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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

Jorge Luis MARTINEZ HERNANDEZ,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary for the Department of Homeland Security; DAVID VENTURELLA, Acting Director, Immigration and Customs Enforcement; JULIO HERNANDEZ, Field Office Director, Immigration and Customs Enforcement Seattle Field Office; BRUCE SCOTT, Warden, Northwest ICE Processing Center,

Respondents.

Case No. 2:26-cv-02034

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

INTRODUCTION AND FACTUAL BACKGROUND

1. This case challenges the unlawful re-detention of Petitioner, Mr. Jorge Luis Martinez Hernandez. Petitioner is a thirty-four-year-old national of Mexico, now held in the Respondents' custody at Northwest ICE Processing Center in Tacoma, Washington.

2. Petitioner entered the United States without inspection on January 31, 2024, near Lukeville, Arizona. He entered with his partner and their two-month-old child. The family unit was encountered by U.S. Customs and Border Protection, and on February 1, 2024, each person was issued a Notice to Appear charging removability under 8 U.S.C. § 1182(a)(6)(A)(i).

3. Petitioner was then released from custody on his own recognize ("OREC") to attend future removal proceedings in the Portland Immigration Court. His release was subject to certain terms and conditions imposed by Immigration and Customs Enforcement ("ICE").

4. Counsel was hired and a timely application for asylum and withholding of removal was filed on July 29, 2024. *See* 8 U.S.C. § 1158(a)(2)(B). Petitioner found employment as an agricultural worker near Molalla, Oregon.

5. On December 25, 2025, Petitioner was arrested in Salem, Oregon on suspicion of Driving Under the Influence of Intoxicants ("DUII"). He was briefly held in police custody and soon after released to his partner. Again, he was released on his own recognizance, without a requirement to financially secure his appearance for future court proceedings. The DUII offense did not result in injuries to any person.

6. On February 24, 2026, Petitioner entered an agreement to DUII diversion and attended an initial evaluation on March 13, 2026. He later attended a victim's impact panel, completed bi-weekly drug and alcohol screenings, installed an InterLock device on his vehicle,

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and attended one group class. Petitioner was in full compliance with his Diversion Agreement at the time of his detention.

7. On June 2, 2026, Petitioner attended a scheduled check-in at the Portland ICE Field Office. He had previously attended routine check-ins with his family every six months, and on a 30-day basis for three months after their entry (however, all prior check-ins had always occurred in Eugene, Oregon). At the June 2 check-in, he was taken into federal custody.

8. Petitioner was not afforded the chance to furnish documents demonstrating his compliance with the requirements of the Diversion Agreement, or to offer any other documentation that could help ICE assess whether he is a true danger to the community, such that he his civil detention was necessary. He was told that his conditional guilty plea was "sufficient" to deport him from the United States.

9. Petitioner asserts that he is being detained under 8 U.S.C. § 1226, as this Court consistently finds the detention of noncitizens released on an Order of Release on Recognizance ("OREC") is governed by § 1226(a) and not by § 1225. *See, e.g., Castillo v., Wamsley*, No. 2:25-CV-02054-TMC, 2025 WL 3524932 (W.D. Wash. Nov. 26, 2025), at *7; *Diaz-Aguero v. Noem*, No. 2:26-CV-00637-TLF, 2026 WL 915053, at *2 (W.D. Wash. Apr. 3, 2025); *Lucena-Ojeda v. Noem*, 2026 WL 279353, at *1 (W.D. Wash. Feb. 3, 2025); *Singh v. Wamsley*, 2026 WL 248372, at *1 (W.D. Wash. Jan. 30, 2026). The key question to consider is whether a petitioner has been "treated by [the government] as subject to discretionary detention under section 1226, rather than mandatory detention under section 1225." *Del Valle Castillo v. Wamsley*, No. 2:25-CV-02054-TMC, 2025 WL 3524932, at *5 (W.D. Wash. Nov. 26, 2026) (quoting *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at *8 (W.D. Wash. Aug. 19, 2025)). Here, the record should demonstrate that Petitioner was released on an OREC, rather than humanitarian parole, in July of

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2023, and that the OREC was issued "[i]n accordance with" 8 U.S.C. § 1226. Dkt. 7, Ex. 3 at p. 2. This language would underscore the government's treatment of him as subject to Section 1226(a) rather than 1225(b). *See, e.g., Aguilar-Graterol v. Warden/Facility Administrator, Northwest Detention Center*, No. 2:26-CV-00997-LK, 2026 WL 1162705, at *4 (W.D. Wash. Apr. 29, 2026) (OREC specifying the same indicated government's treatment of petitioner as "subject to discretionary detention under 8 U.S.C. § 1226 from his arrival in the United States until [his subsequent re-detention]"); *Fiston v. Bondi*, No. 2:26-CV-00904-JHC, 2026 WL 926064, at *3 (W.D. Wash. Apr. 6, 2026) (noting that the presence of this language made petitioner's case "even stronger").

10. The Court has also held many times over that due process generally requires an individualized hearing prior to the government's decision to terminate someone's liberty. *See, e.g., E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1322-24 (W.D. Wash. Aug. 19, 2025); *Ramirez Tesara v. Wamsley*, 800 F. Supp. 3d 1130, 1136 (W.D. Wash. Sept. 12, 2025); *Gonzalez v. Bostock*, 808 F. Supp. 3d 1189, 1203 (W.D. Wash. Oct. 7, 2025); *Mohit Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089, at *7-8 (W.D. Wash. Sept. 17, 2025); Report & Recommendation, *Lopez Reyes v. Wamsley*, No. 2:25-cv-01868-JLR-ML, Dkt. 13, at *3-5 (W.D. Wash. Oct. 15, 2025); *Y.M.M. v. Wamsley*, No. 2:25-CV-02075-TMC, 2025 WL 3101782, at *4 (W.D. Wash. Nov. 6, 2025). Many other U.S. District Courts have recently made similar holdings. *See, e.g, Y-Z-L-H v. Bostock*, 792 F. Supp 3d 1123, 1138 (D. Or. 2025) ("Common sense suggests…that parole given only a on case-by-case basis is to be terminated only on [an individualized] basis.")

11. That Petitioner was arrested for DUII in December of 2025 does not alter the requirement that he should have been afforded pre-deprivation due process prior to his detention

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occurring more than six months later, in June of 2026. *See Singh v. Bondi et. al.*, No. C26-0598-SKV, 2026 WL 747104, at *3 (W.D. Wash. Mar. 17, 2026) ("With respect to public safety concerns triggered by Petitioner's [DUII] arrest, Respondents point to no exigency that required Petitioner's immediate re-detention, especially in view of the City of Yakima's decision to release him without charges seven weeks prior"); *Jimenez Carrion v Hermosillo et. al.*, No. 2:26-cv-00694-JNW, 2026 WL 850753, at *3 (W.D. Wash. Mar. 27, 2026) ("Nothing prevented ICE from scheduling a hearing before or promptly after her December check-in . . . the two-month gap between the October arrest and the December re-detention undermines any claims of urgency.")

12. Accordingly, the Court should grant a petition for a writ of habeas corpus and order Petitioner's immediate release. *E.A. T.-B.*, 795 F. Supp. 3d at 1324 (ordering immediate release because "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"); *Ramirez Tesara*, 800 F. Supp. 3d at 1135-36 (similar); *Mohit Kumar*, 2025 WL 2677089, at *12 (similar); *Gonzalez*, 808 F. Supp. 3d at 1203 (similar); *Y.M.M.*, 2025 WL 3101782, at *4 (similar).

PARTIES

13. Petitioner, Mr. Jorge Martinez Hernandez, is a native and citizen of Mexico, presently held at the Northwest ICE Processing Center in Tacoma, Washington.

14. Respondent, Mr. Markwayne Mullin, is sued in his official capacity as the Secretary of the U.S. Department of Homeland Security. Mr. Mullin is the cabinet-level secretary responsible for all immigration enforcement in the United States. He implements enforcement of the Immigration and Nationality Act ("INA") and oversees the operations of ICE.

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15. Respondent, Mr. David Venturella, is sued in his capacity as the Acting Director of ICE, which is tasked with executing all immigration law enforcement in the United States.

16. Respondent, Mr. Julio Hernandez, is sued in his official capacity as the Field Office Director of Seattle's ICE Field Office, which exercises control over King County, the site of Petitioner's arrest. He bears responsibility for the apprehension, detention, and removal of noncitizens within her Field Office's jurisdiction. Mr. Hernandez is the immediate legal custodian of the Petitioner, for purposes of a federal habeas petition.

17. Respondent, Mr. Bruce Scott, is sued in his official capacity as the Warden of the Northwest ICE Processing Center, the privately-operated immigration detention facility where Petitioner is being held in custody. He exercises direct custody over the Petitioner.

JURISDICTION

18. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"). 8 U.S.C. § 1101 et. seq.; *see also Reno v. Flores*, 507 U.S. 292, 306 (1993) (affording immigrants Due Process under the Fifth Amendment).

19. The Court holds subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

20. The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., and the All Writs Act, 28 U.S.C. § 1651.

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VENUE

21. Venue is appropriate under because the Petitioner is detained in this judicial district. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973).

22. Venue is also properly with this Court under 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and a substantial part of the events or omissions giving rise to this petition have occurred in the Western District of Washington.

23. For the same reasons, divisional venue is proper under Local Rule 3-2.

REQUIREMENTS OF 28 U.S.C. §§ 2243, 2241

24. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . as it [affords] a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it, and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

25. Petitioner is "in custody" for the purpose of 8 U.S.C. § 2241 because he is held at the Northwest ICE Processing Center. "[T]he Supreme Court has repeatedly held that the in-custody requirement is met where the Government restricts a petitioner's freedom of action or movement." *Doe v. Barr*, 479 F. Supp. 3d 20, 26 (S.D.N.Y. 2020), citing *Jones v. Cunningham*, 371 U.S. 236 (1963) and *Spencer v. Kemna*, 523 U.S. 1, 7 (1998); *see also, e.g., Devitri v. Cronen*, 290 F. Supp. 3d 86, 90 (D. Mass. 2017) (finding the same); *Alvarez v. Holder*, 454 F. App'x 769, 772-72 (11th Cir. 2011) (same).

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LEGAL FRAMEWORK

26. Due process requires that if the DHS seeks to re-arrest a person like Petitioner — i.e., someone who was previously released from its custody— the government must provide at least *some* sort of hearing before a neutral decisionmaker to determine whether re-detention is necessary. Typically, re-detention is only justifiable when a person can be considered a flight risk or danger to the community, and if such determination is made in accordance with due process giving the petitioner a meaningful chance to offer evidence and respond to the government's allegations of danger or flight risk.

27. All persons, regardless of their immigration status, are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected by the Due Process Clause." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). As this Court recently recognized, it is the "the most elemental of liberty interests." *E.A. T.-B.*, 795 F. Supp. 3d at 1321 (citation modified); *see also Ramirez Tesara*, 800 F. Supp. 3d at 1136 (stating that the petitioner had "an exceptionally strong interest in freedom from physical confinement"). Immigration detention is a form of civil confinement that "constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979).

28. It should be noted that the BIA now finds aliens initially detained under 8 U.S.C. §1225(b) to no longer have eligibility for release under 8 U.S.C. § 1226(a)(2). *See Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025); 8 C.F.R. § 1003.19(h)(2)(i)(B). However, the DHS still retains the authority to parole or release individuals such people from its custody, as it regularly does under 8 C.F.R. § 212.5(a)-(c), 8 U.S.C. § 1182(d)(5), and 8 C.F.R. § 1003.19(d). This is

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precisely what happened when Petitioner was released on his own recognizance in February of 2024.

29. Consistent with this principle, those released on parole or conditional release have an interest in their "continued liberty." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

30. To protect against arbitrary re-detention and ensure the right to liberty, due process requires "adequate procedural protections" testing whether the government's asserted justification for physical confinement "outweigh(s) the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (citation modified).

31. Many courts, including this one, have recognized that such principles apply with respect to the re-detention of noncitizens – especially those the DHS has arbitrarily begun returning into its custody, often after such person have been released for months, or as we see here, for years. *See, e.g., Makuey v. Scott et. al.*, No. 2:25-cv-02135-DGE-BAT, 2025 WL 3640900, at *10-11 (W.D. Wash Dec. 16, 2025) (revocation of Petitioner's Order of Supervision without a material change in circumstances found to be a violation of due process, despite prior criminal history, which was already known when prior Order of Supervision was issued).

32. In *E.A. T.-B. v. Wamsley*, *supra*, this Court applied the *Mathews v. Eldridge*, 424 U.S. 319 (1976) framework to hold that, even when the government asserts that mandatory detention statutorily applies, a person's re-detention cannot occur absent a hearing on their custody. The Court reached the same conclusion in *Ramirez Tesara*, *Kumar*, and *Gonzalez*. *See Ramirez Tesara*, 800 F. Supp. 3d at 1136; *Mohit Kumar*, 2025 WL 2677089, at *12; *Gonzalez*, 808 F. Supp. 3d at 1202-03.

33. In applying the *Mathews* factors, the *E.A. T.-B.* Court held that the petitioner had "undoubtedly [been] deprive[d] of an established interest in his liberty," which, as noted, "is the

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most elemental of liberty interests." *E.A. T.-B.*, 795 F. Supp. 3d at 1321. The Court explained that, even if detention was mandatory under the INA, the risk of an erroneous deprivation of liberty without a hearing was high, as a hearing serves to ensure that the purposes of detention—the prevention of danger and flight risk—are properly served. *Id.* at 1322-23.

34. Moreover, the *E.A. T.-B.* Court explained that "the Government's interest in re-detaining non-citizens previously released without a hearing is low: although it would have required the expenditure of finite resources (money and time) to provide Petitioner notice and hearing before arresting and re-detaining him, those costs are far outweighed by the risk of erroneous deprivation of the liberty interest at issue." *Id.* at 1324. As a result, this Court ordered the petitioner's immediate release. *Id.*

35. This Court applied a similar analysis in *Ramirez Tesara*. There, it reasoned that the petitioner had a "weighty" interest in his liberty and was entitled to the "full protections of the due process clause." *Ramirez Tesara, supra,* 800 F. Supp. 3d at 1136. When examining the value of additional safeguards, the Court noted that, despite the government's allegations of Intensive Supervision Appearance Program ("ISAP") violations, a belief that it has "a valid reason to detain Petitioner does not eliminate its obligation to effectuate the detention in a manner that comports with due process.'" *Id.* at 1137 (quoting *E.A. T.-B*, 795 F. Supp. 3d at 1322). In *Ramirez Tesara*, the Court concluded that any government interest in re-detention without a hearing was "minimal." *Id.* Once again, it ordered the petitioner's immediate release. *Id.* at 1139.

36. The *Mohit Kumar* and *Gonzalez* courts reached the same conclusion, holding that all *Mathews* factors weighed in favor of affording the petitioner a proper hearing on his or her re-detention. *See* 22025 WL 2677089, at *12; 808 F. Supp. 3d at 1203, ; *see also* Report & Recommendation, *Lopez Reyes*, No. 2:25-cv-01868-JLR-MLP (W.D. Wash. Oct. 15, 2025), Dkt.

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13, at *8 (same). The decisions in *E.A. T.-B.*, *Ramirez Tesara*, *Mohit Kumar*, and *Gonzalez* are consistent with many other district court decisions addressing similar situations. *See, e.g.*, *Valdez v. Joyce*, 803 F. Supp. 3d 213, 219 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation hearing); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1037 (N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia Barrera v. Andrews*, No. 1:25-CV-01006 JLT SAB, 29025 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar).

37. That 8 U.S.C. § 1225(b) should be the "beginning and end" of Petitioner's detention is a position this Court has "emphatically rejected." *P.T. v. Hermosillo*, No. 2:25-cv-02249-KKE, 2025 WL 3294988, at *3 n. 1 (W.D. Wash. Nov. 26, 2025) (holding that the lawfulness of one's detention does not focus on the Government's claimed authority to detain, but the process by which the alien was detained); *see also Make the Road N.Y. v. Noem*, 805 F. Supp. 3d 139, 162 (D.D.C. Aug. 29, 2025) ("The Court therefore rejects the Government's extraordinary request to treat as falling outside of the Constitution's due process guarantee the millions of immigrants who, although they may have entered unlawfully, have established lives here and made this country home."); *Rodriguez Vasquez v. Bostock*, 802 F. Supp. 3d 1297, 1314 (W.D. Wash. Sept. 30, 2025) (rejecting the recently adopted position that Section 1225(b) applies to any applicant for admission).

COUNT ONE

Violation of the Fifth Amendment Right to Procedural Due Process

38. Petitioner restates and realleges all paragraphs as if fully set forth here.

39. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without

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due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

40. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). While the government has discretion to detain individuals under 8 U.S.C. § 1226(a) and to revoke custodial decisions under 8 U.S.C. § 1226(b), this discretion is not "unlimited" and must comport with constitutional due process. *Zadvydas* at 698.

41. Although the initial decision to detain or release a person may be at government discretion, "the government's decision to release an individual from custody creates 'an implicit promise,' upon which that individual may rely, that their liberty 'will be revoked only if [they] fail to live up to the ... conditions [of release].'" *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). Stated otherwise, while ICE has the discretion to detain or release a noncitizen pending removal proceedings, after that person is released they have a protected liberty interest in remaining *out* of custody. *Id.* (citing *Romero v. Kaiser*, No. 22-cv-20508-TSH, 2022 WL 1443250 (N.D. Cal. May 6, 2022)) (emphasis added).

42. Here, Petitioner demonstrated a willingness to avail himself to ICE whenever required. He hired counsel and filed both written pleadings and a timely application for relief in his removal proceedings. After being arrested for DUII, he complied with the criminal proceedings and was released back into the community within two hours, without the requirement to pay a bond (i.e., to Marion County, he was certainly not found to be a danger to the community requiring confinement). It was not until six months *after* his arrest that ICE chose

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to detain him without prior notice; at this point, Respondents can hardly claim that his detention was such an urgent matter that no pre-deprivation hearing should be afforded.

43. Due Process generally "requires some kind of a hearing before the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). For cases involving re-detention, the guiding authority on this process stems from *Mathews*, *supra.* Per *Mathews*, a reviewing court must consider "(1) the private interest that will be affected by the official action, (2) the risk of an erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that an additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 325.

44. Both this Court and the Central and Eastern Districts of California have found that similarly situated litigants were still entitled to constitutional due process even when arrested or convicted on a criminal matter. *See Singh v. Bondi et. al.*, No. C26-0598-SKV, 2026 WL 747104, at * 3 (W.D. Wash. Mar. 17, 2026); *Jimenez Carrion v Hermosillo et. al.*, No. 2:26-cv-00694-JNW, 2026 WL 850753, at *3 (W.D. Wash. Mar. 27, 2026); *Monsalve v. Chestnut*, No. 1:26-cv-0626 DAD CKD, 2026 WL 242066, at *2 (E.D. Cal. Jan. 19, 2026) ("[R]espondents provide no legal authority in support of the proposition that petitioner's DUI arrest justifies re-detaining him without prior notice or a pre-detention hearing."); *Trujillo Adame v. Warden, California City Immigration Processing Center*, No. 1:26-cv-03521 DAD SCR, 2026 WL 1493991 (E.D. Cal May 28, 2026) ("[H]ere, Respondent has not identified any particularized flight risk or other reason to justify the lack of pre-deprivation notice and hearing other than the assertion—which the Court rejects for the reasons identified above—that Petitioner is not entitled to such procedural safeguards as an applicant for admission under 8 U.S.C. §

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1225(b)(1)"; *Meneses v. Santacruz*, 811 F. Supp. 3d 1158, 1164 (C.D. Cal. Dec. 2, 2025) (re-detention of noncitizen with conviction for attempted murder, after roughly three years of release on an Order of Supervision, held to violate due process with an "unacceptably high risk that the government would erroneously deprive Petitioner of his liberty interest absent a pre-detention hearing.")

45. Similar to the complainant in *Singh v. Bondi et. al.*, Petitioner was granted release by the Marion County Sheriff's Office less than two hours after his DUII arrest, indicating that his civil detention lacked any urgency or public safety exigency when ICE chose to detain him nearly six months later.

Petitioner's Private Interest

46. "[T]he Supreme Court has repeatedly recognized that individuals who have been released from custody, even where such release is conditional, have an interest in their continued liberty." *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1093 (E.D. Cal. 2025) (collecting cases). Consequently, when Petitioner was released on his own recognizance in July of 2023, he "took with him a liberty interest which is entitled to the full protections of the [D]ue [P]rocess [C]lause." *Ramirez Tesara v. Wamsley*, 800 F. Supp. 3d 1130, 1136 (W.D. Wash. Sept. 12, 2025).

47. Petitioner's liberty interest was reaffirmed for two-and-a-half years. That Respondents allowed him to remain in the community for this long, and for months after his arrest, only strengthens the interest. *See DeJesus v. Bostock*, No. 25-CV- 01427-JHC-TLF, 2025 WL 3268002, at *6 (W.D. Wash. Nov. 24, 2025). He has now been undeniably deprived of a liberty interest; he was arrested, taken into custody, and detained without allowing him any

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notice or chance to have an individualized review of the facts and circumstances justifying his detention. The first *Mathews* factor clearly favors Petitioner.

Risk of Erroneous Deprivation

48. The second *Mathews* factor examines "the risk of an erroneous deprivation of [the petitioner's private] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards[.]" *Mathews,* 424 U.S. at 335.

49. The erroneous deprivation of Petitioner's liberty interest was significant. It was made in violation of the agency's own regulations, was not based on an individualized determination of his being a flight risk or danger to the community, and he has now been jailed. Petitioner has lost income and been separated from his family; further, it is "well established that the deprivation of constitution rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *Hernandez v. Sessions*, 842 F.3d 976, 995 (9th Cir. 2017) (recognizing that immigration detention can impose irreparable harms upon a noncitizen, including economic hardships and negative effects on other aspects of human welfare).

50. At no point has the government even examined the probable value of substitute safeguards to ensure Petitioner's attendance in future removal proceedings. Its actions have not only created a risk, but have materialized into an actual and wrongful deprivation of his liberty – affecting not only Petitioner, but also his partner and child.

The Government's Interest in Detention

51. The third *Mathews* factor contemplates "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews,* 424 U.S. at 335.

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52. The government's interest in re-detaining an alien – and to do so without the benefit of a pre-detention hearing or process – is low. *See E.A. T.-B.*, 795 F. Supp. 3d at 1324 ("the Government's interest in re-detaining non-citizens previously released without a hearing is low") (citing *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019)); *see also Ortiz Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020) ("Given the low risk that [petitioner] would cause harm to others or flee . . . government expenditure in this case would not greatly serve the interests of the general public).

53. To the extent that the government does have an interest in re-detaining Petitioner, it has in a sense waived that interest by not detaining him at any time prior to his June 2, 2026 ICE check-in. Respondents have always had Petitioner's home address and could have established contact before the scheduled check-in if they felt he was a risk to the public. The evidence indicates he is not seen as a serious danger by ICE.

54. While a pre-detention process would present *some* administrative burden on the government, given the high risk of an erroneous deprivation and fundamental liberty interests at stake, offering no process is constitutionally deficient. *E.A. T.-B.* at 1324; *see also Makuey v. Scott et. al.*, 2025 WL 3640900, at *12 (noting that the process referred to in 8 C.F.R. § 241.13(i)(3) does not guard against the improper deprivations of liberty, in instances where the government lacks the authority to revoke release in the first place).

55. As this Court held in *Singh, supra*, "To the extent that affording pre-deprivation process through which Petitioner could have addressed his arrest and any public safety implications would have imposed additional burden on the Government, that burden is far outweighed by the important liberty interest at stake and risk of error. The Court finds the Government's interest in re-

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detaining Petitioner with no pre-deprivation process was low." *Singh v. Bondi et. al.*, No. C26-0598-SKV, 2026 WL 747104, at * 3 (W.D. Wash. March 17, 2026).

56. All three *Mathews* factors thus favor the Petitioner. The revocation of his to live freely in the United States, after more than two years of building a life in this country, was done in an arbitrary and incoherent manner and not based on a rational determination of whether he is a danger to the community or a flight risk. Such actions constitute a fundamental violation of due process.

57. Petitioner further argues that ordering a bond hearing is insufficient and cannot undo the constitutional violation which occurred and continues to occur. *See e.g., supra, Jimenez Carrion*, 2026 WL 850753, at * 3 (W.D. Wash. Mar. 27, 2026); *Kumar v. Bondi*, No 2:25-cv-02285, 2025 WL 2677089, at *3 (W.D. Wash. Sept. 16, 2025). He respectfully argues that immediate release is the only sufficient remedy.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to:

1) Assume jurisdiction over this matter;
2) Issue an Order to Show Cause ordering Respondents to demonstrate why this Petition should not be granted within three days;
3) Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;
4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;

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5) Issue an Order prohibiting the Respondents from transferring Petitioner outside the district without 48 hours' advance notice to the undersigned and the Court;

6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

7) Grant any further relief this Court deems just and proper.

Respectfully submitted,

Dated: June 10, 2026

s/ Benjamin Cornell
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Dated: June 10, 2026

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*Motion for Pro Hac Vice Forthcoming

VERIFICATION OF PETITIONER

On behalf of Jorge Luis Martinez Hernandez, the party in custody, I verify that the facts contained in the Petition for Writ of Habeas Corpus, upon information and belief and having reviewed the relevant records and pleadings. Mr. Martinez Hernandez has also communicated all the above facts to counsel, with the source of information being his own recollection of events in the United States. He has not verified this filing himself as he is currently held in ICE custody. The preceding Petition for Writ of Habeas Corpus is compliant with both 28 U.S.C. § 2242 and LCR 100(e).

Dated: June 10, 2026

s/ Benjamin Cornell
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CERTIFICATE OF SERVICE

The undersigned hereby certifies I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participant(s):

US Attorneys
Email: usawaw.habeas@usdoj.gov

Dated: June 10, 2026

s/ Benjamin Cornell
Benjamin Cornell, WSB #49533

Dated: June 10, 2026

s/ Geoffrey M Doolittle
Geoffrey M Doolittle, OSB #113700

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