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

12 MYKHAILO VELYCHKO,

13 Petitioner,

14 v.

15 MARKWAYNE MULLIN, Secretary of
16 the Department of Homeland Security,
17 TODD BLANCHE, Acting Attorney
General, TODD M. LYONS, Acting
Director, Immigration and Customs
Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
Office, CHRISTOPHER LAROSE,
Warden at Otay Mesa Detention Center,

18 Respondents.
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Civil Case No.: 26-cv-2520-DMS-MSB

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

INTRODUCTION

Mykhailo Velychko is a citizen of the Ukraine who was paroled into the United States in 2022 so that he could seek asylum in the United States. He submitted a timely asylum application and also applied for (and was granted) Temporary Protected Status (TPS). But on March 15, 2026, ICE surrounded Mr. Velychko's car, arrested him, and brought him to Otay Mesa Detention Center, where he remains detained.

Mr. Velychko's detention is unlawful for two reasons. First, Mr. Velychko has lawful TPS status, which means his detention is unlawful under 8 U.S.C. § 1254a(d)(4). Second, the agency violated the regulations, the Administrative Procedures Act, and due process by revoking its decision to release him with no notice or explanation. For either reason, this Court should order his immediate release.

STATEMENT OF FACTS

Mr. Velychko was born in the Ukraine and was paroled into the United States in October 2022. Exhibit A, Declaration of Mykhailo Velychko, at ¶ 1. After he arrived in the United States, he applied for and was granted Temporary Protected Status (TPS). *Id.* at ¶ 2. He renewed his TPS a year or so ago, and it is currently valid through October 19, 2026. *Id.* at ¶ 2.

On March 15, 2026, Mr. Velychko was driving his car in Escondido, California, when ICE officers stopped him. *Id.* at ¶ 3. They surrounded his car and arrested him. *Id.* at ¶ 3. Although he told them that he has valid TPS status, they told him that TPS "doesn't help" him. *Id.* at ¶ 3. They did not tell him why they were revoking his parole, nor did they give him an informal interview. *Id.* at ¶ 3.

ICE took Mr. Velychko to Otay Mesa Detention Center and placed him in removal proceedings. *Id.* at ¶ 4. He has been detained since that time. *Id.* at ¶ 4. His next hearing is on June 20, 2026. *Id.* at ¶ 4.

CLAIMS FOR RELIEF

I. Count One: Mr. Velychko has lawful TPS status, which means his detention is unlawful under 8 U.S.C. § 1254a(d)(4).

The Immigration and Nationality Act unequivocally prohibits the detention of individuals with TPS. Specifically, the status says that a TPS holder “shall not be detained...on the basis of [his] immigration status in the United States.” 8 U.S.C. §1254(d)(4). Accordingly, because Mr. Velychko has valid TPS status, he must be immediately released. *See Ramirez-Perez v. Schmidt*, No. 26-CV-158-BHL, 2026 WL 280703, at *1 (E.D. Wis. Feb. 3, 2026) (“when a country is designated for Temporary Protected Status, foreign nationals of that country may apply for protection and, if granted, may not be detained on the basis of the noncitizen’s immigration status...”); *Echeverria v. Janecka*, No. 25-CV-01832-KES-SAB (HC), WL 44896 (E.D. Cal. Jan. 7, 2026); *Mejia v. Noem*, No. 25-CV-981-SPC-NPM, WL 2025 3078656 (M.D. Fl. Nov. 4, 2025).

Furthermore, pursuant to 8 CFR § 244.18(d), a noncitizen granted Temporary Protected Status may only be detained when the individual is determined by USCIS to be deportable or inadmissible on grounds which would have otherwise made him ineligible for Temporary Protected Status. Here, Mr. Velychko is aware of no basis for deportability or inadmissibility. Thus, this Court should order his immediate release pursuant to his valid TPS status.

II. Count Two: ICE failed to comply with its own regulations in revoking Mr. Velychko’s release under 8 C.F.R. § 212.5, violating the Administrative Procedures Act, the regulations, and due process.

When ICE detained Mr. Velychko on March 15, 2026, it did not say why it was revoking its decision to release him. Exh. A at ¶ 3. This violated the regulations, the Administrative Procedures Act, and due process.

Under the Administrative Procedures Act (APA), an agency action may be held unlawful and set aside if it is “arbitrary, capricious, an abuse of discretion, or

1 otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). An action is an
 2 abuse of discretion if the agency “entirely failed to consider an important aspect
 3 of the problem, offered an explanation for its decision that runs counter to the
 4 evidence before the agency, or is so implausible that it could not be ascribed to a
 5 difference in view or the product of agency expertise.” *Nat’l Ass’n of Home*
 6 *Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle*
 7 *Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43
 8 (1983)). For a challenged agency action to be upheld, the agency “must explain
 9 the evidence which is available, and must offer a rational connection between the
 10 facts found and the choice made.” *Motor Vehicle Mfrs*, 463 U.S. at 52 (1983)
 11 (internal quotations omitted) (quoting *Burlington Truck Lines, Inc. v. United*
 12 *States*, 371 U.S. 156, 168 (1962)).

13 Here, the agency did not “offer a rational connection between the facts
 14 found and the choice made”—i.e., the fact that Mr. Velychko had previously been
 15 released, yet the agency decided to detain him even though he had committed no
 16 violations. *Motor Vehicle Mfrs*, 463 U.S. at 52. And nothing suggests that there
 17 was a “rational” reason for this choice, given that Mr. Velychko has valid TPS
 18 status and has complied with all the conditions of his release. This was the
 19 epitome of an “arbitrary” and “capricious” act under the APA. 5 U.S.C.
 20 § 706(2)(A).

21 The agency’s actions also violated the regulations. Per ICE regulations, a
 22 person shall only be “returned to the custody from which he was paroled” when
 23 “the purposes of such parole . . . have been served.” 8 U.S.C. § 1182(d)(5)(A); see
 24 also 8 C.F.R. § 212.5(e)(2)(i) (parole may only be terminated “upon
 25 accomplishment of the purpose for which parole was authorized”); *Y-Z-L-H*, 2025
 26 WL 1898025, at *12 (same). Alternatively, the regulations permit revocation of
 27 parole when “neither humanitarian reasons nor public benefit warrants the
 28 [noncitizen’s] continued presence.” 8 C.F.R. § 212.5(e)(2)(i). But under either

1 scenario, parole shall only be “terminated upon written notice to the alien.” 8
 2 C.F.R. § 212.5(e)(2)(i). So under the statute and the regulations, the agency may
 3 only revoke parole and re-detain a noncitizen when the parole’s purpose is served
 4 or no humanitarian reasons warrant it *and* the noncitizen receives written notice.

5 None of this occurred here. Because “the purpose[] of [Mr. Velychko’s]
 6 parole” was to allow him to apply for asylum, that purpose has not yet “been
 7 served” because his asylum claim is still pending before the IJ. 8 U.S.C.
 8 § 1182(d)(5)(A). And the humanitarian reasons for parole—to avoid unnecessary
 9 detention when an asylum seeker poses no danger or flight risk—remains the
 10 same. Put differently, “upon Petitioner’s entry into the United States, Respondents
 11 determined that Petitioner was suitable for release. Respondents have not
 12 provided a reasoned explanation or any changed circumstances that would justify
 13 their current departure from their prior decision.” *Y-Z-L-H v. Bostock*, 792 F.
 14 Supp. 3d 1123, 1146 (D. Or. 2025). Under the APA, “[i]t is Respondents’ burden
 15 to provide a reasoned explanation for their action,” which they will not be able to
 16 do. *Id.*

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

21 Multiple courts have released parolees on this basis. *See Arias v. Larose*,
 22 No. 3:25-CV-02595-BTM-MMP, 2025 WL 3295385, at *3 (S.D. Cal. Nov. 25,
 23 2025); *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D.
 24 Cal. Oct. 1, 2025); *Salazar v. Casey*, No. 25-cv-2784 JLS-VET, 2025 WL
 25 3063629 (S.D. Cal. Nov. 3, 2025); *Perez v. LaRose*, No. 25-cv-02620-RBM-JLB,
 26 2025 WL 3171742 (S.D. Cal. Nov. 13, 2025); *Y-Z-L-H v. Bostock*, No. 25-cv-
 27 965-SI, 2025 WL 1898025, at *13 (D. Or. July 9, 2025). Because Mr. Velychko is
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1 in the same position as these individuals, this Court should do the same and order
2 his immediate release.

3 Additionally, “[t]he Fifth Amendment guarantees that ‘[n]o person shall be
4 ... deprived of life, liberty, or property, without due process of law.’” *Salazar*,
5 2025 WL 3063629, at *3 (quoting U.S. Const. amend. V). “[T]he Due Process
6 Clause applies to all ‘persons’ within the United States, including aliens, whether
7 their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v.*
8 *Davis*, 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. Velychko’s redetention
 12 violated the Due Process Clause. *Salazar*, 2025 WL 3063629, at *5. *See also*
 13 *Perez v. LaRose*, No. 3:25-CV-02620-RBM-JLB, 2025 WL 3171742, at *4 (S.D.
 14 Cal. Nov. 13, 2025) (“[T]he revocation of [Mr. Velychko’s] parole without
 15 justification or consideration of his individualized circumstances violates the Due
 16 Process Clause.”). Thus, Mr. Velychko’s redetention violated the APA, the
 17 regulations, and due process.

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

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

22 **IV. Prayer for relief**

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

- 24 1. Order Respondents to immediately release Petitioner from custody
 25 pursuant to the requirements of his TPS status;
- 26 2. Order that prior to any re-detention of Petitioner, that Petitioner is
 27 entitled to notice of the reasons for revocation of his parole and a
 28 hearing before an immigration judge to determine whether detention is

1 warranted. Respondents bear the burden of establishing, by clear and
2 convincing evidence, that Petitioner poses a danger to the community or
3 a risk of flight at that hearing; and

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

5 Respectfully submitted,

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7 Dated: May 6, 2026

s/ Kara Hartzler

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