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9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 ENMANUEL ALEJANDRO DURAN-
13 MONTILLA,

14 Petitioner,

15 v.

16 KRISTI NOEM, Secretary of the
17 Department of Homeland Security,
18 PAMELA JO BONDI, Attorney General,
19 TODD M. LYONS, Acting Director,
20 Immigration and Customs Enforcement,
21 JESUS ROCHA, Acting Field Office
22 Director, San Diego Field Office,
23 CHRISTOPHER LAROSE, Warden at
24 Otay Mesa Detention Center,

25 Respondents.

Civil Case No.: 26-cv-1336-RBM-DDL

**Amended Petition
for a
Writ of Habeas Corpus**

INTRODUCTION

Enmanuel Alejandro Duran-Montilla is a citizen of Venezuela who was released so that he could seek asylum in the United States. But despite complying with all his court dates and timely submitting his asylum application, Mr. Duran-Montilla was arrested when an ICE officer pulled him over at a stoplight. ICE then took him into custody without any notice or explanation.

Respondents have revoked Mr. Duran-Montilla's parole in violation of the statute and regulations, which require written notification and a determination that the purposes of the parole have been served. Alternatively, the Due Process Clause of the Fifth Amendment of the Constitution requires redeprivation notice and hearing. Either way, the agency's actions violated the Administrative Procedures Act and the Due Process Clause, and this Court should order his immediate release.

STATEMENT OF FACTS

Mr. Duran-Montilla was born in Venezuela and fled because he feared persecution. Exhibit A, Declaration of Enmanuel Alejandro Duran-Montilla, at ¶ 1. He came to Mexico and made an appointment through the CBP One App. *Id.* at ¶ 1.

On November 19, 2024, Mr. Duran-Montilla presented himself at the port of entry for his CBP One appointment and was paroled in to the United States. *Id.* at ¶ 2. He went to Utah, where an immigration lawyer helped him apply for asylum and Temporary Protected Status (TPS). *Id.* at ¶ 3. He was complying with all his requirements and attending all his hearings. *Id.* at ¶ 3.

On December 30, 2025, Mr. Duran-Montilla was stopped at a stoplight next to an ICE officer. *Id.* at ¶ 4. The ICE officer pulled him over and began asking him questions. *Id.* at ¶ 4. He then took Mr. Duran-Montilla into custody. *Id.* at ¶ 4. The ICE officer never told Mr. Duran-Montilla why he was arresting him, nor did

1 the officer give him an informal interview at which he could contest his detention.
 2 *Id.* at ¶ 4.

3 After ICE took Mr. Duran-Montilla into custody, he was transferred to
 4 California, where he has been detained at Otay Mesa Detention Center ever since.
 5 *Id.* at ¶ 5.

6 CLAIMS FOR RELIEF

7 **I. Count One: ICE failed to comply with its own regulations and the** 8 **Administrative Procedures Act in revoking Mr. Duran-Montilla's** 9 **parole.**

10 When ICE detained Mr. Duran-Montilla on December 30, 2025, it did not
 11 say whether it was revoking his parole. Exh. A at ¶ 4. Either way, the
 12 government's actions violated the regulations and the Administrative Procedures
 13 Act.

14 Under the Administrative Procedures Act (APA), an agency action may be
 15 held unlawful and set aside if it is "arbitrary, capricious, an abuse of discretion, or
 16 otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). An action is an
 17 abuse of discretion if the agency "entirely failed to consider an important aspect
 18 of the problem, offered an explanation for its decision that runs counter to the
 19 evidence before the agency, or is so implausible that it could not be ascribed to a
 20 difference in view or the product of agency expertise." *Nat'l Ass'n of Home*
 21 *Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle*
 22 *Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43
 23 (1983)). For a challenged agency action to be upheld, the agency "must explain
 24 the evidence which is available, and must offer a rational connection between the
 25 facts found and the choice made." *Motor Vehicle Mfrs*, 463 U.S. at 52 (1983)
 26 (internal quotations omitted) (quoting *Burlington Truck Lines, Inc. v. United*
 27 *States*, 371 U.S. 156, 168 (1962)).
 28

1 Here, regardless of whether the agency formally revoked Mr. Duran-
2 Montilla's parole, it violated the APA. If the agency did *not* revoke his parole,
3 then it inexplicably violated its own parole decision by detaining Mr. Duran-
4 Montilla. Doing so violated the APA because the agency did not "offer a rational
5 connection between the facts found and the choice made"—i.e., the fact that
6 Mr. Duran-Montilla was still on parole, yet the agency decided to detain him.
7 *Motor Vehicle Mfrs*, 463 U.S. at 52. And nothing suggests that there *was* a
8 "rational" reason for this choice, given that Mr. Duran-Montilla had filed an
9 asylum application and complied with all the conditions of his parole. This was
10 the epitome of an "arbitrary" and "capricious" act under the APA. 5 U.S.C.
11 § 706(2)(A).

12 But assuming the agency *had* revoked his parole, it also violated the APA.
13 Per ICE regulations, a person shall only be "returned to the custody from which
14 he was paroled" when "the purposes of such parole . . . have been served." 8
15 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. § 212.5(e)(2)(i) (parole may only be
16 terminated "upon accomplishment of the purpose for which parole was
17 authorized"); *Y-Z-L-H*, 2025 WL 1898025, at *12 (same). Alternatively, the
18 regulations permit revocation of parole when "neither humanitarian reasons nor
19 public benefit warrants the [noncitizen's] continued presence." 8 C.F.R.
20 § 212.5(e)(2)(i). But under either scenario, parole shall only be "terminated upon
21 written notice to the alien." 8 C.F.R. § 212.5(e)(2)(i). So under the statute and the
22 regulations, the agency may only revoke parole and re-detain a noncitizen when
23 the parole's purpose is served or no humanitarian reasons warrant it *and* the
24 noncitizen receives written notice.

25 None of this occurred here. Because "the purpose[] of [Mr. Duran-
26 Montilla's] parole" was to allow him to apply for asylum, that purpose has not yet
27 "been served" because his asylum claim is still pending. 8 U.S.C.
28 § 1182(d)(5)(A). And the humanitarian reasons for parole—to avoid unnecessary

1 detention when an asylum seeker poses no danger or flight risk—remains the
 2 same. Put differently, “upon Petitioner’s entry into the United States, Respondents
 3 determined that Petitioner was suitable for parole. Respondents have not provided
 4 a reasoned explanation or any changed circumstances that would justify their
 5 current departure from their prior decision.” *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d
 6 1123, 1146 (D. Or. 2025). Under the APA, “[i]t is Respondents’ burden to
 7 provide a reasoned explanation for their action,” which they will not be able to do.
 8 *Id.*

9 What’s more, Mr. Duran-Montilla never received any written notification
 10 of a revocation under 8 C.F.R. § 212.5(e). So if the agency revoked his parole,
 11 this decision violated both the statute and the regulation and was “not in
 12 accordance with law” under the APA. 5 U.S.C. § 706(2)(A).

13 Numerous courts have released parolees on this basis. *See, e.g., Arias v.*
 14 *Larose*, No. 3:25-CV-02595-BTM-MMP, 2025 WL 3295385, at *3 (S.D. Cal.
 15 Nov. 25, 2025); *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149
 16 (S.D. Cal. Oct. 1, 2025); *Salazar v. Casey*, No. 25-cv-2784 JLS-VET, 2025 WL
 17 3063629 (S.D. Cal. Nov. 3, 2025); *Perez v. LaRose*, No. 25-cv-02620-RBM-JLB,
 18 2025 WL 3171742 (S.D. Cal. Nov. 13, 2025); *Y-Z-L-H v. Bostock*, No. 25-cv-
 19 965-SI, 2025 WL 1898025, at *13 (D. Or. July 9, 2025). Because Mr. Duran-
 20 Montilla is in the same position as these individuals, this Court should do the
 21 same and order his immediate release.

22 **II. Count Two: The Due Process Clause required notice and a chance to
 be heard before parole was revoked.**

23 Additionally, “the revocation of [Mr. Duran-Montilla’s] parole without
 24 justification or consideration of his individualized circumstances violates the Due
 25 Process Clause.” *Perez v. LaRose*, No. 3:25-CV-02620-RBM-JLB, 2025 WL
 26 3171742, at *4 (S.D. Cal. Nov. 13, 2025). Mr. Duran-Montilla was “entitled to
 27 notice of the reasons for revocation of his parole and a hearing before an
 28

1 immigration judge to determine whether detention is warranted” before ICE
2 revoked his parole. *Id.* at *7.

3 “The Fifth Amendment guarantees that ‘[n]o person shall be ... deprived of
4 life, liberty, or property, without due process of law.’” *Salazar*, 2025 WL
5 3063629, at *3 (quoting U.S. Const. amend. V). “[T]he Due Process Clause
6 applies to all ‘persons’ within the United States, including aliens, whether their
7 presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*,
8 533 U.S. 678, 693 (9th Cir. 2001).

9 “Generally, due process protections depend on the situation and must
10 account for (1) the private interest at issue, (2) the risk of erroneous deprivation of
11 that interest through the procedures used, and (3) the Government's interest.”
12 *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct.
13 1, 2025); (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). Weighing those
14 considerations here, Respondents violated the Due Process Clause by revoking
15 parole with no notice or hearing.

16 “First, Petitioner has a private interest in remaining free, which developed
17 over the [months] he resided in the United States.” *Id.* at *10. It does not matter
18 that parole is temporary or discretionary. “For example, *Morrissey v. Brewer*, 408
19 U.S. 471, 482 (1972)—though analyzing the criminal parole context—found that
20 ‘the liberty of a parolee, although indeterminate, includes many of the core values
21 of unqualified liberty and its termination inflicts a grievous loss on the parolee
22 and often others ... [thus it] must be seen within the protection of the [Fifth]
23 Amendment.’” *Id.*

24 “Second, the risk of an erroneous deprivation of such interest is high as
25 Petitioner's parole was revoked without providing [him] a reason for revocation or
26 giving [him] an opportunity to be heard.” *Salazar*, 2025 WL 3063629, at *4.
27 “Civil immigration detention is permissible only to prevent flight or protect
28 against danger to the community.” *Perez*, 2025 WL 3171742, at *5. But here,

1 “[s]ince DHS's initial determination that Petitioner should be paroled because [he]
 2 posed no danger to the community and was not a flight risk, there is no evidence
 3 that these findings have changed.” *Id.*

4 “Third, the Government's interest in detaining Petitioner without notice,
 5 reasoning, and a hearing is low.” *Salazar*, 2025 WL 3063629, at *5 (cleaned up).
 6 “Detention for its own sake, to meet an administrative quota, or because the
 7 government has not yet established constitutionally required pre-detention
 8 procedures is not a legitimate government interest.” *Pinchi v. Noem*, 792 F. Supp.
 9 3d 1025, 1036 (N.D. Cal. 2025).

10 Thus, because Respondents did not provide “proper notice, reasoning, and a
 11 pre-deprivation hearing” before revoking parole, Mr. Duran-Montilla’s
 12 redetention violated the Due Process Clause. *Salazar*, 2025 WL 3063629, at *5.

13 **III. This Court must hold an evidentiary hearing on any disputed facts.**

14 Resolution of a detention-based habeas petition may require an evidentiary
 15 hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Mr. Reinoso
 16 Martinez hereby requests such a hearing on any material, disputed facts.

17 **IV. Prayer for relief**

18 For the foregoing reasons, Petitioner respectfully requests that this Court:

- 19 1. Order Respondents to immediately release Petitioner from custody,
 20 subject to the conditions of his preexisting parole;
- 21 2. Order that prior to any re-detention of Petitioner, that Petitioner is
 22 entitled to notice of the reasons for revocation of his parole and a
 23 hearing before an immigration judge to determine whether detention is
 24 warranted. Respondents bear the burden of establishing, by clear and
 25 convincing evidence, that Petitioner poses a danger to the community or
 26 a risk of flight at that hearing; and

3. Order any other relief that the Court deems just and proper.

Respectfully submitted,

Dated: March 19, 2026

s/ Kara Hartzler

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