

The Honorable Judge Tana Lin

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

Oswal Ortiz,

Petitioner,

v.

Laura HERMOSILLO, et al.,

Respondents.

Case No.: 2:26-cv-00384-TL

**TRAVERSE AND RESPONSE TO
RESPONDENTS' RETURN TO PETITION
FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

Petitioner, Mr. Oswal Ortiz, argues that the Due Process Clause of the Fifth Amendment requires a hearing *prior* to his re-detention, before a neutral decisionmaker, where Immigration and Customs Enforcement (ICE) must prove that he is a flight risk or a danger to the community. Regardless of the purported statutory bases for Mr. Ortiz's detention, the Respondents did not provide these required procedures upon re-detaining Mr. Ortiz, thus violating his due process rights, as several judges in this district have recognized, and as courts around the country have held. *See, E.A. T.-B. v. Wamsley*, --- F. Supp. 3d ---, No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025); *Francois v. Wamsley*, No. C1:25-cv-02122-RSM-GJL, 2025 WL

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RESPONDENTS' RETURN TO PETITION FOR
WRIT OF HABEAS CORPUS
(CASE NO. 2:26-cv-00384)
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3063251 (W.D. Wash. Nov. 3, 2025); *Kumar v. Wamsley*, No. 2:25-CV-01772-JHCBAT, 2025 WL 2677089 (W.D. Wash. Sept. 17, 2025); *Ramirez Tesara v. Wamsley*, --- F. Supp 3d ---, No. 2:25-CV-01723-MJP-TLF, 2025 WL 2637663 (W.D. Wash. Sept. 12, 2025); *Y.M.M v. Wamsley*, No. 2:25-cv-02075-TMC, 2025 WL 3101782 (W.D. Wash. Sept. 17, 2025). Mr. Ortiz does not claim to be entitled to a hearing under a certain statute but rather, “he argues that the Due Process Clause requires it.” See *E.A.T.-B*, 2025 WL 2402130, at *4. Accordingly, after spending over 120 long days in detention, Mr. Ortiz’s immediate release is warranted.

STATEMENT OF FACTS

The critical facts in this case are undisputed. Mr. Ortiz entered the United States on September 11, 2023, and was released on his own recognizance. Dkt. 7. Ex. A; Dkt 13. ¶ 5-6. He was placed in removal proceedings, and scheduled for a hearing on January 26, 2024, in Seattle Washington. Dkt. 7. Ex. A. Mr. Ortiz fled Venezuela in 2022 due to being physically harmed and beaten [REDACTED] *Id* ¶ 5.

Since Mr. Ortiz’s initial release from the border in 2023, he has updated his address accordingly with the immigration court, appeared at all his scheduled court dates, sought legal assistance and filed an application for asylum, and applied for work authorization. Dkt.10 Pet. Decl. ¶¶ 1-33. Importantly, Mr. Ortiz relied on his freedom and built a life and community in Washington. Dkt. 10. ¶ 11-21; See e.g., Ex. E. *Letter of Support*.

On October 15, 2025, two-years and one month later, Mr. Ortiz was re-detained by ICE at a routine check in. Dkt. 10. ¶ 22-27. Mr. Ortiz was provided no prior notice that he was going to be arrested. *Id*. Mr. Ortiz was never provided a meaningful opportunity to respond to the underlying basis for revoking his release. *Id*.

The Form I-213 related to Mr. Ortiz's recent arrest states that he was taken into custody because he was charged with an "Assault First Degree." Dkt. 7. Ex. B; *See also* Dkt. 13. ¶ 8. In fact, Mr. Ortiz was never charged with an Assault First Degree. Ex. F. *Declaration of Public Defender.*¹ He was charged with Assault in the Second Degree, which will ultimately be reduced to a misdemeanor assault charge due to proof issues. *Id.* Mr. Ortiz has never been convicted of any criminal offense and is presumed innocent of the pending Assault in the Second-degree charge. Dkt. 10. ¶ 17-18.

Mr. Ortiz attended a bond hearing on January 22, 2026, but the immigration court ruled that it had no jurisdiction to hear his case because he is subject to mandatory detention under INA § 235(b)(1) & § 235(b)(2). Dkt. 12. Ex. B. Mr. Ortiz's asylum application is still pending before the immigration court. Dkt. 13. ¶ 11-16. He currently has a master hearing scheduled for February 23, 2026, for a Franco competency inquiry hearing. Dkt. 13. ¶ 11-16.

On February 2, 2026, Mr. Ortiz filed a petitioner for writ of habeas corpus. Dkt. 1. Shortly thereafter Mr. Ortiz retained counsel, and an amended petitioner was timely filed. Dkt. 5.

On Monday February 23, 2026, Immigration Judge Odell found Mr. Ortiz to be competent and set Mr. Ortiz's individual hearing for March 2, 2026. Ex. G. Mr. Ortiz requested

¹ *See Declaration of Public Defender Nicastro* ("I am the attorney to provide public defense for Mr. Ortiz. This case was only ever filed as an assault in the second degree on September 11, 2024, in King County Superior Court. Mr. Ortiz has a gross misdemeanor plea reduction offer, during the course of defense investigation it was discovered that the alleged victim had a history of bullying and harassing other tenants of the motel, that he had previously threatened Mr. Ortiz. Furthermore, Mr. Ortiz needed to be treated for a head wound after his arrest associated with the alleged victim having thrown rocks at his head. The fact that there was a strong potential self-defense claim factored into the State's offer for a misdemeanor reduction.")

1 more time to get a psychological evaluation which was denied by the immigration judge. Mr.
2 Ortiz now has a week to prepare for his individual asylum case while in-custody. *Id.*

3 **ARGUMENT**

4 Mr. Ortiz's petition is based on a primary claim: he is currently being detained in
5 violation of the Fifth Amendment's Due Process Clause because Respondents did not justify his
6 re-detention before a neutral decisionmaker prior to his re-detention or provide him with notice
7 of the reasoning for his re-arrest. In addition to that claim Mr. Ortiz also alleges in his petition
8 that the Respondents have violated the Immigration and Nationality Act. However, Mr. Ortiz
9 acknowledges that the Fifth Amendment claim is dispositive and for the sake of brevity
10 withdraws Count II of the amended petition. Dkt. 5.

11 The Respondents base their argument nearly entirely on statutory grounds – that because
12 Mr. Ortiz is detained pursuant 8 U.S.C. § 1225(b)(2)(A), his detention is mandatory, and the
13 procedures provided by Congress are sufficient to protect his liberty interests. But regardless of
14 the Respondent's argument, due process requires Respondents to justify a noncitizens re-
15 detention after they have been released and gained liberty interests in their freedom in the United
16 States. *See, e.g., P.T. v. Hermosillo*, 2025 WL 3294988, at *2 n. 1 (W.D. Wash. Nov. 26, 2025)
17 (rejecting government's argument that petitioner apprehended on arrival "falls within the
18 mandatory detention scheme under 8 U.S.C. § 1225(b) simply because he has not been
19 'admitted' to the United States") (citing *Rodriguez v. Bostock*, __ F. Supp. 3d __, 2025 WL
20 2782499, at *5, 24 (W.D. Wash. Sep. 30, 2025) (rejecting government's argument that § 1225(b)
21 applies to every applicant for admission)). "To the extent that the Government's briefing
22 suggests that Section 1225(b) should be the beginning and end of the Court's inquiry, this

position is emphatically rejected. In determining the lawfulness of Petitioner's detention, the Court will focus not on the Government's claimed authority to detain, but the process by which Petitioner was detained." *Id.* Mr. Ortiz's claim is no different, and the Due Process Clause requires his release.

Courts analyzing re-detention due process violation claims similar to Mr. Ortiz's have analyzed the question under the three-factor test laid out in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Petitioner acknowledges that Respondents have also attempted to engage in the Mathews analysis, but posits that ultimately, their analysis "undermines more than a century of precedent holding that those who have entered the United States have a liberty interest in remaining—no matter how they entered." *Make the Road v. Noem*, No. 25-cv-190, ---F.Supp.3d--, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025) (citing *Yamataya v. Fisher*, 189 U.S. 86, 100-01 (1903) (noncitizen who entered country in violation of law cannot be "deprived of [her] liberty" without receiving "due process of law"). Accordingly, Mr. Ortiz addresses each Mathews factor below.

I. Mr. Ortiz Has a Considerable Private Interest in His Freedom.

Mr. Ortiz has a strong interest in freedom from physical confinement and in a hearing prior to any revocation of his liberty. Respondent's do not dispute that this factor weighs in his favor. *See* Dkt. 11, p. 6. Mr. Ortiz's interest in not being detained is "the most elemental of liberty interests[.]" *E.A. T.-B.*, 2025 WL 2402130, at *3 (alteration in original) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)); *see also Ramirez Tesara*, 2025 WL 2637663, at *3 (stating that the petitioner "has an exceptionally strong interest in freedom from physical confinement"); *Kumar*, 2025 WL 2677089, at *3 (W.D. Wash. Sept. 17, 2025) ("Petitioner has a very strong interest in not being detained."). "Freedom from imprisonment . . . lies at the heart of

the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. Even for non-citizens, freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action. *Id.* at 696 (a non-citizen has a liberty interest “strong enough” to challenge “indefinite and potentially permanent” immigration detention).

Critically, in recent months, courts—including this one—have repeatedly applied these principles to hold that noncitizens have a strong liberty interest in cases involving re-detention. As this Court explained in *E.A.T.-B.*, a person re-detained after a prior release from ICE custody is “undoubtedly deprive[d] . . . of an established interest in his liberty.” 2025 WL 2402130, at *3. Other courts have reached the same conclusion. *See, e.g., Ramirez Tesara*, 2025 WL 2637663, at *3 (“When he was released from his initial detention on parole, Petitioner took with him a liberty interest which is entitled to the full protections of the due process clause.”); *Pinchi*, 2025 WL 2084921, at *4 (“[Petitioner] has a substantial private interest in remaining out of custody. She has an interest in remaining in her home, continuing her employment, providing for her family, obtaining necessary medical care, maintaining her relationships in the community, and continuing to attend her church.”); *See Doe v. Becerra*, 787 F. Supp. 3d 1083, 1093 (E.D. Cal. Mar. 3, 2025) (“The Supreme Court has repeatedly recognized that individuals who have been released from custody, even where such release is conditional, have a liberty interest in their continued liberty.”).

Respondents drastically understate Mr. Ortiz’s liberty interests, acknowledging only that he has “some interest in his continued freedom.” Dkt. 11. p. 6. At the same time, Respondents concede that “courts have found that the revocation of an order of release on recognizance

pursuant to 8 C.F.R. 1236.1(c)(8) requires a pre-deprivation hearing to determine if that noncitizen is a flight risk or a danger to the community.” See, e.g., *E.A.T.-B. v. Wamsley*, 795 F. Supp. 3d. 1316, 1324 (W.D. Wash. 2025)” *Id.* at 7. The Respondent’s do not offer any argument why Mr. Ortiz’s case differs from that of *E.A.T.-B* or any other re-detention habeas cases where the basis for detention was 1225(b)(2). See e.g., *Manuel*, C25-2353-TL-MLP, 2025 WL 3690778 (W.D. Wash. Dec. 10, 2025), report and recommendation adopted, C25-2353-TL-MLP, 2025 WL 3697277 (W.D. Wash. Dec. 19, 2025).

Mr. Ortiz’s actions since his initial release demonstrate both his reasonable reliance on his freedom as a liberty interest and the weightiness of that interest. Following his release, Mr. Ortiz applied for work authorization, developed relationships with migrant rights organizations, and other community members. Dkt. 10. ¶ 11-21 ; Ex. E. *Letter of Support*. Mr. Ortiz could only accomplish these actions while free.

While in detention Mr. Ortiz’s mental health has declined, which has led to the initiation of the *Franco* process. Dkt. 13. ¶ 15-16. Mr. Ortiz has a liberty interest in being free and able to address his mental health concerns—concerns which can likely only be adequately addressed while free. Mr. Ortiz also has yet to present his asylum claim to an immigration judge. Dkt. 10. ¶ 28. His ability to gather evidence, interview witnesses, retain country-condition experts, and otherwise pursue his asylum claim is deeply hindered by being in detention. Mr. Ortiz has a strong interest in being free to fight for his asylum case. Accordingly, the first Mathews factor weighs heavily in Mr. Ortiz’s favor.

II. The Risk of Erroneous Deprivation of Liberty is High.

1 Second, the risk of erroneous deprivation of Mr. Ortiz's liberty interest in the absence of
2 a pre-detention hearing is high. "That the Government may believe it has a valid reason to detain
3 Petitioner does not eliminate its obligation to effectuate the detention in a manner that comports
4 with due process." *See E.A. T.-B.*, 2025 WL 2402130, at *4. His re-detention must still "bear[]
5 [a] reasonable relation" to a valid government purpose—here, preventing flight or protecting the
6 community against dangerous individuals. *Zadvydas*, 533 U.S. at 690 (second alteration in the
7 original) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Only a hearing before a neutral
8 decisionmaker—where ICE must prove that re-detention is justified and that Mr. Ortiz poses a
9 flight risk or danger—can ensure that this "reasonable relation" to a valid government purpose
10 exists. *Id.* But to date, only the "government enforcement agent" has made any decision about
11 the propriety of detention, *Coolidge v. New Hampshire*, 403 U.S. 443, 450 (1971), a far cry from
12 the hearing before a neutral decisionmaker that due process requires. *Shadwick v. City of Tampa*,
13 407 U.S. 345, 350 (1972).

14 Respondents have not communicated a clear reason for Mr. Ortiz's re-detention. ICE
15 claims that Mr. Ortiz was re-detained because his pending criminal charge was considered a
16 violation of his OREC terms and conditions. Dkt. 11. p. 3. However, at the same time, the
17 Respondents concede—and the Petitioner agrees—that Mr. Ortiz's pending criminal charge is not
18 relevant to this habeas action. Dkt. 11. p. 6 ("Furthermore, an analysis of Petitioner's
19 dangerousness or flight risk is not relevant.") Instead, the Respondent's argue that Mr. Ortiz is
20 simply subject to mandatory detention, no questions asked. *Id.* ("A pre-deprivation hearing
21 would be futile as his detention is based on his mandatory detention."). Respondent's counsel's
22 argument seems to be in conflict with ICE's purported basis for detention. ICE claims that Mr.

1 Ortiz was detained because of his pending criminal charge, but Respondents briefing in this case
2 argues that the basis is 1225(b)(2). *See* Dkt. 13. ¶ 9 (“Petitioner was taken into ICE custody
3 based on his violation of the terms and conditions of his OREC.”) The high risk of erroneous
4 deprivation is demonstrated by these inconsistencies.

5 Importantly, neither ICE’s justification nor Respondent’s briefing in this case make any
6 attempt to rationalize how the government’s actions comply with the Due Process Clause of the
7 Fifth Amendment. ICE’s purported basis that Mr. Ortiz’s detention was triggered due to a
8 pending criminal charge creates a high risk of erroneous deprivation for several reasons. First,
9 ICE incorrectly characterized Mr. Ortiz’s charge in the I-213 by stating that he had been charged
10 with “Assault First Degree, later amended to Assault Second Degree before the King County
11 Superior Court.” *See contra, Declaration of Public Defender Nicastro*. Had Mr. Ortiz been
12 provided a pre-deprivation hearing he could have corrected this error. Furthermore, Mr. Ortiz’s
13 OREC prohibits violations of local, State, or federal laws. Mr. Ortiz’s criminal case is still
14 pending; therefore, the criminal charge is merely an allegation that has yet to be proved beyond a
15 reasonable doubt or reach final adjudication. In other words, whether any laws have been
16 “violated” is a contested question yet to be answered. Without a pre-deprivation hearing, Mr.
17 Ortiz faced a high risk of erroneous deprivation.

18 Lastly, Respondents’ argument completely ignores the fact that Mr. Ortiz was released on
19 his personal recognizance on September 13, 2023, and thereafter he relied on his release, which
20 created a liberty interest in his freedom. The high risk of erroneous deprivation is demonstrated
21 by the fact that a neutral decision maker never considered how Mr. Ortiz’s circumstances have
22 changed for the better since his initial release. Mr. Ortiz was able to move into his very own

1 apartment, applied for asylum, obtained work authorization, and developed connections to the
 2 community. Dkt. 10. ¶ 13; Ex. E. *Letter of Support*. As this Court explained in *Ramirez Tesara*,
 3 “[o]nce established, Petitioner’s interest in liberty is a constitutional right which may only be
 4 revoked through methods that comport with due process, such as a hearing in front of a neutral
 5 party to determine whether Petitioner’s re-detainment is warranted.” 2025 WL 2637663, at *3
 6 (citing *Padilla v. U.S. Immigr. & Customs Enf’t*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash.
 7 2023)). This factor weighs heavily in favor of Mr. Ortiz.

8 **III. The Government Interest in Immigration Detention Without a Hearing is**
 9 **Minimal.**

10 The government’s interest in re-detaining Mr. Ortiz without a hearing is slight. See, e.g.,
 11 *Maklad*, 2025 WL 2299376, at *8; *Ortega*, 415 F. Supp. 3d at 970 (“If the government wishes to
 12 re-arrest Ortega at any point, it has the power to take steps toward doing so; but its interest in
 13 doing so without a hearing is low.”). The Respondent’s primary argument is that there is a
 14 heightened government interest in the immigration context. Dkt. 11 at p. 6-7. This interest,
 15 however, is not threatened if a pre-deprivation hearing is required. Contrary to Respondents
 16 arguments, nothing prevents the government from detaining individuals while also providing
 17 procedural due process.

18 A pre-deprivation hearing will undoubtably require time, resources, and cost; however,
 19 the cost and resources used to provide a pre-deprivation hearing are outweighed by the risk of
 20 erroneous deprivation of the liberty interest at stake. See, e.g., *E.A. T.-B.*, 2025 WL 2402130, at
 21 *5 (“[A]lthough [a pre-deprivation hearing] would have required the expenditure of finite
 22 resources (money and time) to provide Petitioner notice and hearing . . . before arresting and

1 redetaining him, those costs are far outweighed by the risk of erroneous deprivation of the liberty
2 interest at issue.”). This factor weighs heavily in favor of Mr. Ortiz.

3 IV. Injunctive Relief Prohibiting Re-detention.

4 Mr. Ortiz also seeks a permanent injunction prohibiting the Respondents from re-
5 detaining him without written notice and a hearing prior to re-detention where Respondents must
6 prove by clear and convincing evidence that he is a flight risk or danger to the community and
7 that no alternatives to detention would mitigate those risks. Dkt. 5, p.17. Mr. Ortiz is not seeking
8 a blanket prohibition of re-detention under all circumstances but instead specifically requests that
9 the Respondent’s be enjoined from re-detaining him in a same or similar manner as they have in
10 the underlying habeas case. *Id.* at p. 13. Remarkably, the Respondents make no opposition to this
11 request.

12 Where habeas petitioners raise Due Process claims and have also invoked the Court’s
13 jurisdiction under 28 U.S.C. § 1331, the Court has “the authority both to entertain [the
14 petitioner’s] constitutional challenges and to grant injunctive relief in response to them,”
15 “irrespective of the accompanying habeas petition.” *Roman v. Wolf*, 977 F.3d 935, 941-42 (9th
16 Cir. 2020). The moving party must convince the court that relief is needed, and the necessary
17 determination is that “there exists some cognizable danger of recurrent violation, something more
18 than the mere possibility which serves to keep the case alive.” *Cummings v. Connell*, 316 F.3d
19 886, 897 (9th Cir. 2003) (quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953)).

20 A plaintiff seeking a permanent injunction must demonstrate (1) that she has suffered an
21 irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate
22 to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff

1 and defendant, a remedy in equity is warranted; and (4) that the public interest would not be
2 disserved by a permanent injunction. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391
3 (2006). “Once a [constitutional] right and a violation have been shown, the scope of a district
4 court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent
5 in equitable remedies.” *Roman*, 977 F.3d at 942 (quoting *Swann v. Charlotte-Mecklenburg Bd. of*
6 *Educ.*, 402 U.S. 1, 15 (1971)).

7 Mr. Ortiz suffered irreparable injury when the Respondent’s violated his right to due
8 process and subjected him to over 120 days of detention. No legal or equitable remedy can
9 compensate Mr. Ortiz for the violation of his due process rights and unlawful detention. The
10 conditions inside of NWIPC are volatile and for some people even punitive. *See e.g., Sorio v.*
11 *Hermosillo, et al.*, 2:25-CV-02492-TL, 2026 WL 413530 (W.D. Wash. Feb. 13, 2026). Mr. Ortiz
12 is understandably terrified about his rights being violated again since they were so easily violated
13 in the first instance. A remedy in equity is warranted as the hardships against Mr. Ortiz far
14 outweigh any purported hardship of the Respondents. Additionally, the Respondent’s offer no
15 argument about any such hardships. Lastly, the public interest would be served by granting the
16 requested permanent injunction. The public interest would greatly benefit from prohibiting the
17 Respondent’s from violating Mr. Ortiz’s rights in a same or similar way. Afterall Mr. Ortiz and
18 many similar to him are valued members of the community at large. It would serve judicial
19 economy to explicitly prohibit the Respondents from engaging in conduct that violates the due
20 process clause of the Fifth Amendment rather than requiring another habeas to be filed. Across
21 the United States ICE has shown in several different instances that it does not care about the rule
22

1 of law.² Shockingly, a nationwide Reuters investigation calculated that federal courts have ruled
 2 over 4,400 times since October 2025 that ICE is detaining people illegally.³ This widespread
 3 pattern creates a cognizable danger that Mr. Ortiz's rights may be violated again by ICE for
 4 simply being a non-citizen. The public has an interest in a federal government that adheres to the
 5 rule of law. Explicitly requiring the government to obey the constitution in its future operations
 6 greatly serves the public interest.

7 A cognizable danger of recurrent violation exists. Mr. Ortiz requested that this court
 8 pursuant to FRE 201 take judicial notice of the number of re-detention cases similar to Mr. Ortiz
 9 that have been granted. Dkt. 5, p.15. Mr. Ortiz argues that the Respondent's repeated conduct of
 10 re-detaining people without process, despite clear rulings from this court creates a cognizable
 11 danger of re-detention. To aid the court in this analysis, Mr. Ortiz provides the following
 12 timeline:

15 ² See e.g., *Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM, 2026 WL 468284 (C.D. Cal. Feb.
 16 18, 2026) ("Respondents have far crossed the boundaries of constitutional conduct. Somehow,
 17 even after the judicial declaration of law that the DHS was misguided in its act of legal
 18 interpretation that nullified portions of a congressionally enacted statute, Respondents still insist
 19 they can continue their campaign of illegal action. The shameless submission that is
 20 Respondents' Opposition deliberately seeks to erode any semblance of separation of powers.
 [See Dkt. No. 110, "Opposition" or "Opp."]. Respondents can only do so in a world where the
 Constitution does not exist. The Constitution makes no apology in condemning Respondents.
 With no other option but to uphold its constitutional duty, the Court **GRANTS** Petitioners'
 Motion.").

21 ³ Nate Raymond, et al., *Courts have ruled 4,400 times that ICE jailed people illegally. It hasn't*
 22 *stopped.*, Reuters (Feb. 14, 2026, 2:07 AM, updated Feb. 17, 2026),
 23 <https://www.reuters.com/legal/government/courts-have-ruled-4400-times-that-ice-jailed-people-illegally-it-hasnt-stopped-2026-02-14/>.

- 1 1. Petitioner E.A.T.-B was re-detained without notice by ICE at the Portland Immigration
2 Courtthouse on **June 18, 2025**. On August 19, 2025, this court ruled that E.A.T.-B's re-
3 detention violated due process. *E.A. T.-B*, 795 F. Supp. 3d 1316 (W.D. Wash. 2025).
- 4 2. Petitioner Phong Thanh Nguyen was re-detained without notice or an opportunity to be
5 heard at an ICE Check-in on **July 16, 2025**. On August 21, 2025, this court ruled that Mr.
6 Nguyen suffered irreparable harm due to his re-detention. *Nguyen v. Scott*, 796 F. Supp.
7 3d 703 (W.D. Wash. 2025).
- 8 3. Petitioner Daixon Jose Ramirez Tesara was re-detained by ICE without notice at an ICE
9 appointment on **August 18, 2025**. On November 25, 2025, this court ruled that the
10 petitioner's re-detention violated due process. *Tesara v. Wamsley*, C25-1723-KKE-TLF,
11 2025 WL 3288295 (W.D. Wash. Nov. 25, 2025).
- 12 4. Petitioner Petrona Tomas Manuel was re-detained by ICE without notice or an
13 opportunity to be heard on **October 28, 2025**. On December 10, 2025, this court ruled
14 that petitioner's re-detention violated due process.
- 15 5. Petitioner Carlos Fabian Navarrete Acosta was re-detained by ICE without notice or an
16 opportunity to be heard on **November 4, 2025**, at his ICE check-in. On December 10,
17 2025, this court ruled that petitioner's re-detention violated due process.
- 18 6. Petitioner Jatinder Singh was re-detained by United States Border Patrol without notice
19 on **December 10, 2025**. On February 2, 2026, this court ruled that petitioner's re-
20 detention violated due process. *Singh v. Noem*, 2:26-CV-00079-DGE, 2026 WL 265670
21 (W.D. Wash. Feb. 2, 2026).

7. Petitioner Mahib Dieng was re-detained by ICE at his check-in without notice or an opportunity to be heard on **January 16, 2026**. On February 13, 2026, this court ruled that petitioner's re-detention violated due process. *Dieng v. Hermosillo*, 2:26-CV-00190-LK, 2026 WL 411857 (W.D. Wash. Feb. 13, 2026).

Here, the Respondents have been placed on notice as early as August 19, 2025, that re-detaining a person who was initially detained at the border and then released in some fashion (OREC or otherwise) violates the Fifth Amendment Due Process clause if the re-detention lacks notice and an opportunity to be heard. The timeline above outlines a pattern that despite clear rulings from this Court ICE does not intend on re-detaining individuals like Mr. Ortiz in a way that respects non-citizens due process rights. This clear pattern is evidence of a cognizable danger that Mr. Ortiz a recurrent violation.

V. Immediate Release is Warranted.

As in *Y.M.M., Ramirez Tesara, E.A. T.-B.*, and *Kumar*, this Court should order Mr. Ortiz's immediate release. 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. *E.A.T.-B.*, 2025 WL 2402130, at *6; see also *Kumar*, 2025 WL 2677089 ("[R]elease following post-deprivation procedures is insufficient to remedy the alleged harm because the alleged harm, i.e., potentially erroneous detention, has happened and is continuing to occur.").

CONCLUSION

For the aforementioned reasons, Mr. Ortiz respectfully requests that the court grant the petition for habeas corpus, order his immediate release, and prevent the Respondents from re-detaining him in the future absent the protections required by the Fifth Amendment.

1 Respectfully submitted this February 23, 2026.

2
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9 **WORD COUNT CERTIFICATION**

10 I, SAM M SUEOKA, certify that this motion contained 4,162 words, in compliance with
11 the Local Civil Rules.

12 /s/ Sam M Sueoka

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