

DETAINED

Chief District Judge David G. Estudillo

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JATINDER SINGH,

Petitioner,

v.

KRISTI NOEM, *et al.*;

Respondents.

CASE NO.: 2:26-cv-00079-DGE

PETITIONER'S RESPONSE TO RETURN
(TRAVERSE)

NOTED FOR CONSIDERATION:
January 28, 2026

PETITIONER'S RESPONSE TO RETURN

I. Introduction

Respondents' Return confirms the core defect in this case: ICE revoked Petitioner's liberty without any meaningful process whatsoever, based on unproven allegations and an erroneous view that mandatory detention under 8 U.S.C. § 1225(b) extinguishes due-process protections. It does not.

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1 Respondents do not dispute that no pre-deprivation hearing occurred, that no neutral
2 decisionmaker assessed the alleged violation, and that Petitioner was re-detained first and
3 justified later. That is precisely the constitutional violation at issue.

4 On the first claim for relief, Dkt. 1, at 11, the government advanced two main
5 arguments. First that Petitioner is not entitled to any due process because he is a mandatory
6 detainee, Dkt. 7, at 5-6, and that his re-detention complied with due process because, though
7 he was released by ICE on a Bond, he is not entitled to due process as a mandatory detainee,
8 Dkt. 7 at 6-8. Finally the Respondents claim that Petitioner violated the terms of his bond by
9 being charged with physical control of a vehicle under the influence. They state that, though
10 the charges remain pending, he has no interest in a pre-deprivation hearing because he was on
11 notice that he was to comply with all federal and local laws. Dkt 7 at 8. Respondents make no
12 effort to justify how being charged with a crime indicates that Mr. Singh has violated the
13 terms of his Bond, they simply state it as a truism. In making all these arguments they
14 implicitly concede that Petitioner was not provided with any process before his bond was
15 revoked. The only contention that there was any process provided is in the Rosa declaration
16 which states “during an informal interview, petitioner acknowledged understanding of the
17 revocation but declined to provide a statement.” Dkt 8, at 3. There was no explanation of
18 what an informal interview is, when it was conducted or what was said to Petitioner. There
19 was also no indication that he was provided any written notice of the revocation of his bond.
20 In fact, to add further insult to injury Respondents simultaneously and without legal authority,

1 issued Petitioner a notice of issuing a civil fine for unlawfully entering the United States. Dkt
2 9-4 at 2-3.

3 **II. The Government Concedes That No Pre-Deprivation Process Was Provided**

4 Respondents' argument rests on a single factual assertion: that Petitioner was "advised"
5 his release was revoked during an "informal interview." Rosa Decl. ¶ 11.

6 That is not process.

7 Respondents identify:

- 8 • No written notice provided before detention;
9 • No opportunity to contest the alleged bond violation;
10 • No finding that Petitioner in fact violated a condition of release;
11 • No assessment by a neutral decisionmaker.

12 Indeed, the only alleged "process" is a post-hoc acknowledgment that Petitioner understood he
13 was being re-detained after the decision had already been made. Due process requires more than
14 being informed that the government has already deprived you of your liberty.

15 In its Return Memorandum, Respondents acknowledge that Petitioner was released from
16 detention on an OREC after his first apprehension by the Department of Homeland Security.
17 Respondents do not assert that Petitioner was provided notice and a hearing before a neutral
18 decisionmaker where ICE demonstrated by clear and convincing evidence that Petitioner was
19 re-detained because he was now a flight risk or a danger to the community. They merely state
20
21

1 that he was being re-detained due to risk of flight without providing any analysis of that
2 contention.

3 Respondents also “acknowledge that district courts have recently decided that the
4 revocation of an OREC requires a pre-detention hearing to determine if that noncitizen is a
5 flight risk or a danger to the community. Dkt. 7 at 5; *see, e.g., E.A. T.-B. v. Wamsley*, No. 2:25-
6 cv-1192, 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025); *Ramirez Tesara v. Wamsley*,
7 No. 2:25-CV-01723, 2025 WL 2637663, at *2-4 (W.D. Wash. Sept. 12, 2025). But they argue
8 that the decisions by the Court “erroneously conflate 8 C.F.R. § 1236.1(c)(9) and 8 C.F.R. §
9 1236.1(c)(8).” Dkt. 7 at 5. However, this Court came the correct conclusion because
10 Respondents argument does not consider “the supremacy of the United States Constitution and
11 the executive branch’s duty to comply with the Due Process Clause of the Fifth Amendment.”
12 *G.S. v. Hermosillo*, C25-2704-TSZ, 2026 U.S. DIST. LEXIS 12874, at *5 n.2 (W.D. Wash. Jan.
13 22, 2026).

14 This Court has recognized that the three-part *Mathews* test applies when analyzing
15 whether an individual’s re-detention comported with due process. *See id.* Under that test, court
16 must consider three factors:

17 First the private interest that will be affected by the official action; second, the risk
18 of an erroneous deprivation of such interest through the procedures used, and the
19 probable value, if any, of additional or substitute procedural safeguards; and
20 finally, the Government’s interest, including the function involved and the fiscal
21 and administrative burdens that the additional or substitute procedural requirement
would entail.

1 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The *Mathews* test clearly demonstrates that
2 Petitioner's due process rights were violated. Accordingly, Petitioner addresses each factor
3 below.

4 ***I. Petitioner's private interest is weighty.***

5 Petitioner gained a liberty interest in his continued freedom when he was last released
6 from ICE custody on his Bond. He has an exceptionally strong interest in freedom from physical
7 confinement and in a hearing prior to any revocation of his liberty. His "interest in not being
8 detained is 'the most elemental of liberty interests[.]'" *E.A. T.-B.*, 2025 WL 2402130, at *3
9 (alteration in original) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). "Freedom from
10 imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*
11 *v. Davis*, 533 U.S. 678, 690 (2001). The Ninth Circuit has held that "[i]n the context of
12 immigration detention, it is well-settled that 'due process requires adequate procedural
13 protections to ensure that the government's asserted justification for physical confinement
14 outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Singh v. Holder*, 638 F.3d
15 1196, 1203 (9th Cir. 2011)).
16

17 This principle applies with significant force to Petitioner given that he was already
18 determined to be neither a danger nor a flight risk when he was released from custody on a \$3,000
19 bond. Dkt. 1 at 7; Dkt. 9-4. He timely filed an application for asylum and was awaiting a lawful
20 process.

1 A noncitizen released from custody has a protected liberty interest in remaining out of
2 custody. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (“Just as people on
3 preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released
4 from immigration detention] have a liberty interest in remaining out of custody on bond.”).
5 Petitioner’s liberty interest continued to grow over time as he continued to live in the United
6 States, attended his immigration court hearings, and then patiently waited for the adjudication of
7 his asylum application. *See Ramirez Tesara*, 2025 WL 2637663, at *3 (“When he was released
8 from his initial detention on parole, Petitioner took with him a liberty interest which is entitled to
9 the full protections of the due process clause.”). Therefore, this factor weighs strongly in
10 Petitioner’s favor.

11 ***2. The absence of a pre-deprivation hearing created an unacceptably high risk of***
12 ***erroneous deprivation.***

13 Even when “the Government may believe it has a valid reason to detain Petitioner[s],”
14 that belief “does not eliminate its obligation to effectuate the detention in a manner that
15 comports with due process.” *E.A. T.-B.*, 2025 WL 2402130, at *4.

16 Petitioner’s re-detention must still “bear[] [a] reasonable relation” to a valid government
17 purpose: here, preventing flight or protecting the community against dangerous individuals.
18 *Zadvydas*, 533 U.S. at 690 (second alteration in the original) (quoting *Jackson v. Indiana*, 406
19 U.S. 715, 738 (1972)); *see also, e.g., Hernandez*, 872 F.3d at 990 (“The government has
20 legitimate interests in protecting the public and in ensuring that noncitizens in removal
21 proceedings appear for hearings, but any detention incidental to removal must bear a reasonable

1 relation to its purpose.” (citation modified)). Only a hearing before a neutral decisionmaker—
2 where ICE must prove that re-detention is justified because Petitioner poses a flight risk or
3 danger—can ensure that this “reasonable relation” to a valid government purpose exists.

4 Respondents never provided Petitioner with a hearing before a neutral decisionmaker
5 where they were required to show that Petitioner violated the conditions of release and is now
6 a flight risk or danger. The Supreme Court has repeatedly explained that an individual is not
7 afforded due process where it is simply the “government enforcement agent” who makes the
8 decision about the propriety of detention. *Coolidge v. New Hampshire*, 403 U.S. 443, 450
9 (1971). That process—which is exactly what occurred here—is a far cry from the hearing before
10 a neutral decisionmaker that due process requires. *See, e.g., Shadwick v. City of Tampa*, 407
11 U.S. 345, 350 (1972) (“Whatever else neutrality and detachment might entail, it is clear that
12 they require severance and disengagement from activities of law enforcement.”).

13 Only a hearing before a neutral decisionmaker—where ICE must prove that re-detention
14 is justified because Petitioner poses a flight risk or danger—can ensure re-detention is
15 effectuated in a manner that does not run afoul of due process. *See Pinchi v. Noem*, 792 F. Supp.
16 3d 1025, 1035 (N.D. Cal. 2025) (declaring, in the case of a detained noncitizen who was
17 redetained without pre-deprivation hearing, that “there is a significant risk that even the two-
18 day curtailment of liberty that [she] already suffered upon her re-detention by ICE was not
19 justified by any valid interest” and concluding that “[p]roviding her with the procedural
20

safeguard of a pre-detention hearing will have significant value in helping ensure that any future detention has a lawful basis”). Therefore, this factor also weighs in favor of Petitioner.

3. *The government has failed to show a countervailing interest against providing a pre-deprivation hearing.*

“In immigration court, custody hearings are routine and impose a minimal’ cost.” *See Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, at *2 (E.D. Cal. Mar. 3, 2025). Other courts have found that “the Government’s interest in re-detaining non-citizens previously released without a hearing is low: although it would have required the expenditure of finite resources (money and time)” to provide a pre-deprivation hearing, “those costs are far outweighed by the risk of erroneous deprivation of the liberty interest at issue.” *E.A. T.-B.*, 2025 WL 2402130, at *5; *see also Gonzalez v. Bostock*, 2:25-cv-01404-JNW-GJL, 2025 WL 2841574, at *8 (W.D. Wash. Oct. 7, 2025) (concluding government interest to be low even assuming “requiring predetention process would present some administrative burden”).

Finally, “[s]ociety’s interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.” *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983). This factor also weighs strongly in favor of Petitioner.

I certify that this memorandum contains 1,801 words, in compliance with the Local Civil Rules.

Dated this 29th day of January, 2026.

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