

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS,
EL PASO DIVISION**

Mohammed Osman Mohammed,

Petitioner,

v.

Pamela Bondi, Attorney General,

Kristi Noem, Secretary, U.S. Department of
Homeland Security,

Todd M. Lyons, Acting Director of Immigration
and Customs Enforcement,

Marisa Flores, Director, El Paso Field Office
Immigration and Customs Enforcement, and

Curtis Taylor, Major General, U.S. Army at Camp
Bliss,

Respondents.

Case No. 3:26-cv-00167 (LS)

**PETITIONER'S
SUPPLEMENTAL BRIEF**

Expedited Handling Requested

INTRODUCTION

1. This case challenges the unlawful arrest and mandatory immigration detention of Petitioner Mohammed Osman Mohammed. Mr. Mohammed is a twenty-nine-year-old devoted family and community member who came to the United States fleeing persecution in his home country of Ethiopia. He has done everything required of him in his immigration proceedings, including timely filing his asylum application, attending all ICE check-ins, and appearing for all scheduled court hearings. Mr. Mohammed entered in 2023, and, after presenting himself to an immigration official, the government briefly detained him. It then released him to live in Maple Grove, Minnesota with his extensive family, after finding he was not dangerous or a flight risk.

Determined to remain safely and lawfully in the United States, Mr. Mohammed quickly obtained counsel and timely filed his I-589 Application for Asylum and Withholding of Removal with the Executive Office of Immigration Review. He currently has a master calendar hearing scheduled March 31, 2026.

2. Despite Mr. Mohammed's prior release from immigration custody and his pending proceedings in immigration court, Respondents arrested Mr. Mohammed on January 6, 2026, when he was exiting a car wash. Since then, Mr. Mohammed has been locked in an immigration detention center in Texas, deprived of his liberty and separated from his brother, aunt, cousins, and their children in Minnesota.

3. On January 29, 2026, this Court entered an order for supplemental briefing as to whether Mr. Mohammed was arrested on a warrant issued by the attorney general. (Doc. No. 5.) As stated in Mr. Mohammed's verified Petition, it is his belief that Respondent ICE arrested him without a warrant. (Pet. ¶ 30.) Respondents alone can determine definitively whether an administrative warrant was ever issued for Mr. Mohammed's arrest.

LEGAL ARGUMENTS

4. Whether or not Mr. Mohammed's recent arrest was "on a warrant issued by the Attorney General," Mr. Mohammed's current detention has been unlawful from its inception, in violation of his due process rights.

5. It is a "well established" rule "that the Fifth Amendment entitles aliens to due process of law." *Trump v. J. G. G.*, 604 U.S. 670 (2025). An immigrant detainee possesses procedural due process rights, which may be vindicated via a habeas petition, regardless of whether the detention is found to be authorized by statute. *See Trejo v. Warden*, No. EP-25-CV-401-KC, 2025 WL 2992187, at *7 (W.D. Tex. Oct. 24, 2025) (noting that, "[i]n the § 1225(b) mandatory detention

context, this Court has previously held that the *Jennings* Court preserved the viability of as-applied constitutional challenges”) (citing *Lopez-Arevelo*, — F. Supp.3d at —, 2025 WL 2691828 at *8; *Santiago*, 2025 WL 2792588 at *7). Wherein Petitioner “was not detained while crossing the border, but while living in the United States,” he possesses a protectable due process interest that cannot be set aside by a mere showing of statutory compliance. *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *5 (W.D. Tex. Oct. 16, 2025) (holding that a petitioner who has already entered the country is entitled to due process protections that exist separately from statutory authorization).

6. In this context, due process requires that Respondents show, at a pre-deprivation hearing, materially changed circumstances to justify Mr. Mohammed’s redetention. This is because “[m]any courts, including this one, have found that ICE’s decision to release a noncitizen confers a significant liberty interest,” and that this interest may not be spontaneously revoked “without an individualized determination by a neutral adjudicator.” *Trejo*, 2025 WL 2992187, at *7; *see also Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *7 (W.D. Tex. Oct. 21, 2025) (granting habeas relief to petitioner after finding mandatory detention policies applied in unconstitutional manner).

7. When the government released Mr. Mohammed from its custody years ago, it determined that he was neither a flight risk nor a danger to the community. Since then, nothing has changed to undermine that determination. On the contrary, support for that determination has only strengthened: Mr. Mohammed has built deep ties to the United States, regularly volunteers at his local mosque and the Oromo Community Center, has been working, attended all his ICE check-ins, and is on a path to be granted asylum. His criminal record reflects only petty misdemeanor violation for driving with a wireless communication device in his hand.

8. Even “[w]hen government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner.” *United States v. Salerno*, 481 U.S. 739, 746 (1987). Where, as here, Petitioner raises an as-applied procedural due process challenge, courts must conduct an individualized assessment to determine whether the process supplied to them adequately safeguards the significant liberty interests they have accrued as a resident of this country. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (noting that, “once an alien enters the country,” his Fifth Amendment entitlement grows, “for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent”) (collecting cases).

9. Courts use the three-factor *Mathews v. Eldridge* test to determine what process is due to noncitizens challenging detention. *See Mathews v. Eldridge*, 424 U.S. 319 (1976). The *Mathews* factors assess: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Id.* at 335.

10. The first *Mathews* factor weighs heavily in Mr. Mohammed’s favor. Mr. Mohammed has a strong liberty interest in light of his prior release and the three years he has spent living freely in America. Because he was previously released from custody and not even subject to government monitoring beyond occasional ICE check-in meetings that he attended, Mr. Mohammed possesses a weighty interest in his continued liberty. *See Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 686 (W.D. Tex. 2025) (finding that because Petitioner spent “nearly three years at liberty in the United States” he possessed a cognizable interest in his freedom from detention); *Hernandez-Fernandez*

v. Lyons, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *9 (W.D. Tex. Oct. 21, 2025) (same); *Chinchilla v. De Anda-Ybarra*, No. EP-25-CV-00548-DB, 2025 WL 3645178, at *4 (W.D. Tex. Dec. 16, 2025) (“Petitioner possesses a strong liberty interest in his freedom from detention because he has established a life here[.]”).

11. The second *Mathews* factor also weighs in Mr. Mohammed’s favor. Mr. Mohammed was previously released from detention after being found that he was neither a danger nor a flight risk. His re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, make the risk of erroneous deprivation of liberty not just high, but certain. The value of additional procedural safeguards is significant; the provision of a bond hearing would allow an immigration judge to conduct an individualized assessment, based on specific facts, as to whether continued detention is necessary to ensure presence at removal hearings and safety for the community. *See Vieira*, 2025 WL 2937880, at *7. Under these circumstances, the second factor weighs heavily in Mr. Mohammed’s favor.

12. The third factor favors Mr. Mohammed as well. Far from imposing additional burdens, releasing Mr. Mohammed and requiring the government to provide a pre-deprivation hearing before re-detaining him would in fact *save* the government from the enormous fiscal and administrative costs of a prolonged and unnecessary incarceration. No public interest is served by unconstitutional and arbitrary detention.

CONCLUSION

Respondents violated procedural due process by re-detaining Mr. Mohammed without adequate procedural protections before or after the deprivation of his liberty. Therefore, this Court should order Mr. Mohammed’s release and prohibit any re-detention absent a pre-deprivation process.

Date: February 11, 2026

Respectfully submitted,

/s/ Emily Esposito Heger

Emily Esposito Heger
Texas A&M University School of Law**
Immigrant Rights Clinic
1515 Commerce Street
Fort Worth, Texas 76102
emilyheger@law.tamu.edu
(817) 369-8804

s/ Lyle Cherneff

Lyle Cherneff
Legal Rights Center
1611 Park Avenue
Minneapolis, MN 55404
lcherneff@legalrightscenter.org
(612) 677-2125

**Plaintiff is represented by a clinic operated by Texas A&M University School of Law, but this document does not purport to present the school's institutional views, if any.