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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TRESOR TIDO-NGOUMTSOP,

Case No.: 26-cv-02913-LL-VET

Petitioner

v.

Judge: Hon. Linda Lopez

CHRISTOPHER LAROSE, et al.,

Respondents

**PETITIONER'S TRAVERSE
AND REQUEST FOR RELEASE
OR, IN THE ALTERNATIVE, A
CONSTITUTIONALLY
ADEQUATE BOND HEARING**

**I. RESPONDENTS FAIL TO ADDRESS THE CENTRAL CONSTITUTIONAL CLAIM
PRESENTED IN THE PETITION**

The Petition does not merely challenge whether Petitioner's detention falls under 8 U.S.C. § 1225(b) or § 1226(a). Rather, the Petition principally challenges Respondents' re-detention of Petitioner without constitutionally adequate pre-deprivation process after DHS had previously released him into the United States and permitted him to remain at liberty in the community for more than four years.

1 Respondents' Return largely repeats the government's broader statutory position
2 regarding detention under 8 U.S.C. § 1225(b)(2) and references the line of cases addressing
3 whether re-detained noncitizens are instead subject to detention under § 1226(a). But
4 Respondents do not meaningfully address the Petition's central constitutional claim: whether the
5 government may revoke a previously granted liberty interest through re-detention without notice,
6 an opportunity to be heard, or any individualized determination before liberty is taken away.

7 Petitioner entered the United States without inspection on or about March 6, 2022. On
8 April 7, 2022, DHS released Petitioner into the United States pursuant to an Order of Release on
9 Recognizance (Form I-220A), permitting him to reside at liberty in the community. Petitioner
10 thereafter remained at liberty in the United States for more than four years, complied with his
11 immigration-related obligations, and was granted Temporary Protected Status pursuant to INA §
12 244 on March 13, 2024.

13 On May 3, 2026, Petitioner was arrested by Immigration and Customs Enforcement
14 officers in the interior of the United States and subsequently transferred to the Otay Mesa
15 Detention Center, where he remains detained.

16 The Petition challenges Respondents' re-detention of Petitioner without constitutionally
17 adequate pre-deprivation process after years of liberty previously granted by DHS. The
18 remaining issue before this Court is whether the government may revoke that previously granted
19 liberty without constitutionally adequate procedural safeguards and, if not, the appropriate
20 remedy for that completed constitutional deprivation.

21 **II. RESPONDENTS' NON-OPPOSITION DOES NOT RESOLVE THE**
22 **CONSTITUTIONAL VIOLATION**

23 Although Respondents preserve their position that Petitioner is subject to detention under
24 8 U.S.C. § 1225(b)(2), they acknowledge that this Court and other courts in this District have
25 repeatedly rejected that position under materially indistinguishable facts. Respondents further
26 acknowledge that this Court's prior decisions control the result here if the Court adheres to its
27 prior rulings.

1 But Respondents' non-opposition to the Petition does not resolve the constitutional injury
2 presented in this case.

3 Petitioner was previously released by DHS and permitted to reside at liberty in the
4 community for more than four years. He was later re-detained without any pre-deprivation
5 hearing, without any individualized determination that he posed a danger or flight risk, and
6 without any constitutionally adequate process before his liberty was revoked.

7 The constitutional injury therefore occurred at the moment Petitioner was taken back into
8 custody without the procedural safeguards required before revoking a previously granted liberty
9 interest. The remaining issue before this Court is the appropriate remedy for that completed
10 deprivation of liberty.

11 **III. PETITIONER ACQUIRED A PROTECTED LIBERTY INTEREST AFTER**
12 **DHS RELEASED HIM**

13 This case involves an additional and important feature: Petitioner had previously been
14 released by DHS.

15 Shortly after entering the United States, Petitioner was released from government custody
16 and placed into removal proceedings under INA § 240. He then lived freely in the United States
17 for more than four years while complying with the immigration process.

18 That release reflects the government's determination that Petitioner did not pose a danger
19 to the community or a flight risk. Courts have repeatedly recognized that such release constitutes
20 an affirmative governmental judgment that detention is unnecessary and creates a protected
21 liberty interest in remaining free from custody absent appropriate procedural safeguards.

22 Freedom from physical detention lies at the core of the liberty protected by the Due
23 Process Clause. The Supreme Court has emphasized that "[f]reedom from imprisonment—from
24 government custody, detention, or other forms of physical restraint—lies at the heart of the
25 liberty" protected by the Constitution. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

26 Once the government releases an individual from immigration custody, that release
27 creates an implicit assurance that liberty will not later be revoked absent constitutionally
28

adequate procedures. The subsequent revocation of that liberty without notice, an opportunity to be heard, or any individualized determination implicates core protections of the Due Process Clause.

IV. RE-DETENTION WITHOUT PROCEDURAL SAFEGUARDS

VIOLATES DUE PROCESS

The Due Process Clause prohibits the government from depriving individuals of liberty without constitutionally adequate procedures.

Courts addressing immigration re-detention after prior release have repeatedly applied the balancing framework established in *Mathews v. Eldridge*, 424 U.S. 319 (1976), to evaluate whether the government may revoke a previously granted liberty interest without notice or an opportunity to be heard. Under that framework, courts consider: (1) the private interest affected by the government action; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value of additional safeguards; and (3) the government's interest, including the fiscal and administrative burdens associated with additional procedural requirements. Each of these factors weighs heavily in Petitioner's favor here.

A. Petitioner's liberty interest is substantial

Petitioner's interest in remaining free from detention is profound. Civil immigration detention represents a significant deprivation of liberty.

Petitioner lived freely in the community for more than four years after DHS released him. During that time, he complied with the immigration process and remained available to authorities.

The liberty interest at stake therefore is not hypothetical; it is the continuation of a freedom that the government itself previously granted.

B. The risk of erroneous deprivation is high without a hearing

The risk of erroneous deprivation is particularly high where detention occurs without any meaningful opportunity to challenge the government's decision before liberty is revoked.

1 Here, Petitioner was taken back into custody without any individualized determination
2 that he had become a flight risk or danger to the community.

3 Civil immigration detention is constitutionally permissible only when it serves a
4 legitimate governmental purpose, such as ensuring appearance at proceedings or protecting the
5 community.

6 Where detention occurs without notice, an opportunity to be heard, or any meaningful
7 opportunity to contest the government's decision before re-detention, the risk of erroneous
8 deprivation of liberty is substantial.

9 **C. The government's interest in detention without process is minimal**

10 The government's interest in detaining Petitioner without procedural safeguards is
11 minimal.

12 DHS previously determined that Petitioner could safely remain at liberty in the
13 community. There is no indication that Petitioner violated the conditions of his release or that
14 circumstances changed in any way that would justify revocation of that liberty.

15 Because the government previously determined that Petitioner did not pose a danger or
16 flight risk, its interest in re-detaining Petitioner without constitutionally adequate procedures is
17 comparatively weak.

18 **V. A POST-DETENTION BOND HEARING DOES NOT FULLY REMEDY THE**
19 **CONSTITUTIONAL VIOLATION**

20 Respondents suggest that the appropriate remedy is simply to provide Petitioner with a
21 bond hearing under 8 U.S.C. § 1226(a).

22 But courts have repeatedly recognized that a post-detention bond hearing cannot fully
23 cure the constitutional injury where a person has already been deprived of liberty without
24 constitutionally adequate pre-deprivation process.

25 The constitutional injury occurs at the moment an individual is taken back into custody
26 without the procedural safeguards required before revoking a previously granted liberty interest.

1 Even if a later bond hearing results in release, the individual has already suffered the very
2 deprivation of liberty that due process is intended to prevent. A post-deprivation hearing
3 therefore cannot fully remedy the completed constitutional violation.

4 For this reason, courts throughout this District have repeatedly concluded that where
5 DHS re-detains a previously released noncitizen without constitutionally adequate pre-
6 deprivation procedures, the appropriate remedy is immediate release rather than merely a later
7 bond hearing.

8 **VI. IMMEDIATE RELEASE IS THE APPROPRIATE REMEDY**

9 Under these circumstances, the appropriate remedy is immediate release.

10 Petitioner lived freely in the community for more than four years after DHS released him.
11 The government has not identified any changed circumstances that would justify revoking that
12 liberty without constitutionally adequate process.

13 Although Respondents preserve their statutory position, they acknowledge that this Court
14 and other courts in this District have repeatedly rejected detention under materially
15 indistinguishable circumstances and further acknowledge that this Court's prior decisions control
16 the result here if the Court adheres to those rulings.

17 Because Petitioner has already been deprived of liberty without the procedures required
18 by due process, habeas relief is warranted.

19 Courts throughout California have repeatedly concluded that where DHS re-detains a
20 previously released noncitizen without constitutionally adequate pre-deprivation safeguards,
21 immediate release — rather than merely a later bond hearing — is the appropriate remedy. This
22 Court has previously held that “[t]he proper remedy for the unlawful detention is Petitioner’s
23 immediate release subject only to the conditions of his preexisting release.” *Raymundo Chel v.*
24 *LaRose*, No. 26cv1114-LL-BLM, ECF No. 6 at 6 (S.D. Cal. Apr. 6, 2026). Courts in the Eastern
25 District have repeatedly granted materially identical relief, including orders prohibiting DHS
26 from imposing additional restrictions such as electronic monitoring absent a future
27 constitutionally adequate pre-deprivation hearing.

1 Immediate release should restore Petitioner to the status quo existing before detention,
2 including the same conditions that existed immediately prior to his re-detention. Respondents
3 should not impose any materially more restrictive conditions of supervision — including
4 electronic monitoring or similar restraints on liberty — unless such restrictions are determined to
5 be necessary at a future constitutionally adequate pre-deprivation hearing. Respondents should
6 further be ordered to return all of Petitioner's documents and personal belongings upon release.

7 **VII. ALTERNATIVELY, THE COURT SHOULD ORDER A PROMPT**
8 **BOND HEARING**

9 If the Court determines that immediate release is not warranted, Petitioner respectfully
10 requests an order directing Respondents to provide a prompt custody redetermination hearing
11 before an Immigration Judge. Such hearing should occur under INA §1226(a) and must be
12 constitutionally adequate.

13 Accordingly, the government should bear the burden of establishing, by clear and
14 convincing evidence, that continued detention is necessary to prevent flight or danger to the
15 community.

16 **VIII. CONCLUSION**

17 Respondents now acknowledge that Petitioner's detention is governed by 8 U.S.C. §
18 1226(a). But the Petition challenges the unlawful deprivation of liberty that has already occurred.

19 Petitioner was previously released by DHS and lived freely in the United States for more
20 than four years. The government has not identified any changed circumstances justifying
21 revocation of that liberty.

22 Under these circumstances, Petitioner respectfully requests that the Court grant the
23 Petition for Writ of Habeas Corpus and order Petitioner's immediate release, or, in the
24 alternative, order a prompt and constitutionally adequate bond hearing under §1226(a) at which
25 the government bears the burden of proving by clear and convincing evidence that continued
26 detention is necessary.

27 Respectfully submitted,

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