

The Honorable Judge Kymberly K. Evanson

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

Miguel SIRA-HURTADO,

Petitioner,

v.

Laura HERMOSILLA, *et al.*,

Respondents.

Case No.: 2:25-cv-2173

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

Note on Motion Calendar:
November 21, 2025

INTRODUCTION

Petitioner, Mr. Miguel Sira-Hurtado, argues that the Due Process Clause of the Fifth Amendment requires a hearing *prior* to re-detention, before a neutral decisionmaker, where Immigration and Customs Enforcement (ICE) must justify his re-detention. Regardless of the purported statutory basis for Mr. Sira-Hurtado's detention, the Respondents did not provide these required procedures upon re-detaining Mr. Sira-Hurtado, thus violating his due process rights, as

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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 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. Sira-Hurtado 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 150 long days in detention, Mr. Sira-Hurtado’s immediate release is warranted.

STATEMENT OF FACTS

The critical facts in this case are undisputed. Mr. Sira-Hurtado entered the United States on November 2, 2023, and was released on his own recognizance. Dkt. 8 ¶ 7; Dkt. 9 Exhibit A. He was placed in removal proceedings, and scheduled for a December 28, 2023 hearing in Dallas, Texas, which was later changed to June 3, 2025, in Seattle, Washington. Dkt. 8 ¶ 7-9; Dkt 1 Petitioner Decl., ¶¶ 8-18.

Since Mr. Sira-Hurtado’s initial release from the border in 2023, he has updated his address accordingly with the immigration court, appeared at all of his scheduled court dates, sought legal assistance and filed an application for asylum, and applied for work authorization. Dkt.1 Pet. Decl. ¶¶ 1-22. Importantly, Mr. Sira-Hurtado also built a life and community in Washington, where he met his now girlfriend and fostered strong relationships with migrant

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1 advocacy organizations. *Id.* ¶ 9-14. At the time he was re-detained, Mr. Sira-Hurtado's girlfriend
2 was pregnant. *Id.* ¶ 11.

3 When Mr. Sira- Hurtado appeared as required for his June 3, 2025, Master Calendar
4 hearing, the Department of Homeland Security (DHS) moved to dismiss his case. *Id.* ¶ 10. Over
5 Mr. Sira-Hurtado's objections, the immigration judge granted DHS's oral motion and Mr. Sira-
6 Hurtado was promptly arrested and taken into custody at the Northwest ICE Processing Center
7 (NWIPC) in Tacoma, Washington. *Id.* Following his arrest, ICE purportedly served Mr. Sira-
8 Hurtado a Notice and Order for Expedited Removal under 8 U.S.C § 1225(b)(1). Dkt. 8. ¶ 10.
9 Respondents do not contest the fact that Mr. Sira-Hurtado was not provided with prior notice that
10 he was going to be re-arrested or a reason for his re-arrest, nor do they contest that he was not
11 provided an opportunity for a hearing before a neutral decisionmaker prior to his re-arrest. *See*
12 *generally* Dkt. 7, Dkt. 8.

13 On June 20, 2025, DHS discovered that Mr. Sira-Hurtado had been diagnosed with a
14 "serious  condition," which triggered the process for identifying him as a class
15 member under the settlement in *Franco-Gonzales v. Holder*, CV-10-02211 DMG DTBX, 2014
16 WL 5475097 (C.D. Cal. Oct. 29, 2014). Dkt. 1 at p.2-3; Dkt. 8 ¶12. DHS subsequently filed a
17 motion to reopen Mr. Sira-Hurtado's proceedings with the immigration judge, but on July 7,
18 2025, the immigration judge denied DHS's motion to reopen because it failed to include any
19 evidence or documentation to support their request. Dkt. 1. Exhibit E. Notably, the *Franco v.*
20 *Holder* settlement specifically requires that upon notification that a detained noncitizen suffers
21 from a serious  DHS counsel must promptly file notice with the immigration

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judge or BIA, including all information and documentation gathered by ICE in the process of designating a person as a class member. *Franco-Gonzales v. Holder*, CV-10-02211 DMG DTBX, 2014 WL 5475097, at * 5 (C.D. Cal. Oct. 29, 2014).

In July, DHS also submitted filings to the BIA noting Mr. Sira-Hurtado's potential class membership, but to date, DHS has not provided the required documentation of Mr. Sira-Hurtado's  condition to either the immigration court or the BIA. Dkt. 8 ¶12-17; Dkt. 1 at p.3. Thus, the strict timeline created under the *Franco* settlement has been delayed. Mr. Sira-Hurtado has had no access to appointed counsel and no access to a *Franco v. Holder* mandated bond hearing, protections that may have otherwise been afforded to him under the settlement. *See Franco-Gonzales v. Holder*, CV-10-02211 DMG DTBX, 2014 WL 5475097, (C.D. Cal. Oct. 29, 2014). Meanwhile, Mr. Sira-Hurtado's ongoing  health issues, tied to memory loss resulting from a traumatic brain injury, have continued to worsen while he has been detained. Dkt. 1 Pet. Decl. ¶ 41.

On July 3, 2025, Mr. Sira-Hurtado filed a timely appeal of the immigration judges' order granting the dismissal of his case to the Board of Immigration Appeals (BIA), where it remains pending. Dkt. 8 ¶ 14. Mr. Sira-Hurtado also requested a credible fear interview, a process supposedly afforded to him under the expedited removal statutes. 8 U.S.C. § 1225(b)(1)(B); Sueoka Decl.; Supp. Exhibit G. In response to his request, U.S. Citizenship and Immigration Services (USCIS) closed his credible fear case pending an outcome of the appeal with the BIA. Supp. Exhibit G. A joint motion to remand the case to the immigration judge based on *Franco v.*

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1 *Holder* has been pending with the BIA since August 4, 2025. Dkt. 8 ¶ 17; Dkt. 1. Jacobsen Decl.,
 2 Ex. F.

3 Mr. Sira-Hurtado filed his habeas petition on November 3, 2025, arguing that the Due
 4 Process Clause requires his immediate release from detention. Dkt. 1 at 14. Mr. Sira-Hurtado
 5 also seeks to prevent Respondents from re-detaining him without a pre-deprivation hearing. *Id.*

6 ARGUMENT

7 Mr. Sira- Hurtado's petition is based on a single claim: he is currently being detained in
 8 violation of the Fifth Amendment's Due Process Clause because Respondents did not justify his
 9 re-detention before a neutral decisionmaker prior to his re-detention or provide him with notice
 10 of the reasoning for his re-arrest. In response, Respondents base their argument nearly entirely on
 11 statutory grounds – that because Mr. Sira-Hurtado is detained pursuant 8 U.S.C. § 1225(b), this
 12 Court is precluded from reviewing his claim, his detention is mandatory, and the procedures
 13 provided by Congress are sufficient to protect his liberty interests. But recently, federal judges
 14 have consistently held that regardless of statutory argument, due process requires Respondents to
 15 justify a noncitizens re-detention after they have been released and gained liberty interests in
 16 their freedom in the United States. *See e.g., Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL
 17 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation
 18 hearing); *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, --- F.Supp.3d ----, 2025 WL
 19 1953796 (W.D.N.Y. July 16, 2025) (similar); *Pinchi v. Noem*, No. 5:25-CV-05632- PCP, --- F.
 20 Supp. 3d ---, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, No.
 21 1:25-CV-00946 JLT SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v.*

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1 *Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar);
 2 *Hernandez v. Wofford*, No. 1:25-CV-00986-KES-CDB (HC), 2025 WL 2420390 (E.D. Cal. Aug.
 3 21, 2025). Mr. Sira-Hurtado's claim is no different, and the Due Process Clause requires his
 4 release.

5 Respondents argue that "[t]he INA precludes this Court's review of DHS's decision to
 6 process Sira-Hurtado through expedited removal." Dkt. 7 at 7 (citing 8 U.S.C. § 1252(g)). But
 7 again, Mr. Sira- Hurtado is not challenging the statutory use of expedited removal, which
 8 Respondents also openly acknowledge. Dkt. 7 at 11 ("Sira-Hurtado does not dispute that he may
 9 be lawfully processed for expedited removal."). Federal courts have authority to grant writs of
 10 habeas corpus to an individual in custody if that custody violates "the Constitution or laws or
 11 treaties of the United States[.]" 28 U.S.C. § 2241(c)(3). This Court has jurisdiction over this case
 12 because Mr. Sira-Hurtado is in custody in the United States and Mr. Sira-Hurtado claims that his
 13 re-detention violates the Fifth Amendment of the U.S. Constitution, which prohibits the federal
 14 government from depriving any person of "life, liberty, or property, without due process of
 15 law[.]" U.S. Const. Amend. V. This right extends to "all 'persons' within the United States,
 16 including [non-citizens], whether their presence here is lawful, unlawful, temporary, or
 17 permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Mr. Sira-Hurtado's petition is not
 18 about DHS's *decision* to place him in removal proceedings. His claim is about *how* he was re-
 19 arrested without process, without notice, and without an opportunity to be heard, in violation of
 20 the Due Process Clause.

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Courts analyzing re-detention due process violation claims similar to Mr. Sira-Hurtado'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. Sira-Hurtado addresses each *Mathews* factor below.

I. Mr. Sira-Hurtado Has a Considerable Private Interest in His Freedom.

Mr. Sira-Hurtado has a strong interest in freedom from physical confinement and in a hearing prior to any revocation of his liberty. In fact, his "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

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1 non-citizen has a liberty interest “strong enough” to challenge “indefinite and potentially
2 permanent” immigration detention).

3 Critically, in recent months, courts—including this one—have repeatedly applied these
4 principles to hold that noncitizens have a strong liberty interest in cases involving re-detention.
5 As this Court explained in *E.A.T.-B.*, a person re-detained after a prior release from ICE custody
6 is “undoubtedly deprive[d] . . . of an established interest in his liberty.” 2025 WL 2402130, at *3.
7 Other courts have reached the same conclusion. *See, e.g., Ramirez Tesara*, 2025 WL 2637663, at
8 *3 (“When he was released from his initial detention on parole, Petitioner took with him a liberty
9 interest which is entitled to the full protections of the due process clause.”); *Pinchi*, 2025 WL
10 2084921, at *4 (“[Petitioner] has a substantial private interest in remaining out of custody. She
11 has an interest in remaining in her home, continuing her employment, providing for her family,
12 obtaining necessary medical care, maintaining her relationships in the community, and
13 continuing to attend her church.”); *Maklad*, 2025 WL 2299376, at *8 (similar). When he was
14 released from his initial detention on his own recognizance, Petitioner acquired a liberty interest
15 entitled to the protections of the Due Process Clause. *See Doe v. Becerra*, 787 F. Supp. 3d 1083,
16 1093 (E.D. Cal. Mar. 3, 2025) (“The Supreme Court has repeatedly recognized that individuals
17 who have been released from custody, even where such release is conditional, have a liberty
18 interest in their continued liberty.”).

19 Respondents drastically understate Mr. Sira-Hurtado’s liberty interests, acknowledging
20 only that he has “some interest in his continued freedom.” Dkt. 7 p. 11-12. At the same time,
21 Respondents concede that “Courts in this district have found that due process requires a pre-

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1 deprivation hearing prior to the revocation of an OREC.” *See, e.g., E.A.T.-B. v. Wamsley*, No.
 2 25-cv-1192-KKE, 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025).” *Id.* at 9. They argue
 3 that Mr. Sira-Hurtado’s situation is somehow different because he was released from custody for
 4 a “relatively short period of time,” “his initial removal proceedings were dismissed,” and “he
 5 qualified for expedited removal” at the time of his re-detention. Dkt. 7 p. 11-12. Prior to his
 6 detention, Mr. Sira-Hurtado was in the United States for 1 year and 7 months. *See* Dkt. 1. Pet.
 7 Decl. ¶¶3&21-32 (stating that Mr. Sira-Hurtado entered the United States on November 2, 2023
 8 and was re-arrested by DHS on June 3, 2025.). In *E.A.T.-B.*, the Petitioner had resided in the U.S.
 9 for 1 year and 9 months, yet the Court found no indication that this particular period of time
 10 somehow decreased their liberty interest. *E.A.T.-B. v. Wamsley*, No. 25-cv-1192-KKE, 2025 WL
 11 2402130, at *1 (W.D. Wash. Aug. 19, 2025) (E.A.T.-B.] entered the United States on or about
 12 September 6, 2023, and was re-detained on June 18, 2025 (1 year and 9 months)).

13 Mr. Sira-Hurtado’s actions since his initial release demonstrate both his reasonable
 14 reliance on his freedom as a liberty interest and the weightiness of that interest. Following his
 15 release, Mr. Sira-Hurtado sought assistance with the Northwest Immigrant Rights Project to file
 16 his asylum application, applied for work authorization, developed relationships with migrant
 17 rights organizations, and began a relationship with his girlfriend. Dkt.1 Pet. Decl. ¶¶ 1-22.

18 Mr. Sira-Hurtado could only accomplish these actions while free.

19 While in detention Mr. Sira-Hurtado has suffered from severe dental pain and his
 20 memory issues have only deteriorated. *Id.* ¶ 36. Mr. Sira-Hurtado experienced 
 21 because of his dental pain and  and was placed in medical isolation. *Id.* Mr.

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1 Sira-Hurtado has a liberty interest in being free and able to address his  health
 2 concerns, which can only be adequately addressed while free. Mr. Sira-Hurtado has a liberty
 3 interest in spending time with his significant other, who suffered a miscarriage while he was in
 4 detention. *Id.* ¶ 11. His ability to provide for and care for his loved one is something he can only
 5 do while free. Mr. Sira-Hurtado also has yet to present his asylum claim to either an Immigration
 6 judge or USCIS. *See generally id.* His ability to gather evidence, interview witnesses, retain
 7 country-condition experts, and otherwise pursue his asylum claim is deeply hindered by being in
 8 detention. Mr. Sira-Hurtado has a strong interest in being free to fight for his asylum case.

9 The Respondents argue that one of the reasons Mr. Sira-Hurtado's liberty interest is
 10 tempered is because DHS decided to dismiss his initial removal proceedings. Dkt. 7 at p. 10.
 11 This argument fails to acknowledge the fact the DHS intends on re-opening his case, as
 12 demonstrated by motions to both the immigration judge and the BIA. Dkt 8. ¶¶12-18 ("Upon the
 13 BIA's remand, ERO expects Petitioner will proceed on the initial Notice to Appear."); Dkt 1.
 14 Exhibit D & F.

15 Lastly, the Respondents point out that non-citizens have a lesser liberty interest than
 16 citizens. Dkt. 7 at p. 10. This argument again ignores Mr. Sira-Hurtado's main concern, which is
 17 not that his liberty interest is equivalent to that of a citizen. Instead, he contends that the
 18 Constitution protects his interest in liberty by requiring due process if it is to be deprived. *See*
 19 *also, Lopez v. Reyes*, 2:25CV01868 (W.D. Wash. Oct. 15, 2025) Report and Recommendation,
 20 pg. 4. Accordingly, the first *Mathews* factor weighs heavily in Mr. Sira-Hurtado's favor.

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

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1 Second, the risk of erroneous deprivation of Mr. Sira-Hurtado's liberty interest in the
 2 absence of a pre-detention hearing is high. *See E.A. T.-B.*, 2025 WL 2402130, at *4. "That the
 3 Government may believe it has a valid reason to detain Petitioner does not eliminate its
 4 obligation to effectuate the detention in a manner that comports with due process." *Id.* His re-
 5 detention must still "bear[] [a] reasonable relation" to a valid government purpose—here,
 6 preventing flight or protecting the community against dangerous individuals. *Zadvydas*, 533 U.S.
 7 at 690 (second alteration in the original) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

8 Only a hearing before a neutral decisionmaker—where ICE must prove that re-detention
 9 is justified and that Mr. Sira-Hurtado poses a flight risk or danger—can ensure that this
 10 "reasonable relation" to a valid government purpose exists. But to date, only the "government
 11 enforcement agent" has made any decision about the propriety of detention, *Coolidge v. New*
 12 *Hampshire*, 403 U.S. 443, 450 (1971), a far cry from the hearing before a neutral decisionmaker
 13 that due process requires. *Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972).

14 Remarkably, Mr. Sira-Hurtado has never received notice of the basis for his re-detention
 15 and the Respondent's do no argue post-hoc that there was a change in circumstances. Mr. Sira-
 16 Hurtado was never provided an opportunity to be heard and respond to allegations attempting to
 17 justify his re-detention. The Respondent's filings are devoid of any explanation as to why Mr.
 18 Sira-Hurtado was re-detained other than stating that detention is mandatory for individuals who
 19 are subject to expedited removal.¹ At most, the Governments' I-213 form states that Mr. Sira-

20 _____
 21 ¹ Mr. Sira-Hurtado contends that the expanded definition of expedited removal violates due
 22 process. *See Make the Road v. Noem*, No. 25-cv-190, ---F.Supp.3d---, 2025 WL 2494908, at *3
 23 (D.D.C. Aug. 29, 2025), finding Plaintiff's similarly situated to Petitioner likely to succeed on

Hurtado was apprehended “as per directions from ICE Headquarters...to allow subject to be served with Expedited Removal.” Dkt. 9. Exhibit B.

Respondents’ argument completely ignores the fact that Mr. Sira-Hurtado was released on his personal recognizance on November 3, 2023, and thereafter relied on his release which created a liberty interest in his freedom. The high risk of erroneous deprivation is demonstrated by the fact that a neutral decision maker never considered how Mr. Sira-Hurtado’s circumstances have changed for the better since his initial release. As this Court explained in *Ramirez Tesara*, “[o]nce established, Petitioner’s interest in liberty is a constitutional right which may only be revoked through methods that comport with due process, such as a hearing in front of a neutral party to determine whether Petitioner’s re-detainment is warranted.” 2025 WL 2637663, at *3 (citing *Padilla v. U.S. Immigr. & Customs Enf’t*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023)).

Furthermore, Mr. Sira-Hurtado, just as the petitioner in *E.A.T.-B.*, “does not claim to be entitled to a hearing consistent with a particular statute: he argues that the Due Process Clause requires it.” *E.A. T.-B.*, 2025 WL 2402130, at *4. And due process requires such a hearing because Petitioner’s circumstances have changed materially since his release in November 2023. Respondents’ arguments fail to explain why they found Mr. Sira-Hurtado eligible for release on his own recognizance in November 2023, but not nearly two years later after he had established

Due Process claims relating to the application of expanded expedited removal. But even if, for argument purposes, he is subject to expedited removal under the expanded definition, Mr. Sira-Hurtado argues that he is entitled to due process in the form of a hearing before a neutral decisionmaker prior to being re-detained.

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ties to the community, attended all of his immigration hearings, and filed an asylum application. *See, e.g., Y-Z-L-H v. Bostock*, 2025 WL 1898025, at *14 (D. Or. July 9, 2025) (noting that such a discrepancy may be considered an arbitrary and capricious decision). Re-detaining Mr. Sira-Hurtado without first reconsidering the release factors in light of established ties to the community and other equities poses a substantial risk of erroneous deprivation of liberty.

Respondents contend that the procedures provided to Mr. Sira-Hurtado are sufficient, however, they fail to demonstrate their own compliance with those procedures. Federal regulations set forth the procedure for making an adequate inadmissibility determination for purposes of expedited removal. *See* 8 C.F.R. § 253.3(b)(2). Specifically, the regulations require that DHS (1) execute Form I-867AB, (2) advise the noncitizen of the charges against them, (3) provide an opportunity for the noncitizen to respond, (4) obtain supervisory concurrence, *and then* issue the expedited removal order and serve it on the noncitizen. *Id.* (emphasis added). According to Respondents, on the day Mr. Sira-Hurtado was arrested, “ERO took Petitioner into custody and served him with Notice and Order of Expedited Removal.” Dkt. 8 ¶ 11. Respondents do not allege completion of any other step required under the regulations.

Additionally, Mr. Sira-Hurtado has not even been able to access the minimal process afforded to him under the expedited removal statutes, given the ongoing nature of his § 1229a proceedings, which are currently pending on appeal before the BIA. Dkt. 8 ¶ 14, Supp. Exhibit G. A person who is placed in expedited removal and who then expresses a fear of persecution or an intent to seek asylum receives a “credible fear” screening interview before an asylum officer employed by U.S. Citizenship and Immigration Services. 8 U.S.S. § 1225(b)(a)(B). But when

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1 Mr. Sira-Hurtado attempted to request a credible fear interview, USCIS closed his credible fear
 2 case “until such a time the BIA renders a decision.” Supp. Exhibit G. If Mr. Sira-Hurtado were
 3 lawfully placed in expedited removal, he would be able to access a credible fear interview.² Dkt.
 4 7 at 11. Respondent’s failure to comply with “existing procedures,” 8 C.F.R. § 253.3(b)(2) and 8
 5 U.S.C. § 1225(b)(a)(B), severely undercuts their argument that “existing procedures are
 6 constitutionally sufficient.” Dkt. 7 p. 11. Accordingly, the second *Mathews* factor weighs heavily
 7 in Mr. Sira-Hurtado’s favor.

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

10 The government’s interest in re-detaining Mr. Sira-Hurtado without a hearing is slight. *See,*
 11 *e.g., Maklad*, 2025 WL 2299376, at *8; *Ortega*, 415 F. Supp. 3d at 970 (“If the government
 12 wishes to re-arrest Ortega at any point, it has the power to take steps toward doing so; but its
 13 interest in doing so without a hearing is low.”). The Respondent’s primary argument is that there
 14 is a heightened government interest in the immigration context. Dkt. 7 at p. 12. 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 Furthermore, the Respondents have articulated that the sole reason for re-detention without a
 19 hearing is because Mr. Sira-Hurtado is “an expedited removal.” Dkt. 7 at p. 11. The lack of any

20 ² Even if expedited removal were applied lawfully, the argument here is that due process requires
 21 pre-deprivation notice and a hearing, regardless of the basis for detention or type of proceedings
 22 that followed.

1 further justification undermines any suggestion that Respondents' interest is so great that it must
2 be satisfied immediately without a pre-deprivation hearing. ICE was persuaded on November 3,
3 2023, to release Mr. Sira-Hurtado on his personal recognizance and never re-assessed release
4 factors prior to his re-detention.

5 A pre-deprivation hearing will undoubtedly require time, resources, and cost; however, the
6 cost and resources used to provide a pre-deprivation hearing are outweighed by the risk of
7 erroneous deprivation of the liberty interest at stake. *See, e.g., E.A. T.-B.*, 2025 WL 2402130, at
8 *5 (“[A]lthough [a pre-deprivation hearing] would have required the expenditure of finite
9 resources (money and time) to provide Petitioner notice and hearing . . . before arresting and re-
10 detaining him, those costs are far outweighed by the risk of erroneous deprivation of the liberty
11 interest at issue.”). This factor weighs heavily in favor of Mr. Sira-Hurtado.

12 IV. Immediate Release is Warranted.

13 As in *Y.M.M., Ramirez Tesara, E.A. T.-B.*, and *Kumar*, this Court should order Mr. Sira-
14 Hurtado's immediate release. because “a post-deprivation hearing cannot serve as an adequate
15 procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of
16 liberty.” *E.A.T.-B.*, 2025 WL 2402130, at *6; *see also Kumar*, 2025 WL 2677089 (“[R]elease
17 following post-deprivation procedures is insufficient to remedy the alleged harm because the
18 alleged harm, i.e., potentially erroneous detention, has happened and is continuing to occur.”).

19 CONCLUSION

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22 TRVERSE AND RESPONSE TO
23 RESPONDENTS' RETURN TO PETITION FOR
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1 Mr. Sira- Hurtado's continued detention violates the Due Process Clause of the Fifth
2 Amendment, and he respectfully requests that this Court grant his petition and order his
3 immediate release.

4
5 Respectfully submitted on November 21, 2025

6 /s/ Sam M Sueoka

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13 **WORD COUNT CERTIFICATION**

14 I, Peyton Jacobsen, certify that this traverse and response contains 4,090 words, in
15 compliance with the Local Civil Rules.

16 /s/ Peyton Jacobsen

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