

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**

DESMARK NDISET AWA;

Petitioner,

v.

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

Respondents.

Case No.: 2:26-cv-922

**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 Desmark Ndifet Awa, a native and citizen of Cameroon, who is currently being held in detention at the Northwest ICE Processing Center (NWIPC) by U.S. Immigration and Citizenship Enforcement (ICE).

2. Petitioner seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241 because his parole was revoked in violation of Due Process.

3. Petitioner last entered the United States on or around June 26, 2023. He expressed a credible fear of return to Cameroon and was released on parole by the Department of Homeland Security (DHS) on August 6, 2023.

4. On September 13, 2023, Petitioner was given an Order of Release on Recognizance (OREC) specifying the conditions of his release.

5. On December 9, 2025, Petitioner was abruptly and unlawfully re-detained by DHS while attending a scheduled check-in, in compliance with his conditions of release.

6. Prior to re-detaining Petitioner, Respondents did not provide any written notice explaining the basis for the revocation of his release. Likewise, Respondents did not assess whether he presented a flight risk or danger to the community prior to his re-arrest and re-detention. 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.

7. This Court has recently held in multiple cases that due process demands a hearing *prior* to the government's decision to terminate a person's liberty. *See Bello Chacon v. Hermosillo*, No. 2:25-cv-02299-TMC, 2025 WL 3562666, at *4 (W.D. Wash. Dec. 12, 2025); *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316 (W.D. Wash. 2025); *Ramirez Tesara v. Wamsley*, 800 F. Supp. 3d 1130 (W.D. Wash. 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 (W.D. Wash. Sept. 17, 2025). Many other courts have held the same.

8. Even when an individual is re-arrested due to alleged violations of their order of release, including criminal charges or convictions that arise after conditional parole, it is a due process

1 violation for ICE to re-arrest and re-detain an individual without providing notice of the violations
2 and an opportunity to be heard. *Singh v. Noem*, No. 2:26-CV-00079-DGE, 2026 WL 265670, at
3 *5 (W.D. Wash. Feb. 2, 2026); *Petrov v. Hermosillo*, C25-2647-KKE, 2026 U.S. Dist. LEXIS
4 7557, at *3 (W.D. Wash. Jan. 14, 2026). And any factual disputes regarding alleged violations of
5 release conditions “must be adjudicated at a pre-deprivation hearing and they do not extinguish
6 the liberty interest that grew when Respondents” permitted an individual to develop life outside
7 of custody. *Rodriguez Diaz v. Kaiser*, No. 25-cv-05071-TLT, 2025 WL 3011852, at *10 (N.D.
8 Cal. Sep. 16, 2025).

9 9. By failing to provide any sort of pre-deprivation hearing, Respondents have violated
10 Petitioner’s constitutional right to due process.

11 10. Upon the filing of a Petition for Writ of Habeas Corpus, the court “shall forthwith award
12 the writ or issue an order directing the respondent to show cause why the writ should not be
13 granted....” 28 U.S.C. § 2243.

14 11. Habeas corpus is “perhaps the most important writ known to the constitutional law . . .
15 affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.”
16 *Fay v. Noia*, 372 U.S. 391, 400 (1963).

17 12. Accordingly, this court should grant the instant petition for a writ of habeas corpus and
18 order Petitioner’s immediate release. *See E.A. T.-B.*, 795 F. Supp. 3d at 1324 (ordering immediate
19 release because “a post-deprivation hearing cannot serve as an adequate procedural safeguard
20 because it is after the fact and cannot prevent an erroneous deprivation of liberty”); *Ramirez*
21 *Tesara*, 800 F. Supp. 3d at 1138–39 (similar); *Kumar*, 2025 WL 2677089, at *3–4 (similar).

PARTIES

13. Petitioner Desmark Ndifet Awa is a native and citizen of Cameroon who is presently detained at the Northwest ICE Processing Center in Tacoma, Washington.

14. 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 Petitioner.

15. 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.

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

17. Respondent Julio Hernandez is sued in his official capacity as Acting Field Office Director for the Seattle office of Immigration and Customs Enforcement, an agency of the Department of Homeland Security. He is responsible for overseeing ICE operations pertaining to noncitizens within its territorial jurisdiction, such as Petitioner, including detentions, enforcement, and removal operations. He is the immediate legal custodian of the petitioner for purposes of a federal habeas petition.

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

//

//

JURISDICTION

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

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

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

VENUE

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

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

FACTUAL BACKGROUND

24. Petitioner Desmark Ndifet Awa is a 30-year-old citizen and national of Cameroon who is currently being held in detention at the NWIPC by ICE.

25. Petitioner last entered that United States on or around June 26, 2023.

26. He expressed a credible fear of return to Cameroon and was released on parole by the DHS on August 6, 2023.

27. On September 13, 2023, Petitioner was given an OREC specifying the conditions of his release.

1 28. Petitioner timely filed for asylum on November 30, 2023.

2 29. Upon information and belief, Petitioner attended an annual ICE check-in meeting around
3 December 2023 in compliance with the conditions on his OREC.

4 30. On January 30, 2024, Petitioner was charged with a violation of Oregon Revised Statute
5 (ORS) 813.010 for misdemeanor driving under the influence.

6 31. On April 15, 2024, these charges were dismissed with prejudice after Petitioner fully
7 complied with and completed a diversion program.

8 32. Upon information and belief, Petitioner attended his annual ICE check-in meeting around
9 December 2024 in compliance with the conditions on his OREC.

10 33. On July 25, 2025, Petitioner was again charged with violation of Oregon Revised Statute
11 (ORS) 813.010 for misdemeanor driving under the influence. The complaint indicates that he is
12 again eligible to have the charges dismissed upon completion of a diversion program.

13 34. On December 9, 2025, Petitioner was abruptly and unlawfully re-detained by the DHS
14 while attending a scheduled check-in, in compliance with his conditions of release. He has
15 remained at the NWIPC ever since.

16 35. On February 11, 2026, an immigration judge ordered Petitioner removed to Uganda as
17 compelled by the Asylum Cooperative Agreement therewith. Petitioner appealed the decision on
18 March 9, 2026.

19 36. Prior to Petitioner's re-detention, he did not receive written notice of the reasons for his re-
20 detention.

21 37. Prior to Petitioner's re-detention, ICE did not assess whether he presented a flight risk or
22 danger to the community.

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

MEMORANDUM OF LAW

Due Process Principles

39. Due process requires that if DHS seeks to re-arrest a person who has previously been released on parole, the government must afford a hearing before a neutral decisionmaker to determine whether any re-detention is justified, and whether they are a flight risk or danger to the community.

40. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Id.* at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

41. The Ninth Circuit assumed without deciding that *Mathews'* three-part test applies in "the immigration detention context." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206-07 (9th Cir. 2022). Under that test, a court must consider:

First, the private interest that will be affected by the official action; second, 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 finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. at 335.

1 42. District courts, including this Court, have applied the *Mathews* test in similar circumstances
2 to Petitioner's case—cases in which DHS has taken an individual back into custody, often after
3 they have been released for months or years. *See e.g., Petrov*, 2026 U.S. Dist. LEXIS 7557, at *5;
4 *E.A. T.-B.*, 795 F. Supp. 3d at 1320–24; *Ramirez Tesara*, 800 F. Supp. 3d at 1135–37; *Kumar*,
5 2025 WL 2677089, at *2–3; *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1033 (N.D. Cal. 2025).

6 43. Applying the *Mathews* factors, courts have consistently found that individuals' "liberty
7 interest in [continued] release from custody is entitled to constitutional protections of due process"
8 and that when individuals receive no process related to re-detention, constitutional rights are
9 violated. *Petrov*, 2026 U.S. Dist. LEXIS 7557, at *9; *see also E.A. T.-B.*, 795 F. Supp. 3d at 1324
10 (ordering petitioner's immediate release after weighing the *Mathews* factors); *Ramirez Tesara*,
11 800 F. Supp. 3d at 1135–37 (noting that despite the government's allegations of ISAP violations,
12 "the fact 'that the Government may believe it has a valid reason to detain Petitioner does not
13 eliminate its obligation to effectuate the detention in a manner that comports with due process.'");
14 *Kumar*, 2025 WL 2677089, at *3–4 (holding that all three *Mathews* factors weighed in favor of
15 affording the petitioner a hearing).

16 44. "Freedom from imprisonment—from government custody, detention, or other forms of
17 physical restraint—lies at the heart of the liberty protected by the Due Process Clause." *Zadvydas*
18 *v. Davis*, 533 U.S. 678, 690 (2001). An individual's interest in not being detained is "the most
19 elemental of liberty interests[.]" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Consistent with
20 this principle, individuals released on parole or other forms of conditional release have a liberty
21 interest in their "continued liberty," *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972), because the
22 revocation of parole undoubtedly "inflicts a grievous loss on the parolee." *Yaman v. Lyons*, No.
23 1:26-CV-00556-DC-SCR, 2026 WL 323060, at *4 (E.D. Cal. Feb. 6, 2026), report and

1 recommendation adopted, No. 1:26-CV-00556-DC-SCR (HC), 2026 WL 453565 (E.D. Cal.
2 Feb. 18, 2026).

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

11 46. Even in cases where a noncitizen has been charged with or convicted of a crime after being
12 conditionally released, this Court and others have held that the noncitizen is entitled to a pre-
13 deprivation hearing and ordered the petitioner's immediate release. *See, e.g., Singh*, 2026 WL
14 265670, at *5–6 (W.D. Wash. Feb. 2, 2026); *Guillermo M.R. v. Kaiser*, No. 25-cv-05436-RFL,
15 2025 U.S. Dist. LEXIS 138205 (N.D. Cal., July 16, 2025); *Domingo v. Kaiser*, No. 25-cv-058933-
16 RFL, 2025 WL 1940179 (N.D. Cal., July 14, 2025). In *Singh*, the Petitioner was released from
17 detention under an Order of Recognizance and later charged with driving under the influence.
18 2026 WL 265670, at *1, 3. The officers who re-detained the petitioner informed him that "his
19 release is being revoked due to noncompliance with release conditions and court requirements,"
20 citing the pending DUI charges. *Id.* at *1. This Court found that all three *Mathews* factors favored
21 the Petitioner; that a pending charge where no final decision has been reached, without more, is
22 insufficient to demonstrate a lack of "compliance with all laws on the local, state and federal
23 level" as a condition of release; and that the "informal interview" alleging the Petitioner's

1 violation and reasons for revocation of release comprised conclusory statements absent any
2 process necessary to protect the Petitioner's Fifth Amendment rights. *Id.* at *5. This Court ordered
3 immediate release of the Petitioner and prohibited the government from re-detaining the Petitioner
4 without first providing pre-deprivation notice and an opportunity to be heard in front of an
5 immigration judge, absent urgent circumstances or a clear legal basis for detention not present
6 under the circumstances. *Id.* at *6.

7 47. The same framework and principles apply here and compels Petitioner's immediate
8 release, especially since the 2024 DUI charges were dismissed with prejudice after completion of
9 a diversion program, ICE declined to re-detain Petitioner at his prior annual check-in with
10 awareness of that record, and the 2025 DUI charges based on an alleged violation of the same
11 statute were still pending at the time of his re-detention. Petitioner has a protected liberty interest,
12 the risk of erroneous deprivation of that liberty interest is high absent a pre-deprivation hearing,
13 and the government's interest in re-detention without a hearing is minimal because any
14 administrative or financial burdens in providing Petitioner with a hearing are far outweighed by
15 the risk of erroneous deprivation. Here, in addition to the deprivation of his physical freedom,
16 Petitioner's re-detention has imposed further irreparable harm because his driver's license was
17 suspended when he missed a scheduled court hearing solely due to his captivity at the NWIPC.

18 48. Petitioner has verified this Petition. *See* Verification of Petitioner.
19

20 **CLAIM FOR RELIEF**

21 **Violation of Fifth Amendment Right to Due Process
Procedural Due Process**

22 49. Petitioner restates and realleges all preceding paragraphs as if fully set forth here.
23

50. 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.

51. Respondents revoked Petitioner’s parole 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.

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

EXHAUSTION OF ADMINISTRATIVE REMEDIES

53. There are no administrative remedies that can provide the relief the Petitioner seeks for violation of his Due Process rights through unlawful re-detention.

54. An administrative appeal of the final order of removal is pending through unrelated counsel. Exhaustion of this administrative remedy is not required because Petitioner is seeking relief related only to his custody status, which is not inconsistent with an order of removal.

IRREPARABLE INJURY

55. Petitioner has suffered irreparable injury because of his detention. Despite being paroled on August 6, 2023, he was unconstitutionally re-detained without the required hearing while attending his ICE check-in—in compliance with the conditions of his release. His physical liberty continues to be restrained, in penal-like conditions, and no just cause for doing so can be specified.

See, e.g., Maliwat v. Scott, No. 2:25-cv-00788-TMC, 2025 U.S. Dist. LEXIS 152663, at *15

(W.D. Wash. August 7, 2025). “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) 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;
- (3) 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 meaningful 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;
- (4) 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;
- (5) Award attorney’s fees and costs to the petitioner under the Equal Access to Justice Act, and on any other basis justified under law; and
- (6) Grant any other relief this Court deems just and proper.

1 Respectfully submitted this 18th day of March 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