

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

A-K-

Petitioner

vs.

Laura HERMOSILLO, Seattle Field
Office Director, U.S. Immigration and
Customs Enforcement (ICE), Bruce SCOTT,
Warden, Northwest ICE Processing Center;
Kristi NOEM, Secretary
of Homeland Security, Pamela
BONDI, Attorney General, Todd
LYONS, Acting Director of
Immigration and Customs Enforcement,
U.S. DEPARTMENT OF HOMELAND
SECURITY, U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT,
U.S. DEPARTMENT OF JUSTICE,
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW

Respondents

) Case No. 2:26-cv-00160-RAJ

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) **PETITIONER'S TRAVERSE AND
RESPONSE IN SUPPORT OF
PETITION FOR WRIT OF HABEAS
CORPUS**

) **NOTE ON MOTION CALENDAR:**
) **February 4, 2026**

PET'R'S TRAVERSE AND RESP.
TO RESP'TS' RETURN-1

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INTRODUCTION

1. Respondents ask this Court to endorse a system where a father caring for a child with brain cancer can be stripped of his liberty based on smartphone app glitches, utilizing military-style tactics rather than due process. Petitioner A-K- was not a fugitive; he was a compliant participant in the Alternatives to Detention ("ATD") program who reported faithfully for years. Yet, rather than providing notice of alleged technical violations or a hearing before a neutral decisionmaker, ICE agents in "full tactical gear" raided his home as part of a programmatic sweep titled "Operation Restoring Law and Order."
2. Respondents now attempt to justify this re-detention by citing five alleged instances of "missed" biometric check-ins. But as the attached Declaration of Viktoriia Kungurtseva indicates, the most recent "violation" was a technical malfunction on Thanksgiving Day that Petitioner proactively reported to ICE and immediately cured at the very next opportunity provided by ICE (the following Monday).
3. ICE's decision to arrest Petitioner—separating him from his 16-year-old son battling Medulloblastoma—based on corrected technical errors underscores the arbitrary nature of the government's unilateral decision-making. Due process demands that before the government strips a person of their liberty, it must provide notice and a hearing before a neutral decisionmaker. *See E.A.T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025). Because Respondents failed to provide this basic constitutional safeguard, Petitioner's continued detention is unlawful. This Court should grant the writ and order his release.

II. ARGUMENT

A. Regulatory Discretion Does Not Override Constitutional Due Process: Due process requires a pre-deprivation hearing before re-detention.

Respondents argue that Petitioner is subject to "mandatory detention" under 8 U.S.C. § 1225(b) and that 8 C.F.R. § 1236.1(c)(9) allows them to revoke release "at any time." This argument fails because the Constitution supersedes agency regulations. Once the government *chose* to release Petitioner on Parole and later on Recognizance (OREC)—a status he held for nearly two years—it created a protected liberty interest. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

Petitioner's central claim is that prior to re-detention, due process required ICE to demonstrate by clear and convincing evidence that Petitioner violated his conditions of release so as to now pose a flight risk or danger to the community. Courts around the country have repeatedly and resoundingly held that due process requires exactly this protection. *See, e.g., E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025) (granting habeas petition, ordering immediate release due to lack of pre-deprivation hearing, and requiring adequate notice and an immigration court hearing prior to any future re-detention); *Ledesma Gonzalez v. Bostock*, No. 2:25-CV-01404- JNW-GJL, 2025 WL 2841574, at *9 (W.D. Wash. Oct. 7, 2025) (same); *Y.M.M. v. Wamsley*, No. 2:25-CV-02075, 2025 WL 3101782 (W.D. Wash. Nov. 6, 2025) (same); *Hernandez v. Wofford*, No. 1:25-CV-00986-KES-CDB (HC), 2025 WL 2420390, at *8 (E.D. Cal. Aug. 21, 2025) (same); *Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089, at *3 (W.D. Wash. Sept. 17, 2025) (granting TRO and ordering immediate release due to lack of pre-deprivation

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1 hearing); *Garro Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *7 (N.D. Cal.
2 July 24, 2025) (granting preliminary injunction and ordering that petitioner not be re-detained
3 without a pre-deprivation hearing before a neutral immigration judge where the government
4 must demonstrate by clear and convincing evidence that she is a flight risk or danger); *Duong*
5 *v. Kaiser*, No. 25-CV-07598-JST, 2025 WL 2689266, at *7 (N.D. Cal. Sept. 19, 2025) (same).

6 Respondents do not dispute this precedent but rather argue that these courts reached
7 those decisions in error, claiming that 8 C.F.R. § 1236.1(c)(8) imposes no regulatory
8 requirement for due process and so none exists. *See* Respondents' Return Memorandum pg 6.
9 Respondents misread the aforementioned decisions. In issuing its decision in *Wamsley*, this
10 court did not "erroneously conflate 8 C.F.R. § 1236.1(c)(9) and 8 C.F.R. § 1236.1(c)(8)."
11 Rather, this and other courts have found that individuals in the Petitioner's position have a
12 liberty interest under the Due Process Clause of the Fifth Amendment to the United States
13 Constitution.

14 Likewise, Respondents' reliance on *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA
15 2025) is misplaced. That decision addresses the statutory interpretation of 'admission' for
16 asylum seekers. It does not—and cannot—override the constitutional Due Process
17 requirements for revoking an established liberty interest. As this Court held in *E.A.T.-B.*, once
18 the Government grants release, it creates a liberty interest that requires Due Process protections
19 to revoke. An administrative BIA decision cannot strip a Petitioner of constitutional
20 protections. *Id.*

21 Respondents argue that because Petitioner is subject to "mandatory detention," a
22 hearing on flight risk is immaterial. This is circular reasoning. Petitioner was *released* from
23 that detention. To return him to custody, the Government must first establish a valid basis for

1 revocation. If the alleged violation was merely a technical error or a misunderstanding—facts
2 that can only be established at a hearing—then the justification for returning him to mandatory
3 status collapses. Detention must bear a “reasonable relation” to its purpose. *Zadvydas v. Davis*,
4 533 U.S. 678, 690 (2001). If Petitioner is not a flight risk or danger, re-detaining him serves no
5 legitimate government purpose.

6 Respondents argue that if a hearing is required, the standard should be a mere
7 “preponderance of the evidence.” Respondents’ Return at pg 9. This is not the standard the
8 Supreme Court has held applies in hearings where Due Process is implicated. The Supreme
9 Court has held that in civil commitment proceedings—which characterize immigration
10 detention—Due Process requires the Government to prove its case by “clear and convincing
11 evidence.” *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011) (applying the Supreme
12 Court’s civil commitment standard from *Addington v. Texas* to immigration detention); *see also*
13 *Hernandez v. Sessions*, 872 F.3d 976, 990-91 (9th Cir. 2017) (reaffirming that Due Process
14 requires the clear and convincing standard for bond determinations). As the court in *Garro*
15 *Pinchi* recently held, permitting detention on a lower standard would violate the fundamental
16 protections against arbitrary deprivation of liberty.

17 In the above-cited cases, courts found that the government cannot regulate away an
18 individual’s due process rights. This case is no different, and accordingly, the Court should
19 grant the habeas petition.

20 Respondents’ argument that a hearing would be “futile” because detention is
21 “mandatory” is circular. Petitioner was *already* released from that “mandatory” detention. To
22 return him to custody, the Government must first establish a valid basis for revocation. If the
23 alleged violation was merely a technical error—as Petitioner’s evidence shows—then the

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1 justification for returning him to custody collapses. Detention must bear a "reasonable relation"
2 to its purpose. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

3 **B. The *Mathews* Test Dictates that Due Process Was Violated.**

4 As this Court held in *Wamsley*, the constitutionality of re-detention is evaluated under the
5 *Mathews v. Eldridge*, 424 U.S. 319 (1976), test. All three factors weigh heavily in Petitioner's
6 favor.

- 7 1. **Petitioner's private interest is weighty.** Petitioner's interest is not just his own
8 physical liberty, but his ability to care for his seriously ill child. Petitioner's son is
9 currently battling brain cancer (Medulloblastoma) at Doernbecher Children's Hospital.
10 His detention disrupts his ability to provide care and support during this life-threatening
11 medical crisis. This interest is "the most elemental of liberty interests." *Hamdi v.*
12 *Rumsfeld*, 542 U.S. 507, 529 (2004).

13 **The Risk of Erroneous Deprivation is High.** This case perfectly illustrates the high risk of
14 error when detention decisions are left to the unilateral discretion of enforcement officers.

- 15
- 16 • **Technical Glitches vs. Flight Risk:** Respondents cite a "violation" on November 27,
17 2025. However, Petitioner's evidence shows this was a technical app failure on
18 Thanksgiving Day that was reported to ICE immediately and resolved in-person the very
19 next business day.
 - 20 • **Programmatic Dragnet:** Petitioner's arrest was not an individualized determination of
21 danger; it was part of "Operation Restoring Law and Order Portland.". When
22 enforcement relies on broad "operations" rather than case-by-case adjudication, the result
23 is erroneous detention of individuals like Petitioner. A neutral arbiter would have easily

distinguished between a "fugitive" and a father struggling with a buggy smartphone app.

- **Necessity of a Neutral Arbiter:** A hearing before an Immigration Judge would allow Petitioner to explain that any perceived noncompliance was the result of technical difficulties, and that he has otherwise been compliant with all terms of his release from detention. Without such a hearing, the risk of erroneous deprivation is not just high—it is guaranteed. *See Duong v. Kaiser*, No. 25-CV-07598-JST, 2025 WL 2689266, at 7 (N.D. Cal. Sept. 19, 2025).

- 2. The Government's Interest is Low.** Maintaining an individual in detention at government expense imposes a financial burden on the government, whereas his release on ISAP (with the bracelet) costs comparatively little. The government has no legitimate interest in spending finite resources to detain a compliant asylum seeker who poses no danger to the community. *See E.A.T.-B.*, 2025 WL 2402130, at 5. Respondents conflate the general interest in immigration enforcement with the specific interest in detaining *this* Petitioner—a father with a pending asylum case and a child battling cancer—without a hearing.

C. The Court Should Disregard Inadmissible Evidence.

Respondents rely on the Declaration of Deportation Officer Javier Delgado to allege five ATD violations. This declaration should be afforded little to no weight because it is hearsay, lacks supporting documentation, and is contradicted by the specific facts of the interaction.

Hearsay: Officer Delgado's statements regarding Petitioner's alleged violations are out-of-court assertions offered for the truth of the matter asserted. Fed. R. Evid. 801(c). The

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1 statements concerning Petitioner's alleged failures to comply with conditions of release are
2 inadmissibly hearsay.

3 **Contradictions within the Respondents' evidence:** The Government's Form I-213 claims
4 that upon arrest, "Officers informed K— he had a warrant for his arrest." *See* Respondents'
5 Return Exhibit D at 2. However, Petitioner's wife attests that "When ICE officers arrested my
6 husband, they did not provide a warrant, even after we asked why they were arresting him and
7 under what authority." Likewise, Respondents have not provided a copy of the warrant that
8 they claim was created prior to Petitioner's detention, casting doubt on the authenticity of this
9 statement. The Respondents' evidence contains other errors and omissions, including the claim
10 that, "Subject has no immigration petitions or applications pending or approved." Respondents'
11 Return Exhibit D at 3, which is contradicted by the fact that Petitioner has a pending asylum
12 application that Respondents claim to have taken into property ("Form 589") and on which he
13 has a pending merits hearing. Delgado Decl., ¶ 11.

14 In the same document, Respondents claim that "Subject has 5 ATD violations," but
15 under the "IMMIGRATION RECORD," none of those violations are listed. Instead, the
16 document reads, "History was expected but not provided." *Id.* at 2. All of this contradicts the
17 Respondents' Return, which asserts, "Petitioner missed biometric check-ins six times." *See*
18 Respondents' Return at pg 3 line 2. These factual disputes within the Respondents' own
19 evidence demonstrate the lack of a transparent process afforded to Petitioner and the inherent
20 unreliability of Respondents' evidence.

21 **Best Evidence Rule:** The officers summarize the contents of "DHS records and databases"
22 regarding the missed check-ins rather than providing the actual ISAP compliance logs or
23 screenshots of the app failures. Under the Best Evidence Rule, the records themselves are

1 required. Fed. R. Evid. 1002. Respondents' failure to attach the actual logs suggests they may
2 not support the narrative that these were "willful" violations rather than the technical glitches
3 described by Petitioner's wife.

4 **Lack of Individualized Assessment:** The Form I-213 explicitly states the arrest was part of a
5 "field operation... targeting K—". It frames the arrest as a tactical objective of "Operation
6 Restoring Law and Order" rather than a reasoned response to flight risk. This supports
7 Petitioner's argument that he was swept up in a politicized and programmatic enforcement
8 action without the due process of an individualized hearing.

9
10 **III. CONCLUSION**

11 Each of the *Mathews* factors favors the Petitioner. The government's unilateral revocation of
12 Petitioner's liberty—based on technical app malfunctions and executed during a broad "sweep"
13 without regard for his son's medical crisis—violates the Due Process Clause.

14 The Court should grant the habeas petition and order that Respondents not re-detain Petitioner
15 "until after an immigration court hearing is held (with adequate notice) to determine whether
16 detention is appropriate." *E.A.T.-B.*, 2025 WL 2402130, at *6.

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3 DATED: February 4, 2026

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