

Honorable Jamal N. Whitehead

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

Jairo ESPINOZA PALACIOS et al.,

Petitioners,

v.

Laura HERMOSILLO et al.,

Respondents.

Case No. 2:26-cv-00491-JNW

PETITIONERS' TRAVERSE

Noted for Consideration:
March 2, 2026

INTRODUCTION

Respondents do not dispute that the Department of Homeland Security (DHS) previously released Petitioners and thereafter revoked their liberty without any written notice or pre-deprivation hearing. Nor do they offer any persuasive authority for “respectfully disagree[ing]” with the numerous decisions in this District holding that such re-detention violates the Due Process Clause. Dkt. 20 at 10. Instead, Respondents’ own justifications for Petitioners’ re-detention—unsubstantiated allegations of violations, reliance on out-of-circuit authority, and a request that this Court depart from its prior holdings—only underscore the risk of erroneous deprivation and the necessity of enjoining any future re-detention absent constitutionally adequate process.

Petitioners, however, acknowledge the factual dispute concerning Petitioner Rahim, *see* Dkt. 20 at 9–10, and respectfully request that the Court dismiss his claim without prejudice.

Accordingly, the Court should grant the Petition with respect to Petitioners Espinoza Palacios, Garrido Chavarria, Kurochkin, Mhret, Mitiku, Mounther, Penzo Croechez, Sharp Perez, and Ukbagabir.¹

ARGUMENT

I. The *Mathews v. Eldridge* factors demonstrate that Petitioners' due process rights were violated.

Each Petitioner was previously released from DHS custody upon a determination that they were not a danger or flight risk, and each was subsequently re-detained without written notice or a hearing before a neutral decisionmaker. Respondents, in turn, claim that they were lawfully authorized to re-detain every Petitioner without any additional procedures. Examining "each noncitizen's re-detention independently," Dkt. 20 at 1, only confirms these core facts for purposes of applying the *Mathews v. Eldridge* framework.

Under *Mathews*, 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). All three factors favor Petitioners.

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

Respondents concede the "weighty liberty interests implicated by the Government's detention of noncitizens." Dkt. 20 at 9 (citation omitted). This concession is well-founded. The interest in freedom from physical confinement is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also, e.g., Ledesma Gonzalez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 2841574, at *7 (W.D. Wash. Oct. 7, 2025) (finding that the petitioner's "liberty interest . . . is a fundamental interest that must be accorded significant weight"). Indeed, "[t]he Supreme Court has repeatedly recognized that individuals who have been released from custody,

¹ As previously submitted, Petitioner Nestor Rodriguez received a voluntary departure order during the pendency of this Petition and has also withdrawn his claim for relief before the Court. *See* Dkt. 19.

1 even where such release is conditional, have a liberty interest in their continued liberty.” *Doe v.*
 2 *Becerra*, 787 F. Supp. 3d 1083, 1093 (E.D. Cal. Mar. 3, 2025) (collecting cases).

3 Here, each Petitioner was released from immigration custody—on either parole or an
 4 order of recognizance—based on a determination that they were not a danger or flight risk.² Each
 5 thereafter built a life in the United States: working, raising children, attending court hearings,
 6 pursuing applications for relief, and complying with conditions of release. *See generally* Dkt. 1
 7 ¶¶ 31–38 (Espinoza Palacios), ¶¶ 42–49 (Garrido Chavarria), ¶¶ 53–62 (Kurochkin), ¶¶ 66–70
 8 (Mhret), ¶¶ 74–82 (Mitiku), ¶¶ 86–94 (Mounther), ¶¶ 98–109 (Penzo Croechez), ¶¶ 135–43
 9 (Sharp Perez); ¶¶ 147–152 (Ukbagabir). As courts have recognized, such ties strengthen a
 10 petitioner’s due process protections. *See, e.g., Lakshya Rana v. Bondi*, No. 2:26-cv-00244-TL,
 11 2026 WL 472800, at *4 (W.D. Wash. Feb. 19, 2026) (“When Petitioner was released on his own
 12 recognizance, he acquired a liberty interest—one that Respondents concede—and that interest
 13 entitles him to Due Process, which Respondents have failed to give.” (internal citation omitted));
 14 *Tsyamba v. Hermosillo*, No. 2:25-cv-02623-GJL, 2026 WL 237514, at *4 (W.D. Wash. Jan. 29,
 15 2026) (explaining that the petitioner’s initial release “allowed him to gain[] a foothold in the
 16 United States and develop ties in this country, thereby strengthening his constitutional right to
 17 due process” (alteration in original)).

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

19 Respondents divide Petitioners into two groups—those released on parole and those
 20 released on an order of recognizance—and argue that the existing procedures were sufficient for
 21 each, even though none received any individualized determination that re-detention was
 22 warranted. As this Court has affirmed, when the government reverses its own prior determination
 23 that an individual is not a danger or flight risk, “re-detaining . . . without first reconsidering those
 24

25 ² Under the applicable regulations, release on parole requires DHS to determine that the
 26 individual “present[s] neither a security risk nor a risk of absconding.” 8 C.F.R. § 212.5(b).
 27 Similarly, release on an order of recognizance requires a determination that the individual
 “would not pose a danger to property or persons” and “is likely to appear for any future
 proceeding.” 8 C.F.R. § 236.1(c)(8).

1 factors poses a significant risk of an erroneous deprivation of [their] liberty interest in continued
 2 release.” *Ledesma Gonzalez*, 2025 WL 2841574, at *8 (quoting *E.A.T.-B. v. Wamsley*, 795 F.
 3 Supp. 3d 1316, 1323 (W.D. Wash. 2025)). Respondents’ arguments for why no hearing was
 4 required only reinforce that risk.

5 With respect to Petitioners released on parole under 8 U.S.C. § 1182(d)(5), Respondents
 6 argue that parole “automatically terminated” and that no further process was required because
 7 Petitioners “had notice of the expiration date when they were granted parole.” Dkt. 20 at 9.
 8 However, “[t]hat the express terms of the parole notice allowed for discretionary termination or
 9 expiration does not somehow obviate the need for the Government to provide an individualized
 10 hearing prior to re-detaining the parolee.” *Shinwari v. Hermosillo*, No. 2:26-cv-00009-RAJ, 2026
 11 WL 262605, at *4 (W.D. Wash. Jan. 30, 2026) (alteration in original) (quoting *Ramirez Tesara v.*
 12 *Wamsley*, 800 F. Supp. 3d 1130, 1136 (W.D. Wash. 2025)); *see also, e.g., Francois v. Wamsley*,
 13 No. C25-2122-RSM-GJL, 2025 WL 3496557, at *3 (W.D. Wash. Dec. 5, 2025) (rejecting the
 14 government’s argument that petitioners “knew that they could be re-detained if they violated the
 15 conditions of parole,” based on “nothing beyond” the declaration of a deportation officer).
 16 Respondents “respectfully disagree[]” with this reasoning without any basis. Dkt. 20 at 10.

17 The risk of erroneous deprivation is equally apparent for Petitioners released on orders of
 18 recognizance. Respondents contend that their (alleged) violations of release conditions render
 19 them “special cases” under *Zinerman v. Burch*, 494 U.S. 113, 128 (1990). Dkt. 20 at 11.³ But as
 20 another court in this District recently explained in rejecting the identical argument:

21 _____
 22 ³ Respondents have not submitted any primary evidence of the alleged violations and, even now,
 23 cannot describe the claimed violations with any degree of specificity. *See, e.g.,* Dkt. 21 ¶¶ 42–50
 24 (nine alleged violations by Petitioner Ukbagabir with no description); *id.* ¶¶ 102–112 (same, with
 25 respect to Petitioner Penzo Croechez); *id.* ¶ 164 (alleging sole alleged violation of “missed
 26 callback” by Petitioner Kurochkin on the day of his release); *cf. Ramirez Tesara*, 2025 WL
 27 3288295, at *5 (“[I]t is clear that Petitioner was not provided notice and an opportunity to be
 heard on [the alleged violations] if, even now, the Government cannot fully describe the
 violations that purportedly triggered Petitioner’s re-detention.”). Moreover, the recitations of
 alleged violations in the Booth Declaration, Dkt. 21, are inadmissible hearsay. Fed. R. Evid.
 801(c). The statements are not based on personal knowledge of Petitioners’ specific
 circumstances of re-detention, and instead based on a review of “various records and systems
 maintained by ICE in the regular course of business.” Dkt. 21 ¶ 3; *see* Fed. R. Evid. 602. The

Zinerman 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). The *Sarwari* court found that the *Parratt* rule “obviously does not apply” where a noncitizen previously released from immigration custody challenged their re-detention. *Id.* at *5. That conclusion applies with full force here: Petitioners’ re-detentions were not random or unauthorized acts that the government could not have anticipated, as four Petitioners were detained at their own scheduled check-ins, *see* Dkt. 1 ¶¶ 60, 78, 106, 151, and the remainder were arrested through planned enforcement operations at specific locations, *see id.* ¶¶ 36–37, 48, 69, 93, 139. Moreover, the *Parratt* framework applies only where an adequate post-deprivation remedy exists to compensate for the absence of pre-deprivation process. *See Zinerman*, 494 U.S. at 126. Respondents cannot demonstrate that such a remedy exists because they maintain that Petitioners have no right to any hearing and that their detention is mandatory without recourse. *See* Dkt. 20 at 11–12.

Respondents’ reliance on *Martinez Hernandez v. Andrews*, 2025 WL 2495767 (E.D. Cal. Aug. 27, 2025), fares no better. *See* Dkt. 20 at 11. As the *Sarwari* court explained, the *Martinez Hernandez* court was distinguishable because it was ruling on a preliminary injunction, and thus “merely ruled that prompt, post-deprivation process was required . . . before the petitions were even adjudicated.” *Sarwari*, 2026 WL 279968, at *5 (citation modified). That court did not make an “ultimate determination that this was all the process the petitioners were due.” *Id.* Next, the *Sarwari* court correctly observed that the *Martinez Hernandez* court actually found significant risk of erroneously depriving someone of liberty was high without further process. *Id.* And lastly, *Sarwari* distinguished *Martinez Hernandez* on the basis that it involved a petitioner who had a

best evidence rule requires Respondents to produce the underlying ICE records and ATD violation reports, rather than rely on Officer Booth’s summaries of those materials. *See* Fed. R. Evid. 1002; *cf. United States v. Valdovinos-Mendez*, 641 F.3d 1031, 1035 (9th Cir. 2011) (distinguishing between admissible testimony about the absence of records and testimony about their contents, where the best evidence rule applies).

1 history of arrests both in his country of origin and in the United States—much different from the
 2 petitioner in *Sarwari* itself (or Petitioners here). *Id.* at *5–6; *see also id.* at *8 (emphasizing that
 3 “Respondents’ treatment of *Zinermom* [and] *Martinez Hernandez* . . . falls short of the basic level
 4 of accuracy that the Court expects from litigants who come before it” (citation modified)).

5 Finally, “a post-deprivation hearing cannot serve as an adequate procedural safeguard
 6 because it is after the fact and cannot prevent an erroneous deprivation of liberty.” *E.A.T.-B. v.*
 7 *Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025). Indeed, this Court emphasized the
 8 same in *Ledesma Gonzalez*, holding that “providing effectively no pre-detention process—as
 9 ICE did here—is constitutionally deficient.” 2025 WL 2841574, at *8 (rejecting the
 10 government’s argument that the petitioner “can challenge its detention decision after the fact”).⁴

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

13 Courts in this District have now repeatedly held that the government’s interest in re-
 14 detaining noncitizens without procedural safeguards is “minimal,” because a pre-deprivation
 15 hearing does not impair any legitimate interest. *Ramirez Tesara*, 800 F. Supp. 3d at 1137; *see*
 16 *also, e.g., P.T. v. Hermosillo*, No. C25-2249-KKE, 2025 WL 3294988, at *3–4 (W.D. Wash. Nov.
 17 26, 2025) (“[The government’s] interests are not threatened if a pre-deprivation hearing is
 18 required.”); *E.A.T.-B.*, 795 F. Supp. 3d at 1324 (the “finite” costs of providing notice and a
 19 hearing “are far outweighed by the risk of erroneous deprivation” of the liberty interest at stake).

20 Respondents’ reliance on *Rodriguez Diaz v. Garland*, 53 F. 4th 1189 (9th Cir. 2022), is
 21 misplaced, because that case addressed the standard of proof at bond hearings for noncitizens
 22 detained under § 1226(a)—not whether the government may bypass pre-deprivation process
 23 entirely when re-detaining individuals it previously released. The government’s general interest

24 ⁴ Respondents also cite *Safi v. Noem*, No. 2:26-cv-00308-TLF, 2026 WL 445564 (W.D. Wash.
 25 Feb. 17, 2026), for the proposition that post-deprivation hearings may suffice. The court there
 26 found post-deprivation process appropriate because the petitioner had been apprehended after
 27 attempting to cross the U.S.-Canadian border illegally, which the court viewed as “presenting an
 urgency requiring detention before a hearing.” *Id.* at *4. No Petitioner in this case presents
 comparable facts, particularly in light of Petitioner Rahim’s request for dismissal from this
 petition. *See supra* p.1.

1 in immigration enforcement, however “heightened,” Dkt. 20 at 10 (citation omitted), does not
 2 diminish its obligation to afford procedural protections before depriving an individual of
 3 established liberty.

4 ***

5 Because all three *Mathews* factors favor Petitioners, the Court should find that
 6 Respondents’ re-detention of Petitioners without written notice or a pre-deprivation hearing
 7 violated their rights under the Due Process Clause of the Fifth Amendment and order that all
 8 Petitioners be immediately released.

9 **II. Petitioners are entitled to an order enjoining re-detention absent constitutionally**
 10 **adequate process.**

11 Respondents assert in passing that Petitioners’ request for injunctive relief is
 12 “speculative,” Dkt. 20 at 2, but devote no substantive argument to the point. Nor do they disavow
 13 the authority to re-detain Petitioners in the same manner—without notice or a hearing—if
 14 released. To the contrary, Respondents expressly maintain that re-detention without a pre-
 15 deprivation hearing was lawful for both groups of Petitioners. Dkt. 20 at 9, 11. That position
 16 establishes more than a “mere possibility” of recurrence—it reflects an avowed intention to
 17 continue the challenged conduct. *See, e.g., Arroyo Silva v. Hermosillo*, No. 2:26-cv-00179-GJL,
 18 2026 WL 445003, at *6 (W.D. Wash. Feb. 17, 2026) (“Respondents make clear that their current
 19 practices for re-detention contravene, and will continue to contravene, the constitutional
 20 principles espoused in this Order and in other court orders issued in this District.”).

21 Recognizing the threat of re-arrest without due process, numerous courts have issued
 22 orders enjoining future re-detention without a pre-deprivation hearing in granting writs of habeas
 23 to similarly situated petitioners. *See, e.g., E.A.T.-B.*, 795 F. Supp. 3d at 1324; *Tsyamba*, 2026 WL
 24 237514, at *6–7; *Shinwari*, 2026 WL 262605, at *4; *Cabrera Perez v. Hermosillo*, No. C25-
 25 2542-RSM, 2026 WL 100735, at *6 (W.D. Wash. Jan. 14, 2026); *Osuna Benitez v. Hermosillo*,
 26 No. 2:25-CV-02535-BAT, 2025 WL 3763932, at *6 (W.D. Wash. Dec. 30, 2025); *Francois*,
 27 2025 WL 3496557, at *4; *P.T.*, 2025 WL 3294988, at *4; *Ramirez Tesara*, 2025 WL 3288295, at

1 *6; *Y.M.M. v. Wamsley*, No. 2:25-cv-02075, 2025 WL 3101782, at *3 (W.D. Wash. Nov. 6,
2 2025). This non-exhaustive list of cases also underscores that so long as no court order directly
3 prohibits detaining an individual, Respondents will continue their unlawful practices. *Cf. Nielsen*
4 *v. Preap*, 586 U.S. 392, 403 (2019) (plurality opinion) (noting that the claims of the plaintiffs did
5 not become moot when they were released on bond “[u]nless th[e] preliminary [relief] was made
6 permanent” because they still “faced the threat of re-arrest and mandatory detention”).

7 Such relief is well within the Court’s authority. Habeas corpus is, “at its core, an equitable
8 remedy.” *Schlup v. Delo*, 513 U.S. 298, 319 (1995). Its equitable roots are embodied by “the
9 statutory command that the judge, after granting the writ and holding a hearing of appropriate
10 scope, [shall] ‘dispose of the matter as law and justice require.’” *Fay v. Noia*, 372 U.S. 391, 492
11 (1963) (quoting 28 U.S.C. § 2243). A habeas court is accordingly authorized to “fashion
12 appropriate relief other than immediate release.” *Preiser v. Rodriguez*, 411 U.S. 475, 487 (1973).
13 And “[o]nce a [constitutional] right and a violation have been shown, the scope of a district
14 court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent
15 in equitable remedies.” *Roman v. Wolf*, 977 F.3d 935, 942 (9th Cir. 2020). These principles
16 authorize courts not only to remedy unlawful detention through release, but also to craft forward-
17 looking relief necessary to prevent recurrence of the constitutional violation. *Arroyo Silva*, 2026
18 WL 445003, at *6 (“Where a petitioner demonstrates a cognizable danger of repeated unlawful
19 detention, permanent injunctive relief falls within the breadth and flexibility inherent in habeas
20 equitable powers.”).

21 Any such order should also require the government to justify re-detention by clear and
22 convincing evidence and to demonstrate that alternatives to detention are inadequate. A
23 heightened burden is appropriate where, as here, each Petitioner’s initial release reflected a
24 government determination that they were not a danger or flight risk, and it is the government that
25 seeks to reverse that determination and reimpose confinement. *See Espinoza v. Kaiser*, No. 1:25-
26 cv-01101, 2025 WL 2675785, at *14 (E.D. Cal. Sept. 18, 2025); *see also, e.g., Martinez*
27 *Hernandez*, 2025 WL 2495767, at *14. That standard comports with long-established due

process principles: “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.” *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011) (quoting *Addington v. Texas*, 441 U.S. 418, 427 (1979)), *abrogated on other grounds by Jennings v. Rodriguez*, 583 U.S. 281 (2018). Similarly, because each Petitioner was previously released under less restrictive conditions, any pre-deprivation hearing must require Respondents to demonstrate why alternatives to detention would no longer be adequate.

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. Petitioners also request that the Court order that upon release, Respondents must return to Petitioners any personal property as outlined in their prayer for relief. Dkt. 1 at 33.

Respectfully submitted this 2nd day of March, 2026.

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**I certify that the foregoing contains 2,976 words,
in compliance with the Local Civil Rules.*

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