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The Honorable James L Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RIVAS, DARVI JESUS Petitioner, v. BRUCE SCOTT, Warden of the Northwest ICE Processing Center; MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security Respondents.	CIVIL ACTION NO. 2:26-cv-02606-JLR **TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

I. INTRODUCTION

This Court ordered Respondents to show cause why the Petition for Writ of Habeas Corpus should not be granted (Dkt. #2). They have failed to do so. Respondents do not dispute Petitioner's years of compliance while released by Respondents on an OREC, the dismissal of his prior removal proceedings following the grant of TPS, the absence of any criminal conduct or supervision violations, or the fifteen-month delay between the expiration of Petitioner's TPS and his re-detention. Nor do they identify any individualized reason why detention suddenly became necessary in July 2026. Instead, Respondents devote much of their Return to defending a position Petitioner has never advanced while attempting to justify Petitioner's detention based

solely upon the commencement of new removal proceedings. The Constitution requires more. As discussed below, Respondents have failed to demonstrate that Petitioner's continued detention is lawful. Accordingly, the Petition should be granted and Petitioner should be immediately released.

II. RESPONDENTS MISCHARACTERIZE PETITIONER'S CLAIM

Respondents' Return repeatedly argues that Petitioner claims the OREC remained legally effective after the IJ dismissed Petitioner's prior removal proceedings. That has never been Petitioner's argument. Petitioner has consistently acknowledged that the IJ's September 16, 2024 dismissal terminated the pending removal proceedings and, with them, the statutory basis for the OREC. The Petition expressly recognizes that Petitioner's reporting obligations ceased once the IJ granted DHS's unopposed motion to dismiss following Petitioner's grant of TPS. Petitioner therefore does not contend that the OREC remained legally operative or that DHS lacked authority to initiate new removal proceedings.

Petitioner's past OREC is significant to this case because it demonstrates that by releasing Petitioner pursuant to 8 U.S.C. § 1226(a), DHS necessarily determined that detention was unnecessary and that Petitioner could safely remain in the community while his removal proceedings were pending. See *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115-16 (9th Cir. 2007). Petitioner's subsequent conduct confirmed that determination.

The Petition challenges Respondents' decision to revoke Petitioner's liberty nearly two years later **without identifying any individualized basis or material change in circumstances**, despite Petitioner's conduct having consistently validated DHS's earlier determination that he could safely remain at liberty.

Indeed, Respondents do not dispute the facts that make the OREC relevant. They do not dispute that DHS released Petitioner on an OREC after determining detention was unnecessary, that Petitioner complied with every condition of that release for nearly two years, that he committed no crimes, violated no conditions of supervision, or failed to appear as directed, and that DHS never revoked the OREC based on any misconduct. Those undisputed facts demonstrate why the OREC is central to Petitioner's claim: it reflects DHS's own prior determination that Petitioner could safely remain at liberty, a determination Petitioner's conduct consistently validated.

As Judge Evanson recently explained in *Abdelmasseh v. Scott*, Case No. 2:26-cv-01681-KKE (W.D. Wash. June 24, 2026), a petitioner's "demonstrated compliance with the terms of his parole strongly supports the Government's earlier determination . . . that Petitioner does not present a risk of absconding." The court further concluded that subsequent evidence—including the petitioner's work history, community ties, and lack of a criminal record—"bolsters that initial determination as well."

The same is true here. DHS previously determined that Petitioner could safely remain at liberty by releasing him on an OREC. Petitioner's subsequent conduct did not undermine that determination—it confirmed it. Like the petitioner in *Abdelmasseh*, Petitioner's conduct strengthened—not weakened—the Government's original determination that detention was unnecessary.

Respondents nevertheless ask this Court to disregard that entire history and accept renewed detention based solely on the issuance of a new NTA. *Abdelmasseh* teaches the opposite: the Government cannot ignore highly probative evidence confirming its earlier

determination while offering no individualized explanation for why detention suddenly became necessary.

Accordingly, Respondents' repeated assertion that the OREC terminated "by operation of law" misses the point. Rather, the question before this Court is whether Respondents may revoke Petitioner's liberty years after determining detention was unnecessary without identifying any individualized reason why detention suddenly became necessary. Respondents' Return never answers that question.

III. RESPONDENTS NEVER IDENTIFY ANY MATERIAL CHANGE JUSTIFYING RE-DETENTION

Respondents' Return confirms the central allegation of the Petition. They identify no material change in Petitioner's circumstances that justified revoking the liberty DHS had previously determined he could safely enjoy. Instead, Respondents rely almost exclusively on the issuance of a new NTA, as though the commencement of new removal proceedings alone answers the constitutional question presented by this case. It does not.

Respondents repeatedly argue that the issuance of a new NTA independently authorized Petitioner's detention. But that argument conflates statutory authority with constitutional process. As one court recently explained, "The mere fact that the government has the authority to detain someone does not mean that it may do so in any manner it chooses, without affording due process." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 157 (W.D.N.Y. 2025). The existence of a new NTA explains how new removal proceedings began—it does not explain why detention suddenly became necessary after years of successful compliance.

Indeed, Respondents do not dispute that Petitioner complied with DHS supervision for nearly two years, that DHS moved to dismiss his prior removal proceedings after TPS was granted, that the IJ granted that motion, that Petitioner committed no crimes, violated no

conditions of supervision, or absconded, or that DHS waited approximately fifteen months after Petitioner's TPS expired before re-detaining him. Yet Respondents identify no criminal conduct, no supervision violation, no failure to appear, no change in circumstances, and no individualized reason why detention suddenly became necessary in July 2026.

Administrative agencies must provide a reasoned explanation when they depart from a prior determination or change course. An agency acts arbitrarily when it entirely fails to consider an important aspect of the problem or offers an explanation that runs counter to the evidence before it. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Respondents provide no such explanation here. Their failure to identify any material change in Petitioner's circumstances confirms that his re-detention was arbitrary and that the writ should issue.

IV. RESPONDENTS IGNORE THEIR OWN ADMINISTRATIVE RECORD

Respondents argue that any inaccuracies contained in the Form I-213 are irrelevant because Petitioner's detention is based upon the July 3, 2026 NTA rather than the I-213. That misses Petitioner's point. The issue is not whether the I-213 itself authorizes detention. Rather, it is whether Respondents exercised their detention authority based upon an accurate and reasoned understanding of Petitioner's immigration history. Their own records demonstrate they did not. Due process requires procedures reasonably calculated to minimize the risk of erroneous deprivation of liberty, *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), and the Ninth Circuit has repeatedly emphasized that detention decisions must rest upon individualized consideration supported by reliable evidence. *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017); *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011).

The administrative record contains multiple material inconsistencies that Respondents make no effort to reconcile. The Form I-213 repeatedly states that Petitioner's TPS "was dismissed by IJ in 2024," when it was Petitioner's removal proceedings—not his TPS—that the IJ dismissed after DHS moved for dismissal because TPS had been granted. The I-213 further states that Petitioner had "no pending immigration applications," despite Petitioner's timely TPS re-registration filing. Furthermore, although incorrect, EOIR's subsequent order requiring Petitioner to pay the annual asylum fee was itself part of the Government's administrative record. Yet Respondents never attempt to reconcile that order with the I-213's assertion that Petitioner had "no pending immigration applications." Likewise, DHS's own supervision records reflect that Petitioner's reporting obligations ended because his removal proceedings were DISMISSED, consistent with the IJ's dismissal order.

Respondents do not dispute any of these inconsistencies. Nor do they explain how DHS concluded Petitioner had no pending immigration applications while other agency records reflected otherwise. Instead, Respondents simply ask the Court to disregard the inaccuracies because a new NTA was later issued.

But due process requires more than the mechanical issuance of a charging document. It requires that decisions affecting an individual's liberty be based upon an accurate consideration of the relevant facts.

Here, Respondents never reconcile the inconsistencies within their own administrative record, yet ask this Court to conclude that Petitioner's re-detention resulted from a careful and individualized assessment. The record demonstrates the opposite.

V. RESPONDENTS' ATTEMPT TO DISTINGUISH *SAGRERO-PEREZ* FAILS

Respondents attempt to distinguish *Sagrero-Perez* almost exclusively on the ground that DHS issued Petitioner a new NTA on the day of his arrest. That misses the broader reasoning of Judge Zilly's decision. The significance of *Sagrero-Perez* is not only the timing of the NTA, but the Court's examination of **whether DHS lawfully exercised its detention authority when re-detaining an individual who had previously been released and remained at liberty after DHS dismissed his removal proceedings.**

As an initial matter, Judge Zilly observed that "[t]he ICE ERO team that apprehended petitioner cited no basis other than the October 2025 warrant for stopping petitioner's vehicle or for arresting him." Likewise here, Respondents identify no individualized basis for Petitioner's re-detention beyond the commencement of new removal proceedings. They point to no criminal conduct, no violation of supervision, no failure to appear, and no other intervening event that transformed Petitioner into a danger or flight risk after years of successful compliance.

Judge Zilly further concluded that "all three *Mathews* factors weigh in petitioner's favor" because: "(i) he has a protected liberty interest in not remaining in custody at NWIPC, (ii) the absence of pre-deprivation procedures created an unacceptably high risk of erroneous deprivation, and (iii) the governmental interest in petitioner's re-detention without a hearing is minimal or non-existent." The court also relied on *Yildirim v. Hermosillo* for the principle that "any factual disputes related to the justification for the petitioner's re-detention should have been resolved at a pre-deprivation hearing, not after-the-fact during habeas proceedings."

Finally, Judge Zilly rejected DHS's reliance on changing "enforcement priorities," concluding that ICE's change in priorities was "neither logical . . . nor sufficient to justify the deprivation of petitioner's liberty without notice and an opportunity to be heard." The court

further emphasized that **"[n]o contention has been made that petitioner's whereabouts were unknown, that petitioner has been recalcitrant, or that petitioner could not have simply been served with a notice to appear for immigration proceedings in an out-of-custody manner."**

Those same considerations are present here. Respondents do not contend that Petitioner's whereabouts were unknown, that he absconded, violated supervision, or otherwise became unavailable to DHS. To the contrary, Respondents permitted Petitioner to remain openly in the community for approximately fifteen months after his TPS expired before suddenly arresting him. Like the respondents in *Sagrero-Perez*, they never explain why Petitioner could not simply have been served with a new NTA while remaining at liberty. Instead, they rely solely on the fact that a new NTA was issued. *Sagrero-Perez* makes clear that due process requires more.

VI. RESPONDENTS' *MATHEWS* ANALYSIS MINIMIZES PETITIONER'S LIBERTY INTEREST

Respondents' application of *Mathews v. Eldridge*, 424 U.S. 319 (1976), improperly minimizes Petitioner's fundamental liberty interest while overstating the Government's administrative burden. Respondents ask this Court to balance Petitioner's continued physical confinement against what they characterize as **"meaningful administrative costs"** and **"significant fiscal and administrative burdens."** That comparison fundamentally misapprehends the balancing required by *Mathews*. The Constitution does not permit the Government to avoid providing due process simply because doing so requires additional administrative effort. **When the interest at stake is an individual's physical liberty, administrative convenience cannot outweigh the protections guaranteed by the Fifth Amendment.**

As the Supreme Court has repeatedly recognized, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Respondents' application of *Mathews* is inconsistent not only with Supreme Court precedent, but with a growing body of decisions from this District recognizing that DHS may not revoke a noncitizen's liberty without constitutionally adequate procedures. See *P.T. v. Hermosillo*, No. C25-2249, 2025 WL 3294988 (W.D. Wash. Nov. 26, 2025); *Yildirim v. Hermosillo*, No. C25-2696, 2026 WL 111358 (W.D. Wash. Jan. 15, 2026); *Cruz-Reyes v. Bondi*, 2026 WL 332315 (W.D. Wash. Jan. 28, 2026); *Torres Ferrera v. Scott*, No. 2:26-cv-00583-TL (W.D. Wash. 2026); *Gonzalez v. Joyce*, 2025 WL 2961626 (W.D. Wash. Sept. 15, 2025).

The liberty interest is particularly significant here, where Petitioner had lived openly in the community for years before being abruptly re-detained. Respondents nevertheless suggest that requiring additional pre-deprivation procedures would impose an undue administrative burden because Petitioner has an upcoming removal hearing. But the existence of future immigration proceedings does not diminish Petitioner's present constitutional interest in remaining free from unnecessary detention.

Nor is Petitioner's detention insignificant. By the time Respondents filed their Return, Petitioner had already spent more than a month confined at NWIPC. Every additional day of unlawful detention constitutes a continuing deprivation of one of the most fundamental liberty interests protected by the Constitution. *Mathews* does not permit courts to weigh months of physical confinement against the Government's interest in administrative convenience.

Indeed, Judge Zilly recently rejected this precise balancing in *Sagrero-Perez*, concluding that "all three Mathews factors weigh in petitioner's favor" because the petitioner possessed a

protected liberty interest, the absence of pre-deprivation procedures created an unacceptably high risk of erroneous deprivation, and "the governmental interest in petitioner's re-detention without a hearing is minimal or non-existent." The same reasoning applies here. Respondents identify no individualized basis for Petitioner's re-detention and no legitimate governmental interest that outweighs the substantial deprivation of liberty resulting from his continued confinement.

Respondents' *Mathews* analysis ultimately reduces Petitioner's constitutional liberty interest to a matter of administrative convenience. That is not the balancing *Mathews* requires. Where, as here, Respondents seek to deprive an individual of his physical liberty after years of successful compliance, due process demands more than the issuance of a new NTA and the promise of a future hearing. It requires procedures reasonably designed to prevent the erroneous deprivation of liberty before that liberty is taken away.

VII. RESPONDENTS STILL FAIL TO EXPLAIN WHY DETENTION WAS NECESSARY

Despite their Return, Respondents still cannot answer the central question presented by this case: What changed? They point to the issuance of a new NTA and the commencement of new removal proceedings, but those are legal events—not changes in Petitioner's conduct or circumstances. Respondents identify no criminal conduct, no violation of supervision, no failure to appear, no absconding, no newly discovered evidence, and no individualized reason why Petitioner suddenly became a danger to the community or a flight risk after years of successful compliance. In short, nothing about Petitioner changed, only Respondents' decision to deprive him of his liberty did. Because Respondents have failed to identify any lawful, individualized justification for that decision, they have failed to carry the burden imposed by this Court's Order to show cause why the writ should not issue. Accordingly, the Petition should be granted and Petitioner immediately released.

VIII. CONCLUSION

Respondents' Return ultimately confirms Petitioner's claim. It does not dispute Petitioner's years of compliance, the dismissal of his prior removal proceedings, the absence of any criminal conduct or supervision violations, or the fifteen-month delay between the expiration of TPS and Petitioner's re-detention. Nor does it identify any individualized reason why detention suddenly became necessary in July 2026. Instead, Respondents defend a decision to deprive Petitioner of his liberty based solely upon the commencement of new removal proceedings. The Constitution requires more. Accordingly, the Petition should be granted and Petitioner should be immediately released.

Respectfully submitted this 12th day of August 2026.

/s/Vicky J Currie

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