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6 Attorney for Petitioners Kely Villatoro et al.

7 **UNITED STATES DISTRICT COURT**

8 **WESTERN DISTRICT OF TEXAS**

9 KELY VILLATORO, ET AL.,

) Case No. SA-26-CA-0124-XR

10 Petitioners,

11
12 v.

13 Kristi NOEM, et al.,

14 Respondents.

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) PETITIONERS RESPONSE

) Honorable Xavier Rodriguez

) United States District Judge
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)

I. INTRODUCTION

Petitioners Kely Villatoro and her son respectfully submit this reply in response to the Government's opposition. First, the Government fails to confront Petitioners' central argument: that Petitioners re-detention without due process violates the Fifth Amendment. Second, Petitioners, through counsel, clarify that although they initially described their entry as without inspection, the Forms I-213 indicate that Petitioners applied for admission and were paroled into the United States. Petitioners therefore seek immediate release based on the lack of procedural due process attendant to their re-detention. Petitioners further argue as follows:

I. The Government's Opposition Fails Because Re-Detention Without Process Violates the Fifth Amendment

The Government's opposition ignores the fundamental constitutional defect in Petitioners' re-detention: the government re-arrested Ms. Villatoro and her minor child after years of peaceful residence and full compliance with their Orders of Supervision, without notice, without a hearing, and without any material change in circumstances. That action violates the Due Process Clause of the Fifth Amendment.

A. Petitioners Possess a Constitutionally Protected Liberty Interest

1 “Freedom from imprisonment—from government custody, detention, or
2 other forms of physical restraint—lies at the heart of the liberty protected by the
3 Due Process Clause.” Zadvydas v. Davis, 533 U.S. 678, 690 (2001). Once DHS
4 released Petitioners on parole and issued Forms I-220A, Petitioners acquired a
5 protected liberty interest in remaining free from physical restraint.
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8 Ms. Villatoro and her minor child have resided peacefully in the United
9 States since December 2016. After presenting at the border, they were
10 apprehended, detained, and affirmatively released by ICE after a determination
11 that they were neither a danger nor a flight risk. Since that time, they have fully
12 complied with all conditions of supervision and have had no violations, arrests, or
13 adverse conduct of any kind.
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16 Courts have consistently recognized that noncitizens released from
17 immigration custody possess a protectable liberty interest in remaining out of
18 detention. See Lopez-Arevalo v. Ripa, No. EP-25-CV-337-KC, 2025 U.S. Dist.
19 LEXIS 188232 (W.D. Tex. Sept. 21, 2025); citing, Diaz v. Kaiser, No. 25-cv-
20 5071, 2025 U.S. Dist. LEXIS 113566, 2025 WL 1676854, at *2 (N.D. Cal. June
21 14, 2025).
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25 Petitioners’ interest in remaining free from physical restraint by its own
26 government is “the most elemental of liberty interests.” Hamdi v. Rumsfeld, 542
27 U.S. 507, 529 (2004). As mentioned previously, “freedom from
28 imprisonment...lies at the core of the liberty protected by due process.”

1 Zadvydas, 533 U.S. at 690. That liberty interest is especially significant where, as
2 here, DHS previously exercised its discretion to release Petitioners from custody
3 and permit them to live in the community under Orders of Supervision. Once
4 liberty has been granted, it may not be withdrawn arbitrarily or without
5 appropriate procedural safeguards.
6
7

8 Here, DHS affirmatively authorized Ms. Villatoro and her minor child to
9 reside in the community under supervision beginning in 2016. Ms. Villatoro has
10 resided in the United States for nearly ten years, during which time she married
11 her lawful permanent resident husband, is raising their United States citizen
12 children, enrolled her minor son in school, and established deep and enduring ties
13 to the community. For nearly this same decade, Petitioners consistently reported
14 to ICE, complied with every condition imposed, and appeared at every in-person
15 check-in, including and notably at the appointment at which they were taken into
16 custody. They reasonably relied on DHS's grant of liberty in structuring their
17 lives and complying with the government's directives.
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22 DHS nevertheless re-detained Petitioners without notice, without a
23 hearing, and without any allegation of misconduct or violation. That action
24 implicates the most fundamental protections of the Due Process Clause.
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28 B. Due Process Requires Notice and a Hearing Before DHS May Revoke
Release

1 Because Petitioners possess a protected liberty interest, DHS may not
2 revoke their release absent constitutionally adequate procedures. At a minimum,
3 due process requires notice and a pre deprivation hearing to determine whether
4 re-detention after having been paroled and released on an Order of Supervision
5 for nearly a decade is justified. The Supreme Court has made clear that “the
6 fundamental requisite of due process of law is the opportunity to be heard . . . at a
7 meaningful time and in a meaningful manner.” Goldberg v. Kelly, 397 U.S. 254,
8 267 (1970). DHS provided Petitioners with none. Courts have further held that
9 due process requires a pre-deprivation hearing before the revocation of parole.
10 See Young v. Harper, 520 U.S. 143, 147–49 (1997); *see also*, Morrissey v.
11 Brewer, 408 U.S. 471, 484 (1972)(holding that “due process would seem to
12 require that some minimal inquiry be conducted at or reasonably near the place of
13 the alleged parole violation...and...promptly.”).

14 The government’s interests in civil immigration detention are limited to
15 ensuring appearance at future proceedings and protecting the community.
16 Zadvydas, 533 U.S. at 690-692. Neither justification exists here. Petitioners are
17 not flight risks. They have reported to ICE continuously since 2016 and appeared
18 at every required check-in. Their uninterrupted compliance conclusively
19 demonstrates that detention is not necessary to ensure appearance. The
20 government cannot show that detention is warranted given Petitioners sustained
21 compliance with the government’s directives over the many years. Nor has DHS

1 made any individualized determination that Ms. Villatoro poses a danger to the
2 community.
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5 C. DHS Lacked Statutory and Regulatory Authority to Re-Detain
6
7 Petitioners Absent a Material Change in Circumstances

8 Even apart from the constitutional violations that have arisen, DHS's
9 action violates its own statutory and regulatory limits. Pursuant to 8 U.S.C. §
10 1226(b), the "Attorney General at any time may revoke a bond or parole
11 authorized under subsection (a), rearrest the alien under the original warrant, and
12 detain the alien." The Board has held that ICE may re-arrest a noncitizen and
13 revoke an existing bond or release only upon a change in circumstances arising
14 after release. *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981). In previous
15 litigation, the federal government has acknowledged that any such change in
16 circumstances must be material. *Saravia v. Sessions*, 905 F. 3d. 1137, 1142 (9th
17 Cir. 2018), citing to, Oral Argument at 1:55-2:09, 13:07-:30, *Saravia v.*
18 *Sessions* (No.18-15114), <https://youtu.be/7wuOafIXrLk>. Here, the government
19 cannot allege any material change. To the contrary, the government contends that
20 Petitioners' pursuit of a stay before the Ninth Circuit has resulted in their
21 detention over the past two months. That argument improperly assigns blame to
22 Petitioners for exercising their appellate rights, despite the fact that their case was
23 judicially administratively closed by the Ninth Circuit and only recently
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1 reopened. Petitioners complied fully with supervision for years. Their re-
2 detention rests solely on a policy-driven re-arrest practice, not on individualized
3 facts. Re-detaining Petitioners without changed circumstances and without a
4 hearing is arbitrary and unlawful. Moreover, continued detention causes severe
5 and irreparable harm as outlined in Petitioner Ms. Villatoro's declaration where
6 she describes the dire conditions at the detention center along with concern over
7 the recent measles outbreak the facility is experiencing.

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11 Moreover, Petitioner is the mother of three United States citizen children.
12 The minor child detained with her is thirteen years old. Detaining a compliant
13 parent and child without justification serves no legitimate governmental purpose
14 and inflicts immediate and irreparable harm on the family unit.
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18 D. The Government's Speculation About Future Removal Does Not Justify
19 Present Detention
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21 Respondents argue that Petitioners may be detained because removal will
22 be possible once their case is concluded. That argument rests entirely on
23 speculation and an impermissible presumption that Petitioners will lose their
24 case.
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26 At present, removal is stayed by order of the Ninth Circuit, and Petitioners'
27 case remains actively pending. DHS cannot lawfully effectuate removal while
28 that stay remains in place. Detaining Petitioners now—based solely on conjecture

1 about a future outcome—results in penalizing the Petitioners for pursuing their
2 legal rights.
3

4 Moreover, the government’s assertion that flights operate regularly or that
5 travel documents exist assumes a final order of removal and the absence of a
6 judicial stay, conditions that simply do not exist here. Due process does not
7 permit DHS to restrain liberty based on a hypothetical outcome where sometime
8 in the future the government prevails in pending judicial proceedings. Nor may
9 DHS justify Petitioners’ detention by asserting that they “caused” the stay
10 through the pursuit of judicial review. Petitioners acted squarely within their legal
11 rights. Their detention instead stems from the government’s recent enforcement
12 policies and is tantamount to penalizing individuals for exercising the right to
13 seek judicial review by revoking their order of supervision.
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19 **II. Clarification Regarding Manner of Entry**

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21 Second, Petitioners, through counsel, acknowledge that while they initially
22 described their entry as without inspection, the Forms I-213 reflect that
23 Petitioners presented themselves for admission and were subsequently paroled
24 into the United States. That clarification does not alter the constitutional analysis.
25 Petitioners seek immediate release based on the government’s violation of their
26 procedural due process rights arising from arbitrary re-detention after long-term
27 supervised release.
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3 **III. Conclusion**

4 Because Petitioners have demonstrated long-standing compliance, pose no
5 flight risk or danger, and were re-detained without notice, hearing, or a material
6 change in circumstances, their continued detention violates the Fifth Amendment.
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8 Petitioners respectfully request that the Court grant the writ of habeas corpus and
9 order their immediate release under appropriate conditions.
10

11
12 February 4, 2026

Respectfully Submitted,
S/Roxana V. Muro

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WORD COUNT CERTIFICATION

The undersigned, counsel of record for Petitioner certifies that this Memo contains 1,785 words, which complies with the word limit of L.R. 11-6.1.

Dated: February 4, 2026

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2026, I electronically filed the foregoing Petitioners' Response with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties shall be served in accordance with the Federal Rules of Civil Procedure.

Dated: February 4, 2026

Respectfully Submitted,
/s/Roxana V. Muro

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SWORN DECLARATION FROM KELY VILLATORO

I, KELY VILLATORO, do declare the following from my personal knowledge and belief:

1. My name is Kely Villatoro, and my son and I entered the United States seeking asylum on or about December 2016.
2. I was detained for several days and then released on or about December 27, 2016, to the custody of my husband.
3. I was released under supervision and instructed to report to my local Immigration and Customs Enforcement ("ICE") office.
4. I was advised that I would have an appearance before the Immigration Court in March 2017.
5. From the time of my release, I consistently reported to the ICE office located at 300 N. Los Angeles Street, as instructed.
6. At each appearance, I was given a future date to return, with which I fully complied.
7. In November 2025, I again reported to the ICE office at 300 N. Los Angeles Street.
8. At that time, I was directed to the basement of the building, where an ankle monitor was placed on my ankle.
9. I was instructed to return in December 2025 with my children. I appeared as instructed and was informed that my son and I were going to be deported from the United States. I informed my attorney who requested an emergency stay of removal with the appeals court. My case was administratively closed, and it had recently been re-calendared.
10. Despite the stay of removal, we were told that we were going to be detained.
11. My son and I were transferred to another location, which I believe was Anaheim, California. We were placed on a plane and flown to Atlanta, Georgia, traveling overnight.
12. We were then placed on another flight to San Antonio, Texas, and transported by vehicle to a detention facility.

1 13. Approximately one month ago, my son [REDACTED] was assaulted by another detained child and
2 suffered an open wound to his face. I requested medical assistance for my son, but officers stated
3 that he could not receive stitches because it was after 9:00 p.m. He was only given an ice pack.

4 14. While detained at the Dilley detention facility, there has been a measles outbreak among
5 detainees. I am afraid for my health and the health of my child. In addition, worms were found in
6 food served at the facility.

7 15. My husband is a lawful permanent resident from Guatemala and is currently caring for our three
8 U.S. citizen children. My husband works full time and has been required to pay for a nanny
9 while I remain detained.

10 16. My son [REDACTED] has missed school and has been emotionally affected. His teachers have noticed
11 changes in his behavior.

12 17. My children frequently ask for me and express their desire for our family to be reunited. Our
13 youngest child, [REDACTED] is two years old. My children have lost their appetite and are suffering
14 emotionally due to my absence.

15 18. I have never missed an ICE check-in and have always complied with all instructions given to me
16 by immigration authorities. If released, I would continue to report as instructed.

17 19. I have no criminal history and have never been arrested.

18 20. I have lived a peaceful life in the United States and do not understand why I was detained after
19 years of compliance.

20 21. I miss my family and seek release so that I may reunite with them while my immigration case
21 continues.

22 I declare under penalty of perjury that the above is true and correct to the best of my knowledge and if
23 asked to testify I could and would completely thereto.

24 /s/ Kely Villatoro
25 Kely Villatoro
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