

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Harrinson Jose OSUNA BENITEZ,

Petitioner,

v.

Laura HERMOSILLO, Seattle Field Office Director,
Enforcement and Removal Operations, United States
Immigration and Customs Enforcement (ICE); Bruce
SCOTT, Warden, Northwest ICE Processing Center;
Kristi NOEM, Secretary, United States Department of
Homeland Security; Pamela BONDI, U.S. Attorney
General; UNITED STATES DEPARTMENT OF
HOMELAND SECURITY;

Respondents.

Case No. 2:25-cv-02535-BAT

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

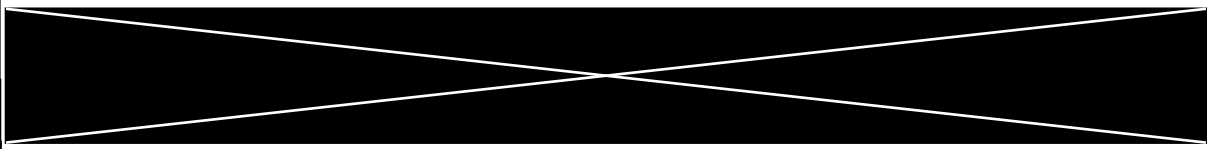
1 The central claim in this case is that the Due Process Clause requires a hearing *prior to*
2 re-detention, before a neutral decisionmaker, where Immigration and Customs Enforcement
3 (ICE) must justify the re-detention of Petitioner Harrinson Jose Osuna Benitez (Mr. Osuna).
4 Respondents did not provide these required procedures upon re-detaining Mr. Osuna in
5 November 2025, thus violating his due process rights, as several judges in this district have
6 recognized, and as courts around the country have held. *See, e.g., E.A. T.-B v. Wamsley*, --- F.
7 Supp. 3d ---, No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025); *Francois v.*
8 *Wamsley*, No. C1:25-cv-02122-RSM-GJL, 2025 WL 3063251 (W.D. Wash. Nov. 3, 2025);
9 *Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089 (W.D. Wash. Sept. 17,
10 2025); *Ramirez Tesara v. Wamsley*, --- F. Supp. 3d ---, No. 2:25-CV-01723-MJP-TLF, 2025
11 WL 2637663 (W.D. Wash. Sept. 12, 2025). Accordingly, and consistent with these decisions,
12 Mr. Osuna's immediate release is warranted.

13 Respondents' return addresses only the regulatory authority for Mr. Osuna's initial
14 release and subsequent re-detention without a hearing. But regardless of the authority for the
15 initial detention and release upon Mr. Osuna's entry into the country, due process required a
16 hearing *prior* to his re-detention, during which ICE was required to prove by clear and
17 convincing evidence that Mr. Osuna violated his conditions of release and is now a flight risk or
18 danger. Respondents do not contest this point, which is dispositive of the habeas petition. Indeed,
19 Respondents' return supplies no legal argument against Mr. Osuna's claim that he is being held
20 in violation of the Fifth Amendment's Due Process Clause. Accordingly, the Court should grant
21 the petition for a writ of habeas corpus and order Mr. Osuna's release from detention.

22 The parties agree on critical facts in this case. In short, Mr. Osuna registered himself with
23 DHS's CBP One app, presented himself in September 2024 to CBP authorities at a U.S. port of

1 entry, and was released on parole. *See* Osuna Decl., ¶ 3; Dkt 9 ¶ 4-5 Dkt. 10-1; Dkt 10-2. He was
2 placed in removal hearings. Osuna Decl. ¶ 6; Dkt. 10-1. Since his release on parole in September
3 2024, Mr. Osuna has complied with the steps of his immigration case, including timely filing his
4 asylum application, attending all immigration court hearings in his case, presenting himself for
5 ICE–Enforcement and Removal Operations appointments as requested, and building a stable life
6 in the United States. Osuna Decl. ¶¶ 6-8. Respondents never contest these points. *See* Dkt. 8-1.
7 Nor do Respondents do not meaningfully contest that Mr. Osuna was arbitrarily arrested and re-
8 detained on November 17, 2025 without pre-deprivation notice and hearing. Dkt. 10-3.
9 Respondents do not contest that Mr. Osuna was re-detained simply because of his tattoos. Dkt.
10 10-3. Respondents also do not contest that at the time of his arrest, they were aware that Mr.
11 Osuna was in active removal proceedings, Dkt. 10-2; that he has no criminal history, Dkt. 10-3,
12 and that Respondents were aware that Mr. Osuna had already submitted an asylum application,
13 Dkt. 10-3.

14 Respondents contend only that ICE re-detained him due to an accusation that he has
15 tattoos that may be affiliated with the criminal organization 

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18 *See generally* Dkts. 8-10. Nor Respondents address the fact that, with the exception of a new
19 tattoo of the name of Mr. Osuna’s baby son, Mr. Osuna already had all of his tattoos at the time
20 that DHS released him from his initial detainment. *Ids.* Respondents do not claim that Mr. Osuna
21 was provided a process or opportunity to contest his re-detainment. Dkt. 8-1.

22 Mr. Osuna’s petition for writ of habeas corpus presents one claim: that he is currently
23 detained in violation of the Fifth Amendment’s Due Process Clause. Rather than address

1 this claim through legal argument, Respondents only recite the regulations that purportedly
2 permitted Mr. Osuna's initial release in September 2024 and subsequent re-detention in
3 November 2025. *See* Dkt. 8-1. In fact, Respondents do not meaningfully oppose the petition. *See*
4 *id.* (submitting only "detention authorities" and "factual background").

5 As this Court has repeatedly explained, "a post-deprivation hearing cannot serve as an
6 adequate procedural safeguard because it is after the fact and cannot prevent an erroneous
7 deprivation of liberty." *E.A. T.-B.*, 2025 WL 2402130, at *6; *see also, e.g., Kumar*, 2025 WL
8 2677089 ("[R]elease following post-deprivation procedures is insufficient to remedy the alleged
9 harm because the alleged harm, i.e., a potentially erroneous detention, has happened and is
10 continuing to occur."). Consistent with these decisions, Mr. Osuna is already being unlawfully
11 detained without a pre-deprivation hearing. Only his immediate release remedies that ongoing
12 violation.

13 CONCLUSION

14 For the foregoing reasons, due process requires a pre-deprivation hearing before a neutral
15 decisionmaker, at which ICE must justify re-detention by clear and convincing evidence.
16 Because Respondents failed to provide Mr. Osuna that constitutionally-required process, his
17 immediate release is warranted, and the Court should grant the habeas petition. In so ordering,
18 the Court should specify that Mr. Osuna must be released on the same conditions of release
19 previously imposed before the re-arrest in November 2025.

20 Respectfully submitted this 26th day of December 2025.

21
22 s/ Julia M. Braker
23 Julia M. Braker
Email: Julia.braker@clear-clinic.org

CLEAR Clinic

1 PO Box 11288
2 Portland, OR 97211
(971) 258-1372

3 s/ Kelly Vomacka
4 Kelly Vomacka, WSBA No. 20090
Email: Kelly.Vomacka@ghp-law.net

5 Gibbs Houston Pauw
6 1000 Second Avenue, Suite 1600
Seattle, WA 98104
7 253-303-6050

8 *Attorneys for Petitioner*

9 I certify that this traverse and response contains 887
10 words, in compliance with the Local Civil Rules.
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