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7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 ENYERT DELFIN-RICARDO,

CASE NO.: 26-cv-0136-RSH-BJW

12
13 Petitioner,

14 v.

**AMENDED PETITION FOR
WRIT OF HABEAS CORPUS**

15
16 KRISTI NOEM, Secretary of the
Department of Homeland Security,
17 PAMELA JO BONDI, Attorney General,
TODD M. LYONS, Acting Director,
18 Immigration and Customs Enforcement,
JESUS ROCHA, Acting Field Office
19 Director, San Diego Field Office,
20 CHRISTOPHER LAROSE, Warden at
Otay Mesa Detention Center,

21 Respondents.
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26 ¹ The Court provisionally appointed Federal Defenders of San Diego, Inc. ECF
27 No. 2. A status report is simultaneously filed indicating that Petitioner has
28 indicated he would like assistance of counsel and that Federal Defenders accepts
representation. Petitioner's financial eligibility for representation is included in
the financial affidavit that will be filed with this Court.

1 INTRODUCTION

2 In August of 2021, ICE permitted Mr. Delfin-Ricardo to enter the country.
3 He complied with everything that was required of him. Despite this, on October 7,
4 2025, ICE detained him at an ICE check-in appointment in Houston, Texas. ICE
5 did not provide him with a basis for his detention. Mr. Delfin-Ricardo was
6 eventually taken to the Otay Mesa Detention Center. This civil immigration
7 habeas petition claims the detention of Petitioner violates the parole statute, the
8 government’s regulations, and the Fifth Amendment’s Due Process Clause.

9 This Court should order Petitioner’s immediate release and reinstate
10 Petitioner’s parole.

11 STATEMENT OF FACTS

12 Mr. Delfin-Ricardo is a Cuban national who entered the United States on
13 August 13, 2021. Exhibit A, Declaration of Delfin-Ricardo at ¶ 1. He was
14 detained for two nights and then released the next day. *Id.*

15 After being released, Mr. Delfin-Ricardo pursued his asylum claim and
16 made all his court appearances. *Id.* at ¶¶ 1–2. His asylum claim is currently on
17 appeal. *Id.* at ¶ 2.

18 On October 7, 2025, Mr. Delfin-Ricardo appeared for his annual check-in.
19 *Id.* at ¶ 4. After waiting for three hours at ICE offices, his name was called, he
20 was taken to a room, where here was handcuffed. *Id.* ICE did not explain why he
21 was being detained. *Id.* ICE did not provide Mr. Delfin-Ricardo with any
22 paperwork and did not give him an opportunity to contest his detention. *Id.*

23 Prior to his detention in October, Mr. Delfin-Ricardo integrated himself
24 into the community. He worked in construction.

1 § 1182(d)(5)(A) is determined “on a case-by-case basis.” 8 U.S.C.
2 § 1182(d)(5)(A). Then, “when the purpose of the parole has been served,”
3 § 1182(d)(5)(A) provides that “the alien shall forthwith return or be returned to
4 the custody from which he was paroled and thereafter his case shall continue to be
5 dealt with in the same manner as that of any other applicant for admission to the
6 United States.” *Jennings*, 583 U.S. at 288 (quoting 8 U.S.C. § 1182(d)(5)(A)).

7 To terminate the previously granted parole, the agency must comply with
8 the applicable regulatory and statutory requirements. As set forth in 8 C.F.R.
9 § 212.5(e)(2)(i), which governs the “[t]ermination of parole,”

10 In cases not covered by paragraph (e)(1) of this section,³ upon
11 accomplishment of the purpose for which parole was authorized or
12 when in the opinion of one of the officials listed in paragraph (a)
13 of this section, neither humanitarian reasons nor public benefit
14 warrants the continued presence of the alien in the United States,
15 parole shall be terminated upon written notice to the alien and he
or she shall be restored to the status that he or she had at the time
of parole.

16 8 C.F.R. § 212.5(e)(2)(i). That is, “[u]nder the governing regulation,
17 [§ 1182(d)(5)(A)] parole may be terminated only if the purpose of parole is
18 accomplished, or humanitarian reasons and the public benefit no longer warrant
19 parole.” *Loaiza Arias v. LaRose*, No. 3:25-cv-02595-BTM-MMP, 2025 WL
20 3295385, at *3 (S.D. Cal. Nov. 25, 2025) (citing 8 C.F.R. § 212.5(e)).

21 What’s more, ICE is required to inform noncitizens of the reasons for
22 revocation. The court in *Y-Z-H-L* determined that under the Administrative
23 Procedure Act, immigration parolees are entitled to determinations related to their
24 parole revocations that are not arbitrary, capricious or an abuse of discretion. *Y-Z-*
25 *L-H*, 792 F. Supp. 3d at 1144. An agency acts arbitrarily and capriciously by
26 failing to make a reasoned determination or where the agency fails to “articulate[]
27 a satisfactory explanation for its action including a rational connection between
28 the facts found and the choice made.” *Id.* Parole revocations in the context of the

1 INA must occur on a case-by-case basis and may occur “when the purposes of
2 such parole shall, in the opinion of the Secretary of Homeland Security, have been
3 served the alien shall forthwith return or be returned to the custody from which he
4 was paroled.” *Id.* (quoting 8 C.F.R. § 212.5(e)). 8 C.F.R. § 212.5(e) requires
5 written notice of the termination of parole except where the immigrant has
6 departed or when the specified period of parole has expired.

7 The government has failed to follow the applicable statutory and regulatory
8 provisions to terminate Petitioner’s parole. *Cf. Coal. for Humane Immigrant Rts.*
9 *v. Noem*, No. 25-cv-872 (JMC), 2025 WL 2192986, at *2 (D.D.C. Aug. 1, 2025)
10 (holding that the government failed to follow the applicable statutory and
11 regulatory provisions and that paroled noncitizens cannot be subject to expedited
12 removal proceedings); *Salgado Bustos v. Raycraft*, No. 25-13202, 2025 WL
13 3022294, at *5–7 (E.D. Mich. Oct. 29, 2025) (same); *E.V. v. Raycraft*, No. 4:25-
14 cv-2069, 2025 WL 2938594, at *10 (N.D. Ohio Oct. 16, 2025) (same).

15 First, the parole statute at 8 U.S.C. §1182(d)(5)(A) permits the termination
16 of parole only where there is a finding that the purpose of such parole has been
17 served. *Y-Z-L-H*, 792 F. Supp. 3d at 1133. Here, however, the purpose of
18 Petitioner’s parole has not been served. He fled from Cuba, seeking asylum in the
19 United States, and he entered the United States at a port of entry. Exh. A ¶ 1. At
20 that time, Mr. Delfin-Ricardo was granted parole pursuant to 8 U.S.C.
21 § 1182(d)(5)(A), which provides for parole into the United States “for urgent
22 humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A). He
23 filed an asylum application and he has filed an appeal of the immigration judge’s
24 decision. Thus, when he was recently arrested and detained, he was still seeking
25 asylum. Thus, the purpose of parole has not yet been served.

26 Second, regardless of the purpose, ICE is required to provide the noncitizen
27 “a cogent description of the reasons supporting the revocation decision.” *J.E.H.G.*
28 *v. Chestnut*, No. 1:25-CV-01673-JLT SKO, 2025 WL 3523108, at *6 (E.D. Cal.

1 Dec. 9, 2025). In *Y-Z-H-L*, the Petitioner received an email stating that “DHS was
2 exercising its discretion” to terminate parole. 792 F. Supp. 3d at 1146. The court
3 said that this language was vague and did not provide an actual reason. *Id.* It
4 stated that the “email was legally insufficient to meet the statutory and regulatory
5 requirements, even though it cited those provisions and invoked the word
6 ‘discretion.’” *Id.* Common sense and the words of the statute require parole
7 revocation to be analyzed on a case-by-case basis and that a decision to revoke
8 parole “must attend to the reasons an individual [noncitizen] received parole.”
9 *J.E.H.G.*, 2025 WL 3523108, at *6 (citing *Mata Velasquez v. Kurzdorfer*, No. 25-
10 CV-493-LJV, 2025 WL 1953796, at *11 (W.D.N.Y. July 16, 2025)). There is no
11 indication that the government conducted that analysis in this case.

12 Judge Curiel found an APA violation in *Noori v. LaRose*, No. 25-CV-1824-
13 GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct. 1, 2025). *Noori* concluded that “to
14 meet statutory and regulatory requirements, revocation should only occur when
15 (1) the parole’s purpose is served or (2) when humanitarian reasons and public
16 benefit are no longer warranted, and the noncitizen is provided written notice.” *Id.*
17 The first requirement was not met because the petitioner “applied for asylum and
18 was still in the middle of those proceedings when Respondents issued and
19 executed the revocation.” *Id.* And even though the petitioner was provided a
20 “generic notification” of his revocation, the second requirement was not met
21 because “humanitarian reasons still warrant the Petitioner’s presence in the
22 country.” *Id.* At a minimum, Judge Curiel held, parole revocation “requires an
23 individualized determination,” which the government had not provided because it
24 failed to explain “why the Petitioner would now be considered a flight risk or
25 danger to the community.” *Id.*

26 Here, as in *Noori*, the government failed to meet the statutory and
27 regulatory requirements for parole revocation. Thus, the government here “has
28 acted arbitrarily and capriciously in violation of the APA.” *Id.*

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2. Mr. Delfin-Ricardo’s detention is a violation of the Due Process Clause.

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 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).

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

1 interest through the procedures used, and the probable value, if any, of additional
2 or substitute procedural safeguards”; and (3) “the Government's interest, including
3 the function involved and the fiscal and administrative burdens that the additional
4 or substitute procedural requirement would entail.” *Id.*

5 All three factors support a finding that the government’s revocation of
6 Mr. Delfin-Ricardo’s parole without reasoning or an opportunity to be heard,
7 denied Petitioner of his due process rights. First, Mr. Delfin-Ricardo has a
8 significant liberty interest in remaining out of custody pursuant to his conditional
9 parole. “Freedom from imprisonment—from government custody, detention, or
10 other forms of physical restraint—lies at the heart of the liberty [the Due Process
11 Clause] protects.” *Zadvydas*, 533 U.S. at 690. He also has an interest in remaining
12 with his family and continuing the process of adjusting status to a lawful
13 permanent resident and asylum. *See Morrissey*, 408 U.S. 471 at 482 (“Subject to
14 the conditions of his parole, he can be gainfully employed and is free to be with
15 family and friends and to form the other enduring attachments of normal life.”).

16 Second, the risk of an erroneous deprivation of such interest is high as
17 Mr. Delfin-Ricardo parole was revoked without providing him a reason for
18 revocation or giving him an opportunity to be heard. When he was paroled, the
19 government made a finding that he did not pose a danger to the community and
20 was not a flight risk. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1760 (N.D. Cal.
21 2017) (“Release reflects a determination by the government that the noncitizen is
22 not a danger to the community or a flight risk.”). “Once a noncitizen has been
23 released, the law prohibits federal agents from rearresting him merely because he
24 is subject to removal proceedings.” *Saravia*, 280 F. Supp. 3d at 1760. “Rather, the
25 federal agents must be able to present evidence of materially changed
26 circumstances—namely, evidence that the noncitizen is in fact dangerous or has
27 become a flight risk....” *Id.* “Where, as here, ‘the petitioner has not received any
28 bond or custody hearing,’ ‘the risk of an erroneous deprivation of liberty is high’

1 because neither the government nor [Petitioner] has had an opportunity to
2 determine whether there is any valid basis for [his] detention.” *Pinchi*, 2025 WL
3 2084921, at *5 (quoting *Singh v. Andrews*, No. 25-cv-801-KES-SKO (HC), 2025
4 WL 1918679, at *7 (E.D. Cal. July 11, 2025)) (cleaned up).

5 Third, the Government’s interest in detaining Mr. Delfin-Ricardo without
6 proper notice and reasoning or a hearing is “low.” *See Pinchi*, 2025 WL 2084921,
7 at *5; *Matute*, 2025 WL 2817795, at *6; *Ortega v. Bonnar*, 415 F. Supp. 3d 963,
8 970 (N.D. Cal. Nov. 22, 2019) (“If the government wishes to re-arrest [Petitioner]
9 at any point, it has the power to take steps toward doing so; but its interest in
10 doing so without a hearing is low.”).

11 Thus, Mr. Delfin-Ricardo’s detention is unlawful. *See, e.g., Alegria Palma*
12 *v. Larose et al.*, No. 25-cv-1942 BJC (MMP), slip op. at 14 (S.D. Cal. Aug. 11,
13 2025) (granting a TRO based on a procedural due process challenge to a
14 revocation of parole without a pre-deprivation hearing); *Navarro Sanchez*, 2025
15 WL 2770629, at *5 (granting a writ of habeas corpus releasing petitioner from
16 custody to the conditions of her preexisting parole on due process grounds).

17 **II. This Court has jurisdiction to consider Mr. Delfin-Ricardo’s claim.**

18 In cases raising similar claims, the government has argued that this Court
19 lacks jurisdiction to consider or grant relief under 8 U.S.C. §§ 1252(g) and
20 1252(b)(9). This argument fails here for at least three independent reasons. First,
21 Mr. Delfin-Ricardo’s claims are inextricably intertwined with the government’s
22 authority to detain him, which this Court has jurisdiction to consider. Second, this
23 Court has jurisdiction to review whether the agency has complied with due
24 process and its mandatory, nondiscretionary duties.

25 Courts have jurisdiction to “decide a purely legal question that does not
26 challenge the Attorney General’s discretionary authority.” *Ibarra-Perez v. United*
27 *States*, 154 F.4th 989, 996 (9th Cir. 2025) (quotations omitted). In *Ibarra-Perez*,
28 the Ninth Circuit squarely held that “§ 1252(g) does not prohibit challenges to

1 unlawful practices merely because they are in some fashion connected to removal
2 orders.” *Id.* at 997. Accordingly, the question is whether Petitioner’s claim
3 “challenge[s] the Attorney General’s discretionary authority.” *Id.* at 996.

4 They do not. First, Petitioner claim relates to the government’s authority to
5 detain him, and courts have widely held that review of issues related to detention
6 is not barred by § 1252(g) or (b)(9). *See, e.g., Flores–Torres v. Mukasey*, 548 F.3d
7 708, 711 (9th Cir. 2008) (holding that habeas jurisdiction exists to review a
8 challenge to immigration detention based on a citizenship claim); *Kong v. United*
9 *States*, 62 F.4th 608, 617 (1st Cir. 2023) (holding that “assertions of illegal
10 detention [were] plainly collateral to ICE’s prosecutorial decision to execute [a
11 detainee’s removal” and thus not subject to § 1252’s jurisdictional bars); *Cardoso*
12 *v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) (“[S]ection 1252(g) does not bar courts
13 from reviewing an alien detention order[.]”); *Parra v. Perryman*, 172 F.3d 954,
14 957 (7th Cir. 1999) (§ 1252(g) did not apply to a “claim concern[ing] detention”).
15 To undersigned counsel’s knowledge, every judge in this district has held that it
16 has jurisdiction to consider claims that an individual is unlawfully detained.
17 Petitioner’s claim asserts in his habeas petition relate to the government’s
18 authority to detain him without following the regulations and statues relating to
19 parole.

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

27 That is precisely what Judge Curiel recently held in a similar case. In *Noori*
28 *v. Larose*, No. 25-CV-1824-GPC-MSB, 2025 WL 2800149, at *1 (S.D. Cal. Oct.

1 1, 2025), the petitioner was (like Petitioner) an asylum seeker from Afghanistan
2 who “presented himself at the U.S. Port of Entry in San Ysidro, California and
3 applied for admission with a CBP One application.” Immigration officials
4 “paroled him into the United States” under the same type of “DT” humanitarian
5 parole as Mr. Galdamez Ortega. *Id.* But after the government cancelled the
6 petitioner’s removal proceedings and placed him in expedited removal, he filed a
7 habeas petition, and the government argued that §§ 1252(g) and (b)(9) stripped
8 the court of jurisdiction to hear his claims. *Id.* at *5.

9 Nevertheless, Judge Curiel found that he had jurisdiction to hear the claims,
10 noting that “Petitioner does not challenge the decision to commence proceedings.”
11 *Id.* at *6. Instead, “Petitioner challenges the legality of the revocation of
12 humanitarian parole in violation of the law and dismissal of ongoing removal
13 proceedings without due process.” *Id.* So even assuming the agency’s revocation
14 of parole “constitutes a decision or action to adjudicate cases,” that action is not
15 “in the discretion” of the agency under § 1252(g) where it was “not performed in
16 accordance with the mandatory procedures.” *Id.* (quoting *Sharkey v. Quarantillo*,
17 541 F.3d 75, 86 (2d Cir. 2008) (alterations omitted)).

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

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

7 **CLAIM AND PRAYER FOR RELIEF**

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

11 Accordingly, Petitioner respectfully requests that this Court:

- 12 1. Order Respondents to immediately release Petitioner from custody
13 under the same conditions of parole;
- 14 2. Order all other relief that the Court deems just and proper.

15
16 Respectfully submitted,

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18 Dated: December 26, 2025

s/ Zandra Lopez

19 Zandra Lopez

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20 Email: Zandra_Lopez@fd.org