

Judge Richard A. Jones
Magistrate Judge Brian A Tsuchida

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

Harrinson Jose OSUNA BENITEZ,

Mr. Osuna Benitez,

v.

Laura HERMOSILLO, et al;

Respondents.

Case No. 2:25-cv-2535-RAJ-BAT

**EX PARTE MOTION TO ISSUE
ORDER TO SHOW CAUSE AND
ISSUE EXPEDITED BRIEFING
SCHEDULE**

Note on Motion Calendar: December 12,
2025

INTRODUCTION

This case challenges the unlawful re-detention of Harrison Jose Osuna Benitez (“Mr. Osuna”), who entered the United States on September 27, 2024 as an applicant for admission to seek asylum. Mr. Osuna registered himself with the Department of Homeland Security (“DHS”)’s “CBP One” application, presented himself at a port of entry, and DHS granted Mr. Osuna parole into the country.

The law makes clear that Petitioner should not be detained. In fact, individuals released on parole or other forms of conditional release have a “continued liberty” interest. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). As this Court has repeatedly held, due process requires that for people like Mr. Osuna—individuals who have lived in the United States without incident after DHS first released them, submitted applications for protection from removal, and otherwise complied with the terms of their release—prior to re-detention, Respondents must afford a hearing before a neutral decisionmaker where ICE is required to justify the revocation of release and show that Petitioner now constitutes a flight risk or danger to the community. *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); *Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089, at *2–4 (W.D. Wash. Sept. 17, 2025); *Ledesma Gonzalez v. Bostock*, No. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at *7–9 (W.D. Wash. Oct. 7, 2025); Report & Recommendation, *Lopez Reyes v. Wamsley*, No. 2:25-cv-01868-JLR-MLP (W.D. Wash. Oct. 15, 2025), Dkt. 13. No such process was provided here, and thus Petitioner’s immediate release is warranted. Accordingly, Petitioner respectfully requests that the Court immediately issue an order to show cause that ensures prompt resolution of this

1 matter. Notably, the Court has issued similar orders to show cause in recent weeks. *See, e.g.,*
 2 Order, *Lopez Reyes*, No. 2:25-cv-01868-JLRMLP (W.D. Wash. Oct. 1, 2025), Dkt. 5 (requiring
 3 return to petition within six days); Order, *Scott v. Wamsley*, No. 2:25-cv-01819-TMC-BAT
 4 (W.D. Wash. Sept. 22, 2025), Dkt. 9 (requiring return to petition within ten days); Order,
 5 *Guzman Alfaro v. Bostock*, No. 2:25-cv-01706 (W.D. Wash. Sept. 16, 2025) (requiring return to
 6 petition within seven days); Order, *Toktosunov v. Wamsley*, No. 2:25-cv-01724 (W.D. Wash.
 7 Sept. 9, 2025), Dkt. 6 (requiring return to petition within ten days). It should do the same here.

8 ARGUMENT

9 This case is a habeas petition challenging executive detention under 28 U.S.C. § 2241. As
 10 the Supreme Court has explained, the habeas statute provides “a swift and imperative remedy in
 11 all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963), overruled
 12 on other grounds, *Wainwright v. Sykes*, 433 U.S. 72 (1977). Given its purpose, “[t]he
 13 application for the writ usurps the attention and displaces the calendar of the judge or justice
 14 who entertains it and receives prompt action from him within the four corners of the
 15 application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted); *see also*,
 16 *e.g., Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954) (“[R]emedy by petition for
 17 writ of habeas corpus . . . is a speedy remedy, entitled by statute to special, preferential
 18 consideration to insure expeditious hearing and determination.”). Congress’s intent to provide
 19 an expeditious remedy is reflected in 28 U.S.C. § 2243. Under that statute, “[a] court, justice or
 20 judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or
 21 issue an order directing the respondent to show cause why the writ should not be granted.” 28
 22 U.S.C. § 2243. The custodian must file a return “within three days [of the OSC] unless for good
 23 cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added). Consistent

1 with these expeditious procedures, the statute further requires a hearing “not more than five
2 days after the return,” unless good cause is established. *Id.* These requirements ensure that
3 courts “summarily hear and determine the facts, and dispose of the matter as law and justice
4 require.” *Id.*

5 In the Court’s orders on similar requests, it has noted that the “Rules Governing Section
6 2254 Cases in the United States District Courts” supersede 28 U.S.C. § 2243, and that those
7 rules allow for “a response [that] is due within the period of time fixed by the court.” *Guzman*
8 *Alfaro v. Bostock*, No. 2:25-cv-01706 (W.D. Wash. Sept. 16, 2025), Dkt. 11 at 2 (citation
9 modified). But even if that is so, as the Court has recognized in these orders, expeditious
10 processing of a petition for writ of habeas corpus is still warranted. In a typical § 2241 habeas
11 petition, the Court issues an OSC several days or even weeks after the petition is filed. That
12 OSC normally requires a return within thirty days, rather than the three days presumptively
13 established by statute. Then, at the time the return is filed, the government files a return and
14 motion to dismiss, which is noted for twenty-eight days later, as required by LCR 7(d)(4). Once
15 briefing on the motion is complete, the petitions are first considered by a magistrate judge, who
16 issues a report and recommendation (R&R) and provides another fourteen days for objections,
17 and another fourteen days for responses to those objections. As a result, even assuming that an
18 OSC is issued the same day a petition is filed (which does not typically happen) and a
19 magistrate judge issues an R&R the same day as the noting date on the government’s motion to
20 dismiss, it takes at least three months for a district judge to first consider a petitioner’s habeas
21 petition. It is precisely this type of “comparatively cumbersome and time consuming procedure
22 of reference, report, and hearing upon [a] report” that the Supreme Court has criticized as a
23

1 means to decide habeas petitions, emphasizing the “more expeditious method . . . prescribed by
2 the statute.” *Holiday v. Johnston*, 313 U.S. 342, 353 (1941).

3 Petitioner also respectfully submits that Congress did not intend for the § 2254 Rules to
4 supersede the rules for § 2241 in most cases. Cases that proceed under § 2254 and § 2255 differ
5 dramatically from those filed under § 2241. In § 2254 and § 2255 cases, a person has already
6 proceeded through the criminal process, protected by the rights of the Fourth, Fifth, Sixth, and
7 Seventh Amendments. Often, they have appealed their cases to higher courts. In short, by
8 definition, such cases have already received extensive oversight by state or federal judges. That
9 is not true in most § 2241 immigration habeas cases. In these cases, typically it is only a
10 “government enforcement agent” who has made any decision about the propriety of detention,
11 *Coolidge v. New Hampshire*, 403 U.S. 443, 450 (1971), a far cry from the hearing before a
12 neutral decisionmaker that due process typically requires, *see, e.g., Shadwick v. City of Tampa*,
13 407 U.S. 345, 350 (1972) (“Whatever else neutrality and detachment might entail, it is clear that
14 they require severance and disengagement from activities of law enforcement.”); *see also*
15 *Gerstein v. Pugh*, 420 U.S. 103, 112–13 (1975) (similar). This backdrop is important to
16 understanding the need for an expedited order to show cause. Such expeditious treatment of
17 habeas petitions reflects what Congress intended in § 2243, and is consistent with the Supreme
18 Court’s and Ninth Circuit’s repeated affirmances that cases like this one should receive timely
19 determinations.

20 CONCLUSION

21 In light of Petitioner’s strong claims for release, the statutory requirements for habeas
22 proceedings, and the caselaw cited above, Petitioner respectfully requests that the Court issue an
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1 order to show cause which orders a return from Respondents and sets the following briefing
2 schedule:

- 3 • Respondents' return, including any arguments for dismissal: due seven days from
issuance of the order to show cause;
4 • Petitioner's traverse and response: due four days from the filing of the return;
5 • Petitioner also requests that the Court order Respondents not to transfer him from this
district while it considers this petition, so as to not impede his access to counsel while pursuing
his claims.

6
7 Dated: December 12, 2025

8
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19 *Application for admission pro hac vice pending
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20 **WORD COUNT CERTIFICATION**

21 I, Julia Braker, certify that this motion contains 1490 words, in compliance with the Local Civil
22 Rules.

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