UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Giny FRANCOIS, Hector Moises DAVILA ZURITA, Jean Carlos PINTO BAUTISTA,

Petitioners,

v.

Cammilla WAMSLEY, et al.,

Respondents.

Case No. 2:25-cv-2122-RSM-GJL

MOTION FOR TEMPORARY RESTRAINING ORDER

Note on Motion Calendar:
October 31, 2025

INTRODUCTION

Petitioners seek a temporary restraining order (TRO) requiring Respondents to return Petitioner Jean Carlos Pinto Bautista to this district and for the immediate release from detention of all Petitioners. While Petitioners initially sought expedited consideration of this petition, they now seek a TRO in light of actions taken by Respondents in the three days since the filing of their Petition for Writ of Habeas Corpus, Dkt. 1: namely, the abrupt transfer of Mr. Pintofrom the Northwest Immigration and Customs Enforcement (ICE) Processing Center (NWIPC) to New Mexico on October 30, 2025.

The requested TRO is warranted because Petitioners are likely to succeed on their underlying claims for immediate release. The law makes clear that none of the three Petitioners should be in detention currently. As several judges in this district have recently held—including in granting TRO motions—individuals who have lived in the United States after their initial

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release by the Department of Homeland Security (DHS) and who are then re-detained without a pre-deprivation hearing or showing by ICE that they now constitute a flight risk or danger must be released immediately. *See E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, -- F. Supp. 3d --, 2025 WL 2402130, at *6 (W.D. Wash. Aug. 19, 2025) (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"); *Ledesma Gonzalez v. Bostock*, No. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at *9 (W.D. Wash. Oct. 7, 2025) (converting TRO motion into ruling on the merits and ordering immediate release where noncitizen was re-detained without due process and a prior hearing); *Phetsadakone v. Scott*, No. 2:25-CV-01678-JNW, 2025 WL 2579569, at *5 (W.D. Wash. Sept. 5, 2025) (ordering immediate release on TRO motion in order to secure status quo of liberty prior to alleged unlawful re-detention); *Ramirez Tesara v. Wamsley*, No. 2:25-CV-01723-MJP-TLF, -- F. Supp. 3d --, 2025 WL 2637663 (W.D. Wash. Sept. 12, 2025) (ordering immediate release on TRO motion to restore Petitioner to the status quo prior to his unlawful arrest without a hearing); *Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089 (W.D. Wash. Sept. 17, 2025) (same, on TRO motion).

In light of Respondents' abrupt transfer of Mr. Pinto to a facility outside of Washington *after* Petitioners filed their habeas petition, Petitioners respectfully request the Court grant the following relief in order to protect and vindicate their right to liberty under the Fifth Amendment's Due Process Clause:

(1) At Respondents' expense, the immediate transfer of Mr. Pinto back to Washington State and his immediate release from detention upon return to this district;

(2) The immediate release of the remaining petitioners, Mr. Francois and Mr. Davila, as provided in the accompanying proposed order.

STATEMENT OF FACTS

Petitioners are three noncitizens who were each released shortly after their entry into this country and later rearrested by Immigration and Customs Enforcement (ICE) between May and October 2025. Dkt. 3 ¶¶ 1, 5–6; Dkt. 4 ¶¶ 2, 6; Dkt. 5 ¶¶ 3, 14. All three Petitioners had timely

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filed their asylum applications, obtained employment authorization, attended ICE check-ins, and attended all scheduled hearings at the Seattle Immigration Court. *Id.* Despite Petitioners' diligent compliance with the requirements for their immigration matters, Respondents suddenly re-detained them, without first justifying this re-detention before a neutral decisionmaker where ICE was required to demonstrate why each were now a flight risk or danger to the community.

Petitioners filed this case on October 28, 2025. Dkt. 1. At the time of filing, all three Petitioners were detained at the NWIPC in Tacoma, Washington. Dkt. 3 ¶ 7; Dkt. 4 ¶ 8; Dkt. 5 ¶ 14. Petitioners also filed an Ex Parte Motion to Issue Order to Show Cause and Issue Expedited Briefing Schedule (Motion for OSC). Dkt. 2.[1] In that motion, Petitioners specifically requested, *inter alia*, an order that Respondents not transfer any of them from the Western District of Washington while the Court considers their Petition, so as not to impede their access to counsel while pursuing their claims. *Id.* at 7. On October 29, after this case was docketed, and pursuant to a request from the U.S. Attorney's Office for the Western District of Washington, Petitioners provided their immigration identification number, known as "A" number, to that office. Decl. of Amanda Ng ¶ 4.

[1] In other cases, undersigned counsel have filed similar motions in lieu of burdening the court with TRO motions, which the court has granted. *See, e.g.*, Order, *Kumar v. Wamsley*, No. 2:25-cv-2055-KKE (W.D. Wash. Oct. 22, 2025), Dkt. 7 (requiring return to petition within eight days); Order, *Lopez Reyes v. Wamsley*, No. 2:25-cv-01868-JLR-MLP (W.D. Wash. Oct. 1, 2025), Dkt. 5 (same, within six days); Order, *Scott v. Wamsley*, No. 2:25-cv-01819-TMC-BAT (W.D. Wash. Sept. 22, 2025), Dkt. 9 (same, within ten days). In cases where transfer appeared likely or imminent, undersigned counsel have additionally requested, and the district court has granted, an OSC restraining Respondents from transferring petitioners without advance notice permitting them to seek appropriate emergency relief. *See Kumar*, No. 2:25-cv-2055-KKE (W.D. Wash. Oct. 22, 2025), Dkt. 7 at 2 (ordering government to provide advance notice "prior to any action to move or transfer [Petitioner] from the [NWIPC]" in order to preserve the status quo while the court determines its subject-matter jurisdiction); *Y.M.M. v. Wamsley*, No. 2:25-cv-2075-TMC (W.D. Wash. Oct. 28, 2025), Dkt. 8 at 2 (same); *cf. Del Valle Castillo v. Wamsley*, No. 2:25-cv-2054-TMC (W.D. Wash. Oct. 30, 2025), Dkt. 14 (granting TRO prohibiting government from "transferring any of the Petitioners from this district pending further order" of the court after one of the petitioners was transferred from the NWIPC while his habeas petition was pending, in order to "preserve the status quo and prevent immediate harm").

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On October 29, 2025, at or around 11:30 pm, Mr. Pinto's wife, Yerly Ortega Pinerez, received a call from her husband. Decl. of Yerly Ortega Pinerez (Ortega Decl.) ¶ 7. On the call, Ms. Ortega learned that Respondents were transferring Mr. Pinto to an unknown location. *Id.* Mr. Pinto was not given any information about where he was being taken. *Id.* ¶¶ 7–8. This transfer occurred despite the fact that Mr. Pinto is scheduled for his next hearing before the Tacoma Immigration Court on November 17, 2025. Ng Decl., Ex. A.

Ms. Ortega has not heard from her husband since that call. *Id.* ¶ 9. She did not get confirmation that he had been transferred until the next morning, when she received a call from the family member of another person who had befriended Mr. Pinto at the NWIPC. *Id.* ¶ 8. The family member informed Ms. Ortega that her husband had been included in a group for transfer out of Tacoma. *Id.* The person also confirmed that no-one had been told where they were being moved and the group was crying as they left. *Id.* Since the transfer, Mr. Pinto has yet to make contact with either his wife or his counsel. *See id.* ¶ 9; Ng. Decl. ¶ 6. Ms. Ortega does not know how to reach her husband, whether he is safe, or when he may be able to call her. Ortega Decl. ¶ 9.

On the morning of October 30, Ms. Ortega notified the Northwest Immigrant Rights Project that Mr. Pinto had been transferred out of the NWIPC. Ng Decl. ¶ 5. The same morning, undersigned counsel also received word that at least one other client in another habeas petition before this Court had been moved from this district. After learning this information, shortly after 12:00 pm, counsel reached out to Michelle Lambert, who is counsel for Respondents in another habeas petition. Decl. of Aaron Korthuis ¶ 5. Counsel requested that ICE return Mr. Pinto to Washington State, where he lived with his family prior to detention and where he has counsel. *Id.* ¶ 6. Counsel also requested that ICE provide notice prior to transfer of any other petitioner, in order to allow time for counsel to seek relief if necessary. *Id*. Counsel noted that the undersigned's preference was to avoid the need to seek relief via a motion for a TRO from the Court, and requested a response to these requests by 3:00 pm. *Id*. Ms. Lambert stated that she would consult with her clients, and responded at 2:49 pm, advising that Mr. Pinto and another of

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counsel's clients were in the process of being transferred to the Otero ICE Processing Center in New Mexico. *Id.* ¶¶ 7–8. Ms. Lambert further stated that her clients were not willing to return Mr. Pinto to this district or to provide notice as to the other petitioners in this case. *Id.* ¶ 7. This is despite the fact that Mr. Pinto has a hearing scheduled before the Tacoma Immigration Court on November 17, 2025. Ng Decl. ¶ 7; *id.* at Ex. A. Counsel then informed Ms. Lambert that they would seek emergency relief from this Court. Korthuis Decl. ¶ 9.

The harm that Mr. Pinto and other Petitioners face is significant. As reflected in documents submitted to this Court, two of the three Petitioners—Messrs. Pinto and Davila—reside in Washington. Dkt. 5 ¶ 4; Dkt. 4 ¶ 2. All three have family or other community support in the state. *See* Dkt. 4 ¶ 9; Dkt. 5 ¶ 18; Ortega Decl. ¶¶ 2–3; Dkt. 3 ¶ 2. In Mr. Pinto's case, his detention and now abrupt transfer out of Washington are the first time he has been parted from his wife and five-year-old daughter since they fled Venezuela together. *See* Ortega Decl. ¶¶ 2–3. Given Mr. Pinto's transfer to New Mexico, he is now outside the economic reach of his wife and young daughter, who lack the financial means to travel to him. *Id.* ¶¶ 3,10. Even if Respondents release Mr. Pinto from his unlawful detention, his family has no way of bringing him back to their home in Washington without incurring significant financial hardship. *Id.* ¶ 11.

As of the filing of the instant motion, to undersigned counsel's knowledge and belief, Messrs. Francois and Davila remain detained at the NWIPC in Tacoma, Washington.

ARGUMENT

On a motion for a TRO, the movant "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and TRO standards are "substantially identical"). A TRO may issue where "serious questions going to the merits [are] raised and the balance of hardships tips sharply in [plaintiff's] favor." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citation modified). To succeed under the "serious

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question" test, Petitioners must also show that they are likely to suffer irreparable injury and that an injunction is in the public's interest. *Id.* at 1132.

I. Petitioners are likely to succeed on the merits of their petition.

Due process requires Respondents to afford Petitioners a hearing before a neutral decisionmaker where ICE is required to justify re-detention *before* it occurs. In recent months, as DHS has detained other noncitizens in similar situations, courts in this district have so held in multiple separate cases and ordered the immediate release of noncitizens who had been re-detained by DHS without a pre-deprivation hearing. *See Ledesma Gonzalez*, 2025 WL 2841574 (granting immediate release where petitioner's order of release on recognizance was arbitrarily revoked without notice or a hearing); *E.A. T.-B.*, 2025 WL 2402130 (granting immediate release due to lack of pre-deprivation hearing); *Ramirez Tesara*, 2025 WL 2637663 (same); *Kumar*, 2025 WL 2677089 (same); *cf. Phetsadakone*, 2025 WL 2579569 (ordering release because DHS failed to follow procedures required by regulation).

Many other courts across the country have similarly ordered the immediate release of persons with ongoing proceedings who are re-detained without a hearing. *See*, *e.g.*, *Valdez v. Joyce*, 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation hearing); *Mata Velasquez v. Kurzdorfer*, -- F. Supp. 3d --, 2025 WL 1953796 (W.D.N.Y. July 16, 2025) (similar); *Garro Pinchi v. Noem*, -- F. Supp. 3d --, 2025 WL 2084921, at *7 (N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, 2025 WL 2299376, at *10 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews*, 2025 WL 2420068, at *13 (E.D. Cal. Aug. 21, 2025) (similar); *Hernandez v. Wofford*, 2025 WL 2420390 (E.D. Cal. Aug. 21, 2025).

As demonstrated by these many cases rejecting similar arrests, Petitioners are likely to succeed on their claim and the Court should thus order the immediate return of Mr. Pinto and immediate release of all three Petitioners. Notably, if Respondents continue to assert that Petitioners' detention is justified after their release, they may thereafter schedule a hearing where they bear the burden of presenting clear and convincing evidence that each re-detention is warranted.

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As this Court recently explained in *E.A. T.-B.*, the three-factor test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976), is the controlling framework for determining what process Petitioners are due. *E.A. T.-B.*, 2025 WL 2402130, at *3. *Mathews* requires the Court to evaluate (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguard" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335; *see also Ramirez Tesara*, 2025 WL 2637663, at *2–4 (applying *Mathews* factors to assess right to pre-deprivation hearing); *Ledesma Gonzalez*, 2025 WL 2841574, at *7-9 (same); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) (same); *Morrissey v. Brewer*, 408 U.S. 471, 482–84 (1972) (assessing parolee's liberty interests and the state's interests to determine what process is due a parolee). Here, those factors strongly favor Petitioners.

A. Petitioners have a Weighty Private Interest.

Petitioners have an exceptionally strong interest in freedom from physical confinement and in a hearing prior to any revocation of their liberty. Indeed, the "interest in not being detained is 'the most elemental of liberty interests[.]'" *E.A. T.-B.*, 2025 WL 2402130, at *3 (alteration in original) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)); *see also Ramirez Tesara*, 2025 WL 2637663, at *3 (stating that the petitioner "has an exceptionally strong interest in freedom from physical confinement"). "Freedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects." *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.'" *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

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justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *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)).

This principle applies with significant force given all three Petitioners' initial release from detention on their own recognizance. "The Supreme Court has repeatedly held that in at least some circumstances, a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated." *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017). This includes cases of "pre-parole conditional supervision," *id.* (citing *Young v. Harper*, 520 U.S. 143, 152 (1997)); "probation," *id.* (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)), and "parole," *id.* (citing *Morrissey*, 408 U.S. at 482).

These principles apply with even more force here, where civil immigration detention is concerned, than in cases involving renewed incarceration in the criminal context. As one court has explained, "[g]iven the civil context, [a noncitizen's] liberty interest is arguably greater than the interest of parolees in *Morrissey*." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019). Parolees and probationers have a diminished liberty interest because of their underlying convictions. *See, e.g.*, *United States v. Knights*, 534 U.S. 112, 119 (2001) ("Probation is one point on a continuum of possible punishments . . ." (citation modified)); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987) ("To a greater or lesser degree, it is always true of probationers (as we have said it to be true of parolees) that they do not enjoy the absolute liberty to which every citizen is entitled . . ." (citation modified)). Nonetheless, 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*, 864 F.3d at 684.

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Critically, in recent months and years, courts—including courts in this district—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." 2025 WL 2402130, at *3. Other courts have reached the same conclusion. *See, e.g.*, *Ramirez Tesara*, 2025 WL 2637663, at *3 ("When he was released from his initial detention on parole, Petitioner took with him a liberty interest which is entitled to the full protections of the due process clause."); *Kumar*, 2025 WL 2677089, at *3 n.3 (listing cases where "courts throughout the Ninth Circuit have concluded that non-citizens who are released from ICE custody have a protected liberty interest under the Due Process Clause in remaining out of custody while their cases proceed"); *Garcia*, 2025 WL 2420068, at *10 ("[P]arole allowed [the petitioner] to build a life outside detention, albeit under the terms of that parole. [Petitioner] has a substantial private interest in being out of custody, which would allow him to continue in these life activities, including supporting his family."); *Garro Pinchi*, 2025 WL 2084921, at *4 ("[Petitioner] has a substantial private interest in remaining out of custody. She has an interest in remaining in her home, continuing her employment, providing for her family, obtaining necessary medical care, maintaining her relationships in the community, and continuing to attend her church."); *Maklad*, 2025 WL 2299376, at *8 (similar).

Just as in these cases, Petitioners have a strong interest in their liberty. Prior to their re-detention, Petitioners had each lived in the United States for over a year without incident. All three had timely filed asylum applications, obtained employment authorization, found gainful employment, complied with the various conditions of their releases, attended immigration court hearings, and otherwise built stable lives in this country that included attending church, living with family, and enrolling a child in school. Dkt. 3 ¶¶ 3–4, 9, 11; Dkt. 4 ¶¶ 3–5, 9; Dkt. 5 ¶¶ 4–12, 16. These facts demonstrate that Petitioners had a significant due process interest in not being re-detained without notice and a hearing, and that they are in fact entitled to freedom from confinement, other than complying with their immigration proceedings and conditions of release.

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B. The Risk of Erroneous Deprivation Is High.

Second, "the risk of erroneous deprivation of [Petitioners'] liberty interest in the absence of a pre-detention hearing is high." *E.A. T.-B.*, 2025 WL 2402130, at *4. "That the Government may believe it has a valid reason to detain Petitioner[s] does not eliminate its obligation to effectuate the detention in a manner that comports with due process." *Id.* Their re-detention must still "bear[] [a] reasonable relation" to a valid government purpose—here, preventing flight or protecting the community from dangerous individuals. *Zadvydas*, 533 U.S. at 690 (second alteration in the original) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

Only a hearing before a neutral decisionmaker—where ICE must prove that re-detention is justified and that each Petitioner poses a flight risk or danger—can ensure that this "reasonable relation" to a valid government purpose exists. But to date, only a "government enforcement agent" has made any decision about the propriety of Petitioners' detention, *Coolidge v. New Hampshire*, 403 U.S. 443, 450 (1971), 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 (1975) (similar). Indeed, as another court analyzing the lawfulness of Respondents' re-detention of a noncitizen recently observed, "[t]he government's unilateral determination that re-detention is warranted is far less likely to be correct than the decision reached by a neutral adjudicator in a bond hearing." *Duong v. Kaiser*, No. 25-CV-07598-JST, --- F. Supp. 3d ---, 2025 WL 2689266, at *7 (N.D. Cal. Sept. 19, 2025). In fact, Petitioners did not (and have not) even received actual, meaningful notice of the basis for their re-detention, much less an opportunity to respond to any allegations purporting to justify that re-detention or a hearing before a neutral decisionmaker.

The arbitrary nature of Petitioners' re-detention is illustrated in each of their circumstances. In Mr. Francois's case, he was granted humanitarian parole immediately upon entry and made efforts to move his court hearing to Georgia before flying across the country in order to attend his May 28, 2025, court hearing in Seattle, Washington. Dkt. 3 ¶¶ 1, 4. Despite his

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diligence and objection to the dismissal of his case, ICE re-detained him in the corridor outside of the courtroom. *Id.* ¶¶ 5–6. There was no allegation that Mr. Francois was a flight risk or danger to the community, and no reason given for the sudden revocation of his parole. *Id.* ¶ 6. In Mr. Davila's case, he had complied with all conditions of his release—sending weekly photos of himself, attending monthly video calls, being at home for in-person visits, and presenting himself at ICE appointments whenever called. Dkt. 4 ¶¶ 3, 5. The arbitrary nature of his re-detention is underscored by the way that he was taken into custody: when he voluntarily presented himself at an ICE office on the first available day after being instructed to come in on short notice. *Id.* ¶¶ 5–6. Like Mr. Francois, he never received any explanation for why his parole was revoked. *Id.* ¶ 6. Finally, in Mr. Pinto's case, the arbitrary nature of the arrest is even more blatant: he was re-arrested for allegedly missing a court hearing that had been *rescheduled*. Dkt. 5 ¶¶ 11–14. In fact, he had appeared with his family at the court on the original date of his hearing, only to learn that the court had sua sponte rescheduled his case for a later date. *Id.* ¶¶ 11–12. Indeed, Respondents' own records show that his October 10, 2025 hearing had been cancelled and rescheduled for October 29, 2025. Dkt. 6–12. Respondents' incorrect rationale for having re-detained Mr. Pinto "underscore[s] rather than undermine[s] the need for robust procedural safeguards before a deprivation of liberty occurs." *E.A. T.-B.*, 2025 WL 2402130, at *4. His re-detention and now transfer to New Mexico is all the more egregious given his faithful compliance with all requirements of his asylum process and his close family attachments in Eastern Washington. *See* Dkt. 5 ¶¶ 16–18.

As the court explained in *Ramirez Tesara*, "[o]nce established, [a] 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 re-detainment is warranted." 2025 WL 2637663, at *3 (citing *Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023)). This is true regardless of the statutory basis for Petitioners' detention, as they do "not claim to be entitled to a hearing consistent with a particular statute: [they] argue[]that the Due Process Clause requires it." *E.A. T.-B.*, 2025 WL

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2402130, at *4. And due process requires such a hearing because "Petitioner[s'] circumstances have changed materially" since their initial releases in August 2024 (Mr. Francois), September 2023 (Mr. Davila), and August 2024 (Mr. Pinto). *Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal. 2019). Apart from their core interests in being free from imprisonment, Petitioners' ties to this country have deepened over the time that each has resided here. "These facts show that a[] pre-deprivation] hearing provide[s] additional safeguards under these circumstances." *Id.*; *see also, e.g.*, *Jorge M.F.*, 534 F. Supp. 3d at 1055 ("In any pre-detention hearing, the IJ would be required to consider any additional evidence from the eight-plus months since Petitioner was released."); *Garcia*, 2025 WL 2420068, at *10 ("[P]arole allowed [Petitioner] to build a life outside detention.").

C. The Government's Interest Is Minimal.

Finally, "the government's interest in detaining [Petitioners] or re-detaining [them] without a hearing is slight." *Maklad*, 2025 WL 2299376, at *8; *Ortega*, 415 F. Supp. 3d at 970 ("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."). "[A]lthough [a pre-deprivation hearing] would have required the expenditure of finite resources (money and time) to provide Petitioner[s] notice and hearing on [ISAP] violations before arresting and re-detaining [them], 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; *see also id.* ("[W]here ICE was previously persuaded that Petitioner would not abscond nor would he pose a danger to his community, and those factors were not re-assessed before his June 2025 arrest and detention, the Court must consider the Government's interest in detaining Petitioner in this context *without a hearing*." (emphasis added)). Notably, since their releases, Petitioners continued to demonstrate that they posed neither a flight risk nor a danger to the community, as none have any criminal history, all had timely filed for asylum, all had been granted employment authorization, all had faithfully complied with all conditions of release, and all had attended court hearings as they were scheduled. *See* Dkt. 3 ¶¶ 3–5, 9, 11; Dkt. 4 ¶¶ 3–7, 9; Dkt. 5 ¶¶ 4–12, 16–17.

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The government may claim that its interest in enforcing immigration laws weighs heavily in its favor. But any such "heightened interest" is not "implicated here," *Kumar*, 2025 WL 2677089, at *4, where Petitioners have complied with the immigration laws: they timely filed for asylum, as the Immigration and Nationality Act (INA) expressly permits. 8 U.S.C. § 1158. Any claimed "enforcement" instead amounts to punishing and deterring people like Petitioners from asserting the statutory rights that the INA expressly provides, rather than enforcing those laws. Even more fundamentally, the government's interest in immigration enforcement "is not at stake here; instead, it is the much lower interest in detaining [Petitioners] pending removal without a bond hearing." *Perera*, 598 F. Supp. 3d at 746. Many other courts have observed the same. *See, e.g.*, *Zagal-Alcaraz v. ICE Field Office*, 2020 WL 1862254, at *7 (D. Or. Mar. 25, 2020) ("The government interest at stake here is not the continued detention of Petitioner, but the government's ability to detain him without a bond hearing"), *report and recommendation adopted*, 2020 WL 1855189 (D. Or. Apr. 13, 2020).

In addition, the government's interest is not limited to enforcement of the law; it also encompasses the interest of the "public," including the administrative or financial burdens additional process requires. *Mathews*, 424 U.S. at 348. Here, any cost in holding a hearing, should the government choose to do so, is minimal. Moreover, any financial burden is outweighed by the costs of detaining Petitioners—or detaining and transferring, in Mr. Pinto's case—during such proceedings. *See 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."). In addition, "[s]ociety's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required." *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983); *see also Morrissey*, 408 U.S. at 484 ("Society . . . has an interest in not having parole revoked because of erroneous information or because of an erroneous evaluation of the need to revoke parole, given the breach of parole conditions."). This consideration also "cuts strongly in favor" of Petitioners because "[w]hen the Government incarcerates individuals it cannot show to

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be a poor bail risk for prolonged periods of time, as in this case, it separates families and removes from the community breadwinners, caregivers, parents, siblings and employees." *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020).

In sum, Petitioners are able to demonstrate that each "has a protected liberty interest in his continuing release from custody, and that due process requires that Petitioner[s] receive a hearing before an immigration judge before [they] can be re-detained." *E.A. T.-B.*, 2025 WL 2402130, at *5.

II. Petitioners will suffer irreparable harm absent an injunction.

Petitioners must also show they are "likely to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. Irreparable harm is the type of harm for which there is "no adequate legal remedy, such as an award of damages." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014).

Here, Petitioners' unlawful detention constitutes "a loss of liberty that is . . . irreparable." *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff'd in part, vacated in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022); *cf. Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (irreparable harm is met where "preliminary injunction is necessary to ensure that individuals . . . are not needlessly detained" because they are neither a danger nor a flight risk). This is particularly true here, where Petitioners' detention also violates the Constitution. "Civil [immigration] detention violates due process outside of certain special and narrow nonpunitive circumstances." *Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018) (citation modified). As detailed above, Petitioners' detention is outside of those "special and narrow nonpunitive circumstances," as the Due Process Clause forbids their re-detention without a pre-deprivation hearing. These constitutional concerns also counsel in favor of finding that Petitioners have demonstrated irreparable harm, for they have shown that their detention violates due process. *See Baird v.*

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Bonta, 81 F.4th 1036, 1048 (9th Cir. 2023) (declaring that "in cases involving a constitutional claim, a likelihood of success on the merits usually establishes irreparable harm").[2]

Detention also prevents Petitioners from working to not just sustain themselves and, in Mr. Pinto's case, his family, but to earn savings for their future, including raising necessary funds to retain counsel to represent them in removal proceedings. *See, e.g.*, Dkt. 4 ¶ 8; Ortega Decl. ¶¶ 3–4. This type of "potential economic hardship" supports a finding of irreparable harm. *Leiva-Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011) (per curiam); *see also Gonzalez Rosario v USCIS*, 365 F. Supp. 3d 1156, 1162 (W.D. Wash. 2018) (recognizing a "negative impact on human welfare" when noncitizens "are unable to financially support themselves or their loved ones").

Moreover, detention also inflicts substantial harm on Mr. Pinto by separating him from his wife and five-year-old daughter. Dkt. 5 ¶¶ 14, 18 (explaining that his detention "is really tough on [his] family" and is causing his wife much stress as she "struggl[es] to maintain" their household as the sole breadwinner with a young child to care for); *see also* Ortega Decl. ¶¶ 4–6 (describing emotional and financial toll on her since Mr. Pinto was detained, as well as the emotional distress it is causing their young daughter). Mr. Pinto's transfer from the NWIPC has only compounded this harm. *See* Ortega Decl. ¶¶ 9–11 (discussing her concern over Mr. Pinto's well-being, inability to visit him, difficulties in "get[ting] him home" even if he is released, and the fact that upon learning of the transfer, their daughter "was crying and begging not to go to school" because she "wanted to see her father"). Absent a TRO, Mr. Pinto has no hope of being reunited with his wife and daughter, from whom he had never been previously separated. *Id.* ¶¶ 5–6. Such "separation from family members" is an important irreparable harm factor. *Leiva-*

[2] Respondents may argue that Petitioners cannot demonstrate irreparable harm because the harm they are suffering assumes their detention is unlawful. But any such contention would be misplaced because the court will also be assessing the merits question, which "is a threshold inquiry and is the most important factor" when deciding a TRO motion. *Baird*, 81 F.4th at 1040; *see also Env't Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 989 (9th Cir. 2020) (same); *California by and through Becerra v. Azar*, 950 F.3d 1067, 1083 (9th Cir. 2020) (en banc) (similar). And as Petitioners have demonstrated, *supra* Sec. I, that inquiry weighs strongly in Petitioners' favor.

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Perez, 640 F.3d at 969–70 (citation omitted); *see also, e.g.*, *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (per curiam) (finding "separated families" to be a "substantial injur[y] and even irreparable harm[]"); *cf. Hernandez*, 872 F.3d at 996 (recognizing that "government-compelled [family] separation" causes family members "trauma" and "other burdens").

In sum, the unlawful deprivation of liberty to which Petitioners are subject causes them direct and immediate irreparable harms that warrant a TRO.

III. The balance of hardships and public interest weigh heavily in Petitioners' favor.

The final two factors for a TRO—the balance of hardships and public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, Petitioners face weighty hardships: loss of liberty, deprivation of the right to earn a living, and separation from their family. *See supra* Sec. I.A.; Sec. II. The government, by contrast, faces no hardship as to Petitioners detained in Tacoma, as all it must do is release persons it previously determined should be released, and who have since lawfully resided in this country and have no criminal history. As to Mr. Pinto, Respondents do face the expense of returning him to Washington. Nonetheless, it is Respondents who chose to move forward with transferring him across the country *after* the habeas petition had been filed with a request that he not be transferred, and *after* Petitioners' counsel reached out and requested that Respondents stop his transfer. In fact, Respondents had the opportunity to avoid any expenses of transfer; at the time of undersigned's request to Respondent's counsel, Mr. Pinto was still "in the process of being transferred to the Otero ICE Processing Center in New Mexico." Korthuis Decl. ¶ 8. Instead, Respondents proceeded with transferring him hundreds of miles away from his family and legal counsel. These actions are especially egregious here, where Respondents are well aware that Petitioners are likely to prevail on the merits of the case given other recent rulings issued by the Western District of Washington, ordering that similarly situated petitioners be immediately released. Despite that, Respondents decided to move Mr. Pinto elsewhere, taking him away from his home, his family, and his counsel. Avoiding such "preventable human suffering" strongly tips the balance in favor of Petitioners. *Hernandez*, 872 F.3d at 996 (quoting *Lopez*, 713 F.2d at

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1437). What is more, "the public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of . . . a likely [illegal] process." *Id.* Indeed, "in cases involving a constitutional claim, a likelihood of success on the merits . . . strongly tips the balance of equities and public interest in favor of granting a preliminary injunction." *Baird*, 81 F.4th at 1048.

Accordingly, the balance of hardships and the public interest favor a temporary restraining order to ensure that Respondents return Mr. Pinto to this district and release all Petitioners unless and until Respondents provide a hearing with a neutral decisionmaker where the government must demonstrate that each Petitioner poses a flight risk or danger before any re-detention.

IV. Return of Mr. Pinto to Washington and the immediate release of all Petitioners is warranted.

As in *Ramirez Tesara, Phetsadakone*, *Kumar, Ledesma Gonzalez,* and *E.A. T.-B.*, this Court should order Petitioners' immediate release. "[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." *E.A. T.-B.*, 2025 WL 2402130, at *6. In other words, Petitioners' unlawful detention without a pre-deprivation hearing is *already* occurring, and only immediate release remedies that issue. *See Garro Pinchi*, 2025 WL 2084921, at *5 (declaring, in the case of a detained noncitizen who was re-detained without pre-deprivation hearing, that "there is a significant risk that even the two-day curtailment of liberty that [she] already suffered upon her re-detention by ICE was not justified by any valid interest" and concluding that "[p]roviding her with the procedural safeguard of a pre-detention hearing will have significant value in helping ensure that any future detention has a lawful basis").

Moreover, as the court explained in *Ramirez Tesara*, Petitioners' "immediate release is necessary to restore the status quo ante litem. This 'refers not simply to any situation before the filing of a lawsuit, but instead to the last uncontested status which preceded the pending controversy.'" 2025 WL 2637663, at *5 (quoting *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d

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1199, 1210 (9th Cir. 2000)); *see also Phetsadakone*, 2025 WL 2579569, at *5 ("The last uncontested status here was Phetsadakone's release on supervision, which he maintained without incident for decades. The Government's July 2025 re-detention—allegedly without following required procedures—created the current controversy. Restoring Phetsadakone to his prior supervised release status maintains the status quo ante litem and prevents irreparable harm while allowing full adjudication of his claims for injunctive relief and on the merits."). As in those cases, the pending controversy here stems from Petitioners' re-detention.

In similarly situated cases, Respondents have asserted that granting immediate release via a TRO inappropriately grants "ultimate relief." Not only is this incorrect because Petitioners seek only to restore the status quo, but this principle is also at odds with Supreme Court and Ninth Circuit precedent. In fact, the Supreme Court long ago explained that for temporary relief to be proper, it *should* be akin in nature to the final relief sought: "[a] preliminary injunction is always appropriate to grant intermediate relief of the same character as that which may be granted finally." *De Beers Consol. Mines v. United States*, 325 U.S. 212, 220 (1945). This principle remains the law. *Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 810 F.3d 631, 636 (9th Cir. 2015) ("A preliminary injunction is appropriate when it grants relief of the same nature as that to be finally granted."). Moreover, "absent 'permanent' relief from unlawful detention in the form of a final judgment" from this Court clarifying the procedural protections required before any future re-detention, Petitioners will continue to suffer "collateral consequences" in the form of the "threat of re-arrest and mandatory detention." *Ortiz Martinez v. Wamsley*, No. 2:25-CV-01822-TMC, 2025 WL 2899116, at *3–4 (W.D. Wash. Oct. 10, 2025) (explaining that petitioners' release on bond pursuant to the court's earlier TRO did not moot their habeas petition) (quoting and citing, inter alia, *Nielsen v. Preap*, 586 U.S. 392, 403 (2019) (plurality), and *Abdala v. INS*, 488 F.3d 1061, 1064 (9th Cir. 2007)). Granting this TRO would thus not grant "ultimate relief."

Lastly, the principles that govern this case are now well-established. In the past two months, courts in this district have repeatedly affirmed that it is unlawful for Respondents to re-

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detain persons like Petitioners without first providing a hearing where the detained person can demonstrate that they present a flight risk or a danger to the community if not taken back into custody. This is consistent with many other district court decisions across the country.

Accordingly, Petitioners respectfully seek a TRO requiring Mr. Pinto's return to this district and the immediate release of all three Petitioners.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request the Court grant their motion for a temporary restraining order.

Respectfully submitted this 31st day of October, 2025.

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WORD COUNT CERTIFICATION

I certify that this memorandum contains 6,894 words, in compliance with the Local Civil Rules.

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