

Honorable Richard A. Jones

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

Sadam SHINWARI and Sairing Yuneixi
TOVAR FIGUEROA,

Petitioners,

v.

Laura HERMOSILLO et al.,

Respondents.

Case No. 2:26-cv-00009-RAJ

PETITIONERS' TRAVERSE

Noted for Consideration:
January 26, 2026

INTRODUCTION

Respondents do not dispute that the Department of Homeland Security (DHS) re-detained Petitioners after having released them from immigration custody on humanitarian parole, without notice, and without any hearing justifying the renewed deprivation of liberty. As numerous courts in this District and across the nation have recognized, such arbitrary re-detention violates the Due Process Clause, which forbids civil confinement imposed without notice and a pre-deprivation hearing. Respondents attempt to rely on their statutory and regulatory authority to detain Petitioners and revoke their parole, but such authority cannot displace the requirements of the Constitution. In fact, Respondents' own submission confirms that DHS provided no procedures before re-detaining Petitioners, only underscoring the serious risk of erroneous deprivation of liberty. Accordingly, this Court should order Petitioners' immediate release and

1 prohibit Respondents from re-detaining them absent a constitutionally adequate notice and
2 hearing.

3 **ARGUMENT**

4 **I. Petitioners were re-detained without any notice or hearing.**

5 Respondents' submission confirms that Petitioners were initially paroled pursuant to
6 8 U.S.C. § 1182(d)(5). Dkt. 7 at 4–5; Dkt. 8 ¶¶ 4, 14. Respondents do not contest that both
7 Petitioners had timely filed their asylum applications after being paroled. *See* Dkt. 2 ¶ 5; Dkt. 3
8 ¶ 5. Neither Petitioner was immediately re-detained upon the expiration of their parole.
9 According to Respondents, Petitioner Shinwari's initial parole expired on October 13, 2023, but
10 he was re-paroled for another two years until October 14, 2025. Dkt. 8 ¶ 4. He was not detained
11 until December 17, 2025. *Id.* ¶ 7. Petitioner Tovar Figueroa's parole was valid for two years
12 following her entry in June 2023, but she was not re-detained until December 2025. *Id.* ¶¶ 11, 14,
13 15. Petitioners are not subject to a final removal order.¹ *See* Dkt. 7 at 4, 5 n.2.

14 Respondents do not contend that DHS provided any notice to Petitioners before re-
15 detaining them. Instead, they point out that the regulations for automatic parole revocation
16 require “no written notice.” Dkt. 7 at 3 (quoting 8 C.F.R. § 212.5(e)(1)). The record further
17 demonstrates that Respondents did not provide a hearing before re-detaining Petitioners. *See* Dkt.
18 9-3 at 2 & Dkt. 9-5 at 2–3; *see also* Dkt. 8 ¶ 7 (stating that arresting officers “encountered
19 Shinwari after his scheduled interview with [U.S. Citizenship and Immigration Services]” for his
20 asylum application); *id.* ¶ 15 (stating that arresting officers “encountered Tovar Figueroa while
21 conducting an immigration arrest of another individual”).

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24 ¹ As Respondents confirm, the immigration judge pretermitted Ms. Tovar Figueroa's asylum
25 application without any individualized consideration of her claim. *See* Dkt. 7 at 5 (citing Dkt. 8
26 ¶ 18). *See Matter of C-I-G-M- & L-V-S-G-*, 29 I. & N. Dec. 291 (BIA 2025). Accordingly, the IJ
27 ordered her removed. However, as Respondents recognize, Dkt. 7 at 5 n.2, that order does not
become administratively final unless Ms. Tovar fails to file an appeal within 30 days of the
January 8, 2026 order to the Board of Immigration Appeals. Upon information and belief, Ms.
Tovar has already exercised her right to seek administrative review. As such, her removal
proceedings are ongoing.

1 In short, the factual record is undisputed that DHS re-detained Petitioners years after they
2 were paroled into the United States without any notice or hearing.

3 **II. Petitioners' arbitrary re-detention without a pre-deprivation hearing violates the**
4 **Due Process Clause of the Fifth Amendment.**

5 The undisputed facts establish a straightforward constitutional violation: DHS revoked
6 Petitioners' liberty and re-detained them without notice or a pre-deprivation hearing, in violation
7 of the Due Process Clause of the Fifth Amendment. Respondents' arguments to the contrary miss
8 the mark.

9 First, Respondents' emphasis on ICE's asserted statutory detention authority under
10 8 U.S.C. § 1225(b) is beside the point. The question here is not whether Respondents possess
11 some abstract authority to detain "applicants for admission," Dkt. 7 at 6, but whether the process
12 by which Respondents revoked Petitioners' liberty and re-detained them satisfied the Fifth
13 Amendment. *See, e.g., E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1323 (W.D. Wash. 2025)
14 ("Petitioner does not claim to be entitled to a hearing consistent with a particular statute: he
15 argues that the Due Process Clause requires it. This line of the Government's reasoning therefore
16 does not address Petitioner's concern and cannot carry the day."). In granting relief in a closely
17 analogous re-detention case, another court in this District further explained:

18 To the extent that the Government's briefing suggests that Section 1225(b)
19 should be the beginning and end of the Court's inquiry, this position is
20 emphatically rejected. In determining the lawfulness of Petitioner's
21 detention, the Court will focus not on the Government's claimed authority
22 to detain, but the process by which Petitioner was detained.

23 *P.T. v. Hermosillo*, No. C25-2249-KKE, 2025 WL 3294988, at *2 n.1; *see also, e.g., Francois v.*
24 *Wamsley*, No. C25-2122-RSM-GJL, 2025 WL 3063251, at *3 (W.D. Wash. Nov. 3, 2025) ("Any
25 argument that ICE acted within its authority has no affect [sic] on a claim contending that
26 detention violates Constitutional Due Process." (citation omitted)).

27 Second, Respondents' observation that there is "no statutory or regulatory requirement"
for a pre-deprivation hearing, Dkt. 7 at 6, is likewise unavailing. As Respondents concede,
multiple district courts have held that due process requires notice and a pre-deprivation hearing

1 before a neutral decisionmaker prior to re-detention. *See* Dkt. 7 at 7.² Many of these cases found
 2 unconstitutional the arbitrary re-detention of individuals who, like Petitioners Shinwari and
 3 Tovar Figueroa, were previously paroled under 8 U.S.C. § 1182(d)(5), recognizing their
 4 entitlement to due process. *See, e.g., Ramirez Tesara v. Wamsley*, 800 F. Supp. 3d 1130, 1136
 5 (W.D. Wash. Sept. 12, 2025) (“That the express terms of the parole notice allowed for
 6 discretionary termination or expiration does not somehow obviate the need for the Government
 7 to provide a [sic] individualized hearing prior to re-detaining the parolee.”); *Rodriguez Cabrera*
 8 *v. Mattos*, --- F. Supp. 3d ---, 2025 WL 3072687, at *11 (D. Nev. Nov. 3, 2025) (same); *Mata*
 9 *Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 152 (W.D.N.Y. 2025) (“[The government’s
 10 argument] would mean that a noncitizen living here on parole could be taken into custody and
 11 beaten by local police without any violation of the Fourth Amendment. That cannot be the law.”);
 12 *Francois*, 2025 WL 3496557, at *3 (rejecting the government’s argument that the petitioners
 13 “knew that they could be re-detained if they violated the conditions of parole”); *Jose B.M. v.*
 14 *Murray*, No. 1:25-cv-01584-KES-CDB (HC), 2026 WL 19121, at *3 (E.D. Cal. Jan. 4, 2026)
 15 (agreeing with other district court decisions holding that “a noncitizen like petitioner, who was
 16 paroled into the United States, has a due process right to challenge his re-detention without a
 17 bond hearing” (collecting cases)).

18 Ultimately, Respondents do not contest that the *Mathews v. Eldridge* test is appropriate
 19 but conduct a flawed analysis of the factors. First, they minimize Petitioners’ liberty interests by
 20 asserting that they are “not coextensive” with those of U.S. citizens. Dkt. 7 at 7 (citation
 21 omitted). This comparison, however, “does not negate Petitioner[s’] liberty interest in not being
 22 detained.” *Kumar v. Wamsley*, No. 2:25-cv-01772-JHC-BAT, 2025 WL 2677089, at *3 (W.D.
 23 Wash. Sept. 17, 2025). Second, Respondents’ assertion that Petitioners’ parole “could be revoked
 24 at any time,” Dkt. 7 at 9, only underscores the substantial risk of erroneous deprivation because
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26 ² Respondents fault these decisions for “erroneously conflating 8 C.F.R. § 1236.1(c)(9) and
 27 8 C.F.R. § 1236.1(c)(8),” Dkt. 7 at 7, but these provisions only govern release of individuals
 detained under 8 U.S.C. § 1226 and are irrelevant to parole revocation.

1 “no . . . mechanism exists for a noncitizen whose humanitarian parole is revoked or expires to
2 stay or seek review of a DHS official’s decision to re-arrest and detain them,” thus leaving
3 “noncitizen[s] like Petitioner[s] [with] no recourse to challenge re-detention after parole
4 revocation as based upon an erroneous or mistaken factual or legal predicate, or as otherwise
5 arbitrary.” *Rodriguez Cabrera*, 2025 WL 3072687, at *13. Lastly, Respondents assert a purported
6 “interest in revoking parole and returning individuals to custody who violate their terms.” Dkt. 7
7 at 10. But Petitioners do not dispute Respondents’ interest in resuming custody over individuals
8 who “violate” the terms of their release—they simply assert that Respondents must pursue such
9 an interest while abiding by the Constitution. And as courts in this District have found, “the
10 countervailing governmental interest” in re-detaining a noncitizen “without a pre-detention
11 hearing” “is minimal.” *Ramirez Tesara*, 800 F. Supp. 3d at 1137; *see also, e.g., Francois*, 2025
12 WL 3496557, at *4 (“[T]he Government’s interest in arresting and detaining without a
13 hearing . . . is low . . .”); *cf. Rodriguez Cabrera*, 2025 WL 3072687, at *13 (“[The
14 government’s] interests are in fact *protected* by the individualized determination by an IJ . . .”
15 (emphasis added)).

16 It is undisputed that Respondents previously released Petitioners from immigration
17 custody, that Petitioners pursued their asylum claims as instructed, and that thereafter
18 Respondents took Petitioners into immigration custody without notice and a hearing prior to their
19 re-detention. Accordingly, the three *Mathews* factors weigh in favor of affording notice and a
20 hearing prior to any re-detention—procedures that Respondents indisputably failed to provide,
21 rendering Petitioners’ detention unconstitutional.

22 **III. Due process requires the government to justify re-detention by clear and convincing**
23 **evidence and consideration of alternatives to detention.**

24 A constitutionally adequate pre-deprivation process requires the government to justify re-
25 detention by clear and convincing evidence. In challenging the applicable burden of proof,
26 Respondents misplace their reliance on cases such as *Demore v. Kim*, 538 U.S. 510 (2003),
27 *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), and *Zadvydas v. Davis*, 533 U.S. 678

1 (2001). *See* Dkt. 7 at 10–11. None of those cases addressed the evidentiary standard required
2 when the government seeks to revoke liberty it previously granted and reimpose civil
3 confinement. *Cf. Pinchi v. Noem*, 792 F.Supp.3d 1025, 1034 (N.D. Cal. 2025) (“Because the
4 question [of re-detention] . . . was not presented in *Rodriguez Diaz*, the court had no opportunity
5 to address it.”).

6 As a district court explained in a case challenging the re-detention of six asylum seekers,
7 placing a heightened burden of proof on the government is reasonable where:

8 [T]he immigrant’s initial release reflected a determination by the
9 government that the noncitizen is not a danger to the community or a flight
10 risk. Since it is the government that initiated re-detention, it follows that the
government should be required to bear the burden of providing a
justification for the re-detention.

11 *Espinoza v. Kaiser*, No., 2025 WL 2675785 (E.D. Cal. Sept. 18, 2025). That analysis comports
12 with long-established due process principles governing civil detention, under which courts have
13 applied the same clear and convincing standard whenever continued civil immigration detention
14 requires affirmative justification by the government, even where initial detention was lawful.
15 *E.g., Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011) (“Because it is improper to ask the
16 individual to ‘share equally with society the risk of error when the possible injury to the
17 individual’—deprivation of liberty—is so significant, a clear and convincing evidence standard
18 of proof provides the appropriate level of procedural protection.” (quoting *Addington v. Texas*,
19 441 U.S. 418, 427 (1979)), *abrogated on other grounds by Jennings v. Rodriguez*, 583 U.S. 281
20 (2018).

21 Similarly, due process requires consideration of alternatives to detention, and that
22 requirement applies with particular force in the re-detention context. Respondents inexplicably
23 invoke *Singh v. Holder* as the “high-water mark of procedural protections,” failing to explain
24 why Petitioners are entitled to less procedural protections than “criminal alien detainees
25 subjected to prolonged mandatory detention.” Dkt. 7 at 11 (quoting in first part *Martinez v.*
26 *Clark*, 124 F.4th 775, 786 (9th Cir. 2011)). Indeed, the fact that Petitioners were previously
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1 paroled and released especially warrants requiring the government to demonstrate why detention,
2 rather than continued or modified conditions of release, is necessary.

3 **CONCLUSION**

4 For all the foregoing reasons, Petitioners respectfully request that this Court grant a writ
5 of habeas corpus, order their immediate release, and enjoin Respondents from re-detaining any
6 Petitioner absent notice and a pre-deprivation hearing at which Respondents must justify danger
7 or flight risk by clear and convincing evidence and that no alternative to detention would
8 mitigate those risks.

9
10 Respectfully submitted this 26th day of January, 2026.

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13 **I certify that the foregoing contains 2,023 words,
14 in compliance with the Local Civil Rules.*

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