Honorable Theresa L. Fricke

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

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| Yadien BEALTER REYES et al.,<br><br>Petitioners,<br><br>v.<br><br>Laura HERMOSILLO et al.,<br><br>Respondents. | Case No. 2:26-cv-00270-TLF<br><br>**PETITIONERS' TRAVERSE**<br><br>Noted for Consideration:<br>February 17, 2025 |

## INTRODUCTION

Respondents' return does not meaningfully engage with the constitutional question presented. Petitioners do not dispute that Congress has granted the Executive authority to detain noncitizens in certain situations. The question, however, is whether the Fifth Amendment permits the government to strip Petitioners of liberty it previously granted—releasing each of them on parole or an order of recognizance after determining they were neither a danger nor a flight risk— without providing written notice and a hearing before a neutral decisionmaker. On this point, this Court has held that due process requires such a hearing, and Respondents offer no persuasive authority to disturb that consensus. Each Petitioner remains in ongoing removal proceedings without a final order of removal, and each was re-detained without any of the procedural protections that due process demands. Because Respondents cannot show that constitutionally adequate process preceded the re-detention of any Petitioner, the writ should issue.



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## ARGUMENT

### I. The Due Process Clause—not 8 U.S.C. § 1225(b) or agency regulations—forms the basis of Petitioners' re-detention claim.

As an initial matter, Respondents' emphasis on the Department of Homeland Security's (DHS's) statutory detention authority under 8 U.S.C. § 1225(b) is beside the point. The question here is not whether Respondents possess the statutory authority to subject "applicants for admission" to mandatory detention, but whether the process by which Respondents revoked Petitioners' liberty and effectuated re-detention satisfied the Fifth Amendment. *See* Dkt. 1 ¶¶ 77–80. Accordingly, this Court and others in this District have held in similar cases that "even if a particular statute or regulation does not require a pre-arrest hearing in these specific circumstances, this does not mean such a hearing is not required by Due Process." *Gregorio Ordoñez v. Bondi*, No. 2:25-cv-02356-JHC-TLF, 2025 WL 3852444, at *4 (W.D. Wash. Dec. 19, 2025), *R&R adopted*, 2026 WL 30022 (W.D. Wash. Jan. 5, 2026); *see also, e.g.*, *E.A .T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1323 (W.D. Wash. 2025) ("This line of the Government's reasoning . . . cannot carry the day."); *Shinwari v. Hermosillo*, No. 2:26-CV-00009-RAJ, 2026 WL 262605, at *3 (W.D. Wash. Jan. 30, 2026) ("[T]he Court rejects Respondents' argument that Petitioners' re-detention is lawful because the applicable statute and regulation do not require a pre-detention hearing."); *P.T. v. Hermosillo*, No. C25-2249-KKE, 2025 WL 3294988, at *2 n.1 (W.D. Wash. Nov. 26, 2025); *Tomas Manuel v. Hermosillo*, No. C25-2353-TLM-LP, 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."), *R&R adopted*, 2025 WL 3697277 (Dec. 19, 2025); *Francois v. Wamsley*, No. C25-2122-RSM-GJL, 2025 WL 3063251, at *3 (W.D. Wash. Nov. 3, 2025) ("[A]ny argument that ICE acted within its authority has no affect [sic] on a claim contending that detention violates Constitutional Due Process."). That district court decisions are not binding precedent, *see* Dkt. 12 at 15 (citing *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011)), does not undermine the persuasive force of the uniform conclusion reached by numerous judges in this



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District.[1] *See, e.g.*, *Regence Blueshield v. Philip Morris, Inc.*, 40 F. Supp. 2d 1179, 1182 (W.D. Wash. 1999) (looking to fellow district court decisions for guidance where cases were "exactly on point and, therefore, highly persuasive").

Under *Mathews v. Eldridge*, the Court considers (1) the private interest affected, (2) the risk of erroneous deprivation through the procedures used and the probable value of additional safeguards, and (3) the government's interest. 424 U.S. 319, 335 (1976). As outlined below, all three factors weigh in Petitioners' favor.

**A. Petitioners have a weighty interest in their continued liberty.**

As to the first factor, Respondents acknowledge the "weighty liberty interests implicated by the Government's detention of noncitizens," Dkt. 12 at 12, but minimize that interest by asserting it is "not coextensive" with those of U.S. citizens. *Id.* at 13 (citation omitted). This comparison, however, "does not negate Petitioner[s'] liberty interest in not being detained." *Kumar v. Wamsley*, No. 2:25-cv-01772-JHC-BAT, 2025 WL 2677089, at *3 (W.D. Wash. Sept. 17, 2025); *see also, e.g.*, *Lucena-Ojeda v. Noem*, No. 2:26-CV-00085-BAT, 2026 WL 279353, at *2 (W.D. Wash. Feb. 3, 2026) ("[T]he Court rejects the notion that petitioner's weighty liberty interest is greatly diminished solely because he is a noncitizen in immigration proceedings."). Each Petitioner was released from immigration custody on parole or an order of recognizance—based on a determination that they were not a danger or flight risk[2]—and thereafter built a life in

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[1] For this reason, *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026), is irrelevant. That decision addresses only the question of what detention statute may apply to Petitioners, which is not before the Court. Further, as Respondents concede, *Buenrostro-Mendez* is "not binding in the Ninth Circuit." Dkt. 12 at 10; *see also id.* at 11 (acknowledging that "courts in this District have reached the opposite conclusion" (citing cases)). Respondent offers no persuasive authority that "warrants a fresh look," Dkt. 12 at 11, at this Court's decisions regarding Petitioners' constitutional claim.

[2] Agency regulations require DHS to determine that a person "would not pose a danger to property or persons" and "is likely to appear for any future proceeding before releasing that person under an order of recognizance." 8 C.F.R. § 236.1(c)(8). Similarly, DHS releases individuals under parole upon determining that they "present neither a security risk nor a risk of absconding." 8 C.F.R. § 212.5(b).



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the United States, pursued immigration relief, and complied with the conditions of their release. *See* Dkt. 1 ¶¶ 24–35; 45–62. Their interest in freedom from physical confinement is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

Here, Respondents do not dispute that each Petitioner was released from immigration custody and thereafter established lives in the United States—Ms. Bealter for nearly four years, Mr. Nuñez for over two years, and Mr. Ponce for over two years. During that time, each Petitioner reported to ICE as directed, attended scheduled hearings, timely filed applications for relief, and developed community ties. *See* Dkt. 1 ¶¶ 24–32, 45–50, 54–59. Ms. Bealter gave birth to a son, who was only eight months old at the time of her re-detention and depends on her for nursing. *Id.* ¶¶ 29, 31–32. Mr. Nuñez built a life with his wife and two young children, actively participating in their church community. *Id.* ¶ 50. Mr. Ponce was granted Temporary Protected Status, received employment authorization, and was raising his children in Washington. *Id.* ¶¶ 57–58. As this District has consistently recognized, such ties strengthen a petitioner's constitutional interest in continued liberty. *See Tsyamba v. Hermosillo*, No. 2:25-cv-02623-GJL, 2026 WL 237514, at *4 (W.D. Wash. Jan. 29, 2026) (initial release "allowed him to gain[] a foothold in the United States and develop ties in this country, thereby strengthening his constitutional right to due process"); *Osuna Benitez v. Hermosillo*, No. 2:25-cv-02535-BAT, 2025 WL 3763932, at *4 (W.D. Wash. Dec. 30, 2025) ("Petitioner has a substantial interest in remaining in his home with his family and maintaining the relationships he has developed . . . .").

With respect to Petitioners Bealter and Ponce, Respondents also contend that their alleged violations of release conditions "substantially reduced the weight" of their liberty interests. Dkt. 12 at 13. But this argument conflates Petitioners' liberty interest with the government's justification for the deprivation. Contrary to Respondent's unsupported assertion, courts have consistently recognized that a noncitizen's liberty interest remains weighty regardless of the government's post hoc justifications for re-detention. *See, e.g.*, *Ramirez Tesara v. Wamsley*, 800 F. Supp. 3d 1130, 1136 (W.D. Wash. 2025) (holding that petitioner's liberty interest was entitled



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to "the full protections of the due process clause" despite alleged violations of release conditions); *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1321 (W.D. Wash. 2025) (similar).

**B. The risk of erroneous deprivation absent a pre-deprivation hearing is high.**

First, Respondents' assertion that Petitioners Bealter and Ponce present "special case[s]" qualifying for an exemption from a pre-deprivation hearing lacks merit. *See* Dkt. 12 at 13–14. Respondents' reliance on *Zinermon v. Burch*, 494 U.S. 113, 127 (1990), is misplaced. As another court recently explained in rejecting the identical argument,

> *Zinermon* does not suggest there may be special cases; rather, it discusses a single, discrete "special case" known as "the *Parratt* rule" . . . . The *Parratt* rule applies to a unique subset of deprivations where there is no practical way that "predeprivation procedural safeguards *could* address the risk of deprivations" because the nature of the deprivation is such that it cannot be foreseen by the state.

*Sarwari v. Wamsley*, No. 2:26-cv-00121-TL, 2026 WL 279968, at *4 (W.D. Wash. Feb. 3, 2026) (emphasis in original) (citations omitted). The *Sarwari* court found that "[t]he Parratt rule obviously does not apply" to a similar constitutional challenge to re-detention by DHS. *Id.* at *5. Respondents do not contend that any statutory post-deprivation hearing or common-law tort remedy is available—nor can they plausibly do so while asserting that the law imposes no limits on their authority to arbitrarily re-detain Petitioners and subject them to mandatory detention. *See* Dkt. 12 at 9–11.

Second, Respondents' reliance on *Martinez Hernandez v. Andrews*, 2025 WL 2495767 (E.D. Cal. Aug. 27, 2025), for the proposition that a post-deprivation hearing would suffice, Dkt. 12 at 14, fares no better. The *Sarwari* court's reasoning for distinguishing *Martinez Hernandez* applies with equal force here. As the court explained, the *Martinez Hernandez* court was ruling on a preliminary injunction, and thus "merely ruled that prompt, post-deprivation process was required . . . . before the petitions were even adjudicated" and did not make an "ultimate determination that this was all the process the petitioners were due." *Sarwari,* 2026 WL 279968, at *5 (citation modified). Next, the *Sawari* court rejected the argument that *Martinez Hernandez* supports Respondents as to the erroneous deprivation factor, observing that in reality, the



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*Martinez Hernandez* court agreed that the risk of erroneously depriving someone of liberty was high without further process. *Id.* And last, *Sawari* explained how *Martinez Hernandez* involved a petitioner who had a history of arrests both in his country of origin and in the United States—much different from the petitioner in *Sawari* itself (or Petitioners here). *Id.* at *5–6.

Third, Respondents aver that pre-deprivation hearings were not required because Ms. Bealter and Mr. Ponce have allegedly violated conditions of their release. Dkt. 12 at 13–14. But as courts in this District have repeatedly found, such "factual disputes as to Petitioner's alleged parole violations should be resolved at a pre-deprivation hearing, rather than resolved after the fact by this Court." *Ramirez Tesara v. Wamsley*, No. C25-1723-KKE-TLF, 2025 WL 3288295, at *5 (W.D. Wash. Nov. 25, 2025); *see also P.T.*, 2025 WL 3294988, at *3. Accordingly, whether Ms. Bealter's pending charge or Mr. Ponce's alleged zone violation warrant re-detention based on flight risk or danger to the community are matters that a neutral decisionmaker should evaluate prior to detention.

Lastly, this Court has repeatedly held that "a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty." *E.A. T.-B.*, 795 F. Supp. 3d at 1324; *see also Sarwari*, 2026 WL 279968, at *6 (same). Respondents nevertheless assert that "[w]here detention is mandatory, a pre-detention hearing would serve no purpose," relying on *Calderon v. Noem*, No. 2:25-cv-2136, 2025 WL 3754042, at *8 (W.D. Wash. Dec. 29, 2025). Dkt. 12 at 15. As an initial matter, that argument again conflates the question of statutory authority with the outcome of the constitutional claim. Moreover, *Calderon* involved a petitioner whose pending criminal charge subjected him to mandatory detention under § 1226(c)(1)(E), and the *Calderon* court itself emphasized both "the undisputed applicability of the [Laken Riley Act (LRA)] . . . at the time of his detention" and "the immediate availability of a *Joseph* hearing to determine whether the LRA actually did apply." *Calderon*, 2025 WL 3754042, at *8.

The opportunity for a pre-deprivation hearing remains "the root requirement of the Due Process Clause" where any significant protected interest is at risk. *Cleveland Bd. of Educ. v.*



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*Loudermill*, 470 U.S. 532, 542 (1985). Respondents' submissions do not alter this touchstone of procedural due process and cannot overcome the numerous recent decisions holding the same.

**C. The government's interest in re-detaining Petitioners without a hearing is minimal.**

Respondents' assertion of a "heightened government interest in the immigration detention context," Dkt. 12 at 14 (citing *Rodriguez Diaz*, 53 F.4th at 1206), cannot justify their deprivation of Petitioners' liberty without due process. Courts in this District have now repeatedly recognized that (1) the government's interest in re-detaining noncitizens without procedural safeguards is "low," *Ramirez Tesara*, 2025 WL 3288295, at *5; *see also P.T.*, 2025 WL 3294988, at *3; (2) any interest in ensuring conditions for release are followed "[is] not threatened if a pre-deprivation [hearing] is required," *P.T.*, 2025 WL 3294988, at *4; and (3) the "finite" costs of providing such notice and a hearing "are far out-weighed by the risk of erroneous deprivation" of a petitioner's liberty interests, *id.* at *3.

Respondents invoke the Ninth Circuit's language in *Rodriguez Diaz* regarding the government's interest in preventing noncitizens from remaining in the United States in violation of law. Dkt. 12 at 14–15. But *Rodriguez Diaz* addressed the standard of proof at bond hearings for noncitizens detained under § 1226(a)—not whether the government may bypass pre-deprivation process entirely when re-detaining individuals it previously released. The government's general interest in immigration enforcement does not diminish its obligation to afford procedural protections before depriving an individual of established liberty.

Because Respondents' manner of re-detaining Petitioners did not comport with procedural due process, Petitioners have been unlawfully detained since their respective re-detentions.

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

A constitutionally adequate pre-deprivation process requires the government to justify re-detention by clear and convincing evidence. In challenging the applicable burden of proof, Respondents misplace their reliance on cases such as *Demore v. Kim*, 538 U.S. 510 (2003),



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*Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), and *Zadvydas v. Davis*, 533 U.S. 678 (2001). *See* Dkt. 18 at 10–11. None of those cases addressed the evidentiary standard required when the government seeks to revoke liberty it previously granted and reimpose civil confinement. *Cf. Pinchi v. Noem*, 792 F.Supp.3d 1025, 1034 (N.D. Cal. 2025) ("Because the question [of re-detention] . . . was not presented in *Rodriguez Diaz*, the court had no opportunity to address it.").

As another district court explained in a case challenging the re-detention of six asylum seekers, placing a heightened burden of proof on the government is reasonable where "the immigrant's initial release reflected a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2675785, at *14 (E.D. Cal. Sept. 18, 2025); *see also, e.g.*, *Martinez Hernandez*, 2025 WL 2495767, at *14 ("Since it is the government that initiated re-detention, it follows that the government should be required to bear the burden of providing a justification for the re-detention."). That analysis comports with long-established due process principles governing civil detention, under which courts have applied the same clear and convincing standard whenever continued civil immigration detention requires affirmative justification by the government, even where initial detention was lawful. *E.g.*, *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011) ("Because it is improper to ask the individual to 'share equally with society the risk of error when the possible injury to the individual'—deprivation of liberty—is so significant, a clear and convincing evidence standard of proof provides the appropriate level of procedural protection." (quoting *Addington v. Texas*, 441 U.S. 418, 427 (1979))), *abrogated on other grounds by Jennings v. Rodriguez*, 583 U.S. 281 (2018).

Similarly, due process requires consideration of alternatives to detention, and that requirement applies with particular force in the re-detention context. The fact that Petitioners were previously released especially warrants requiring the government to demonstrate why detention, rather than continued or modified conditions of release, is necessary.



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**III. Petitioners are entitled to an order preventing re-detention without written notice and a pre-deprivation hearing.**

Recognizing the threat of arbitrary re-detention, numerous courts in this District have issued orders enjoining future re-detention without a pre-deprivation hearing in granting writs of habeas to similarly situated petitioners. *See, e.g., E.A. T.-B.*, 795 F. Supp. 3d at 1324; *Sarwari*, 2026 WL 279968, at *8; *Shinwari*, 2026 WL 262605, at *4; *Cabrera Perez*, 2026 WL 100735, at *5; *Osuna Benitez*, 2025 WL 3763932, at *6; *P.T.*, 2025 WL 3294988, at *4; *Ramirez Tesara*, 2025 WL 3288295, at *6. This "clear pattern of re-detention without sufficient process by Respondents[] demonstrate[s] that Petitioners face a continuing threat of constitutional harm throughout their removal proceedings," warranting injunctive relief. *Arroyo Silva v. Hermosillo*, No. 2:26-CV-00179-GJL, 2026 WL 445003, at *6 (W.D. Wash. Feb. 17, 2026); *cf. Nielsen v. Preap*, 586 U.S. 392, 403 (2019) (case was not moot despite individuals' release because "[u]nless th[e] preliminary injunction [resulting in release] was made permanent and was not disturbed on appeal, [the plaintiffs] faced the threat of re-arrest and mandatory detention").

Furthermore, such an order is well within this Court's authority to issue a writ of habeas corpus, which is, "at its core, an equitable remedy." *Schlup v. Delo*, 513 U.S. 298, 319 (1995). "Equitable relief" is "characterized by flexibility which enables it to . . . accord all the relief necessary to correct the particular injustices involved." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 248 (1944); *see also Boumediene v. Bush*, 553 U.S. 723, 779 (2008). A habeas court is thus authorized to "fashion appropriate relief other than immediate release," *Preiser v. Rodriguez*, 411 U.S. 475, 487 (1973), in order to ensure an effective remedy for unlawful detention.

**CONCLUSION**

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



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Respectfully submitted this 17th day of February, 2026.

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**I certify that the foregoing contains 3,063 words, in compliance with the Local Civil Rules.*

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