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UNITED STATES DISTRICT COURT
FEDERAL DISTRICT COURT OF WESTERN WASHINGTON

Javier Eduardo MARQUEZ RUJANO,

Petitioner,

v.

Laura HERMOSILLO, Field Office Director of
Enforcement and Removal Operations, Seattle
Field Office, Immigration and Customs
Enforcement; Kristi NOEM, Secretary, U.S.
Department of Homeland Security Pamela
BONDI, U.S. Attorney General; Bruce SCOTT,
Warden, Northwest Detention Center,

Respondents.

Case No. 2:26-cv-00325-TL

PETITIONER'S TRAVERSE

PETITIONER'S TRAVERSE

Petitioner submits the following Traverse to Respondents' opposition to this Court's order to show cause and to his petition for writ of Habeas Corpus.

INTRODUCTION

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

ARGUMENT

I. PETITIONER'S REMOVAL IS STAYED

As Respondent's note, Petitioner proceeded to an individual merits hearing on February 11, 2026. At that hearing, the Immigration Judge ordered him removed to the country of Ecuador under an Asylum Cooperative Agreement. Petitioner has sought review of that determination before the Board of Immigration Appeals. *See* Declaration of Casey Parsons, Ex. A. Where an individual seeks review of a decision of removal before the Board of Immigration Appeals, such Notice of Appeal triggers a stay of the deportation for the duration of the time that the appeal is pending before the Board. 8 C.F.R. § 1003.6(a).

II. PETITIONER'S DETENTION SHOULD BE GOVERNED BY 1226(a)

Petitioner has been present in the United States since November 25, 2023 when he encountered Customs and Border Patrol and was detained as he was crossing the border to make

a claim for asylum. At the time that he was detained, he was released on his own recognizance and ordered to appear before an immigration judge.

Respondents rely only on the text of 8 U.S.C. 1225(b)(1) in interpreting the applicability of the statute to determine which detention rule should apply. Respondent's citation to *Matter of E-R-M & L-R-M*, 25 I&N Dec. 520 is inapposite: it supports only the proposition that the Department had discretion to place Petitioner in removal proceedings as opposed to expedited removal proceedings. Like many other individuals petitioning for Habeas Corpus at this moment in time, Petitioner is not currently "arriving" in the United States. He has been in the country for more than two years and has remained in the United States for that period of time. *See, e.g., Bello Chacon v. Hermosillo, et. al.*, Case No. 2:25-cv-02299-TMC (W.D. Wash. December 12, 2025); *Singh v. Albarran, et. al.*, Case No. 1:25-cv-01788-CBD (E.D. Cal. January 9, 2026).

III. DUE PROCESS REQUIRES A PRE-DEPRIVATION HEARING BEFORE REDETAINING AN INDIVIDUAL LIKE PETITIONER

As this Court has recently held in multiple cases, due process demands a hearing prior to the government's decision to terminate a person's liberty. *See E.A. T.-B. v. Wamsley*, --- F. Supp. 3d --- No. C25-1192-KKE, 2025 WL 2402130, at *2-6 (W.D. Wash. Aug. 19, 2025); *Ramirez Tesara v. Wamsley*, --- F. Supp. 3d ---, No. 2:25-CV-01723-MJP-TLF, 2025 WL 2637663, at *2-4 (W.D. Wash. Sept. 12, 2025); *Ledesma Gonzalez v. Bostock*, No. 2:25-CV01404-JNW-GJL, 2025 WL 2841574, at *7-9 (W.D. Wash. Oct. 7, 2025); *Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089, at *2-4 (W.D. Wash. Sept. 17, 2025); *Lopez Reyes v. Wamsley*, No. 2:25-cv-01868-JLR-MLP (W.D. Wash. Oct. 15, 2025), Dkt. 13. Many other courts have recently held the same. Accordingly, this Court should grant the instant petition for a writ of habeas corpus and order Petitioner's 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); *Ledesma Gonzalez*, 2025 WL 2841574, at *9 (similar).

Due process requires that if DHS seeks to re-arrest a person like Petitioner—who has lived in the United States without incident after DHS first released him—the government must afford a hearing before a neutral decisionmaker to determine whether any re-detention is justified, and whether the person is a flight risk or danger to the community. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected by the Due Process Clause.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). As this Court has recognized, this is the “the most elemental of liberty interests.” *E.A. T.-B.*, 2025 WL 2402130, at *3 (citation modified); *see also Ramirez Tesara*, 2025 WL 2637663, at *3 (stating that the petitioner had “an exceptionally strong interest in freedom from physical confinement”). Consistent with this principle, individuals released on parole or other forms of conditional release have a liberty interest in their “continued liberty.” *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Such liberty is protected by the Fifth Amendment because, “although indeterminate, [it] includes many of the core values of unqualified liberty,” such as the ability to be gainfully employed and live with family, “and its termination inflicts a ‘grievous loss’ on the [released individual] and often on others.” *Id.* To protect against arbitrary re-detention and to ensure the right to liberty, due process requires “adequate procedural protections” that test whether the government’s asserted justification for a noncitizen’s physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (citation modified).

Due process thus guarantees notice and an individualized hearing before a neutral decisionmaker to assess danger or flight risk before the revocation of an individual's release. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) ("The fundamental requisite of due process of law is the opportunity to be heard . . . at a meaningful time in a meaningful manner." (citation modified)); *see also, e.g., Morrissey*, 408 U.S. at 485 (requiring "preliminary hearing to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed . . . a violation of parole conditions" and that such determination be made "by someone not directly involved in the case" (citation modified)).

Several courts, including this one, have recognized that these principles apply with respect to the re-detention of the many noncitizens that DHS has arbitrarily begun taking back into custody, often after such persons have been released for months and years. *See, e.g., Ramirez Tesara*, 2025 WL 2637663, at *2–3; *Kumar*, 2025 WL 2677089, at *2–3; *Ledesma Gonzalez*, 2025 WL 2841574, at *7–8.

The *Ramirez Tesara* court in particular reasoned that the petitioner had a "weighty" interest in his liberty and was entitled to the "full protections of the due process clause." 2025 WL 2637663, at *3. When examining the value of additional safeguards, the Court also noted that despite the government's allegations of ISAP violations, "the fact 'that the Government may believe it has a valid reason to detain Petitioner does not eliminate its obligation to effectuate the detention in a manner that comports with due process.'" *Id.* at *4 (quoting *E.A. T.-B.*, 2025 WL 2402130, at *4). Finally, the Court reasoned that any government interest in re-detention without a hearing was "minimal." *Id.* Accordingly, there too, the Court ordered the petitioner's immediate release. *Id.* at *5. That decision is consistent with many other district court decisions addressing similar situations. *See, e.g., Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL

1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation hearing); *Garro Pinchi v. Noem*, --- F. Supp. 3d ---, No. 5:25-CV-05632-PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar).

CONCLUSION

Like many other petitioner seeking review of their detention before Federal Courts, Petitioner has been present in the country for years. He was detained absent a pre-deprivation of rights hearing, and proceeded to an individual merits hearing on his asylum claim on the detained docket. Since then, Petitioner has sought review of the Immigration Judge's order of removal in his case, staying his removal. For the foregoing reasons, Petitioner respectfully asks that this Court grant his petition for a writ of Habeas Corpus, ordering his immediate release from custody.

Dated: March 5, 2026

By: /s/ Casey Parsons
Casey Parsons
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Attorneys for Petitioner