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9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**
12

13 LUIS ALEJANDRO MULLER-
14 PLUVIOSE,

15 Petitioner,

16 v.

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

26 Respondents.
27
28

Civil Case No.: 26-cv-1442-LL-BLM

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

INTRODUCTION

Luis Alejandro Muller-Pluviose is a citizen of Venezuela who was released into the United States. But despite complying with all his court dates and timely submitting his asylum application, Mr. Muller-Pluviose was arrested at his immigration check-in appointment in June 2025. ICE took him into custody without any notice or explanation.

While it is unclear whether the government has formally revoked Mr. Muller-Pluviose's parole, the government's actions are unlawful regardless. If the agency did not revoke his parole, then it violated that parole by detaining him. And if the agency *did* revoke his parole, then it did so in violation of the statute and regulations, which require written notification and a determination that the purposes of the parole have been served. Alternatively, the Due Process Clause of the Fifth Amendment of the Constitution requires redeprivation notice and hearing. Either way, the agency's actions violated the Administrative Procedures Act and the Due Process Clause, and this Court should order his immediate release. At a minimum, Mr. Muller-Pluviose is subject to prolonged detention and should receive a bond hearing

STATEMENT OF FACTS

Mr. Muller-Pluviose was born in Venezuela and fled because he feared persecution. Exhibit A, Declaration of Richard Jose Muller-Pluviose at ¶ 1. On December 2, 2019, he crossed into the United States and turned himself in to Border Patrol. *Id.* at ¶ 2. He was taken into custody and transferred to Otay Mesa Detention Center. *Id.* at ¶ 2.

In May 2020, Mr. Muller-Pluviose was released into the United States due to the COVID pandemic. *Id.* at ¶ 3. He applied for and received Temporary Protected Status (TPS). *Id.* at ¶ 3. Because he received TPS, the IJ terminated his removal proceedings. *Id.* at ¶ 3.

1 In June 2025, Mr. Muller-Pluviose received a letter saying that he had to
 2 come in to the ICE office for an appointment. *Id.* at ¶ 4. When he went, they said
 3 that he no longer had TPS and arrested him. *Id.* at ¶ 4. ICE never told him why his
 4 release was revoked, nor did ICE give him an informal interview at which he
 5 could contest my detention. *Id.* at ¶ 4.

6 On November 19, 2025, the IJ ordered Mr. Muller-Pluviose removed. *Id.* at
 7 ¶ 5. He timely filed an appeal to the BIA that is currently pending. *Id.* at ¶ 5.

8 CLAIMS FOR RELIEF

9 **I. Count One: ICE failed to comply with its own regulations in revoking 10 Mr. Muller-Pluviose's parole under 8 C.F.R. § 212.5, violating the 11 Administrative Procedures Act and Due Process.**

12 When ICE detained Mr. Muller-Pluviose in June 2025, it did not say
 13 whether it was revoking his release. Exh. A at ¶ 4. Either way, the government's
 14 actions violate the Administrative Procedures Act and Due Process.

15 Under the Administrative Procedures Act (APA), an agency action may be
 16 held unlawful and set aside if it is "arbitrary, capricious, an abuse of discretion, or
 17 otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). An action is an
 18 abuse of discretion if the agency "entirely failed to consider an important aspect
 19 of the problem, offered an explanation for its decision that runs counter to the
 20 evidence before the agency, or is so implausible that it could not be ascribed to a
 21 difference in view or the product of agency expertise." *Nat'l Ass'n of Home*
 22 *Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle*
 23 *Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43
 24 (1983)). For a challenged agency action to be upheld, the agency "must explain
 25 the evidence which is available, and must offer a rational connection between the
 26 facts found and the choice made." *Motor Vehicle Mfrs*, 463 U.S. at 52 (1983)
 27 (internal quotations omitted) (quoting *Burlington Truck Lines, Inc. v. United*
 28 *States*, 371 U.S. 156, 168 (1962)).

1 Here, regardless of whether the agency formally revoked Mr. Muller-
2 Pluviose's parole, it violated the APA. If the agency did *not* revoke his parole,
3 then it inexplicably violated its own parole decision by detaining Mr. Muller-
4 Pluviose. Doing so violated the APA because the agency did not "offer a rational
5 connection between the facts found and the choice made"—i.e., the fact that
6 Mr. Muller-Pluviose was still on parole, yet the agency decided to detain him.
7 *Motor Vehicle Mfrs*, 463 U.S. at 52. And nothing suggests that there *was* a
8 "rational" reason for this choice, given that Mr. Muller-Pluviose had filed an
9 asylum application and complied with all the conditions of his parole. This was
10 the epitome of an "arbitrary" and "capricious" act under the APA. 5 U.S.C.
11 § 706(2)(A).

12 But assuming the agency *had* revoked his parole, it also violated the APA.
13 Per ICE regulations, a person shall only be "returned to the custody from which
14 he was paroled" when "the purposes of such parole . . . have been served." 8
15 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. § 212.5(e)(2)(i) (parole may only be
16 terminated "upon accomplishment of the purpose for which parole was
17 authorized"); *Y-Z-L-H*, 2025 WL 1898025, at *12 (same). Alternatively, the
18 regulations permit revocation of parole when "neither humanitarian reasons nor
19 public benefit warrants the [noncitizen's] continued presence." 8 C.F.R.
20 § 212.5(e)(2)(i). But under either scenario, parole shall only be "terminated upon
21 written notice to the alien." 8 C.F.R. § 212.5(e)(2)(i). So under the statute and the
22 regulations, the agency may only revoke parole and re-detain a noncitizen when
23 the parole's purpose is served or no humanitarian reasons warrant it *and* the
24 noncitizen receives written notice.

25 None of this occurred here. Because "the purpose[] of [Mr. Muller-
26 Pluviose's] parole" was to allow him to apply for asylum, that purpose has not yet
27 "been served" because his asylum claim is still pending. 8 U.S.C.
28 § 1182(d)(5)(A). And the humanitarian reasons for parole—to avoid unnecessary

1 detention when an asylum seeker poses no danger or flight risk—remains the
 2 same. Put differently, “upon Petitioner’s entry into the United States, Respondents
 3 determined that Petitioner was suitable for parole. Respondents have not provided
 4 a reasoned explanation or any changed circumstances that would justify their
 5 current departure from their prior decision.” *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d
 6 1123, 1146 (D. Or. 2025). Under the APA, “[i]t is Respondents’ burden to
 7 provide a reasoned explanation for their action,” which they will not be able to do.
 8 *Id.*

9 What’s more, Mr. Muller-Pluviose never received any written notification
 10 of a revocation under 8 C.F.R. § 212.5(e). So if the agency revoked his parole,
 11 this decision violated both the statute and the regulation and was “not in
 12 accordance with law” under the APA. 5 U.S.C. § 706(2)(A).

13 Multiple courts have released parolees on this basis. *See Arias v. Larose*,
 14 No. 3:25-CV-02595-BTM-MMP, 2025 WL 3295385, at *3 (S.D. Cal. Nov. 25,
 15 2025); *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D.
 16 Cal. Oct. 1, 2025); *Salazar v. Casey*, No. 25-cv-2784 JLS-VET, 2025 WL
 17 3063629 (S.D. Cal. Nov. 3, 2025); *Perez v. LaRose*, No. 25-cv-02620-RBM-JLB,
 18 2025 WL 3171742 (S.D. Cal. Nov. 13, 2025); *Y-Z-L-H v. Bostock*, No. 25-cv-
 19 965-SI, 2025 WL 1898025, at *13 (D. Or. July 9, 2025). Because Mr. Muller-
 20 Pluviose is in the same position as these individuals, this Court should do the
 21 same and order his immediate release.

22 **II. Count Two: The Due Process Clause required notice and a chance to** 23 **be heard before parole was revoked.**

24 Additionally, “the revocation of [Mr. Muller-Pluviose’s] parole without
 25 justification or consideration of his individualized circumstances violates the Due
 26 Process Clause.” *Perez v. LaRose*, No. 3:25-CV-02620-RBM-JLB, 2025 WL
 27 3171742, at *4 (S.D. Cal. Nov. 13, 2025). Mr. Muller-Pluviose was “entitled to
 28 notice of the reasons for revocation of his parole and a hearing before an

1 immigration judge to determine whether detention is warranted” before ICE
2 revoked his parole. *Id.* at *7.

3 “The Fifth Amendment guarantees that ‘[n]o person shall be ... deprived of
4 life, liberty, or property, without due process of law.’” *Salazar*, 2025 WL
5 3063629, at *3 (quoting U.S. Const. amend. V). “[T]he Due Process Clause
6 applies to all ‘persons’ within the United States, including aliens, whether their
7 presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*,
8 533 U.S. 678, 693 (9th Cir. 2001).

9 “Generally, due process protections depend on the situation and must
10 account for (1) the private interest at issue, (2) the risk of erroneous deprivation of
11 that interest through the procedures used, and (3) the Government's interest.”
12 *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct.
13 1, 2025); (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). Weighing those
14 considerations here, Respondents violated the Due Process Clause by revoking
15 parole with no notice or hearing.

16 “First, Petitioner has a private interest in remaining free, which developed
17 over the [months] he resided in the United States.” *Id.* at *10. It does not matter
18 that parole is temporary or discretionary. “For example, *Morrissey v. Brewer*, 408
19 U.S. 471, 482 (1972)—though analyzing the criminal parole context—found that
20 ‘the liberty of a parolee, although indeterminate, includes many of the core values
21 of unqualified liberty and its termination inflicts a grievous loss on the parolee
22 and often others ... [thus it] must be seen within the protection of the [Fifth]
23 Amendment.’” *Id.*

24 “Second, the risk of an erroneous deprivation of such interest is high as
25 Petitioner's parole was revoked without providing [him] a reason for revocation or
26 giving [him] an opportunity to be heard.” *Salazar*, 2025 WL 3063629, at *4.
27 “Civil immigration detention is permissible only to prevent flight or protect
28 against danger to the community.” *Perez*, 2025 WL 3171742, at *5. But here,

1 “[s]ince DHS's initial determination that Petitioner should be paroled because [he]
 2 posed no danger to the community and was not a flight risk, there is no evidence
 3 that these findings have changed.” *Id.*

4 “Third, the Government's interest in detaining Petitioner without notice,
 5 reasoning, and a hearing is low.” *Salazar*, 2025 WL 3063629, at *5 (cleaned up).
 6 “Detention for its own sake, to meet an administrative quota, or because the
 7 government has not yet established constitutionally required pre-detention
 8 procedures is not a legitimate government interest.” *Pinchi v. Noem*, 792 F. Supp.
 9 3d 1025, 1036 (N.D. Cal. 2025).

10 Thus, because Respondents did not provide “proper notice, reasoning, and a
 11 pre-deprivation hearing” before revoking parole, Mr. Muller-Pluviose’s redetention
 12 violated the Due Process Clause. *Salazar*, 2025 WL 3063629, at *5.

13 **III. At a minimum, Mr. Muller-Pluviose’s detention has become prolonged.**

14 Even if this Court declined to order Mr. Muller-Pluviose released on the
 15 basis of the regulatory and due process violations described above, it should order
 16 the Respondents to provide him a bond hearing. “Section 1225 applies to
 17 ‘applicants for admission’—noncitizens who ‘arrive[] in the United States,’ or are
 18 ‘present’ in the United States but have ‘not been admitted.’” *Banda v. McAleenan*,
 19 385 F. Supp. 3d 1099, 1111 (W.D. Wash. 2019). That includes persons who, like
 20 Mr. Muller-Pluviose, are apprehended near the border and—rather than producing
 21 admission documents—make asylum and other fear-based claims. *See id.* at
 22 1109–11 (describing a similar procedural history and finding that petitioner was
 23 detained under § 1225(b)). Such immigrants are detained under § 1225(b) not
 24 only during their initial proceedings, but also when they appeal to the BIA. *See id.*
 25 at 1111 (reaching same conclusion for immigrant with pending BIA appeal).

26 In years past, the Ninth Circuit applied the constitutional avoidance canon
 27 to hold that § 1225(b) implicitly entitled detained immigrants to bond hearings
 28 every six months. *Rodriguez v. Robbins*, 804 F.3d 1060, 1087–89 (9th Cir. 2015).

1 But the Supreme Court overruled that precedent in *Jennings v. Rodriguez*, holding
 2 that the statute does not entitle detainees to bond hearings or otherwise impose
 3 “any limit on the length of detention.” 583 U.S. 281, 297 (2018). *Jennings* did not
 4 address whether prolonged, mandatory detention without bond hearings violates
 5 due process. *Id.* at 312.¹

6 “In the wake of *Jennings*, district courts have grappled with how to address
 7 due process challenges to prolonged mandatory detention under § 1225(b).”
 8 *Banda*, 385 F. Supp. 3d at 1116. But after a full evaluation, “[n]early all district
 9 courts that have considered the issue agree that prolonged mandatory detention
 10 pending removal proceedings, without a bond hearing, will—at some point—
 11 violate the right to due process.” *Id.* (cleaned up) (collecting cases).

12 Though courts agree that due process mandates a bond hearing when
 13 detention grows unreasonably prolonged, they disagree about how to assess
 14 whether a particular migrant’s detention has reached that point. *Sanchez-Rivera v.*
 15 *Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5–6 (S.D.
 16 Cal. Jan. 9, 2023) (Anello, J.) (surveying the various approaches). Some courts
 17 have “conclude[d] . . . that detention becomes prolonged after six months and
 18 entitles [a petitioner] to a bond hearing.” *Rodriguez v. Nielsen*, No. 18-CV-04187-
 19 TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019). In that case, Mr. Muller-
 20 Pluviose would automatically qualify, as he has been detained for eight months.
 21 Exh. A at ¶ 3.

22 Other courts have adopted various factors tests. *See Sanchez-Rivera*, 2023
 23 WL 139801, at *5–6 (surveying different approaches). Courts generally agree that
 24 relevant factors include:

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 27 ¹ The Supreme Court’s later decision in *Dep’t of Homeland Sec. v. Thuraissigiam*,
 28 591 U.S. 103 (2020), also poses no barrier to granting relief on this detention-
 based due process claim. *See Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC,
 2025 WL 2691828, at *7–9 (W.D. Tex. Sept. 22, 2025).

1 (1) “the total length of detention to date,”

2 (2) “the likely duration of future detention,” and

3 (3) “the delays in the removal proceedings caused by the petitioner and the
4 government.”

5 *Id.* Some courts also consider:

6 (4) “the conditions of detention,” and

7 (5) “the likelihood that the removal proceedings will result in a different final
8 order.”

9 *Id.*; but see *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022) (holding
10 that the fourth and fifth factors are “not particularly suited to assisting the Court in
11 determining whether detention has become unreasonable and due process requires
12 a bond hearing”); *Sanchez-Rivera*, 2023 WL 139801, at *5–6 (agreeing with
13 *Lopez*).² Mr. Muller-Pluviose would prevail under any of these factors tests.

14 First, the “most important factor,” the length of detention, favors
15 Mr. Muller-Pluviose. *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor,
16 “[i]t is important to bear in mind the context: The detention that is being
17 examined here is the detention of a human being who has never been found to
18 pose a danger to the community or to be likely to flee if released.” *Jamal A. v.*
19 *Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn. 2019). With that context, courts
20 have granted bond hearings for persons detained for a period of time comparable
21 to that of Mr. Muller-Pluviose. See *Ashemuke v. ICE Field Off. Dir.*, No. C23-
22 1592-RSL-MLP, 2024 WL 1683797, at *4 (W.D. Wash. Feb. 29, 2024), *report*
23 *and recommendation adopted*, No. C23-1592-RSL, 2024 WL 1676681 (W.D.
24 Wash. Apr. 18, 2024) (“approximately eleven months”); *Brissett v. Decker*, 324
25 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) (“over nine months”); *Perez v. Decker*, No.

26
27 ² Courts also disagree about whether to account for any criminal convictions that
28 have led to the deportation. *Sanchez-Rivera*, 2023 WL 139801, at *5–6. But such
factors—if appropriate at all—are irrelevant where, as here, the person is not
being removed as a result of criminal convictions.

1 18-CV-5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y. Aug. 20, 2018) (“more
2 than nine months”); *Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at
3 *2 (N.D. Cal. Jan. 8, 2020) (“nearly nine months”).

4 Second, Mr. Muller-Pluviose has reason to anticipate significant future
5 detention during his appellate process. Mr. Muller-Pluviose has appealed his
6 decision to the agency and will likely appeal to the circuit court. *See Banda*, 385
7 F. Supp. 3d at 1119. All told, “[t]his process may take up to two years or longer.”
8 *Id.* Because “Petitioner’s future detention can last several more months or even
9 years[,]” this factor favors Mr. Muller-Pluviose. *Abdul Kadir v. Larose*, No.
10 25CV1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025) (Lopez.
11 J.).

12 Third, Mr. Muller-Pluviose did not delay his asylum proceedings but has
13 moved forward expeditiously. Exh. A at ¶ 4.

14 Four, Mr. Muller-Pluviose’s conditions of confinement weigh in favor of a
15 bond hearing. At Otay Mesa Detention Center, detainees are “locked up behind
16 razor wire and concrete walls in a secured facility, forced to wear a color-coded
17 prisoner jump suit, forbidden from accessing the internet, restricted access to
18 outdoor space, restricted on visitation, and guarded at all times with armed guards
19 authorized to inflict punishment for violations of rules.” *Abdul Kadir*, 2025 WL
20 2932654, at *5. Accordingly, “Petitioner’s confinement at OMDC is
21 ‘indistinguishable from penal confinement.’” *Abdul Kadir*, 2025 WL 2932654, at
22 *5 (quoting *Kydyrali*, 499 F. Supp. 3d at 773).

23 Under any test, then, Mr. Muller-Pluviose is entitled to a bond hearing.
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IV. This Court must hold an evidentiary hearing on any disputed facts.

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

V. Prayer for relief

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Order Respondents to immediately release Petitioner from custody, subject to the conditions of his preexisting parole;
2. Order that prior to any re-detention of Petitioner, that Petitioner is entitled to notice of the reasons for revocation of his parole and a hearing before an immigration judge to determine whether detention is warranted. Respondents bear the burden of establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or a risk of flight at that hearing; and
3. Order at a minimum that Petitioner receive a bond hearing where Respondents should bear the burden of establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or a risk of flight;
4. Order any other relief that the Court deems just and proper.

Respectfully submitted,

Dated: March 19, 2026

s/ Kara Hartzler

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