District Judge Tiffany M. Cartwright

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

Moises David BONILLA MEJIA,

Petitioner,

v.

Laura HERMOSILLO, et al.,

Respondents.

Case No. 2:25-cv-02196 TMC-TLF

PETITIONER'S TRAVERSE

Note on Motion Calendar:

November 25, 2025

INTRODUCTION

Petitioner Moises Bonilla Mejia is an asylum-seeker whom Respondents initially released from immigration custody with his wife and children to pursue his case. Dkt. 1 ¶ 24. More than 18 months later, Respondents re-arrested Petitioner on the mistaken belief that he was subject to a final order of removal, when his case was pending before the Board of Immigration Appeals (BIA or Board). Dkt. 1 ¶ 32; Dkt. 2-1 at 99-100. Facing imminent removal, Petitioner filed this action to challenge his removal prior to the issuance of a final order and his re-detention without first holding a hearing before a neutral decisionmaker to determine if he had violated his conditions of release and now presents a flight risk or danger. *See* Dkt. 1 at 12-15. In light of *Cui v. Garland*, 13 F.4th 991 (9th Cir. 2021), Respondents agree that the issue in the case is whether Petitioner has a final order of removal, and that *Cui* is binding precedent which holds that he

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does not. Dkt. 14 at 1-2. Respondents raise to no challenge to Petitioner's Due Process argument on re-detention and also now concede jurisdiction. *Id.* Accordingly, Petitioner asks that this Court order his release, in accordance with the many decisions agreeing that Due Process requires a pre-deprivation hearing. *See Y.M.M. v. Wamsley,* 2025 WL 3101782, * 2 (W.D. Wash. Nov. 6, 2025), *see also* I. *infra*.

ARGUMENT

I. The *Mathews* test demonstrates Petitioner's due process rights were violated.

Petitioner's central claim is that prior to re-detention, due process required ICE to demonstrate by clear and convincing evidence that he violated their conditions of release so as to now pose a flight risk or danger to the community. Dkt. 1 at 8-11, 13-15. In recent weeks and months, courts around the country have repeatedly and resoundingly held that due process requires exactly this protection. *See*, *e.g.*, *E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 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); *Ledesma Gonzalez v. Bostock*, 2025 WL 2841574, at *9 (W.D. Wash. Oct. 7, 2025); *Hernandez v. Wofford*, 2025 WL 2420390, at *8 (E.D. Cal. Aug. 21, 2025); *Kumar v. Wamsley*, 2025 WL 2677089, at *3 (W.D. Wash. Sept. 17, 2025); *Garro Pinchi v. Noem*, 2025 WL 2084921, at *7 (N.D. Cal. July 24, 2025); *Duong v. Kaiser*, 2025 WL 2689266, at *7 (N.D. Cal. Sept. 19, 2025). This case is no different, and accordingly, the Court should grant the habeas petition.

Courts analyzing this question have employed the *Mathews v. Eldridge*, 424 U.S. 319 (1976), test. *See E.A. T.-B.*, 2025 WL 2402130, at *3 ("the parties agree that the Mathews text applies here).

A. Petitioners' private interest is weighty.

Petitioner has a very strong private interest in not being re-detained. This interest is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) *see also, e.g.*, *Ramirez Tesara v. Wamsley*, 2025 WL 2637663 (W.D. Wash. Sept. 12, 2025), at *3 (stating that

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the petitioner had "an exceptionally strong interest in freedom from physical confinement" (citation omitted)); *Ledesma Gonzalez*, 2025 WL 2841574, at *7 (declaring that petitioner's liberty interest "is a fundamental interest that must be accorded significant weight").

Here, Petitioner lived in the community in Washington State, worked as a mechanic, and sent his children to school, after being free from detention for approximately 18 months. *See* Dkt. 17-1 (Bonilla Decl. at 1-2). His interest in his continued liberty is thus "weighty," *Ramirez Tesara*, 2025 WL 2637663 at *3, and this factor weighs strongly in his favor.

B. The risk of erroneous deprivation is high.

The risk of erroneous deprivation is not only high, but effectively conceded by Respondent's admission that the agency was incorrect in asserting that he had a final removal order. *See Ramirez Tesara*, 2025 WL 2637663 at *4 (agreeing that "re-detainment without a hearing results in a risk of erroneous deprivation of [petitioner's] protected interest"); *E.A. T.-B.*, 2025 WL 2402130, at *4 (same). Even when "the Government may believe it has a valid reason to detain Petitioners," that belief "does not eliminate its obligation to effectuate the detentions in a manner that comports with due process." *E.A. T.-B.* at *4. Petitioners' re-detention must still "bear a reasonable relation" to a valid government purpose: here, preventing flight or protecting the community against dangerous individuals. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (cleaned up) (citation omitted); *see also, e.g.*, *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) ("The government has legitimate interests in protecting the public and in ensuring that noncitizens in removal proceedings appear for hearings, but any detention incidental to removal must bear a reasonable relation to its purpose.") (citation modified). Only a hearing before a neutral decisionmaker—where ICE must prove that re-detention is justified because Petitioners pose a flight risk or danger—can ensure that this "reasonable relation" to a valid government purpose exists.

Here, Respondents concede that the ground for re-detention – to effect Respondent's deportation – was erroneous. Respondents have not disputed that Respondent generally complied with his conditions of release. Nor did Respondents provide advanced notice or a hearing before

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a neutral decisionmaker where they were required to show that Petitioners violated the conditions of release and are now a flight risk or danger. Dkt. 1 ¶¶ 35, 36; Dkt. 17-1 at 1-2. These facts underscore the need for a pre-deprivation hearing. As the Supreme Court has repeatedly explained, an individual is *not* afforded due process where it is simply the "government enforcement agent" who makes the decision about the propriety of detention. *Coolidge v. New Hampshire*, 403 U.S. 443, 450 (1971). That process, which is exactly what occurred here, 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."); *Gerstein v. Pugh*, 420 U.S. 103, 112–13 (1975) (explaining the need for the participation of "a neutral and detached magistrate instead of . . . by the officer engaged in the often competitive enterprise of ferreting out crime") (citation omitted).

C. The government's interest also weighs in Petitioners' favor.

As other courts assessing the legality of re-detention have recently found, "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 a pre-deprivation hearing, "those costs are far outweighed by the risk of erroneous deprivation of the liberty interest at issue." *E.A. T.-B.*, 2025 WL 2402130, at *5; *Ledesma Gonzalez*, 2025 WL 2841574, at *8 (concluding government interest to be low even if "requiring pre-detention process would present *some* administrative burden"); *Garro Pinchi*, 2025 WL 2084921, at *6 ("[I]t is likely that the cost to the government of detaining [petitioner] pending any bond hearing would significantly exceed the cost of providing her with a pre-detention hearing."). This conclusion is underscored in this matter, as a pre-deprivation hearing would have permitted Petitioner to argue that his removal order was not final and that he had complied with conditions of release, and that he did not have any criminal convictions.

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CONCLUSION

For the foregoing reasons, Petitioner respectfully requests the Court grant his motion for a temporary restraining order.

Respectfully submitted this 25th day of November, 2025.

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WORD COUNT CERTIFICATION

I certify that this brief contains 1227 words, in compliance with the Local Civil Rules.

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