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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

<p>JUAN RAMIREZ-BIBIANO,</p> <p><i>Petitioner,</i></p> <p>v.</p> <p>CHRISTOPHER LAROSE, Facility senior warden at the Otay Mesa Detention Facility, GREGORY J. ARCHAMBEAULT, Director of the U.S. Immigration and Customs Enforcement San Diego Field Office, TODD LYONS, acting Director of U.S. Immigration and Customs Enforcement, KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, and PAM BONDI, U.S. Attorney General.</p>	<p>CIVIL CASE NO.: 25-CV-3429-JLS</p> <p>TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS</p>
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1. This Court has jurisdiction over this matter because the question is not whether Petitioner is properly in removal proceedings but whether he is lawfully detained.

The Government argues that 8 U.S.C. §1252(g) strips this court of jurisdiction over Mr. Ramirez-Bibiano's petition for a writ of habeas corpus. §1252(g) removes district court jurisdiction over the Attorney General's decision to commence removal proceedings, adjudicate cases, or execute removal orders. In the government's view, Petitioner's immigration detention is part of the removal proceedings and therefore this Court lacks jurisdiction to consider Mr. Ramirez-Bibiano's habeas petition. Dkt 6, p. 5-6. However, the question raised in this petition is not whether Petitioner is properly in removal proceedings, but whether he was lawfully re-detained by ICE on July 23, 2025, after having been granted conditional parole on numerous occasions, most recently in February 2025.

A writ of habeas corpus is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art. I, §9, cl.2). "The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and...the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

The Supreme Court has interpreted the jurisdiction limiting provision in 8 USC §1252(g) provisions narrowly, restricting it "only to three discrete actions the

attorney general might take: the decision to commence proceedings, adjudicate cases or execute removal orders.” *Reno v. Am. Arab Anti-Discrimination Comm.*, 525 US 471, 482 (1999). Consistent with this, the Supreme Court in *Jennings v. Rodriguez*, held that §1252(b)(9) did not bar an immigration detainee from using habeas to challenge the legality of his detention. 583 U.S. 281, 290-92 (2018). The writ is clearly available to non-citizens who challenge their immigration detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

Here, Mr. Ramirez-Bibiano’s habeas petition is focused squarely on the question as to whether the government has properly arrested and detained him. Mr. Ramirez-Bibiano was paroled into the United States on numerous occasions, first in March 2012 and most recently in February 2025. He has been living in the United States on parole until his re-detention on July 23, 2025. He was living in San Diego with his U.S. citizen wife and two children, and working with a valid employment authorization document, California driver’s license, and valid social security number. He was detained during a routine check in with ICE during which he voluntarily reported to ICE as he had been instructed to do by ICE. He was not in violation of the conditions of parole. Neither Mr. Ramirez-Bibiano nor his attorney were informed that parole was terminated nor were they informed of the basis for the termination.

Petitioner does not ask this Court to determine whether he is properly placed in removal proceedings, but only to evaluate the question as to whether his detention is in violation of the law. He is thus enforcing his “constitutional rights to due process in the context of the removal proceedings – not the legitimacy of the removal proceedings or any removal order.” *Garcia v. Noem*, Case. No.: 25-cv-02180-DMS, 2025 WL 2549431, at *4 (S.D. Cal. Sept, 3, 2025); *see Chavez v. Noem*, --- F. Supp. 3d ---, 2025 WL 2730228, at *3 (S.D. Cal. 2025) (finding the same); *United States v. Hovespian*, 359 F.3d 1144, 1155 (9th Cir. 2004)(noting a “district court may consider a purely legal question that does not challenge the Attorney General’s discretionary authority, even if the answer to that legal question . . . forms the backdrop against which the Attorney General later will exercise discretionary authority”).

Respondents argue second that Petitioner’s claims “necessarily arise” from the Attorney General’s decision to commence removal proceedings against him. Dkt. 6, p. 7. This interpretation of 8 U.S.C. § 1252(g) would “eliminate judicial review of immigration [detainees’] claims of unlawful detention . . . inconsistent with *Jennings v. Rodriguez* and the history of judicial review of the detention of noncitizens under 28 U.S.C. § 2241.” *Sanchez v. LaRose*, Case No.: 25-cv-2396-JES, 2025 WL 2770629, at *2 (S.D. Cal. Sept. 26, 2025) (citing *Jennings*, 583 U.S. at 294; *Zadvydas*, 533 U.S. at 699; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1209

(9th Cir. 2022)). Accordingly, as other courts in this District have found in similar cases, this Court has jurisdiction to hear Petitioner’s claims that his detention is unlawful under 28 U.S.C. § 2241. *See Sanchez*, 2025 WL 2770629, at *2; *Rokhfirooz v. LaRose*, Case No.: 25-cv-2053-RSH, 2025 WL 2646165 (S.D. Cal. Sept. 15, 2025).

For the foregoing reasons, this Court has jurisdiction over Mr. Ramirez-Bibiano’s habeas petition and should reject the government’s jurisdiction stripping argument.

2. Petition for Review/Administrative Exhaustion is not required.

The government argues that Mr. Ramirez-Bibiano must pursue a petition for review or exhaust administrative remedies to pursue relief in this case. Dkt. 6, p. 7-9. Here, no applicable statute or rule requires administrative exhaustion. Whether to require exhaustion rests in this court’s “sound judicial discretion.” *Shearson v. Holder*, 725 F.3d 588, 593 (6th Cir. 2013). “Exhaustion can be either statutorily or judicially required.” *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004).

Moreover, prudential exhaustion is not required where: (a) the remedy is not adequate or efficient; (b) seeking relief before the agency would be futile; and/or (c) the movant faces irreparable harm or constitutional violations. *See Laing v. Ashcroft*, 370 F.3d 994, 1000-01 (9th Cir. 2004). Although 28 U.S.C. §2241 “does

not specifically require petitions to exhaust direct appeals before filing petitions for habeas corpus,” the Ninth Circuit “require[s], as a prudential matter, that habeas petitioners exhaust available judicial and administrative remedies before seeking relief under §2241.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001) *abrogated on other grounds by Fernandez-Vargas v. Gonzalez*, 548 U.S. 30 (2006). The Court “may waive the prudential exhaustion requirement if administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.” *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017).

Appeals to the Board may take six to twelve months or longer. Appealing to the BIA will require Mr. Ramirez-Bibiano to wait in custody for a considerable length of time without a bond hearing for a decision from the BIA that the Board has already made clear. Given the BIA’s decision in *Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), there is no reason to require Mr. Ramirez-Bibiano to exhaust administrative remedies because doing so would be inefficient, futile, and would result in irreparable harm to Mr. Ramirez-Bibiano in the form of a lengthy period of detention separated from his family and community. This Court should follow other courts in this district and find that exhaustion here would be futile. *Esquivel-Ipina v. LaRose*, Case No.: 25-CV-2672 JLS, 2025 WL 2998361, at *3–4 (S.D. Cal.

2025); *see also Garcia*, 2025 WL 2549431, at *4–5; (same); *Chavez*, 2025 WL 2730228, at *3–4 (same).

3. Mr. Ramirez-Bibiano possesses a protected liberty interest in remaining out of custody.

The government takes the view that because Mr. Ramirez-Bibiano was paroled into the United States and is charged as an arriving alien, he is lawfully detained pursuant to §1225(b)(2)(A). Dkt. 6, p. 10-14. However, 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 (1972); *see also Sanchez*, 2025 WL 2770629, at * 3. The liberty interest applies to individuals who are paroled into the United States and released to attend removal proceedings. *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *11 (E.D. Cal. Aug. 21, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2578207, at *3 (N.D. Cal. Sept. 5, 2025); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *13 (D. Or. July 9, 2025). Thus, as a noncitizen who previously entered the United States and was living in San Diego for at least 13 years while on parole, Petitioner has a protected liberty interest in remaining out of custody.

As the government notes in its return, “to be released on conditional parole, there must be a finding by ICE that the immigrant does not pose a risk of flight or

danger to the community.” *See Ortega-Cervantes v. Gonzalez*, 501 F.3d 1111, 1115 (9th Cir. 2007). Dkt. 6, p. 15. This means that on at least seven occasions, the most recent occurring on February 13, 2025, ICE determined that Mr. Ramirez-Bibiano was neither a danger or a flight risk and should be released on conditional parole. The government offers no explanation for its sudden about face in the case, a seemingly arbitrary decision that has had devastating consequences for both Mr. Ramirez-Bibiano and his U.S. citizen family members. Here the government has offered no evidence that Mr. Ramirez-Bibiano acted in a way that violated the conditions of parole. Indeed, he was complying with ICE’s instructions that he report to ICE for a check-in when he was re-detained. Nor has the government offered any evidence that Mr. Ramirez-Bibiano is a danger or a flight risk.

While the government has discretion to revoke parole, it may not do so in a manner that violates Mr. Ramirez-Bibiano’s constitutional rights. Because Mr. Ramirez-Bibiano had previously been granted parole on numerous occasions, due process requires that he be provided with a pre-deprivation bond hearing prior to his re-detention. *See Valdez v. Joyce*, 2025 WL 1707737, *4 (S.D.N.Y. 2025).

4. Petitioner was not afforded notice and a hearing before the government revoked parole.

The government argues that because parole is discretionary and is made on a case-by-case basis, and because ICE has the authority to revoke its parole decisions, Mr. Ramirez-Bibiano’s parole was lawfully revoked. However, at no

time did ICE provide Mr. Ramirez-Bibiano with notice and the opportunity to be heard regarding its decision to revoke parole. Nor did ICE articulate to Mr. Ramirez-Bibiano the basis for its revocation of parole. While Mr. Ramirez-Bibiano does not dispute that the government does have the authority to revoke parole, due process requires notice and a hearing before a neutral decision maker before Petitioner is re-detained by immigration authorities. *See Garcia v. Andrews*, No. 1:25-CV-01006-JLT, 2025 WL 2420068, at *11 (E.D. Cal. Aug. 21, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2578207, at *3 (N.D. Cal. Sept. 5, 2025); *Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *13 (D. Or. July 9, 2025); *see also, Mathews v. Eldrige*, 424, U.S. 319 (1976).

The Due Process Clause prohibits deprivations of life, liberty, and property without due process of law. U.S. Const. amend. V. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693. To determine which procedures are constitutionally sufficient to satisfy the Due Process Clause, the Court applies the three-part test established in *Mathews*, 424 U.S. 319. The Court 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.* at 335.

Here, all three factors support a finding that Respondents’ revocation of Petitioner’s conditional parole without an opportunity to be heard deprived Petitioner of his due process rights. First, Petitioner has a significant liberty interest in remaining out of custody pursuant to his conditional parole. “Even individuals who face significant constraints on their liberty or over whose liberty the government wields significant discretion retain a protected interest in their liberty.” *Pinchi*, 792 F. Supp. 3d at 1032. Although the initial decision to detain or release an individual may be within the government’s discretion, “the government’s decision to release an individual from custody creates ‘an implicit promise,’ upon which that individual may rely, that their liberty ‘will be revoked only if [they] fail[] to live up to the . . . conditions of release.’” *Id.* (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)); *see also Zadvydas*, 533 U.S. at 690 (“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.”); *Morrissey*, 408 U.S. 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.”); *Oliveros*, 2025 WL 2677125, at *7.

“Second, the risk of an erroneous deprivation of such interest is high as Petitioner’s parole was revoked without . . . giving [him] an opportunity to be heard.” *Gonzalez Salazar v. Casey*, Case No.: 25-CV-2784 JLS, 2025 WL 3063629, at *4 (S.D. Cal. Nov. 3, 2025); *see also Singh v. Andrews*, No. 1:25-CV-00801-KES, 2025 WL 1918679, at *7 (E.D. Cal. July 11, 2025) (finding where, as here, Petitioner “has not received any bond or custody redetermination hearing,” the “risk of an erroneous deprivation of liberty is high”). “Civil immigration detention is permissible only to prevent flight or protect against danger to the community.” *Pinchi*, 792 F. Supp. 3d at 1035 (citing *Zadvydas*, 533 U.S. at 690). Here, there is no evidence that Petitioner’s detention would serve either purpose. “Since DHS’s initial determination that Petitioner should be paroled because [he] posed no danger to the community and was not a flight risk, there is no evidence that these findings have changed.” *Gonzales Salazar*, 2025 WL 3063629, at *3 (citing *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (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.”). To the contrary, Petitioner “has had no encounters with the . . . criminal justice system” and is not a flight risk, as he was arrested at an ICE check-in.

Third, Respondents’ interest in detaining Petitioner without a hearing is low. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (“If the

government wishes to re-arrest [the 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.”);

Pinchi, 792 F. Supp. 3d at 1036 (“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.”). “Therefore, because Respondents detained Petitioner by revoking [his] parole in violation of the Due Process Clause, [his] detention is unlawful.”

Gonzalez Salazar, 2025 WL 3063629, at *5.

For the foregoing reasons, this Court should grant Mr. Ramirez-Bibiano’s habeas petition. The Court should order his re-release on parole under the same terms and conditions as had been previously imposed. If the government wishes to re-detain Petitioner, the government must provide petition with notice of the reasons for the revocation of his parole and a hearing before a neutral decision maker.

Respectfully submitted,

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