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District Judge Ricardo S. Martinez

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

VICTORIANO CARRILLO PABLO,

Petitioner,

v.

JULIO HERNANDEZ, *et. Al,*

Respondents.

Case No. 2:26-cv-02601-RSM

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR A WRIT OF HABEAS CORPUS

Introduction

The United States Constitution requires due process before people are deprived of liberty. Habeas actions require the government to tell the court the true reasons they de-

tained a person. Here, due process protections were absent. Furthermore, what the respondents told the court was wholly contradictory to the agency's own documents at the time of detention and re-detention. Should a young person be locked up so casually?

Factual Background

Petitioner Victoriano Carrillo Pablo is a Guatemalan asylum seeker and special immigrant juvenile. Ex. B (Form I-797C, Receipt Notice for I-589); Ex. D (Form I-797, Approval Notice for I-360). He entered the United States without inspection on or about May 31, 2021, as an unaccompanied alien child (UAC). Mr. Carrillo Pablo was detained by Customs and Border Protection pursuant to INA § 236 and placed in the custody of the Office of Refugee Resettlement (ORR). *See* below, section A. ORR subsequently released Mr. Carrillo Pablo to the custody of an adult sponsor. Ex A (ORR Verification of Release).

Mr. Carrillo Pablo filed a Form I-589, Application for Asylum and for Withholding of Removal on September 11, 2023. Ex. B (Form I-797C, Receipt Notice for I-589). This application is still pending with United States Citizenship and Immigration Services (USCIS). While residing in the United States, Mr. Carrillo Pablo obtained findings from the Circuit Court of the State of Oregon supporting eligibility for Special Immigrant Juvenile (SIJ) status. Ex. C (Limited Judgment Appointing Guardian for a Vulnerable Youth). He filed a Form I-360 with USCIS, which was approved on September 16, 2024, with a grant of deferred action. Ex. D (Form I-797, Approval Notice for I-360).

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In March 2026, Mr. Carrillo Pablo was accused by a former intimate partner of committing sexual crimes. He is scheduled to appear for a Pre-Trial Conference on September 21, 2026, in the Lane County Circuit Court. Defense Attorney Kolego Declaration. Mr. Carrillo Pablo subsequently received notice from USCIS that his deferred action was terminated on June 22, 2026. Ex. E (Termination Notice of deferred action). Mr. Carrillo Pablo has maintained his innocence and stated his desire to confront these charges in the appropriate forum, the Circuit Court of the State of Oregon. Petitioner's Declaration. He will be asking for a trial date at the Status Check hearing. Defense Attorney Kolego Declaration.

On the morning of July 20, 2026, Immigration and Customs Enforcement officers arrested Mr. Carrillo Pablo in Cottage Grove, Oregon, transporting him immediately to Northwest ICE Processing Center (NWIPC). Dkt. 17-12 at 3 ¶1, (Respondents' Ex. L Record of Deportable/Inadmissible Alien): "At approximate 0738 hours … CARRILLO was transported to the Northwest Immigration Processing Center."; *See also* Dkt. 6 at 2 ¶ 1 (Respondents' Notice of Petitioner Status Pursuant to Court Order): "Petitioner crossed the border in federal custody from Oregon into Washington State at 9:47a.m."; Mr. Carrillo Pablo is currently being held at NWIPC. Petitioner's Declaration.

Mr. Carrillo Pablo contends that his detention is unlawful. He asserts that his original detention near the border pursuant to INA § 236 (8 U.S.C. § 1226), UAC designation, release from ORR custody, and current arrest under INA § 236 clearly support that detention is not mandatory. Therefore, Mr. Carrillo Pablo concludes that his continued detention is unlawful, and the appropriate remedy is his release from custody.

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ARGUMENT

A. Respondents' return states that the detention authority was 8 U.S.C. § 1225 (INA § 235), yet all of ICE's evidence states different statutes: 8 U.S.C. 1226 and the TVPRA.

Habeas statute 28 U.S.C. § 2243 requires Respondents to make a return "**certifying** the **true cause** of the detention." (Emphasis added). On August 6, 2026, Respondents filed papers captioned "Federal Respondents' Return Memorandum". Dkt. 15. In this filing, Respondents repeatedly assert that Petitioner was detained under 8 U.S.C. § 1225. Courts in Washington and around the nation have rejected Respondents' argument that this statute gives them carte blanche to detain noncitizens, particularly those who entered as unaccompanied minors ("UAC"). *See Garcia Gabriel v. Hermosillo*, No. 2:25-cv-02594, 2026 WL 194233, at *3 (W.D. Wash. Jan. 26, 2026) (finding that a person who initially entered the United States as an UAC cannot be subject to the detention procedures in Section 1225); *See also Mena Torres v. Wamsley,* 807 F. Supp. 3d 1266, 1272–73 (W.D. Wash. 2025); *Quinonez Torres v. Hermosillo*, No. 2:26-cv-00076-TLF, 2026 WL 547591, at *6 (W.D. Wash. Feb. 23, 2026); *Cornejo Rivera v. Olson*, No. 3:25-cv-1090-CCB-SJF, 2026 WL 81753, at *2 (N.D. Ind. Jan. 12, 2026) (collecting similar cases from several districts).

Respondents themselves acknowledge the conclusion that mandatory detention in this context has been held to be improper: "Federal Respondents acknowledge that courts in this District have reached a different conclusion in some cases in which petitioners initially entered the United States as UACs and were subsequently released to a sponsor by ORR." Return Dkt. 15 at 6. Despite this concession, Respondents repeatedly assert that he is detained under the 8 U.S.C. § 1225 framework. Return Dkt. 15 at 2, 5, 6.

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Yet the agency's own documents show that they detained Mr. Carrillo Pablo under INA § 236 (8 U.S.C. § 1226) (emphasis added):

- Petitioner "**is within the country** in violation of the immigration laws and is therefore liable to being taken into custody as authorized by **section 236**" of the INA. Dkt. 17-2 at 2 (Respondents' Ex. B, June 5, 2021, Warrant for Arrest of Alien),
- "Pursuant to the authority contained in **section 236** of the Immigration and Nationality Act. . . you will be. . . Detained". Dkt. 17-3 at 2 (Respondents' Ex. C, June 5, 2021, Notice of Custody Determination),
- The June 23, 2026, Warrant for Arrest of Alien was directed to any "immigration officer authorized pursuant to **sections 236** and 287 of the [INA]. . ." Dkt. 17-13 at 2 (Respondents' Ex. M, June 23, 2026, Warrant for Arrest of Alien),
- "Pursuant to the authority contained in **section 236** of the Immigration and Nationality Act. . . you will be. . . Detained". Dkt. 17-14 at 2 (Respondent's Ex. O, July 22, 2026, Notice of Custody Determination),
- In the Notice to Appear (NTA), issued in 2021, Respondents alleged that Petitioner is an "alien **present** in the United States who has not been admitted or paroled" instead of being an "arriving alien." Dkt. 17-5 at 2 (Respondents' Ex. E, June 5, 2021, Notice to Appear),
- In the re-issued Notice to Appear (NTA), issued following Petitioner's July 20, 2026, detention, Respondents indicate that Petitioner is an "alien **present** in the United States who has not been admitted or paroled." Dkt. 17-15 at 2 (Respondents' Ex. P, Notice to Appear),
- Additionally, in the Verification of Release from ORR, Respondents note that Petitioner was released "pursuant to section 462 of the Homeland Security Act of 2002 and section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act." Dkt. 17-4 at 2 (Respondents' Ex. D, ORR Verification of Release).

Although the "basic rule here is clear: An agency must defend its actions based on the reasons it gave when it acted," Petitioner can find no evidence in the record that Respondents detained him under 8 U.S.C. § 1225 as they allege in their Return. *See DHS. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 24, (2020). The "*post hoc* rationalizations of the

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agency ... cannot serve as a sufficient predicate for agency action." *Id.* at 23; s*ee also Citizens to Preserve Overton Park, Inc., v. Volpe*, 401 U.S. 402, 419 (1971) (rejecting "litigation affidavits" from agency officials as "merely 'post hoc' rationalizations"), abrogated on other grounds by *Califano v. Sanders*, 430 U.S. 99 (1977).

As seen above regarding the ORR Verification of Release, Petitioner was additionally processed under a framework that is entirely separate from the one Respondents now invoke. The Trafficking Victims Protection Reauthorization Act ("TVPRA"), codified in relevant part at 8 U.S.C. § 1232, required ORR to place children in the "least restrictive setting that is in the best interest of the child," after assessing danger to self, danger to others, and risk of flight. 8 U.S.C. § 1232(c)(2). They did that; this is precisely the individualized determination Respondents' Exhibit D (ORR Verification of Release) confirms ORR made before releasing him to his family member. Dkt. 17-4. Placing a child in the least restrictive setting—here, Victoriano's uncle's home—is the opposite of a detention facility as Respondents' Return endorses.

Every contemporaneous document Respondents themselves produced indicates the framework for Petitioner's detention is Section 1226 and the TVPRA, not Section 1225. Respondents' Return fails the statutory requirement of 28 U.S.C. § 2243 to certify the "true cause of the detention." Instead, Respondents offer a litigating position adopted after the fact, contradicted by their own record, which violates Petitioner's rights.

B. Respondents violated Mr. Carrillo Pablo's fifth amendment due process rights.

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The Due Process Clause affords Petitioner constitutional protections that must be considered. *See Zadvydas v. Davis*, 533 U.S. 678, 698 (2001); *see also Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("[T]he government's discretion to incarcerate non-citizens is always constrained by the requirements of due process."). Petitioner's claims are rooted in the due process requirement that, once released, he cannot be re-detained without being afforded notice and a hearing before a neutral adjudicator at which the government must demonstrate by clear and convincing evidence that they now pose a risk of flight or danger such that detention is required. *See e.g. Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1195–96 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (to be lawful, re-arrest must be based on evidence that the circumstances relevant to the original release decision have changed, that is, that the person now poses a danger or risk of flight); *see also Sergio S.M. v. Noem*, No. 1:25-CV-01973-KES-HBK (HC), 2025 WL 3768206 (E.D. Cal. Dec. 31, 2025) (enjoining re-detention absent pre-deprivation process); *see also F.S.S.M. v. Wofford*, No. 1:25-CV-01518-TLN-AC, 2025 WL 3526671, at *5 (E.D. Cal. Dec. 9, 2025) (Petitioner's release pursuant to the TVPRA created a reasonable expectation that he would be entitled to retain his liberty under the TVPRA's protection; petitioner, now over 18, has spent five years relying on that representation).

This Court and courts around the country have repeatedly and resoundingly held that the Fifth Amendment's guarantee of due process requires exactly this protection. *See, e.g., E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316 (W.D. Wash. 2025) (granting habeas petition, ordering immediate release due to lack of pre-deprivation hearing, and requiring adequate notice and an immigration court hearing prior to any future re-detention); *see*

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also Gonzalez v. Bostock, 808 F. Supp. 3d 1189 (W.D. Wash. 2025) (same); *see also Ramirez Tesara v. Wamsley*, 800 F. Supp. 3d 1130 (W.D. Wash. 2025) (granting temporary protective order and ordering immediate release due to lack of pre-deprivation hearing).

C. The courts analyzing this question have employed the *Mathews* three-factor test.

The courts analyzing this question have employed the three-factor test established in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), which includes 1) the private interest that will be affected by the official action, 2) the risk of erroneous deprivation of [a liberty interest], and 3) the government's interest. *See Boumediene v. Bush*, 553 U.S. 723, 781 (2008) (substituting "a liberty interest" for a "private interest" in the second *Mathews* factor). Petitioner addresses each *Mathews* factor below.

1. Petitioner has a weighty private interest

Respondents themselves "recognize the 'weighty liberty interests'" of Mr. Carrillo Pablo. Respondents' Return, Dkt. 15 at 8.

Petitioners have an exceptionally strong interest in freedom from physical confinement and in a hearing prior to any revocation of their liberty. Indeed, their "interest in not being detained is 'the most elemental of liberty interests[.]'" *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d at 1321 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)); *see also Ramirez Tesara v. Wamsley*, 800 F. Supp. 3d at 1136 (stating that the petitioner "has an exceptionally strong interest in freedom from physical confinement"); *see also Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089 at *3 (W.D. Wash. Sept. 17, 2025) ("Petitioner has a very strong interest in not being detained.").

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Freedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects." *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Thus, "[d]etention, including that of a non-citizen, violates due process if there are not 'adequate procedural protections' or 'special justification[s]' sufficient to outweigh one's 'constitutionally protected interest in avoiding physical restraint.'" *See Perera v. Jennings*, 598 F. Supp. 3d 736, 742 (N.D. Cal. 2022) (second alteration in original) (quoting *Zadvydas*, 533 U.S. at 690). Similarly, the Ninth Circuit has held that "[i]n the context of immigration detention, it is well-settled that 'due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *See Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)). The Supreme Court has long underscored this point. *See e.g., Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." (citation omitted)).

Even in the criminal parole and supervised release context, courts have held that parolees cannot be re-arrested without a due process hearing affording them the opportunity to contest the legality of their re-incarceration. *See, e.g., Hurd v. D.C., Gov't*, 864 F.3d 671, 684 (D.C. Cir. 2017). Critically, in recent months and years, courts—including this one—have repeatedly applied these principles to hold that noncitizens have a strong liberty interest in cases involving re-detention. As Judge Evanson explained in *E.A. T.-B.*, a person re-detained after a prior release from ICE custody is "undoubtedly deprive[d] . . . of an established interest in his liberty." *E.A. T.-B. v. Wamsley*, 795 F. Supp. at 1321;

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see Pernia v. Noem, No. C26-581-RSM, 2026 U.S. Dist. LEXIS 55504, at *6 (W.D. Wash. Mar. 17, 2026).

Respondents ask the Court to discount Petitioner's liberty interest based on the pending criminal charges. *See* Return, Dkt. 15 at 8-9. Yet in a legal system where "[a]bsent conviction of a crime, one is presumed innocent," it is too far a stretch to presume that charges, without more, demands the loss of liberty. *See Nelson v. Colorado*, 581 U.S. 128, 130 (2017).

This dynamic crystalizes and strengthens Mr. Carrillo Pablo's liberty interests. His continued detention is a Catch-22, degrading his capacity to confront the very charges Respondents rely upon to keep him confined. Even in cases where Petitioners face pending criminal matters, this Court has acknowledged that the first *Mathews* factor weighs in favor of Petitioner where, at the time of re-detention, Petitioner was not provided an opportunity to respond to the allegations that he violated his conditions of release. *See Bealter Reyes v. Hermosillo*, No. 2:26-cv-00270-TLF at 2, 8-9 (W.D. Wash. Feb. 24, 2026). Under these circumstances, the first *Mathews* factor weighs in Petitioner's favor.

2. The risk of erroneous deprivation is high absent additional safeguards.

The second *Mathews* factor considers whether a particular process results in a risk of erroneous deprivation of a protected interest, and the probable value of additional safeguards. *See Mathews*, 424 U.S. at 335. "The risk of erroneous deprivation of [Petitioners'] liberty interest in the absence of a pre-detention hearing is high." *E.A. T.-B. v.*

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Wamsley, 795 F. Supp. 3d at 1322. "That the Government may believe 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.*

Only a hearing before a neutral decisionmaker—where ICE must prove that re-detention is justified and that Petitioner poses a flight risk or danger—can ensure that this "reasonable relation" to a valid government purpose exists. But to date, only the "government enforcement agent" has made any decision about the propriety of detention. *See Coolidge v. New Hampshire*, 403 U.S. 443, 450 (1971). This is a far cry from the hearing before a neutral decisionmaker that due process requires. *See e.g., Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972) ("Whatever else neutrality and detachment might entail, it is clear that they require severance and disengagement from activities of law enforcement."); *see also Gerstein v. Pugh*, 420 U.S. 103, 112 (1975) (similar); *contra* Dkt. 17-12 (July 22, 2026, Record of Deportable/Inadmissible Alien), lacking a neutral decision maker.

Petitioner did not receive notice of the basis for his re-detention, much less an opportunity to respond to allegations purporting to justify their re-detention or a hearing before a neutral decisionmaker. During the arrest and processing, he asked, and was denied, several times to contact his attorneys. Petitioner's Declaration ¶¶ 9, 10.

This case illustrates why these procedural safeguards matter. The respondents' Return itself is based on error. The Return repeatedly states Section 1225 as the detention authority, yet their exhibits repeatedly state Section 1226. *See* above. Furthermore, the Return confirms that Petitioner's re-detention was not based on an individualized determination. They assert that "[t]he agency had access to Petitioner's criminal history and

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made a custody determination based on Petitioner's recent arrest." Dkt. 15 at 9. But the arrest and custody narrative in Respondents' own Exhibit L contains no discussion whatsoever of flight risk or dangerousness and fails to weigh Petitioner's five years of presence in the United States, his pending forms of relief, or any individualized factor at all. These errors suggest Respondents themselves have no clear basis for re-detention aside from their erroneous post-hoc rationalizations.

As this Court explained in *Ramirez Tesara*, "[o]nce established, Petitioner's interest in liberty is a constitutional right which may only be revoked through methods that comport with due process, such as a hearing in front of a neutral party to determine whether Petitioner's redetainment is warranted." 800 F. Supp. 3d 1130, 1136 (W.D. Wash. 2025) (citing *Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023)). Apart from their core interest in being free from imprisonment, Petitioners' ties to this country have deepened over the five years he has lived here. "These facts show that a [pre-deprivation] hearing provide[s] additional safeguards under these circumstances." *Id.*; *see also Garcia*, 2025 WL 2420068, at *10 ("[P]arole allowed [Petitioner] to build a life outside detention.").

Respondents detained Petitioner without notice and without a hearing before a neutral adjudicator where Respondents would have to prove that Petitioner's re-detention is justified. By contrast, the additional safeguards that due process would require Respondents to provide would ensure that their detention remains tethered to some lawful purpose, such as whether they are a flight risk or danger to the community. *See, e.g., Kumar*, 2025 WL 2677089, at *3 (explaining that this factor favored the petitioner where it was "undisputed that Petitioner's arrest was not preceded by a finding that Petitioner was

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a flight risk nor a danger to the community"). The Supreme Court believes that dangerousness to the community is the "secondary statutory purpose." *Zadvydas v. Davis*, 533 U.S. at 697. Respondents' assert that "the risk of erroneous deprivation would have been minimal, while the burdens of providing him with advance notice and process would have been substantial as this could undeniably motivate Petitioner's flight." Dkt. 15 at 9. This assertion is a speculation and is contradicted by everything else in this record. Petitioner has kept his address current with USCIS throughout the pendency of his I-589 and I-360 applications, has appeared at every immigration hearing scheduled in his case. Additionally, Petitioner has asserted a direct interest in working with his defense attorney and appearing in criminal proceedings to prove his innocence. Respondents identify nothing in this specific record that outweighs Mr. Carrillo Pablo's history of compliance, his ties to the community, and his heightened incentives to appear. Accordingly, this factor also weighs in favor of Petitioner.

3. The government's interest is minimal

The third and final *Mathews* factor considers the government's interest in re-detaining Petitioner without a hearing. 424 U.S. at 335. The Government's interest in civil detention without a detention hearing is low. *See E.A. T.*-B, 795 F. Supp. 3d at 1323-24 (citing *Ortega v. Bonnar*,415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) ("If the government wishes to re-arrest Ortega at any point, it has the power to take steps toward doing so; but its interest in doing so without a hearing is low.")). Respondents invoke the government's interests in efficient enforcement, community protection, and ensuring appearance at future proceedings, characterizing them as "interests of the highest order." Dkt. 15 at 9-10

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(quoting *Rodriguez Dias v. Garland*, 53. F.4th 1189, 1208 (9th Cir. 2022). While these interests are legitimate in the abstract, the third *Mathews* factor inquires as to whether that interest justifies re-detention *absent process*.

The Respondent's rationale for re-detention absent process in this case rests on unproven allegations. The Supreme Court has held that civil detention justified by protecting the community "has been upheld only when limited to specially dangerous individuals and subject to strong procedural protections." *Zadvydas v. Davis*, 533 U.S. 678, 691 (2001). In this context, the State of Oregon released Mr. Carrillo Pablo from custody because he is not a danger to the community, nor is he a flight risk. Defense Attorney Kolego Declaration. Yet Respondents rely on these pending allegations to conclude that Petitioner should not be afforded the due process required.

Because the Government has failed to demonstrate a substantial interest in providing little or no due process protections, the third *Mathews* factor weighs in Petitioner's favor.

D. The appropriate remedy in this context is release

Where a habeas petitioner establishes that their detention rests on an unlawful basis, "the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Federal courts retain a "fair amount of flexibility in habeas proceedings to fashion a remedy that addresses the constitutional defect at issue in the case, rather than reflexively defaulting to a narrow form of relief. *Burnett v. Lampert*, 432 F.3d 996, 999 (9th Cir. 2005). A "post-deprivation bond hearing is an inadequate procedural safeguard because it would occur only after detention and thus fails to address an erroneous deprivation of liberty." *Pernia v. Noem*, No. C26-581-RSM, 2026

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U.S. Dist. LEXIS 55504, at *7 (W.D. Wash. Mar. 17, 2026) (quoting *Chicoze-Ezechi v. Noem*, No. 2:26-cv-00145-BAT, 2026 U.S. Dist. LEXIS 21276, 2026 WL 265733, at *2 (W.D. Wash. Feb. 2, 2026); *see also E.A. T.B*, 795 F.Supp.3d at 1323-24. Therefore, the appropriate remedy in this case is immediate release.

CONCLUSION

Respondents' own custody documents all cite Section 236 authority for Petitioner's detention, directly contradicting the position proffered repeatedly in their Return. No individualized flight risk or danger determination was ever made before Petitioner's re-detention. Pending criminal allegations cannot justify Respondents' failure to provide any process at all prior to re-detaining Petitioner, particularly when considering the positive equities in this case. Respondents' disregard for process constitutes a clear violation of Petitioner's due process rights, as judges in this district have recognized, and as courts around the country have held. Due process and Respondents' own record support Petitioner's immediate release.

Respectfully submitted this August 11, 2026.

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