualized determination before a neutral decisionmaker violates the Due Process Clause of the Fifth Amendment;
- (5) Issue an order providing for an award of attorney's fees and costs; and
- (6) Grant such other relief as may be just and reasonable.

1 Respectfully submitted this 5th day of January 2026,

2 /s/ Hilary Smith

3 HILARY SMITH, WSBA #60474

4 Attorney for Petitioner

5 Gibbs Houston Pauw

6 1000 Second Avenue, Suite 1600

7 Seattle, WA 98102

8 (206) 929-3880

9 hilary.smith@ghp-law.net

10
11
12
13
14
15
16
17
18
19
20
21
22
23
PETITION FOR WRIT OF HABEAS CORPUS

(CASE NO. 2:26-cv-25)

Page - 11

Gibbs Houston Pauw

1000 Second Avenue, Suite 1600

Seattle, WA 98104

(206) 929-3880