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7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 DAOFEI FANG,

12 Petitioner,

13 v.

14 MARKWAYNE MULLIN, Secretary of
15 the Department of Homeland Security,
16 TODD BLANCHE, Acting Attorney
General, TODD M. LYONS, Acting
17 Director, Immigration and Customs
Enforcement, JESUS ROCHA, Acting
18 Field Office Director, San Diego Field
Office, JEREMY CASEY, Warden of
19 Imperial Regional Detention Center,

20 Respondents.
21

Case No.: 26-cv-2982-LL-DDL

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

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27 ¹ The Court conditionally appointed Federal Defenders of San Diego, Inc, who
28 now confirms appointment. Mr. Fang indicated he would like the assistance of
counsel. *See* ECF Nos. 5, 6.

INTRODUCTION

In May 2024, Daofei Fang came to the United States border. He was fleeing persecution in China. DHS arrested him after he had entered the country, decided he did not pose a flight risk or a danger, and released him on conditional parole so that he could pursue his asylum claim. He timely filed his asylum claim. He checked in with ICE every six months, and then every year.

Late last month, when Mr. Fang was driving back to Los Angeles from Phoenix, CBP stopped him at a checkpoint and arrested him. He is now detained by ICE at the Imperial Regional Detention Center. Mr. Fang has not been provided with a basis for his detention, whether or why his own recognizance conditional parole was revoked, or an opportunity to contest that revocation or request alternative conditions of release. This civil immigration habeas petition explains that his detention violates the Fifth Amendment's Due Process Clause.

This Court should order Mr. Fang's immediate release onto his existing conditional parole conditions and order that Respondents "not cause Petitioner to be re-detained during the pendency of his removal proceedings without prior leave of this Court." *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1147 (D. Or. 2025); *see also Darji v. LaRose*, No. 26-cv-549-JLS-DEB, 2026 WL 323076 (S.D. Cal. Feb. 6, 2026); *Noori v. LaRose*, ___ F. Supp. 3d ___, 2025 WL 2800149, *9-*13 (S.D. Cal. Oct. 1, 2025); *Delfin-Ricardo v. Noem*, No. 26-cv-136-RSH-BJW, 2026 WL 353357, *1-*2 (S.D. Cal. Feb. 9, 2026); *Modrekiladze v. LaRose*, No. 26-cv-271-JEW-DEB, 2026 WL 242041, *2-*4 (S.D. Cal. Jan. 29, 2026); *Lozada v. LaRose*, No. 25-cv-3614-LL-KSC, 2026 WL 184205 (S.D. Cal. Jan. 23, 2026) (finding similar violations for unlawful revocations of humanitarian or conditional parole and ordering release).

STATEMENT OF FACTS AND BACKGROUND

Daofei Fang is a Chinese national who entered the United States in May 2024. Exhibit A, Declaration of Mr. Fang, ¶¶ 1–2. He was arrested by CBP and

1 “held in custody for about two days.” *Id.* ¶ 2. He was then released so he could
 2 apply for asylum. *Id.* He did apply for asylum, as well as a work permit. He
 3 received that work permit in March 2025. *Id.*

4 He was then subject to supervision conditions by ICE. He explains,
 5 After I was released, I had a requirement to check in with ICE every
 6 six months, and then every year. I went to all my check-ins and
 7 complied with all my conditions. My next scheduled check-in was
 for this July.

8 Exhibit A ¶ 3.

9 His experience indicates he was subject to an “Order of Release on
 10 Recognizance.” *See* Sample Form I-220A Order of Release on Recognizance,
 11 ASAP (Oct. 3, 2025)²; *see also* International Refugee Assistance Project, *Basic*
 12 *Information For People Released into the US by US Government Authorities:*
 13 *What It Means to Receive An “Order of Release on Recognizance* (June 12, 2025)
 14 (noting that people on this form of release receive ICE check-in dates and can
 15 have reporting requirements).³

16 This order is also called one of “conditional parole.” *Garcia-Henriquez v.*
 17 *LaRose*, 2026 WL 323328, *2 (S.D. Cal. Feb. 6, 2026). To issue conditional
 18 parole, DHS determined Mr. Fang was “detained pursuant to Respondents’
 19 discretionary authority under [8 U.S.C.] § 1226.” *Faizyan v. Casey*, No. 25-cv-
 20 2884-RBM-JLB, 2025 WL 3208844, * 5 (S.D. Cal. Nov. 17, 2025). It also made
 21 an individualized determination that he was neither a danger to the community
 22 nor a flight risk. *See Ramirez-Bibiano v. LaRose*, No., 2025 WL 3632748, *4
 23 (S.D. Cal. Dec. 15, 2025) (explaining this point).

24 In late April 2026, Mr. Fang was driving from Phoenix to Los Angeles on
 25 the I-10. He explains, “CBP stopped me at a checkpoint and arrested me. I did not

26 ² Available at <https://asaptogether.org/en/form-i220a/>.

27 ³ Available at [https://support.iraplegalinfo.org/hc/en-us/articles/15908200910100-](https://support.iraplegalinfo.org/hc/en-us/articles/15908200910100-Basic-Information-For-People-Recently-Released-into-the-US-by-US-Government-Authorities)
 28 [Basic-Information-For-People-Recently-Released-into-the-US-by-US-](https://support.iraplegalinfo.org/hc/en-us/articles/15908200910100-Basic-Information-For-People-Recently-Released-into-the-US-by-US-Government-Authorities)
[Government-Authorities.](https://support.iraplegalinfo.org/hc/en-us/articles/15908200910100-Basic-Information-For-People-Recently-Released-into-the-US-by-US-Government-Authorities)

1 understand what was going on. They did not explain why they were arresting me
2 or what they were arresting me for.” Exhibit A ¶ 4.

3 Mr. Fang has never received written notice that his conditional parole had
4 been revoked. He has never learned why or had a chance to explain why his
5 parole should not be revoked. *Id.* ¶ 5. He has remained detained at the Imperial
6 Regional Detention Center. *Id.* ¶ 1. A master calendar hearing, the equivalent of a
7 status hearing, is scheduled in immigration court for tomorrow, May 21,
8 presumably to discuss his asylum case. *See* Exhibit B.

9 LEGAL ARGUMENT

10 I. Summarily revoking Mr. Fang’s parole and subjecting him to 11 detention violates due process.

12 The Due Process Clause of the Fifth Amendment forbids the government
13 from depriving any person of liberty without due process of law. U.S. Const.
14 amend. V. “Freedom from imprisonment—from government custody, detention,
15 or other forms of physical restraint—lies at the heart of the liberty” that the Due
16 Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing
17 *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

18 An individual released from immigration custody has a constitutionally
19 protected liberty interest in remaining free from detention. *Morrissey v. Brewer*,
20 408 U.S. 471, 482, 92 S. Ct. 2593, 2601, 33 L. Ed. 2d 484 (1972); *see also*
21 *Sanchez v. LaRose*, 25-cv-2396, 2025 WL 2770629, at *3 (S.D. Cal.). Thus,
22 Petitioner has a fundamental interest in liberty and being free from official
23 restraint.

24 “Even when ICE has the initial discretion to detain or release a noncitizen
25 pending removal proceedings, after that individual is released from custody [he]
26 has a protected liberty interest in remaining out of custody.” *Pinchi v. Noem*, 792
27 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025). (internal citation omitted). That liberty
28 interest “is not limited to a bond hearing;” people who receive conditional parole

1 have “a protected liberty interest in remaining out of custody.” *Kumar v. LaRose*,
 2 No. 25-cv-3796-JLS-DDL, 2026 WL 40873, *2 (S.D. Cal. Jan. 6, 2026); *accord*,
 3 *e.g.*, *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at
 4 *11 (E.D. Cal. Aug. 21, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV-07492-
 5 RFL, 2025 WL 2578207, at *3 (N.D. Cal. Sept. 5, 2025); *Y-Z-L-H v. Bostock*, No.
 6 3:25-CV-965-SI, 2025 WL 1898025, at *13 (D. Or. July 9, 2025).

7 To determine which procedures are constitutionally sufficient to satisfy the
 8 Due Process Clause, the Court must apply the *Matthews* factors. *See Matthews v.*
 9 *Eldridge*, 424 U.S. 319, 335 (1976). Courts must consider: (1) “the private
 10 interest that will be affected by the official action”; (2) “the risk of an erroneous
 11 deprivation of such interest through the procedures used, and the probable value,
 12 if any, of additional or substitute procedural safeguards”; and (3) “the
 13 Government's interest, including the function involved and the fiscal and
 14 administrative burdens that the additional or substitute procedural requirement
 15 would entail.” *Id.*

16 All three factors support a finding that the government’s revocation of
 17 Mr. Fang’s conditional parole without reasoning or an opportunity to be heard
 18 denied him of his due process rights. First, Mr. Fang has a significant liberty
 19 interest in remaining out of custody pursuant to his conditional parole. “Freedom
 20 from imprisonment—from government custody, detention, or other forms of
 21 physical restraint—lies at the heart of the liberty [the Due Process Clause]
 22 protects.” *Zadvydas*, 533 U.S. at 690. He also has an interest in remaining in the
 23 community. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (“Subject to the
 24 conditions of his parole, he can be gainfully employed and is free to be with
 25 family and friends and to form the other enduring attachments of normal life.”).

26 Second, the risk of an erroneous deprivation of such interest is high:
 27 Mr. Fang’s parole was revoked without providing him a reason for revocation or
 28 giving him an opportunity to be heard. When he was paroled, the government

made a finding that he did not pose a danger to the community and was not a flight risk. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1760 (N.D. Cal. 2017) (“Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.”). “Once a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings.” *Id.* “Rather, the federal agents must be able to present evidence of materially changed circumstances—namely, evidence that the noncitizen is in fact dangerous or has become a flight risk.” *Id.* “Where, as here, ‘the petitioner has not received any bond or custody hearing,’ ‘the risk of an erroneous deprivation of liberty is high’ because neither the government nor [Petitioner] has had an opportunity to determine whether there is any valid basis for [his] detention.” *Pinchi*, 2025 WL 2084921 at *5 (cleaned up).

Third, the Government’s interest in detaining Mr. Fang without proper notice and reasoning or a hearing is “low.” *Id.*; *see also Matute*, 2025 WL 2817795 at *6; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. Nov. 22, 2019) (“If the government wishes to re-arrest [Petitioner] at any point, it has the power to take steps toward doing so; but its interest in doing so without a hearing is low.”).

Thus, Mr. Fang’s detention is unlawful. *See, e.g., Alegria Palma v. Larose et al.*, No. 25-cv-1942 BJC (MMP), slip op. at 14 (S.D. Cal. Aug. 11, 2025) (granting a TRO based on a procedural due process challenge to a revocation of parole without a pre-deprivation hearing); *Navarro Sanchez*, 2025 WL 2770629, at *5 (granting a writ of habeas corpus releasing petitioner from custody to the conditions of her preexisting parole on due process grounds).

II. This Court has jurisdiction to consider Mr. Fang’s claim.

In cases raising similar claims, the government has argued that this Court lacks jurisdiction to consider or grant relief under 8 U.S.C. §§ 1252(g) and 1252(b)(9). This argument fails here.

1 Courts have jurisdiction to “decide a purely legal question that does not
 2 challenge the Attorney General’s discretionary authority.” *Ibarra-Perez v. United*
 3 *States*, 154 F.4th 989, 996 (9th Cir. 2025) (quotations omitted). In *Ibarra-Perez*,
 4 the Ninth Circuit squarely held that “§ 1252(g) does not prohibit challenges to
 5 unlawful practices merely because they are in some fashion connected to removal
 6 orders.” *Id.* at 997. Accordingly, the question is whether Petitioner’s claim
 7 “challenge[s] the Attorney General’s discretionary authority.” *Id.* at 996.

8 It does not. First, Petitioner claim relates to the government’s authority to
 9 detain him, and courts have widely held that review of issues related to detention
 10 is not barred by § 1252(g) or (b)(9). *See, e.g., Flores–Torres v. Mukasey*, 548 F.3d
 11 708, 711 (9th Cir. 2008) (holding that habeas jurisdiction exists to review a
 12 challenge to immigration detention based on a citizenship claim); *Kong v. United*
 13 *States*, 62 F.4th 608, 617 (1st Cir. 2023) (holding that “assertions of illegal
 14 detention [were] plainly collateral to ICE’s prosecutorial decision to execute [a
 15 detainee’s removal” and thus not subject to § 1252’s jurisdictional bars); *Cardoso*
 16 *v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) (“[S]ection 1252(g) does not bar courts
 17 from reviewing an alien detention order[.]”); *Parra v. Perryman*, 172 F.3d 954,
 18 957 (7th Cir. 1999) (§ 1252(g) did not apply to a “claim concern[ing] detention”).

19 As a result, in *Noori*, 2025 WL 2800149 at *1, Judge Curiel explained that
 20 he had jurisdiction over a similar claim. He explained, “Petitioner challenges the
 21 legality of the revocation of humanitarian parole in violation of the law and
 22 dismissal of ongoing removal proceedings without due process.” *Id.* So even
 23 assuming the agency’s revocation of parole “constitutes a decision or action to
 24 adjudicate cases,” that action is not “in the discretion” of the agency under
 25 § 1252(g) where it was “not performed in accordance with the mandatory
 26 procedures.”” *Id.* (quoting *Sharkey v. Quarantillo*, 541 F.3d 75, 86 (2d Cir. 2008)
 27 (alterations omitted)). So too here.

CLAIM AND PRAYER FOR RELIEF

For the reasons just given, the statute, the regulations, and the Fifth Amendment Due Process Clause prohibits the government from continuing to detain Petitioner.

Accordingly, Petitioner respectfully requests that this Court:

1. Order Respondents to immediately release Petitioner from custody under the same conditions of his conditional parole;
2. Order Respondents to not cause Petitioner to be re-detained during the pendency of his removal proceedings without prior leave of this Court; and
3. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: May 20, 2026

s/ Jessie Agatstein

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