

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

K.A.,) Case No. 2:26-cv-00162-SKV
Petitioner)
vs.) **PETITIONER'S TRAVERSE AND**
) **RESPONSE IN SUPPORT OF PETITION**
) **FOR WRIT OF HABEAS CORPUS**
Laura HERMOSILLO, Seattle Field)
Office Director, U.S. Immigration and) Note on Motion Calendar:
Customs Enforcement (ICE), Bruce SCOTT,) February 4, 2026
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)

INTRODUCTION

1. Respondents ask this Court to endorse a system where a person's liberty can be revoked

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

Case No. 2:26-cv-00162-SKV

Cole Enabnit
Portland Immigration Law LLC
520 SW 6th Ave, Suite 610
Portland, OR 97204
(503) 749-7700

on the whim of an enforcement officer, utilizing deception rather than due process. Petitioner K-A- was not a fugitive; she was a compliant participant in the Intensive Supervision Appearance Program (ISAP) who reported faithfully for over twenty months. Whenever there was an issue with her bracelet, her app, or a call, she promptly contacted ICE to explain and seek assistance. She received no indication that any of the issues she experienced were considered violations. Rather than providing notice of a single alleged violation or a hearing before a neutral decisionmaker, ICE agents appeared at her home as part of “Operation Restoring Law and Order Portland”, Dkt. 9-3, under the guise of taking her to the ICE office to obtain a new bracelet for her. They assured her she would be able to return home afterward. In reality, ICE officers had obtained a warrant for her arrest based on probable cause that she was removable based on “the pendency of ongoing removal proceedings,” biometric confirmation of her identity, and a records check indicating she either lacks status or is removable. Dkt. 9-4.¹

2. Respondents now attempt to justify this re-detention by claiming Petitioner accrued at least ten violations for missing biometric check-ins. As supporting evidence for this claim, Respondents cite Delgado Decl., Dkt. 8 ¶¶ 8–17. Respondents do not provide the ATD documentation of the alleged missed biometric check-ins. These alleged violations are not mentioned in the arrest warrant, Dkt. 9-4, and are only given a passing mention in the Form I-213 Record of Deportable/Inadmissible Alien that was completed the day of her arrest, Dkt. 9-3.

3. Due process demands that before the government strips a person of their liberty, it must

¹ The arrest warrant also notes the warrant was served to her and read to her in English. Dkt. 9-4. Petitioner speaks Russian.

1 provide notice and a hearing before a neutral decisionmaker to determine if detention is
2 actually warranted. *See E.A.T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130
3 (W.D. Wash. Aug. 19, 2025). Because Respondents failed to provide this basic
4 constitutional safeguard, Petitioner's continued detention is unlawful. This Court should
5 grant the writ and order his release.

- 6 4. Respondent's return and exhibits reinforce that Petitioner was re-arrested without
7 Respondents first providing notice and a hearing before a neutral decisionmaker, where
8 ICE demonstrated by clear and convincing evidence that Petitioner was re-detained
9 because she is now a flight risk or danger to the community. Further, Respondents' legal
10 arguments disregard this Court's recent rulings. The Constitution requires meaningful
11 process before Respondents deprive Petitioner of her rights. No meaningful process was
12 provided here. Therefore, this Court should grant this habeas petition and order
13 immediate release.

14 **RESPONSIVE STATEMENT OF FACTS**

15 Petitioner agrees with the following key facts: subsequent to Petitioner's entry, she was
16 released into the United States by immigration authorities; she has applied for relief from
17 removal; and she has been re-arrested without Respondents first providing a hearing before a
18 neutral decisionmaker where Immigration and Customs Enforcement (ICE) demonstrated by
19 clear and convincing evidence that she was re-arrested because of a release violation showing
20 she is now a flight risk or danger to the community.

21 Though Respondents now claim a new basis for re-detaining Petitioner, alleging more
22 than ten parole violations, these violations are not mentioned at all in the arrest warrant. Dkt.

23 PET'R'S TRAVERSE AND RESP.
TO RESP'TS' RETURN-3

Case No. 2:26-cv-00162-SKV

Cole Enabnit
Portland Immigration Law LLC
520 SW 6th Ave, Suite 610
Portland, OR 97204
(503) 749-7700

9-4. The arrest warrant lists the bases for the arrest as probable cause as “Petitioner is removable based on pendency of removal proceedings and biometric confirmation of her identity and a records check indicating removability or lack of immigration status.” Dkt. 9-4.² Respondents cite Delgado Decl., Dkt. 8, ¶¶ 8–17 as the sole evidence of the alleged missed biometric check-ins. Petitioner’s husband attests that after downloading the SmartLINK app in August 2024, Petitioner was required to send a selfie photo with her location every Wednesday and had a virtual call with ICE officers approximately once per month. Decl. of Vitalii Naumov, 8. He recalls two times Petitioner had issues with the required calls, first in October 2025 and next in November 2025. Decl. of Vitalii Naumov, 9. During the October call, Petitioner was in class in college and did not answer the call, but called back about five minutes later, and when no one answered, she wrote in the chat that she was available. Decl. of Vitalii Naumov, 10. When her call was returned and she explained the situation, they instructed her not to silence her phone in class. *Id.* In November, her virtual check-in call was scheduled for 9:00 AM to 10:30 AM, but she was called an hour before the check-in time and discovered the call upon waking up to her alarm at 8:20 AM. Decl. of Vitalii Naumov, 11. *See also* Dkt. 1 at 36. Petitioner called and messaged through the app before being asked whether she was pregnant. Decl. of Vitalii Naumov, 11. *See also* Dkt. 1 at 36.

ARGUMENT

A. Regulatory Discretion Does Not Override Constitutional Due Process.

² The arrest warrant also states it was read to the Petitioner in English. Dkt 9-4. The Petitioner speaks Russian.

Respondents' arguments do not adequately rebut Petitioner's entitlement to relief. The
 assertion that "[t]here is no statutory or regulatory requirement for a hearing prior to
 re-detention," Dkt. 7 at 6, is one that this Court and others throughout the U.S. have repeatedly
 addressed in the recent flood of habeas cases prompted by Respondents' actions. This Court and
 others have held that the Constitution requires a pre-deprivation hearing. *E.g.*, *P.T.*, 2025 WL
 329488, at *4 (granting habeas petition, ruling that "absent notice and an opportunity to be
 heard, "[p]etitioner's re-detention does not comport with due process," and granting immediate
 release); *Ramirez Tesara*, 2025 WL 3288295 (same); *Y.M.M. v. Wamsley*, No. 2:25-CV-02075,
 2025 WL 3101782-TMC (W.D. Wash. Nov. 6, 2025) (same); *Ledesma Gonzalez v. Bostock*, No.
 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at *9 (W.D. Wash. Oct. 7, 2025) (same); *E.A.*
T.-B. v. Wamsley, No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 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
 hearing); *Francois*, 2025 WL 3063251 (same); *Hernandez v. Wofford*, No.
 1:25-CV-00986-KES-CDB (HC), 2025 WL 2420390, at *8 (E.D. Cal. Aug. 21, 2025) (same);
Duong v. Kaiser, No. 25-CV-07598-JST, 2025 WL 2689266, at *7 (N.D. Cal. Sept. 19, 2025)
 (granting preliminary injunction and ordering that petitioner not be re-detained without a
 pre-deprivation hearing before a neutral immigration judge where the government must
 demonstrate by clear and convincing evidence that she is a flight risk or danger); *Garro Pinchi*
v. Noem, No. 5:25-CV-05632-PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (same).

Respondents acknowledge that federal district courts such as this Court have found a
 pre-deprivation hearing is required, yet put forth a novel interpretation of 8 C.F.R. § 123.1(c)(9)

PET'R'S TRAVERSE AND RESP.
 TO RESP'TS' RETURN-5

Case No. 2:26-cv-00162-SKV

Cole Enabnit
 Portland Immigration Law LLC
 520 SW 6th Ave, Suite 610
 Portland, OR 97204
 (503) 749-7700

1 and 8 C.F.R. § 123.1(c)(8), arguing that this novel interpretation of the regulations does away
2 with the Constitution's right to Due Process. This cannot be. Under the Supremacy Clause, the
3 Constitution is the "supreme Law of the Land". U.S. Const. art. VI, cl. 2. Regulations are
4 created through the rulemaking process outlined in the Administrative Procedure Act and can be
5 invalidated if a regulation is contrary to the Constitution. 5 U.S.C. § 706(2).

6 The Supreme Court has explicitly held that even where a parole statute grants "broad
7 discretion" to revoke release, the Liberty Interest protected by the Due Process Clause still
8 mandates a hearing. *Morrissey v. Brewer*, 408 U.S. 471, 480–82 (1972). The Government
9 cannot regulate away the Fifth Amendment. Whether 8 C.F.R. § 1236.1(c)(9) explicitly *requires*
10 a danger finding is irrelevant; the *Constitution* requires it to ensure that the deprivation of
11 liberty is not arbitrary.

12 Respondents argue that because Petitioner is subject to "mandatory detention," a hearing
13 on flight risk is immaterial. This is circular reasoning. Petitioner was *released* from that
14 detention. To return her to custody, the Government must first establish a valid basis for
15 revocation. If the alleged "violations" were merely technical errors or misunderstandings—facts
16 that can only be established at a hearing—then the justification for returning her to "mandatory"
17 status collapses. Detention must bear a "reasonable relation" to its purpose. *Zadvydas v. Davis*,
18 533 U.S. 678, 690 (2001). If Petitioner is not a flight risk or danger, re-detaining her serves no
19 legitimate government purpose.

20
21 **B. The Mathews Test Dictates that Due Process Was Violated.**

22 As this Court held in *Francois v. Wamsley*, No. 2:25-cv-02122-RSM-GJL (W.D. Wash.

23 PET'R'S TRAVERSE AND RESP.
TO RESP'TS' RETURN-6

Case No. 2:26-cv-00162-SKV

Cole Enabnit
Portland Immigration Law LLC
520 SW 6th Ave, Suite 610
Portland, OR 97204
(503) 749-7700

Dec. 5, 2025), the constitutionality of re-detention is evaluated under *Mathews v. Eldridge*, 424 U.S. 319 (1976). All three factors weigh heavily in Petitioner's favor.

1. **Petitioner's Liberty Interest is "Weighty."** Respondents recognize Petitioner's weighty liberty interest. Still, Respondents argue that "the Government has a heightened interest in the immigration detention context", citing a Ninth Circuit case during 2020, when detention practices and policies were markedly different, and in which a differently situated Petitioner-Appellee sought a second bond hearing. *Rodriguez Diaz*, 53 F.4th 1189 (9th Cir. 2022). In that case, "the agency's decision to detain Rodriguez Diaz was subject to numerous levels of review, each offering Rodriguez Diaz the opportunity to be heard by a neutral decisionmaker" and "ensur[ing] the risk of erroneous deprivation would be 'relatively small.'" *Id.* at 1210, citing *Yagman v. Garcetti*, 852 F.3d 859, 865 (9th Cir. 2017). "Freedom from imprisonment... lies at the heart of the liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Even conditional release creates a liberty interest that cannot be terminated without due process. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Petitioner lived freely with her spouse in Vancouver, WA for nearly two years. Her interest in remaining free while she pursues her asylum claim is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

2. **The Risk of Erroneous Deprivation is High.** The facts of this case perfectly illustrate the high risk of error when detention decisions are left to the unilateral discretion of

enforcement officers.

- **Arbitrary Enforcement:** Respondents justify Petitioner's detention based on the accrual of at least ten violations for missing biometric check-ins. As support, Respondents cite to a declaration provided by an individual with no personal knowledge of the events alleged. Yet, the record shows an arrest warrant commanding the officers to arrest Petitioner and take her into custody for removal proceedings based on probable cause that she is removable. Dkt. 9-4. The record also shows she was arrested during "a field operation in support of Operation Restoring Law and Order Portland, targeting [her]." Dkt. 9-3. The Form I-213 on the record that includes immigration history lists Petitioner's enrollment in Alternatives to Detention (ATD), her application for a change of venue, and her application for and approval of her work authorization. Dkt. 9-3. The ADT violations are mentioned next as a reason for the arrest but the violations are not listed in the otherwise fairly detailed explanation of Petitioner's immigration history. Dkt. 9-3. To revoke parole months later based on alleged violations that the Petitioner had never been informed of demonstrates the arbitrary nature of the "enforcement agent's" decision-making. *Coolidge v. New Hampshire*, 403 U.S. 443, 450 (1971).
- **The "Ruse" Proves Lack of Process:** ICE agents lured Petitioner to her arrest by claiming she needed a new ankle bracelet. If Petitioner was truly a flight risk, or if she had violated her ATD over ten times, a neutral decisionmaker could have evaluated that evidence. Instead, ICE acted in the shadows, using deception

PET'R'S TRAVERSE AND RESP.
TO RESP'TS' RETURN-8

Case No. 2:26-cv-00162-SKV

Cole Enabnit
Portland Immigration Law LLC
520 SW 6th Ave, Suite 610
Portland, OR 97204
(503) 749-7700

1 to bypass the very process the Constitution requires.

- 2 ○ **Necessity of a Neutral Arbiter:** A hearing before an Immigration Judge would
3 allow Petitioner to explain that all discrepancies in her compliance with ATD had
4 reasonable explanations and she took immediate and sometimes extensive steps
5 to try to remedy issues. Despite the issues, she has maintained compliance with
6 the reporting requirements and has maintained her residence. Without such a
7 hearing, the risk of erroneous deprivation is not just high—it is guaranteed. *See*
8 *Duong v. Kaiser*, No. 25-CV-07598-JST, 2025 WL 2689266, at 7 (N.D. Cal.
9 Sept. 19, 2025).

- 10 3. **The Government's Interest is Low.** Maintaining an individual in detention at
11 government expense imposes a financial burden on the government, whereas his release
12 on ISAP (with the bracelet) costs comparatively little. The government has no legitimate
13 interest in detaining a compliant asylum seeker who poses no danger to the community.
14 *See E.A.T.-B.*, 2025 WL 2402130, at 5.

15 **C. The Government's Evidence is Fatally Flawed and Inadmissible.**

16 Respondents rely on the Declaration of Officer Delgado and the Form I-213 (Exhibit 3) to
17 support their claims. These documents are demonstrably unreliable and should be afforded no
18 weight.

19 **Hearsay:** The officer's statements regarding Petitioner's alleged violations are out-of-court
20 assertions offered for the truth of the matter asserted. *Fed. R. Evid. 801(c)*. Officer Delgado does
21 not claim to have witnessed the alleged violations of Petitioner's terms of release, nor does he
22

23 PET'R'S TRAVERSE AND RESP.
TO RESP'TS' RETURN-9

Case No. 2:26-cv-00162-SKV

Cole Enabnit
Portland Immigration Law LLC
520 SW 6th Ave, Suite 610
Portland, OR 97204
(503) 749-7700

1 cite to any specific document indicating those violations actually occurred. The entirety of his
2 statement is hearsay.

3 **Best Evidence Rule:** The officers have not provided records of the violations themselves (e.g.,
4 the ISAP compliance logs). Under the Best Evidence Rule, the records themselves are required
5 to prove their content. Fed. R. Evid. 1002. Respondents' failure to attach the actual records
6 suggests that the records may not support the narrative presented in the declaration and exhibits.
7 This assertion is supported by the fact that the exhibits themselves are internally inconsistent.
8 For example, Exhibit 3 claims that, "On January 3, 2026, ERO Salt Lake City/Las Vegas
9 arrested A- for ATD violations and issued a Notice to EOIR...". *See* Respondents' Exhibit 3 at
10 3. Nowhere else in Respondents' filings is there a reference to "Salt Lake City" or "Las Vegas."
11 This same document indicates "A- claims to be single" while also listing her spouse as
12 "MIRONOV, KIRILL"—her current spouse's name is Vitalii Naumov. *See Id* at 3 and 1; *see*
13 *also* Declaration of Vitalii Naumov. The numerous inconsistencies within Respondents'
14 evidentiary narrative clearly demonstrate that the Court has not received the "best evidence" to
15 support Respondents' claims.

16
17 **D. Due Process does require the Government to bear the burden of proof at a**
18 **pre-deprivation hearing**
19

20 Respondents argue that if a hearing is required, the standard should be a mere "preponderance
21 of the evidence." Respondents' Return at pg 9. This is not the standard the Supreme Court has
22 held applies in hearings where Due Process is implicated. The Supreme Court has held that in

23 PET'R'S TRAVERSE AND RESP.
TO RESP'TS' RETURN-10

Case No. 2:26-cv-00162-SKV

Cole Enabnit
Portland Immigration Law LLC
520 SW 6th Ave, Suite 610
Portland, OR 97204
(503) 749-7700

1 civil commitment proceedings—which characterize immigration detention—Due Process
2 requires the Government to prove its case by “clear and convincing evidence.” *Singh v. Holder*,
3 638 F.3d 1196, 1203-04 (9th Cir. 2011) (applying the Supreme Court’s civil commitment
4 standard from *Addington v. Texas* to immigration detention); *see also Hernandez v. Sessions*,
5 872 F.3d 976, 990-91 (9th Cir. 2017) (reaffirming that Due Process requires the clear and
6 convincing standard for bond determinations). As the court in *Garro Pinchi* recently held,
7 permitting detention on a lower standard would violate the fundamental protections against
8 arbitrary deprivation of liberty.

9
10 **III. CONCLUSION**

11 For the foregoing reasons, Petitioner respectfully requests that this Court GRANT the Petition
12 for Writ of Habeas Corpus and order her immediate release unless Respondents provide a
13 hearing before a neutral decisionmaker within seven days.

14
15 DATED: February 4, 2026

16 s/ Inna Scott
17 Inna Scott, WSBA No. 46864
iscott@globallawadvocates.com

18 Global Law Advocates, PLLC
19 655 S Orcas St, Ste 210
Seattle, WA 98108-2648
United States
20 (206) 774-8758

21 s/ Cole Enabnit
22 Cole W. Enabnit
cole@pdximmigration.com

23 PET’R’S TRAVERSE AND RESP.
TO RESP’TS’ RETURN-11

Case No. 2:26-cv-00162-SKV

Cole Enabnit
Portland Immigration Law LLC
520 SW 6th Ave, Suite 610
Portland, OR 97204
(503) 749-7700

1 Portland Immigration Law, LLC
2 520 SW 6th Ave, Suite 610
3 Portland, OR 97204
4 United States
5 (503) 749-7700

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
Counsel for Petitioner

PET'R'S TRAVERSE AND RESP.
TO RESP'TS' RETURN-12

Case No. 2:26-cv-00162-SKV

Cole Enabnit
Portland Immigration Law LLC
520 SW 6th Ave, Suite 610
Portland, OR 97204
(503) 749-7700