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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

AYUSH THAKUR,

Petitioner,

v.

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

Respondents.

CASE NO.: 26-cv-3315-BJC-JLB

First Amended Petition for Writ of Habeas Corpus

[Civil Immigration Habeas Petition Under 28 U.S.C. § 2241]

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I. INTRODUCTION

Ayush Thakur is only 23 years old and has now been detained for almost a year. He was born in India. He came to the United States in 2024 requesting asylum and was detained by border patrol. He was then allowed into the country under conditional parole or order of release on recognizance (OREC). Mr. Thakur lived with family in the United States and complied with all the requirements.

At an October 28, 2025 check in with ICE, Mr. Thakur was detained. He was detained without proper notice or an opportunity to contest his detention.

Mr. Thakur's re-detention without proper notice and opportunity to contest violates the Due Process Clause. This Court should grant ***immediate release*** as this Court and other courts in this district have done in the past. *Seidulla v. Larose*, No. 26-CV-1555-BJC-MSB, 2026 WL 821172, at *1 (S.D. Cal. Mar. 25, 2026) (granting immediate release for someone who received OREC); *Gomez Mejia v. Dir., Otay Mesa Det. Ctr.*, No. 26-CV-2285-BJC-BJW, 2026 WL 1458998 (S.D. Cal. May 22, 2026) (same); *Tukhlaev v. Imperial Reg'l Det. Facility*, No. 26-CV-2524-JES-VET, 2026 WL 1270055, at *2 (S.D. Cal. May 8, 2026) (granting immediate release on due process grounds to petitioner who was previously released on OREC); *Teran Hurtado, v. Larose*, No. 3:26-CV-00977-BTM-DDL, 2026 WL 1266121, at *2 (S.D. Cal. May 8, 2026) (same); *Yatcin v. Lyons*, No. 26CV1707 DMS VET, 2026 WL 1133899, at *1–2 (S.D. Cal. Apr. 27, 2026) (granting on due process grounds because petitioner previously released on OREC "received no notice or a pre-deprivation individualized determination."); *Nicolas v. Mullin*, No. 26-CV-2464 JLS (MMP), 2026 WL 1113726, at *1–3 (S.D. Cal. Apr. 24, 2026) (same); *Gzirishvili v. LaRose*, No. 3:26-CV-1647-CAB-MMP, 2026 WL 790746, at *1–2 (S.D. Cal. Mar. 20, 2026) (applying the lack of notice analysis in *Noori v. LaRose*, 807 F. Supp. 3d 1146 (S.D. Cal. 2025) to a petitioner who was previously released on OREC); *C.A.R.V. v. Wofford*, No. 1:25-CV-01395 JLT SKO, 2025 WL 3059549, at *9 (E.D. Cal. Nov. 3, 2025) (finding due process

violation where petitioner was originally released on OREC); *Leiva Flores*, 2025 WL 3228306, at *5 (similarly finding procedural due process violation for petitioner released on OREC and requiring hearing before detention).

II. ICE released Mr. Thakur into the country and then arrested him without notice or an opportunity to be heard.

Mr. Thakur is a 23-year-old Indian national who entered the United States around October 15, 2024. Exhibit A, Declaration of Thakur at ¶¶ 1–2. After taking his picture and fingerprints, ICE released him from detention under conditional parole or order of recognizance (OREC). *Id.* at ¶ 2.

Mr. Thakur integrated himself into the community. He lived with family in South Carolina and then moved to New York. *Id.* at ¶ 3. He complied with all the ICE requirements. *Id.*

A year later, on October 28, 2025, Mr. Thakur reported to an ICE check-in in New York. He was detained without notice or an opportunity to contest his detention. *Id.* at ¶ 4.

He has now been detained for almost a year. *Id.* at 6. In January of 2026, his asylum was denied and it is now under appeal. *Id.* at ¶ 5. He has now been detained for almost a year and is at the Imperial Regional Detention Center. *Id.* at ¶ 6.

III. Argument

A. Revoking Mr. Thakur's release and subjecting him to detention violates the Due Process Clause justifying his immediate release.

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

An individual released from immigration custody has a constitutionally protected liberty interest in remaining free from detention. *Morrissey v. Brewer*,

408 U.S. 471, 482, 92 S. Ct. 2593, 2601, 33 L. Ed. 2d 484 (1972); *see also Sanchez v. LaRose*, 25-cv-2396; 2025 WL 2770629, at * 3 (S.D. Cal.). Thus, Petitioner has a fundamental interest in liberty and being free from official restraint.

"Even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody [he] has a protected liberty interest in remaining out of custody." *Pinchi* v. Noem, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025). (internal citation omitted). Thus, the liberty interest applies to individuals who are released into the United States and released to attend removal proceedings. This due process violations applies where the petitioners in the cases were specifically identified to be released under Order of Release on Recognizance with an accompanying I-220 form. *See C.A.R.V. v. Wofford*, No. 1:25-CV-01395 JLT SKO, 2025 WL 3059549, at *9 (E.D. Cal. Nov. 3, 2025) (finding due process violation where petitioner was originally released on OREC); *Leiva Flores v. Albarran,* No. 25-CV-09302-AMO, 2025 WL 3228306, at *5 (N.D. Cal. Nov. 19, 2025) (similarly finding procedural due process violation for petitioner released on OREC and requiring hearing before detention); *Faizyan v. Casey*, No. 3:25-CV-02884-RBM-JLB, 2025 WL 3208844, at *7 (S.D. Cal. Nov. 17, 2025) (same).

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

All three factors support a finding that the government's revocation of Mr. Thakur's release without reasoning or an opportunity to be heard, denied

Petitioner of his due process rights. First, Mr. Thakur has a significant liberty interest in remaining out of custody pursuant to his conditional parole. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects." *Zadvydas*, 533 U.S. at 690. He also has an interest in remaining with his family and continuing asylum claims. *See Morrissey*, 408 U.S. 471 at 482 ("Subject to the conditions of his parole, he can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life.").

Second, the risk of an erroneous deprivation of such interest is high as Mr. Thakur parole was revoked without providing him a reason for revocation or 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. *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." *Saravia*, 280 F. Supp. 3d at 1760. "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.*

Third, the Government's interest in detaining Mr. Thakur without proper notice and reasoning or a hearing is "low." *See Pinchi*, 2025 WL 2084921, at *5; *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. Thakur'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).

B. This Court has jurisdiction to consider Mr. Thakur'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 for at least three independent reasons. First, Mr. Thakur's claims are inextricably intertwined with the government's authority to detain him, which this Court has jurisdiction to consider. Second, this Court has jurisdiction to review whether the agency has complied with due process and its mandatory, nondiscretionary duties.

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

They do not. First, Petitioner claim relates to the government's authority to detain him, and courts have widely held that review of issues related to detention is not barred by § 1252(g) or (b)(9). *See, e.g., Flores–Torres v. Mukasey,* 548 F.3d 708, 711 (9th Cir. 2008) (holding that habeas jurisdiction exists to review a challenge to immigration detention based on a citizenship claim); *Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) (holding that "assertions of illegal detention [were] plainly collateral to ICE's prosecutorial decision to execute [a detainee's removal" and thus not subject to § 1252's jurisdictional bars); *Cardoso v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) ("[S]ection 1252(g) does not bar courts

from reviewing an alien detention order[.]"); *Parra v. Perryman*, 172 F.3d 954, 957 (7th Cir. 1999) (§ 1252(g) did not apply to a "claim concern[ing] detention"). To undersigned counsel's knowledge, every judge in this district has held that it has jurisdiction to consider claims that an individual is unlawfully detained. Petitioner's claim asserts in his habeas petition relate to the government's authority to detain him without following the regulations and statues relating to parole.

Second, the jurisdictional bars of § 1252 do not bar review of claims that ICE is "failing to carry out non-discretionary statutory duties and provide due process." *J.R. v. Bostock*, No. 2:25-CV-01161-JNW, 2025 WL 1810210, at *3 (W.D. Wash. June 30, 2025); *see also D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 377–78 (D. Mass. 2025) (§ 1252(g) did not bar review of "the purely legal question of whether the Constitution and relevant statutes require notice and an opportunity to be heard").

That is precisely what Judge Curiel recently held in a similar case. In *Noori v. Larose*, No. 25-CV-1824-GPC-MSB, 2025 WL 2800149, at *1 (S.D. Cal. Oct. 1, 2025), the petitioner was (like Petitioner) an asylum seeker from Afghanistan who "presented himself at the U.S. Port of Entry in San Ysidro, California and applied for admission with a CBP One application." Immigration officials "paroled him into the United States" under the same type of "DT" humanitarian parole as Mr. Thakur. *Id.* But after the government cancelled the petitioner's removal proceedings and placed him in expedited removal, he filed a habeas petition, and the government argued that §§ 1252(g) and (b)(9) stripped the court of jurisdiction to hear his claims. *Id.* at *5.

Nevertheless, Judge Curiel found that he had jurisdiction to hear the claims, noting that "Petitioner does not challenge the decision to commence proceedings." *Id.* at *6. Instead, "Petitioner challenges the legality of the revocation of humanitarian parole in violation of the law and dismissal of ongoing removal proceedings without due process." *Id.* So even assuming the agency's revocation

of parole "constitutes a decision or action to adjudicate cases," that action is not "in the discretion" of the agency under § 1252(g) where it was "'not performed in accordance with the mandatory procedures.'" *Id.* (quoting *Sharkey v. Quarantillo*, 541 F.3d 75, 86 (2d Cir. 2008) (alterations omitted)).

Other courts have held the same. In *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1907 (2020), the Supreme Court held that § 1252(b)(9) "does not present a jurisdictional bar" where those bringing suit "are not asking for review of an order of removal," "the decision to seek removal," or "the process by which removability will be determined." (quotations and alterations omitted). And in *Vasquez Garcia v. Noem*, 25-cv-02180-DMS-MMP, 2025 WL 2549431, Dkt. 7 at *8 (S.D. Cal. Sept. 3,2025), Judge Sabraw held that "§ 1252(g) does not limit the Court's jurisdiction in the present case" because the petitioners were "enforcing their constitutional rights to due process in the context of the removal proceedings—not the legitimacy of the removal proceedings or any removal order."

Here, because these actions were "not performed in accordance with the mandatory procedures," they were not undertaken "in the discretion" of the agency. *Noori*, 2025 WL 2800149, at *6; *see also United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265–68 (1954) (holding that agencies must adhere to their own binding regulations, both substantively and procedurally). Accordingly, this Court is not jurisdictionally barred from reviewing them.

IV. 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 parole;
2. Order all other relief that the Court deems just and proper.

Respectfully submitted,

Dated: July 10, 2026

s/ Zandra Lopez

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