

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

Martha Lidia Cotoc Yac de Yac,

Petitioner,

v.

LAURA HERMOSILLO, et al.,

Respondents.

Case No. 2:25-CV-02593

Agency No. A 

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

ORAL ARGUMENT REQUESTED

Noted for consideration:
December 17, 2025

INTRODUCTION

The Petitioner, Martha Cotoc Yac de Yac, (“Ms. Cotoc Yac de Yac”) is an asylum applicant from Guatemala who was unlawfully re-detained by U.S. Immigration and Citizenship Enforcement (ICE) on December 12, 2025 in Portland, Oregon. Petitioner was initially detained by Customs and Border Patrol near Hidalgo, Texas on approximately August 20, 2021. Petitioner was released from custody on an order of recognizance and placed in removal proceedings

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O.S.C. & EXPEDITED BR. SCHED.
Case no: 2:25-CV-02593

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1 pursuant to 8 USC § 1229a. Petitioner applied for asylum affirmatively with U.S. Citizenship
2 and Immigration Services after her case in removal proceedings was dismissed on a joint motion
3 filed by Petitioner and the ICE Office of Chief Counsel. Her application for asylum is pending
4 and no interview has been scheduled.

5 Without cause or justification – and without providing a pre-detention process to
6 determine if changed circumstances demonstrate that petitioner is a flight risk or danger to the
7 community – Respondents re-detained petitioner in Portland, Oregon, and she is now detained at
8 the Northwest ICE Processing Center (NWIPC) in Tacoma, Washington.

9 The law is clear that Petitioner should not be detained. As this Court has repeatedly held,
10 due process requires that for people like the Petitioner -- those who have already established to
11 the satisfaction of DHS officials that they pose neither a flight risk nor danger to the community
12 – that prior to re-detention, Respondents must afford a hearing before a neutral decisionmaker
13 where ICE is required to justify the revocation of release and show that the Petitioner now
14 constitutes a flight risk or danger to the community. *See E.A. T.-B. v. Wamsley*, --- F. Supp. 3d --
15 - No. C25-1192-KKE, 2025 WL 2402130, at *2–6 (W.D. Wash. Aug. 19, 2025); *Ramirez Tesara*
16 *v. Wamsley*, ---F. Supp. 3d ---, No. 2:25-CV-01723-MJP-TLF, 2025 WL 2637663, at *2–4
17 (W.D. Wash. Sept.12, 2025); *Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT, 2025 WL
18 2677089, at *2–4 (W.D. Wash. Sept. 17, 2025); *Ledesma Gonzalez v. Bostock*, No. 2:25-CV-
19 01404-JNW-GJL, 2025 WL 2841574, at *7–9 (W.D. Wash. Oct. 7, 2025); Report &
20 Recommendation, *Lopez Reyes v. Wamsley*, No. 2:25-cv-01868-JLR-MLP (W.D. Wash. Oct. 15,
21 2025), Dkt. 13. No such process was provided here, and thus the Petitioner’s immediate release
22 is warranted.
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Accordingly, the Petitioner respectfully requests that the Court immediately issue an order to show cause that ensures prompt resolution of this matter. Notably, the Court has issued similar orders to show cause in recent weeks. See, e.g., Order, *Kumar v. Wamsley*, No. 2:25-cv-2055-KKE (W.D. Wash. Oct. 22, 2025), Dkt. 7 (requiring return to petition within eight days); Order, *Lopez Reyes*, No. 2:25-cv-01868-JLR-MLP (W.D. Wash. Oct. 1, 2025), Dkt. 5 (requiring return to petition within six days); Order, *Scott v. Wamsley*, No. 2:25-cv-01819-TMC-BAT (W.D. Wash. Sept. 22, 2025), Dkt. 9 (requiring return to petition within ten days); Order, *Guzman Alfaro v. Bostock*, No. 2:25-cv-01706 (W.D. Wash. Sept. 16, 2025), Dkt. 11 (same); Order, *Toktosunov v. Wamsley*, No. 2:25-cv-01724 (W.D. Wash. Sept. 9, 2025), Dkt. 6 (same). It should do the same here.

ARGUMENT

This case is a habeas petition challenging executive detention under 28 U.S.C. § 2241. As the Supreme Court has explained, the habeas statute provides “a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963), overruled on other grounds, *Wainwright v. Sykes*, 433 U.S. 72 (1977). Given its purpose, “[t]he application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains It and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted); see also, e.g., *Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954) (“[R]emedy by petition for writ of habeas corpus . . . is a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination.”).

Congress’s intent to provide an expeditious remedy is reflected in 28 U.S.C. § 2243. Under that statute, “[a] court, justice or judge entertaining an application for a writ of habeas

1 corpus shall forthwith award the writ or issue an order directing the respondent to show cause
2 why the writ should not be granted.” 28 U.S.C. § 2243. The custodian must file a return “*within*
3 *three days* [of the OSC] unless for good cause additional time, not exceeding twenty days, is
4 allowed.” *Id.* (emphasis added). Consistent with these expeditious procedures, the statute further
5 requires a hearing “not more than five days after the return,” unless good cause is established. *Id.*
6 These requirements ensure that courts “summarily hear and determine the facts, and dispose of
7 the matter as law and justice require.” *Id.*
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9 In the Court’s orders on similar requests, it has noted that the “Rules Governing Section
10 2254 Cases in the United States District Courts” supersede 28 U.S.C. § 2243, and that those rules
11 allow for “a response [that] is due within the period of time fixed by the court.” *Guzman Alfaro*,
12 No. 2:25-cv-01706 (W.D. Wash. Sept. 16, 2025), Dkt. 11 at 2 (citation modified). But even if
13 that is so, as the Court has recognized in these orders, expeditious processing of a petition for
14 writ of habeas corpus is still warranted. In a typical § 2241 habeas petition, the Court issues an
15 OSC several days or even weeks after the petition is filed. That OSC normally requires a return
16 within thirty days, rather than the three days presumptively established by statute. Then, at the
17 time the return is filed, the government files a return and motion to dismiss, which is noted for
18 twenty-eight days later, as required by LCR 7(d)(4). Once briefing on the motion is complete, the
19 petitions are first considered by a magistrate judge, who issues a report and recommendation
20 (R&R) and provides another fourteen days for objections, and another fourteen days for
21 responses to those objections. As a result, even assuming that an OSC is issued the same day a
22 petition is filed (which does not typically happen) and a magistrate judge issues an R&R the
23 same day as the noting date on the government’s motion to dismiss, it takes *at least* three months
24 for a district judge to first consider a petitioner’s habeas petition. It is precisely this type of
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1 “comparatively cumbersome and time consuming procedure of reference, report, and hearing
2 upon [a] report” that the Supreme Court has criticized as a means to decide habeas petitions,
3 emphasizing the “more expeditious method . . . prescribed by the statute.” *Holiday v. Johnston*,
4 313 U.S. 342, 353 (1941).

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

In light of the Petitioner's strong claim for release, the statutory requirements for habeas proceedings, and the caselaw cited above, she respectfully requests that the Court issue an order to show cause that orders a return from Respondents and sets the following briefing schedule:

- Respondents' return, including any arguments for dismissal: due **three** days from issuance of the order to show cause;
- Petitioner's traverse and response: due **three** days from the filing of the return

The Petitioner requests that the Court orders Respondents not to transfer her from this district while it considers this petition, so as to not impede her access to counsel while she pursues her claims. *Cf. Kumar*, No. 2:25-cv-2055-KKE (W.D. Wash. Oct. 22, 2025), Dkt. 7, at 2 (ordering government to provide advance notice "prior to any action to move or transfer [Petitioner] from the Northwest Immigration and Customs Enforcement Processing Center" in order to preserve the status quo while the court determines its subject-matter jurisdiction).

Dated this 17th day of December, 2025

s/ Shara Svendsen

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