

Honorable Ricardo S. Martinez

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

Dayan CABRERA PEREZ et al.,

Petitioners,

v.

Laura HERMOSILLO et al.,

Respondents.

Case No. 2:25-cv-2542-RSM

**PETITIONERS' TRAVERSE**

Noted for Consideration:  
December 30, 2025

**INTRODUCTION**

Respondents' return largely sidesteps the constitutional question presented. Petitioners do not dispute that the immigration statutes may authorize detention in certain circumstances. But their claim turns on whether the Fifth Amendment permits the government to revoke liberty it has already granted without notice and a pre-deprivation hearing before a neutral decisionmaker. Because Petitioners share the core facts relevant to that due process inquiry, and because Respondents cannot demonstrate that any constitutionally sufficient process took place prior to the re-detention of any Petitioner, the writ should issue.

**ARGUMENT**

**I. Petitioners share core facts relevant to the due process analysis.**

Respondents characterize this case as involving ten individuals with "no connection other than their current detentions," Dkt. 18 at 1, but their own introduction and recitation of Petitioners' circumstances identify the shared, constitutionally relevant facts that frame the due

process analysis. Each Petitioner was previously released by the Department of Homeland Security (DHS) on either parole or order of recognizance, based on a determination that they were not a danger or flight risk;<sup>1</sup> each remains in ongoing removal proceedings and is not subject to a final order of removal; and each was later re-detained without written notice and without any pre-deprivation hearing before a neutral decisionmaker. *See id.* at 2–5. Those common facts define the liberty interest and the due process to which Petitioners are entitled.

Indeed, Respondents fail to point to any specific factual differences that alters the common constitutional question presented. Individual circumstances may bear on the ultimate custody determination, but as courts in this District have emphasized, such “factual disputes . . . should be resolved at a pre-deprivation hearing, rather than resolved after the fact by this Court.” *Ramirez Tesara v. Wamsley*, No. 2:25-cv-01723-KKE-TLF, 2025 WL 3288295, at \*5 (W.D. Wash. Nov. 25, 2025); *see also, e.g., P.T. v. Hermosillo*, No. 2:25-cv-02249-KKE, 2025 WL 3294988, at \*3 (W.D. Wash. Nov. 26, 2025) (“[A]ny factual dispute about the validity of the [alleged] violations should have been resolved at a pre-deprivation hearing.”).

**II. The Due Process Clause—not § 1225(b) or agency regulations—forms the basis of Petitioners’ re-detention claim.**

Respondents do not meaningfully rebut Petitioners’ constitutional claim. First, Respondents’ emphasis on ICE’s asserted statutory detention authority under 8 U.S.C. § 1225(b) is beside the point. The question here is not whether Respondents possess some abstract authority to detain “applicants for admission,” but whether the process by which Respondents revoked Petitioners’ liberty and effectuated re-detention satisfied the Fifth Amendment. In granting relief in a closely analogous re-detention case, another court in this District recently explained:

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<sup>1</sup> Regulations implementing 8 U.S.C. § 1182(d)(5) require DHS to release an individual under parole after determining that they “present neither a security risk nor a risk of absconding.” 8 C.F.R. § 212.5(b). Similarly, when releasing an individual under an order of recognizance, DHS determines that the noncitizen “would not pose a danger to property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8).

To the extent that the Government's briefing 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.

*P.T. v. Hermosillo*, 2025 WL 3294988, at \*2 n.1; *see also, e.g., Francois v. Wamsley*, No. C25-2122-RSM-GJL, 2025 WL 3063251, at \*3 (W.D. Wash. Nov. 3, 2025) ("Any argument that ICE acted within its authority has no affect [sic] on a claim contending that detention violates Constitutional Due Process." (citation omitted)); *P.T.*, 2025 WL 3294988, at \*2 ("The parties agree that the *Mathews* test applies here . . .").

Second, Respondents' observation that there is "no statutory or regulatory requirement" for a pre-deprivation hearing, Dkt. 18 at 8, is likewise unavailing. As Respondents concede, multiple district courts, including those in this District, have held that due process requires notice and a pre-deprivation hearing before a neutral decisionmaker before re-detention. Those decisions do not "erroneously conflate" certain regulations, *id.* at 8–9, but instead correctly reject the argument that Petitioners are not entitled to a pre-deprivation hearing because such a hearing is not authorized by statute or regulation. As numerous cases have now recognized, "[t]his line of the Government's reasoning . . . does not address Petitioner[s'] concern and cannot carry the day" when their claim is based on the Due Process Clause. *E.A.T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1323 (W.D. Wash. 2025); *see also, e.g., Tomas Manuel v. Hermosillo*, No. C25-2353-TL-MLP, 2025 WL 3690778 (W.D. Wash. Dec. 10, 2025) ("Setting aside Respondents' statutory interpretation, which recent decisions of the Court have cast into doubt, the government must still comply with constitutional requirements."), *report and recommendation adopted*, 2025 WL 3697277 (Dec. 19, 2025); *Ramirez Tesara*, 2025 WL 3288295, at \*5 (recognizing the petitioner's liberty interest notwithstanding government's assertion that he is subject to mandatory detention under § 1225(b)); *cf. Y.M.M. v. Wamsley*, No. 2:25-cv-02075, 2025 WL 3101782 (W.D. Wash. Nov. 6, 2025); *Ledesma Gonzalez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 2841574 (W.D. Wash. Oct. 7, 2025).

1 Ultimately, Respondents do not contest that the *Mathews v. Eldridge* test is appropriate  
2 here and simply assert that noncitizens' liberty interests are "not coextensive" with those of U.S.  
3 citizens. Dkt. 18 at 8 (citation omitted). However, this comparison "does not negate Petitioner[s']  
4 liberty interest" in avoiding arbitrary re-detention. *Kumar*, 2025 WL 2677089, at \*3. It is  
5 undisputed that Respondents previously released Petitioners from immigration custody, that  
6 Petitioners participated in their immigration proceedings as instructed, and that thereafter  
7 Respondents took Petitioners into immigration custody without notice and a hearing prior to their  
8 re-detention. Accordingly, the three *Mathews* factors weigh in favor of affording notice and a  
9 hearing prior to any re-detention—procedures that Respondents indisputably failed to provide,  
10 rendering Petitioners' detention unconstitutional.

11 **III. Due process requires the government to justify re-detention by clear and convincing**  
12 **evidence and consideration of alternatives to detention.**

13 A constitutionally adequate pre-deprivation process requires the government to justify re-  
14 detention by clear and convincing evidence. In challenging the applicable burden of proof,  
15 Respondents misplace their reliance on cases such as *Demore v. Kim*, 538 U.S. 510 (2003),  
16 *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), and *Zadvydas v. Davis*, 533 U.S. 678  
17 (2001). *See* Dkt. 18 at 10–11. None of those cases addressed the evidentiary standard required  
18 when the government seeks to revoke liberty it previously granted and reimpose civil  
19 confinement. *Cf. Pinchi v. Noem*, 792 F.Supp.3d 1025, 1034 (N.D. Cal. 2025) ("Because the  
20 question [of re-detention] . . . was not presented in *Rodriguez Diaz*, the court had no opportunity  
21 to address it.").

22 As a district court explained in a case challenging the re-detention of six asylum seekers,  
23 placing a heightened burden of proof on the government is reasonable where:

24 [T]he immigrant's initial release reflected a determination by the  
25 government that the noncitizen is not a danger to the community or a flight  
26 risk. Since it is the government that initiated re-detention, it follows that the  
27 government should be required to bear the burden of providing a  
justification for the re-detention.

1 *Espinoza v. Kaiser*, No., 2025 WL 2675785 (E.D. Cal. Sept. 18, 2025). That analysis comports  
2 with long-established due process principles governing civil detention, under which courts have  
3 applied the same clear and convincing standard whenever continued civil immigration detention  
4 requires affirmative justification by the government, even where initial detention was lawful.  
5 *E.g.*, *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011) (“Because it is improper to ask the  
6 individual to ‘share equally with society the risk of error when the possible injury to the  
7 individual’—deprivation of liberty—is so significant, a clear and convincing evidence standard  
8 of proof provides the appropriate level of procedural protection.” (quoting *Addington v. Texas*,  
9 441 U.S. 418, 427 (1979)), *abrogated on other grounds by Jennings v. Rodriguez*, 583 U.S. 281  
10 (2018).

11 Similarly, due process requires consideration of alternatives to detention, and that  
12 requirement applies with particular force in the re-detention context. Respondents inexplicably  
13 invoke *Singh v. Holder* as the “high-water mark of procedural protections,” failing to explain  
14 why Petitioners’ are entitled to less procedural protections than “criminal alien detainees  
15 subjected to prolonged mandatory detention.” Dkt. 18 at 11 (quoting in first part *Martinez v.*  
16 *Clark*, 124 F.4th 775, 786 (9<sup>th</sup> Cir. 2011)). Indeed, the fact that Petitioners were previously  
17 released especially warrants requiring the government to demonstrate why detention, rather than  
18 continued or modified conditions of release, is necessary.

### 19 CONCLUSION

20 For all the foregoing reasons, Petitioners respectfully request that this Court grant a writ  
21 of habeas corpus, order their immediate release, and enjoin Respondents from re-detaining any  
22 Petitioner absent notice and a pre-deprivation hearing at which Respondents must justify danger  
23 or flight risk by clear and convincing evidence and that no alternative to detention would  
24 mitigate those risks.

25 Respectfully submitted this 30th day of December, 2025.  
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4 *\*I certify that the foregoing contains 1,492 words,*  
5 *in compliance with the Local Civil Rules.*

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