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Detained

'26CV4410 RSH GC

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

In the Matter of: **RIVERA-PAGOADA, Danis Humberto** Petitioner, v. CHRISTOPHER J. LAROSE, Senior Warden, Otay Mesa Detention Center; PATRICK DIVVER, Field Office Director, San Diego Office of Detention and Removal, U.S. Immigration and Customs Enforcement; TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security; and MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security Respondents.	File No.: A[redacted] **Petition for Writ of Habeas Corpus and Order To Show Cause Within Three Days** Challenge Unlawful Incarceration: Request for Declaratory and Injunctive Relief

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to release Petitioner from detention.

INTRODUCTION

1. Mr. Danis Humberto Rivera-Pagoada is a citizen of Honduras. Mr. Rivera-Pagoada entered the U.S. on or about June 29, 2019, requesting asylum with his family, fleeing from criminal activity within Honduras as well as seeking medical attention for their daughter.

2. He was thereafter issued parole and released on his own recognizance on June 29, 2019. On or about June 27, 2026, Petitioner was detained by Immigration and Customs Enforcement ("ICE") at the Otay Mesa Detention Center with pending removal proceedings.

3. Petitioner's daughter was suffering from severe medical issues that were leading her to partial paralysis. Due to the extent of his daughter's medical issues, the health care available in Honduras is not sufficient to treat her properly.

4. On June 27, 2026, Petitioner was detained while carpooling with a coworker on the way to work. The coworker/vehicle owner was wanted for abandoning his immigration case, and since Petitioner was a passenger, ICE suspected the client was also running out on his immigration case.

5. Petitioner's administrative asylum case was closed, and he now challenges removal proceedings, for which he had not received legal representation at the beginning. The government's actions are unlawful regardless. If the agency did not revoke his conditional parole or release, then it violated that by re-detaining him. And if the agency *did* revoke it, then it did so in violation of the statute and regulations, which require written notification and a determination that the purposes of the parole or release have been served, as well as the

Constitution, which requires pre-deprivation notice and hearing. Either way, the agency's actions violated the Administrative Procedures Act and the Due Process Clause. Thus, this Court should reinstate his release.

JURISDICTION

6. Petitioner is detained in the custody of Respondents at Otay Mesa Detention Center.

7. This action arises under the Due Process Clause of the Fifth Amendment of the U.S. Constitution. Jurisdiction is proper under 28 U.S.C. §§ 1331 (federal question), 2241 (habeas corpus); U.S. Const. art. I, § 2 (Suspension Clause); and 5 U.S.C. § 702 (Administrative Procedure Act. The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

8. Venue is proper in this District because this is the district in which Petitioner was confined. *See Doe v. Garland*, 109 F.4th 1188, 1197-99 (9th Cir. 2024).

CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

9. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to the Respondents "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless good cause additional time, not exceeding twenty days, is allowed." Id. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

10. Petitioner is "in custody" for the purpose of 28 U.S.C. section 2241 because he was arrested by Respondents and remains in their legal and physical custody at Otay Mesa Detention Center in Otay Mesa, California. He is under Respondents' and their agents' direct control.

STATEMENT OF FACTS

11. Petitioner, Daniel Humberto Rivera-Pagoada, is a 38-year-old citizen and national of Honduras who entered the United States in 2019.

12. Prior to his detention, Petitioner had an active asylum case pending before the immigration authorities and was complying with the requirements of his immigration proceedings.

13. On or about June 27, 2026, Petitioner was traveling to work while carpooling with a coworker.

14. Unbeknownst to Petitioner, he was detained by ICE after allegedly abandoning his own immigration proceedings and was a target of an enforcement operation conducted by U.S. Immigration and Customs Enforcement ("ICE").

15. During that enforcement action, ICE officers detained both the coworker and Petitioner, despite the absence of any individualized evidence that Petitioner had violated the conditions of his own immigration case or intended to evade immigration authorities.

16. On information and belief, ICE assumed that Petitioner would likewise fail to appear in his immigration proceedings merely because he was traveling with an individual who had previously abandoned his immigration case.

17. Following Petitioner's detention, Respondents terminated Petitioner's pending asylum proceedings and initiated removal proceedings against him.

18. Petitioner has continuously sought protection in the United States through lawful immigration procedures and has never expressed any intention to evade immigration authorities.

19. Petitioner does not pose a danger to the community, nor is he a flight risk. His detention is based upon speculation rather than an individualized determination supported by evidence.

20. Petitioner's continued detention has caused severe hardship and has deprived him of his liberty without the individualized process required by the Fifth Amendment.

PARTIES

21. Mr. Danis Humberto Rivera-Pagoada ("Petitioner") is a 38-year-old citizen and national of Honduras. He came to the USA in 2019. Prior to his detention, Petitioner had a pending asylum case and was complying with his immigration proceedings. On or about June 27, 2026, Petitioner was detained by U.S. Immigration and Customs Enforcement ("ICE") while carpooling with a coworker on the way to work. Unknown to Petitioner, his coworker had previously abandoned his own immigration case. On information and belief, ICE detained Petitioner based on the assumption that he would likewise fail to comply with his immigration proceedings. Following his detention, Respondents terminated Petitioner's pending asylum case and initiated removal proceedings against him. Petitioner has remained in Respondents' custody since his arrest.

22. Mr. Rivera-Pagoada is currently residing in Respondents' custody at Otay Mesa Detention Center in San Diego, California, as of the time of the filing of this petition.

23. Respondent Christopher LaRose ("LaRose") is the Senior Warden at Otay Mesa Detention Center in San Diego, California, where Mr. Rivera-Pagoada is detained. LaRose is responsible for the day-to-day operations and confinement of non-citizens detained at that

facility. He acts at the direction of Respondents Divver, Lyons, and Mullin. LaRose is a custodian of Mr. Rivera-Pagoada and is named in his official capacity.

24. Respondent Patrick Divver ("Divver") is the Field Office Director of ICE in San Diego, California. He acts at the direction of Respondents Lyons and Mullin. ICE is responsible for local custody decisions relating to non-citizens charged with being removable from the U.S., including the arrest, detention, custody status, and removal of non-citizens. The San Diego Field Office's area of responsibility includes San Diego and Imperial Counties in California. Respondent Divver is a custodian of Mr. Rivera-Pagoada and is named in his official capacity.

25. Respondent Todd Lyons ("Lyons") is the Acting Director of ICE, and he has authority over the actions of Respondents LaRose and Divver. ICE is responsible for local custody decisions relating to non-citizens charged with being removable from the U.S., including the arrest, detention, custody status, and removal of non-citizens. Respondent Lyons is a custodian of Mr. Rivera-Pagoada and is named in his official capacity.

26. Respondent Kristi Mullin ("Mullin") is the Secretary of DHS and has authority over the actions of all other DHS Respondents in this case, as well as all operations and federal agencies of DHS, including ICE. In her capacity as Secretary of DHS, Respondent Mullin is charged with faithfully administering the immigration and naturalization laws of the United States. 8 U.S.C. § 1103(a). Respondent Mullin is a custodian of Mr. Rivera-Pagoada and is named in her official capacity.

27. Respondent ICE is responsible for local custody decisions relating to non-citizens charged with being removable from the U.S., including the arrest, detention, custody status, and removal of non-citizens.

28. Respondent DHS is the federal agency that has authority over the actions of ICE and all other DHS Respondents.

29. This action is commenced against Respondents LaRose, Divver, Lyons, and Mullin (collectively, "Respondents") all in their official capacities.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

30. The IIRIRA, EOIR drafted regulations explaining that, in general, non-citizens who entered the country without inspection were not considered detained under 8 U.S.C. § 1225 or automatically subject to expedited removal. *See* Inspection and Expedited Removal of Aliens, Detention and Removal of Aliens, Conduct of Removal Proceedings, Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Rather, such non-citizens were instead detained under § 1226(a). *See id.*

31. Thus, in the decades that followed, most people who entered without inspection—unless they were subject to some other detention authority—received bond hearings. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

32. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

33. On information and belief, Mr. Rivera-Pagoada alleges that Respondents detained him without conducting an individualized assessment of whether he posed a danger to the

community or a risk of flight. Instead, Respondents relied on Petitioner's mere association with another individual who had allegedly abandoned his immigration proceedings, thereby depriving Petitioner of the due process protections to which he was entitled.

34. Petitioner has demonstrated his intent to comply with the immigration process by pursuing asylum relief and attending to his affairs in the United States. Prior to his detention, Petitioner was employed and was traveling to work when he was apprehended by ICE. Nothing in Petitioner's conduct indicated that he intended to evade immigration authorities or fail to appear for future proceedings.

LEGAL ARGUMENT

35. Courts have recognized the significance of the habeas statute in protecting individuals from unlawful detention, which affords "a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963); see also *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (noting that habeas statute requires expeditious determination of petitions).

36. The Court must grant the petition for writ of habeas corpus or issue an order to show cause to Respondents "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243.

37. "'It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.'" *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).

38. Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas, v. Davis*, 533 U.S. 678, 690 (2001) (internal quotation marks omitted).

39. In the immigration context, the Supreme Court has recognized two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.

40. The test for procedural due process claims, commonly referred to as the Mathews test, balances: (1) the private interest affected by the governmental action; (2) the risk of an erroneous deprivation of that interest and the probable value of additional or substitute procedural safeguards; and (3) the government's interest. Mathews v. Eldridge, 424 U.S. 319, 335 (1976); see also Sho v. Current or Acting Field Off. Dir., No. 1:21-cv-01812-TLN-AC, 2023 WL 4014649, at *3 (E.D. Cal. June 15, 2023), report and recommendation adopted, 2023 WL 4109421 (E.D. Cal. June 21, 2023). Here, each factor weighs in Petitioner's favor. Petitioner has a substantial liberty interest in remaining free from physical detention. The risk of erroneous deprivation is exceptionally high because Respondents detained Petitioner based on his mere association with another individual who had allegedly abandoned his immigration proceedings, rather than on any individualized evidence that Petitioner himself posed a danger to the community or a risk of flight. Additional safeguards, including a meaningful individualized custody determination, would significantly reduce the risk of error. Petitioner was pursuing asylum relief, was employed, and was traveling to work at the time of his detention. These facts demonstrate that Petitioner poses no danger to the community and does not present a flight risk.

CAUSES OF ACTION

COUNT ONE

Violation of Fifth Amendment Right to Due Process – Substantive and Procedural Due Process, U.S. Const. Amend. V.

41. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

42. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

43. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

44. Petitioner has a fundamental liberty interest in remaining free from unnecessary civil immigration detention. Prior to his detention, Petitioner was pursuing asylum relief through the immigration process, maintaining employment, and complying with his obligations while residing in the United States. His detention has deprived him of that liberty interest without an individualized determination that he poses either a danger to the community or a risk of flight.

45. Even where immigration authorities possess discretionary detention authority, the exercise of that discretion must comply with the requirements of the Due Process Clause. Once an individual has established substantial liberty interests, the Government may not revoke that liberty arbitrarily or without adequate procedural safeguards. See *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *7 (E.D. Cal. Aug. 21, 2025) (quoting *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025)).

46. Here, Petitioner was detained while carpooling with a coworker on the way to work. Respondents have identified no individualized facts demonstrating that Petitioner posed a danger to the community or a risk of flight. Instead, on information and belief, Respondents detained Petitioner based on his association with another individual who had allegedly abandoned his immigration proceedings. Such detention is arbitrary and inconsistent with the procedural and substantive protections guaranteed by the Fifth Amendment. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

COUNT TWO

Violation of Fifth Amendment Right to Due Process -

Illegal Retroactive Application of Expedited Removal Designation, U.S. Const. Amend. V.

47. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

48. The Due Process Clause forbids the government from depriving a person of liberty through civil detention absent an individualized determination that the detention serves a legitimate purpose, such as preventing danger to the community or flight. Zadvydas v. Davis, 533 U.S. 678, 690 (2001); Foucha v. Louisiana, 504 U.S. 71, 80 (1992) (freedom from bodily restraint lies at the core of the liberty protected by the Due Process Clause).

49. Respondents detained Petitioner without conducting any individualized assessment of whether he posed a danger to the community or a risk of flight. Instead, Respondents relied solely upon Petitioner's mere association with a coworker who had allegedly abandoned his own immigration case. Guilt by association is not a permissible basis for a deprivation of liberty. See Kansas v. Hendricks, 521 U.S. 346, 357-58 (1997) (civil confinement requires proof of individual dangerousness, not mere association).

50. Because Respondents' detention decision rested on generalized suspicion arising from Petitioner's presence in a vehicle with another person, rather than on any particularized facts about Petitioner himself, the detention is arbitrary and unmoored from any legitimate governmental interest. See Foucha, 504 U.S. at 83 (due process requires that the nature and duration of detention bear a reasonable relation to the purpose for which the individual is detained).

51. Accordingly, Respondents' detention of Mr. Rivera-Pagoada without an individualized custody determination is arbitrary and violates the Due Process Clause of the Fifth Amendment.

COUNT THREE

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A), Arbitrary and Capricious Termination of Petitioner's Asylum Proceedings

52. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

53. Under the APA, a court "shall . . . hold unlawful . . . agency action" that is "not in accordance with law;" "contrary to constitutional right;" "in excess of statutory jurisdiction authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D).

54. An agency's action is arbitrary and capricious where the agency fails to provide a "reasoned explanation for its action" or acts in a manner that runs counter to the evidence before it. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

55. Respondents terminated Petitioner's pending asylum application—an application DHS had already accepted and scheduled for biometrics processing—without providing Petitioner notice, an opportunity to respond, or any reasoned explanation for the termination.

56. On information and belief, Respondents terminated Petitioner's asylum proceedings based solely on his presence in a vehicle with a coworker who had abandoned his own immigration case, rather than on any individualized assessment of Petitioner's asylum application or his compliance with its requirements.

57. Respondents' termination of Petitioner's asylum proceedings "entirely failed to consider an important aspect of the problem"—namely, Petitioner's active pursuit of asylum relief, his compliance with every requirement of that process, and his lack of any connection to his coworker's separate immigration history. *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)

58. Respondents also failed to consider Petitioner's substantial reliance interests in his pending asylum application, including his fingerprint appointment and the years he and his family had already invested in that process. *See Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-33 (2020) (holding that rescission of an immigration benefit without considering "particular reliance interests" is arbitrary and capricious in violation of the APA).

59. The termination of Petitioner's asylum proceedings was not made in furtherance of any legitimate, articulated reason and causes Petitioner irreparable harm. For these reasons, the Court should find that Respondents' termination of Petitioner's asylum proceedings is arbitrary, capricious, and unsupported by substantial evidence. *See* 5 U.S.C. § 706(2)(A), (E).

COUNT FOUR

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with Law and in Excess of Statutory Authority, Unlawful Detention

60. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

61. Under the APA, a court shall "hold unlawful and set aside agency action..." that is "...(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity..." 5 U.S.C. § 706(2)(A)-(B).

62. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

63. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 588 U.S. 752, 773 (2019) (citation omitted).

64. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025), the Court explained that discretionary custody determinations in immigration cases—including decisions to detain rather than release a non-citizen—must be accompanied by written notice and a cogent description of the reasons supporting the agency's decision. Under the APA, non-citizens are entitled to custody determinations that are not arbitrary, capricious, or an abuse of discretion. *See id.* at *10.

65. By detaining Mr. Rivera-Pagoada without notice or consideration of his individualized facts and circumstances, Respondents have violated the INA, implementing regulations, and the APA.

66. Respondents have made no finding that Petitioner is a danger to the community.

67. Respondents have made no finding that Petitioner is a flight risk.

68. On information and belief, by detaining Mr. Rivera-Pagoada categorically and without notice, Respondents have further abused their discretion because, since the agency made its initial custody determination, on information and belief, there have been no changes to Mr. Rivera-Pagoada's specific facts or circumstances that support his detention.

COUNT FIVE

Violation of the Fourth Amendment of the Constitution

69. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

70. The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. amend. IV. The Supreme Court has recognized that immigration arrests and detentions are "seizures" within the meaning of the

Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that deportation proceedings are civil, but the Fourth Amendment still applies to the "seizure" of the person).

71. The Fourth Amendment requires that arrests entail a neutral, judicial determination of probable cause. See *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That neutral, judicial determination can occur either before the arrest, in the form of a warrant, or promptly afterward, in the form of a prompt judicial probable cause determination. *See id.* Arrest and detention of a person, including of a noncitizen, absent a neutral judicial determination of probable cause violates the Fourth Amendment of the Constitution. *Id.*; see also *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991). This determination must occur within 48 hours of detention, which includes weekends, unless there is a bona fide emergency or other extraordinary circumstances. See *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

72. Congress enacted a strong preference that immigration arrests be based on warrants. *See Arizona v. United States*, 567 U.S. 387, 407–08 (2012). The Immigration and Nationality Act thus provides immigration officers with only limited authority to conduct warrantless arrests. 8 U.S.C. § 1357(a)(2). Federal regulations track the strict limitations on warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(ii).

73. Mr. Rivera-Pagoada did not receive any judicial determination of probable cause for his arrest or continued detention by the Respondents.

74. The Government cannot salvage this seizure by invoking generalized immigration enforcement interests. The Fourth Amendment's reasonableness inquiry is fact-specific and demands individualized justification for both the arrest and the extended detention. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 882–84 (1975).

75. Respondents' arrest of Mr. Rivera-Pagoada constitutes an unreasonable and unlawful seizure in violation of the Fourth Amendment.

COUNT SIX

Violation of Fifth Amendment Right to Due Process – Procedural Due Process, U.S. Const. Amend. V.

76. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

77. The government may not deprive a person of life, liberty, or property 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 Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

78. Mr. Rivera-Pagoada has a fundamental interest in liberty and being free from official restraint.

79. The government's detention of Petitioner without notices or an opportunity to be heard before detention violates his right to due process.

80. The government's detention of Petitioner without a meaningful bond and custody redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

COUNT SEVEN

ICE failed to comply with its own regulations in revoking Mr. Fuentes Luis' conditional parole release under 8 C.F.R. § 212.5, violating the Administrative Procedures Act and Due Process.

81. When ICE detained Petitioner on or about June 27, 2026, it did not say that it was revoking his conditional parole, so it is unclear whether a revocation occurred. Either way, the government's actions violate the Administrative Procedures Act and Due Process.

82. 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 otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). For a challenged agency action to be upheld, the agency "must explain the evidence which is available, and must offer a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs*, 463

U.S. at 52 (1983) (internal quotations omitted) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

83. Here, regardless of whether the agency formally revoked Petitioner's release, it violated the APA. If the agency did not revoke his release, then it inexplicably violated its own release decision by detaining Petitioner. Doing so violated the APA because the agency did not "offer a rational connection between the facts found and the choice made"—i.e., the fact that Petitioner already had an asylum application pending, and had no criminal record, yet the agency decided to detain him. *Motor Vehicle Mfrs*, 463 U.S. at 52. And nothing suggests that there was a "rational" reason for this choice, given that Petitioner filed an asylum application and complied with all the conditions of his release. This was the epitome of an "arbitrary" and "capricious" act under the APA. 5 U.S.C. § 706(2)(A).

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

85. None of this occurred here. Because "the purpose of Petitioners' release" was to allow him to apply for asylum, that purpose has not yet "been served" because his asylum claim is still pending. 8 U.S.C. § 1182(d)(5)(A). And the humanitarian reasons for release—to avoid unnecessary detention when an asylum seeker poses no danger or flight risk—remains the same. Put differently, "upon Petitioner's entry into the United States, Respondents determined that Petitioner was suitable for release. Respondents have not provided a reasoned explanation or any changed circumstances that would justify their current departure from their prior decision." *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1146 (D. Or. 2025). 86. Under the APA, "[i]t is Respondents' burden to provide a reasoned explanation for their action". Id. Again, Petitioner was only allegedly stopped for a traffic violation and given a warning of tinted windows, while driving to his son's daycare, and ICE agents happened to be accompanying the highway Trooper.

87. What's more, Petitioner never received any written notification of a revocation under 8 C.F.R. § 212.5(e). So if the agency revoked his release, this decision violated both the statute and the regulation and was "not in accordance with law" under the APA. 5 U.S.C. § 706(2)(A).

88. Several courts have released petitioners on this basis. See *Faizyan v. Casey*, Case No.: 3:25-cv-02884-RBM-JLB, 2025 WL 3208844, at *7 (S.D. Cal. Nov. 17, 2025) (reaching the same conclusion as to the revocation of a petitioner's release on his own recognizance); *Lopez v Marrero*, 3:26-cv-2077-JES-VET. ALSO See *Arias v. Larose*, No. 3:25-CV-02595-BTM-MMP, 2025 WL 3295385, at *3 (S.D. Cal. Nov. 25, 2025); *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct. 1, 2025); *Salazar v. Casey*, No. 25-cv-2784 JLS-VET, 2025 WL 3063629 (S.D. Cal. Nov. 3, 2025); *Perez v. LaRose*, No. 25-cv-02620-RBM-

JLB, 2025 WL 3171742 (S.D. Cal. Nov. 13, 2025); *Y-Z-L-H v. Bostock*, No. 25-cv-965-SI, 2025 WL 1898025, at *13 (D. Or. July 9, 2025).

COUNT NINE

The Due Process Clause required notice and a chance to be heard before release was revoked.

89. Additionally, "the revocation of Petitioner's release without justification or consideration of his individualized circumstances violates the Due Process Clause." *Perez v. LaRose*, No. 3:25-CV-02620-RBM-JLB, 2025 WL 3171742, at *4 (S.D. Cal. Nov. 13, 2025). Petitioner was "entitled to notice of the reasons for revocation of his release and a hearing before an immigration judge to determine whether detention is warranted" before ICE revoked his release. Id. at *7. Due process demands a hearing prior to the government's decision to terminate a person's liberty. By failing to provide such a hearing, Respondents have violated Petitioner's constitutional right to due process. Accordingly, this Court should grant the instant petition for a writ of habeas corpus, and order Petitioner's immediate release. A post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty.

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

91. "Generally, due process protections depend on the situation and must account for (1) the private interest at issue, (2) the risk of erroneous deprivation of that interest through the

procedures used, and (3) the Government's interest." *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct. 1, 2025); (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). Weighing those considerations here, Respondents violated the Due Process Clause by revoking release with no notice or hearing.

92. First, Petitioner has a private interest in remaining free, which developed over the 4 years 3 months he resided in the United States. His interest is heightened given the amount of time he has been free, living and working in the U.S. and that he has a U.S. citizen child he has been raising. It does not matter that release is temporary or discretionary. "For example, *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)—though analyzing the criminal parole context—found that 'the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others ... [thus it] must be seen within the protection of the [Fifth] Amendment.'" *Id.*

93. "Second, the risk of an erroneous deprivation of such interest is high as Petitioner's release was revoked without providing [him] a reason for revocation or giving [him] an opportunity to be heard." *Salazar*, 2025 WL 3063629, at *4. "Civil immigration detention is permissible only to prevent flight or protect against danger to the community." *Perez*, 2025 WL 3171742, at *5. But here, "[s]ince DHS's initial determination that Petitioner should be released because [he] posed no danger to the community and was not a flight risk, there is no evidence that these findings have changed." *Id.*

94. "Third, the Government's interest in detaining Petitioner without notice, reasoning, and a hearing is low." *Salazar*, 2025 WL 3063629, at *5 (cleaned up). "Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally

required pre-detention procedures is not a legitimate government interest." *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1036 (N.D. Cal. 2025).

95. Thus, because Respondents did not provide "proper notice, reasoning, and a pre-deprivation hearing" before revoking release, Petitioner's detention violated the Due Process Clause. *Salazar*, 2025 WL 3063629, at *5.

COUNT TEN

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

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

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show why this Petition should not be granted within three days;

(3) Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;

(4) Declare that refusal to allow Petitioner a meaningful bond and custody redetermination hearing violates the INA, APA, and Due Process;

(5) Issue a Writ of Habeas Corpus with an order to Respondents for the immediate release of Petitioner from custody;

(6) Issue an Order prohibiting the Respondents from transferring Petitioner from this district without the Court's approval;

(7) In the alternative, issue an Order requiring Respondents to provide a bond and custody redetermination hearing within 14 days to meaningfully consider his eligibility for release from DHS custody;

(8) Order an evidentiary hearing and grant such further relief as the Court deems just, equitable, and appropriate; and

(9) Grant all other further relief this Court deems just or proper.

Respectfully Submitted,

/S/ Mario Portugal
Mario Portugal, Esq.
Attorney for the Petitioner