

DETAINED

Magistrate Judge Grady J. Leupold

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FRANCISCO DIEGO FRANCISCO,

Petitioner,

v.

KRISTI NOEM, *et al.*;

Respondents.

CASE NO.: 2:26-cv-25-GJL

**PETITIONER'S REPLY TO FEDERAL
RESPONDENTS' RETURN
MEMORANDUM**

Noted for Consideration:
January 26, 2026

I. ARGUMENT

In their Return Memorandum, Respondents argue that Petitioner's habeas petition should be denied. Dkt. 5, at 1. Respondents further argue that Petitioner cited cases that were "inapposite" and provide "little meaningful guidance" and "serve primarily as a distraction." *Id.* at 7. Petitioner's argument was based upon the facts and an honest understanding of his case and will admit that some nuance had been missing regarding the specific procedural posture of his case.

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1 These facts were verified by Petitioner, through counsel, upon information and belief available at
2 the time of filing. While the cases cited, admittedly, are not the most on-point, they still offer
3 meaningful guidance because Petitioner's claim for relief remains the same: Respondents violated
4 the Fifth Amendment right to due process when they re-detained Petitioner without affording him
5 "any written notice or a meaningful opportunity to be heard," and those due process principles
6 apply where an individual is re-detained after either the revocation of an order of release on
7 recognizance or a order of supervision (OSUP). *Compare E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d
8 1316, 1322 (W.D. Wash. 2025) (finding that re-detention must be effectuated in a manner that
9 comports with due process); *Ramirez Tesara v. Wamsley*, 800 F. Supp. 3d 1130 (W.D. Wash.
10 Sept. 12, 2025) (finding when an individual is release from detention, they take with them "a
11 liberty interest which is entitled to the full protections of the law); *with Jimenez v. Bondi*, C25-
12 2167-RSM, 2025 U.S. Dist. LEXIS 253558, at * 6 (W.D. Wash. Dec. 3, 2025) (ordering
13 petitioner's immediate release after finding his re-detention violated due process because he did
14 not receive prior notice and opportunity to respond); *Phetsadakone v. Scott*, C25-2167RSM, No.
15 C25-1678JNW, 2025 U.S. Dist. LEXIS 173785, at *8 (W.D. Wash Sept. 5, 2025) (finding the
16 "Due Process Clause protects against deprivation of liberty without proper process, and this
17 protection extends to deportation proceedings").

18 In Petitioner's case, he does not first or only need to establish that his detention has
19 become indefinite under the *Zadvydas* standard, as Respondents suggest. Dkt. 5, at 5. Rather, he
20 argues—as he did in his petition—that the manner in which he was *re-detained* violated due
21 process. As Respondents point out, this Court has decided that the Due Process Clause does

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1 require adequate procedural protections before revoking an OSUP, even when an individual has
2 a final order of removal. Dkt. 5, at 8; *see, e.g., Wana v. Bondi*, No. 2:25-CV-02321-RSL, 2025
3 U.S. Dist. LEXIS 258932, at *13 (W.D. Wash. Dec. 15, 2025) (citing *E.A. T.B.* in finding that
4 the government action at issue—re-detaining an individual with an OSUP—“is at the core of the
5 liberty protected by the Due Process Clause); *Khim v. Bondi*, No. 2:25-CV-02383-RSL, 2025
6 U.S. Dist. LEXIS, at *11 (W.D. Wash. Dec. 17, 2025) (same). Other courts have found that
7 individuals should be entitled to a pre-deprivation hearing prior to being re-detained even if they
8 have a final order of removal. *Meneses v. Santacruz*, 25-cv-11206-MCS-PVC, 2025 U.S. Dist.
9 LEXIS 252340, at *8-11 (C.D. Cal. Dec. 2, 2025).

10 Generally, the Due Process Clause "requires some kind of a hearing before the State
11 deprives a person of liberty or property." *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). To
12 determine what procedures are constitutionally sufficient to protect a liberty interest, courts apply
13 the three-part test established in *Mathews v. Eldridge*:

14 First, the private interest that will be affected by the official action; second, the
15 risk of an erroneous deprivation of such interest through the procedures used,
16 and the probable value, if any, of additional or substitute procedural safeguards;
17 and finally, the Government's interest, including the function involved and the
fiscal and administrative burdens that the additional or substitute procedural
requirement would entail.

18 424 U.S. 319, 335 (1976); *see Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022)
19 (applying *Mathews* to due process challenge to immigration detention, noting that "*Mathews*
20 remains a flexible test that can and must account for the heightened governmental interest in the
21 immigration detention context"). "The fundamental requirement of due process is the opportunity

1 to be heard at a meaningful time and in a meaningful manner.” *Mathews*, 424 U.S. at 333 (quoting
2 *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

3 The *Mathews* test clearly demonstrates that Petitioner’s due process rights were violated.
4

5 **A. Petitioner’s private interest is weighty.**

6 Petitioner gained a liberty interest in his continued freedom when he was last released
7 from ICE custody on his OSUP in 2019.¹ He has an exceptionally strong interest in freedom from
8 physical confinement and his “interest in not being detained is ‘the most elemental of liberty
9 interests[.]’” *E.A. T.-B.*, 2025 WL 2402130, at *3 (alteration in original) (quoting *Hamdi v.*
10 *Rumsfeld*, 542 U.S. 507, 529 (2004)). Release of an individual from custody creates an “‘implicit
11 promise’ that the individual’s liberty will be revoked only if they fail to abide by the conditions
12 of their release.” *See, e.g., Calderon v. Kaiser*, 2025 WL 2430609, at *2 (N.D. Cal. Aug. 22,
13 2025) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). Thus, when Petitioner was
14 released in 2019, he acquired a protected liberty interest in his continued freedom. *See Doe v.*
15 *Becerra*, 787 F. Supp. 3d 1083, 1093 (E.D. Cal. Mar. 3, 2025) (“The Supreme Court has
16 repeatedly recognized that individuals who have been released from custody, even where such
17 release is conditional, have a liberty interest in their continued liberty.”). In reliance on this
18 interest, Petitioner has built a life for himself in the United States over the past nearly seven years.
19

20 ¹ Respondents attempt to argue that Petitioner had not been detained when he re-entered the country “as he was
21 released on the same day under an OSUP.” Dkt. 5, at 7 n.4. Yet, they submit a sworn declaration that states Petitioner
“was released from ICE custody on an Order of Supervision . . .” Dkt. 6, ¶ 7 (emphasis added). Based on the facts,
it is clear that Petitioner was detained, regardless of the length of time, and was released from custody and detention
on an OSUP.

Respondents attempt to diminish that interest by alleging that because Petitioner no longer has custody of his children, the purpose of his release had been “fulfilled.” *See* Dkt. 5, at 10-11. However, there is no evidence that the OSUP was granted for this purpose aside from Respondents’ assertions—nowhere in the OSUP paperwork was it a requirement that Petitioner remain the primary caretaker of his children nor was he on notice that no longer being the primary caretaker would result in the revocation of his OSUP. *See* Dkt. 7-4. Therefore, the first *Mathews* factor weighs strongly in Petitioner’s favor.

B. Respondents’ lack of following applicable procedures demonstrates Petitioner was erroneously deprived of his liberty.

Release on an OSUP may be revoked if the noncitizen fails to comply with conditions or “if, on account of changed circumstances,” the government “determines that there is a significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2). Release may also be revoked in an exercise of discretion when the “purposes of release have been served.” *Id.* § 241.4(l)(2)(i). Under the latter circumstance, the decision to revoke must be made by a district director after they make certain findings. *See id.* The regulations provide that on or after March 1, 2003, the terms “director” or “district director” mean:

to the extent that authority has been delegated to such official: asylum office director; director, field operations; district director for interior enforcement; district director for services; field office director; service center director; or special agent in charge. The terms also mean such other official . . . who is delegated the function or authority above for a particular geographic district, region, or area.

1 *Id.* § 1.2. Upon revocation, the noncitizen “will be notified of the reasons for revocation” and an
2 “informal interview” will be conducted promptly after return to custody. *Id.* § 241.13(i)(3).
3

4 Respondents argue ICE followed the relevant procedures by providing Petitioner written
5 notice of the reasons for the revocation. Dkt. 5, at 12. First, Respondent have not proven that
6 Julio S. Hernandez, Acting Field Officer Director, had the authority or the power to revoke
7 Petitioner’s release, or that the authority was delegated to him. The language of section 241.1
8 specifically limits the power of anyone who is not the Executive Associate Director
9 to revoke release. For example, it provides that “[a] district director may also revoke release of
10 a[noncitizen] when”—and only when—“in the district director’s opinion, revocation is in the
11 public interest and circumstances do not reasonably permit referral of the case to the Executive
12 Associate [Director].” 8 C.F.R. § 241.4(l)(2).

13 Second, even if the term “district director” includes an Acting Field Office Direction, it is
14 clear based on the timing of Petitioner’s re-arrest and issuance of the notice that certain findings
15 were not made prior to depriving Petitioner’s liberty. Petitioner was re-arrested around 7:00 AM
16 on November 7, 2025. Dkt. 7-1, at 2. The Notice of Revocation of Release was not signed until
17 about 2:35 PM on the same day. Dkt. 7-6, at 1. It is unclear when it was created. This timing
18 reflects that certain findings were not made *before* revoking Petitioner’s release. *See Sering*
19 *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (W.D. N.Y. 2025) (“So before a district director
20 can revoke release, the district director must make certain findings.”)
21

1 Third, Petitioner asserts he did not receive this notice and the evidence provided by
 2 Respondents supports this. The proof of service indicates that it was served on an individual
 3 named “Rivera-Mendoza, Sotero” and not Petitioner. Dkt. 7-6, at 2. This is not a name Petitioner
 4 has ever used or been mistakenly given by ICE.² There is insufficient evidence that the notice
 5 was, in fact, served on Petitioner as required by the regulations.

6 Lastly, Respondents state that Petitioner “will be given an opportunity to be heard
 7 regarding his OSUP revocation. Dkt. 5, at 12. This assertion is fruitless because the interview
 8 must be prompt—Petitioner has already been detained for nearly three months. An informal
 9 interview at this stage would not be sufficient or prompt. *See, e.g., M.S.L. v. Bostock*, No. 6:25-
 10 cv-01204-AA, 2025 WL 2430267, at *11 (D. Or. Aug. 21, 2025) (holding that informal
 11 interview was not sufficiently “prompt” where it took place twenty-seven days after revocation).

12 For these reasons, the risk of erroneous deprivation of liberty is high, and the second
 13 *Mathews* factor weighs heavily in Petitioner’s favor.

14
 15 **C. The government has failed to show a countervailing interest against providing a pre-deprivation hearing.**

16 Even accounting “for the heightened government interest in the immigration detention
 17 context,” Respondents have not demonstrated or explained why additional procedures—such as
 18 a pre-deprivation hearing—would pose a significant burden on them. *See* Dkt. 5, at 12-13. They
 19

20
 21 ² The name “Juan Francisco-Pedro” has been used by ICE in the past when referring to Petitioner. Dkt. 7-3; Dkt. 7-4; Dkt. 7-5. But never has the name “Sotero Rivera-Mendoza” been a name Petitioner used or referenced in his immigration history.

1 have cited no specific governmental interest in detaining someone like Petitioner, who has lived
2 in the United States for nearly seven years without violating the conditions of his release. Finally,
3 “[s]ociety’s interest lies on the side of affording fair procedures to all persons, even though the
4 expenditure of governmental funds is required.” *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir.
5 1983). This factor also weighs strongly in favor of Petitioner.

6 ***

7 In sum, each *Mathews* factor favors Petitioner and demonstrates that his procedural due
8 process rights were violated when ICE re-detained him.

9
10
11 **II. CONCLUSION**

12 The Court should therefore grant Petitioner’s habeas petition and order that Respondents
13 not re-detain him without adequate notice of the reasons for re-detention and a meaningful
14 opportunity to respond to those reasons.

15 Dated this 26th day of January,

16
17 /s/ Hilary Smith

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1 *I certify that this memorandum contains 2,095 words, in compliance with the Local Civil*
2 *Rules.*

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