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

12 ALPHA OUMAR DIALLO,  
13  
14 Petitioner,  
15  
16 v.  
17 JEREMY CASEY, Warden at Imperial  
18 Regional Detention Center,  
19  
20 Respondents.

CIVIL CASE NO.: 26-cv-2033-BJC

**Amended<sup>1</sup> Petition  
for a  
Writ of Habeas Corpus**

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27 <sup>1</sup> Federal Rule of Civil Procedure 15(a)(1)(A) permits a party to “amend its pleading  
28 once as a matter of course no later than 21 days after serving it.” Fed. R. Civ. Pro.  
15(a)(1)(A) (punctuation altered). It is less than 21 days since service. Ms. Mardian  
therefore files this amended petition as of right.

1 INTRODUCTION

2 Alpha Diallo is a citizen of Guinea who was released so that he could seek  
3 asylum in the United States. But though Mr. Diallo’s asylum case remains  
4 pending on appeal, ICE arrested him at immigration court shortly after he was  
5 ordered removed. ICE took him into custody without giving him any paperwork  
6 or any opportunity to contest his re-detention.

7 While it is unclear whether the government has formally revoked  
8 Mr. Diallo’s parole, the government’s actions are unlawful regardless. If the  
9 agency did not revoke his parole, then it violated that parole by detaining him.  
10 And if the agency *did* revoke his parole, then it did so in violation of the statute  
11 and regulations, which require written notification and a determination that the  
12 purposes of the parole have been served, as well as the Constitution, which  
13 requires pre-deprivation notice and hearing. Either way, the agency’s actions  
14 violated the Administrative Procedures Act and the Due Process Clause. Thus,  
15 this Court should reinstate his release.

16 STATEMENT OF FACTS

17 Mr. Diallo fled his native country of Guinea and came to the United States  
18 seeking asylum, entering around November 2023. Exh. A at ¶ 1. He was arrested  
19 almost immediately and detained. *Id.* Several days later, ICE released him on  
20 parole. *Id.*

21 On July 7, 2025, Mr. Diallo lost his asylum claim and was ordered removed.  
22 *Id.* at ¶ 2. ICE re-detained him as he was leaving the immigration court with his  
23 lawyer. *Id.* ICE did not give him any documents in connection with the arrest or  
24 give him a chance to explain why he should not be arrested. *Id.*

25 Mr. Diallo appealed his immigration case. *Id.* at ¶ 3. That appeal remains  
26 pending. *Id.* According to the EOIR website, the appeal has been pending since  
27 July, yet the BIA has not even set a briefing schedule. EOIR,  
28

1 <https://acis.eoir.justice.gov/en/>. Mr. Diallo confirms that he is unaware of any  
2 deadlines in his appeal. Exh. A at ¶ 3.<sup>2</sup>

3  
4 **CLAIMS FOR RELIEF**

5 **I. Count 1: ICE failed to comply with its own regulations in revoking Mr.**  
6 **Diallo’s parole under 8 C.F.R. § 212.5, violating the Administrative**  
7 **Procedures Act and Due Process.**

8 When ICE detained Mr. Diallo on July 7, 2025, it did not say that it was  
9 revoking his parole, so it is unclear whether a revocation occurred. Exh. A at ¶ 2.  
10 Either way, the government’s actions violate the Administrative Procedures Act  
11 and Due Process.

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

26 Here, regardless of whether the agency formally revoked Mr. Diallo’s  
27 parole, it violated the APA. If the agency did *not* revoke his parole, then it

28 <sup>2</sup> Mr. Diallo financially qualifies for Federal Defenders’ services. Exh. A at ¶ 4.

1 inexplicably violated its own parole decision by detaining Mr. Diallo in July  
2 2025. Doing so violated the APA because the agency did not “offer a rational  
3 connection between the facts found and the choice made”—i.e., the fact that Mr.  
4 Diallo was still on parole, yet the agency decided to detain him. *Motor Vehicle*  
5 *Mfrs*, 463 U.S. at 52. And nothing suggests that there *was* a “rational” reason for  
6 this choice, given that Mr. Diallo had filed an asylum application and complied  
7 with all the conditions of his parole. This was the epitome of an “arbitrary” and  
8 “capricious” act under the APA. 5 U.S.C. § 706(2)(A).

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

22 None of this occurred here. Because “the purpose[ ] of [Mr. Diallo’s]  
23 parole” was to allow him to apply for asylum, that purpose has not yet “been  
24 served” because his asylum claim is still pending on appeal. 8 U.S.C. §  
25 1182(d)(5)(A). And the humanitarian reasons for parole—to avoid unnecessary  
26 detention when an asylum seeker poses no danger or flight risk—remains the  
27 same. Put differently, “upon Petitioner’s entry into the United States, Respondents  
28 determined that Petitioner was suitable for parole. Respondents have not provided

1 a reasoned explanation or any changed circumstances that would justify their  
2 current departure from their prior decision.” *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d  
3 1123, 1146 (D. Or. 2025). Under the APA, “[i]t is Respondents’ burden to  
4 provide a reasoned explanation for their action,” which they will not be able to do.  
5 *Id.*

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

10 Several courts have released parolees on this basis. *See Arias v. Larose*, No.  
11 3:25-CV-02595-BTM-MMP, 2025 WL 3295385, at \*3 (S.D. Cal. Nov. 25, 2025);  
12 *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct. 1,  
13 2025); *Salazar v. Casey*, No. 25-cv-2784 JLS-VET, 2025 WL 3063629 (S.D. Cal.  
14 Nov. 3, 2025); *Perez v. LaRose*, No. 25-cv-02620-RBM-JLB, 2025 WL 3171742  
15 (S.D. Cal. Nov. 13, 2025); *Y-Z-L-H v. Bostock*, No. 25-cv-965-SI, 2025 WL  
16 1898025, at \*13 (D. Or. July 9, 2025).

17 **II. Count 2: The Due Process Clause required notice and a chance to be**  
18 **heard before parole was revoked.**

19 Additionally, “the revocation of [Mr. Diallo’s] parole without justification or  
20 consideration of his individualized circumstances violates the Due Process Clause.”  
21 *Perez v. LaRose*, No. 3:25-CV-02620-RBM-JLB, 2025 WL 3171742, at \*4 (S.D.  
22 Cal. Nov. 13, 2025). Mr. Diallo was “entitled to notice of the reasons for revocation  
23 of his parole and a hearing before an immigration judge to determine whether  
24 detention is warranted” before ICE revoked his parole. *Id.* at \*7.

25 “The Fifth Amendment guarantees that ‘[n]o person shall be ... deprived of  
26 life, liberty, or property, without due process of law.’” *Salazar*, 2025 WL 3063629,  
27 at \*3 (quoting U.S. Const. amend. V). “[T]he Due Process Clause applies to all  
28 ‘persons’ within the United States, including aliens, whether their presence here is

1 lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693  
2 (9th Cir. 2001).

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

10 “First, Petitioner has a private interest in remaining free, which developed  
11 over the [months] he resided in the United States.” *Id.* at \*10. It does not matter that  
12 parole is temporary or discretionary. “For example, *Morrissey v. Brewer*, 408 U.S.  
13 471, 482 (1972)—though analyzing the criminal parole context—found that ‘the  
14 liberty of a parolee, although indeterminate, includes many of the core values of  
15 unqualified liberty and its termination inflicts a grievous loss on the parolee and  
16 often others ... [thus it] must be seen within the protection of the [Fifth]  
17 Amendment.’” *Id.*

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

26 “Third, the Government's interest in detaining Petitioner without notice,  
27 reasoning, and a hearing is low.” *Salazar*, 2025 WL 3063629, at \*5 (cleaned up).  
28 “Detention for its own sake, to meet an administrative quota, or because the

1 government has not yet established constitutionally required pre-detention  
2 procedures is not a legitimate government interest.” *Pinchi v. Noem*, 792 F. Supp.  
3 3d 1025, 1036 (N.D. Cal. 2025).

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

7 **III. Count 3: In the alternative, Mr. Diallo’s prolonged detention warrants  
8 a bond hearing.**

9 Mr. Diallo’s case is therefore properly understood as a parole case, the  
10 remedy for which is release. But even if he had been detained from the outset, he  
11 would still be entitled to a bond hearing under the Due Process Clause. He therefore  
12 raises that claim, too, out of an abundance of caution. Many courts agree that in  
13 some circumstances, continued detention without a bond hearing violates Due  
14 Process. *See, e.g., Gao v. LaRose*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633,  
15 at \*3 (S.D. Cal. Sept. 26, 2025); *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP,  
16 2025 WL 2932654, at \*4 (S.D. Cal. Oct. 15, 2025); *Cong v. Noem*, No. 25-CV-  
17 3730-GPC-DEB, 2026 WL 76566, at \*3 (S.D. Cal. Jan. 9, 2026); *Kydyrali v. Wolf*,  
18 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.); *Mardian v. Mayorkas*,  
19 25-cv-3467-JLS; *Raeva v. Mayorkas*, 25-cv-3175-JO; *Abdul-Samed v. Warden of*  
20 *Golden State Annex Det. Facility*, No. 25-cv-98-SAB-HC, 2025 WL 2099343, at  
21 \*6 (E.D. Cal. July 25, 2025); *Hernandez v. Wofford*, No. 25-cv-986-KES-CDB  
22 (HC), 2025 WL 2420390, at \*3 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*, 704 F.  
23 Supp. 3d 1163, 1171–72 (W.D. Wash. 2023).

24 Though courts agree that due process mandates a bond hearing when  
25 detention grows unreasonably prolonged, they disagree about how to assess  
26 whether a particular migrant’s detention has reached that point. *Sanchez-Rivera v.*  
27 *Matuszewski*, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at \*5–6 (S.D. Cal.  
28 Jan. 9, 2023) (Anello, J.) (surveying the various approaches). But most courts have

1 adopted a factors test. *See Sanchez-Rivera*, 2023 WL 139801, at \*5–6 (surveying  
2 different approaches). Courts generally agree that relevant factors include:

- 3 (1) “the total length of detention to date,”  
4 (2) “the likely duration of future detention,” and  
5 (3) “the delays in the removal proceedings caused by the petitioner and the  
6 government.”

7 *Id.* Some courts also consider:

- 8 (4) “the conditions of detention,” and  
9 (5) “the likelihood that the removal proceedings will result in a different final  
10 order.”

11 *Id.* Other courts have rejected the fourth and fifth factors, holding that they are “not  
12 particularly suited to assisting the Court in determining whether detention has  
13 become unreasonable and due process requires a bond hearing.” *Lopez v. Garland*,  
14 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022); *accord Sanchez-Rivera*, 2023 WL  
15 139801, at \*5–6.<sup>3</sup> Mr. Diallo would prevail under any of these factors tests.

16 First, the “most important factor,” the length of detention, favors Mr. Diallo.  
17 *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, “[i]t is important to bear  
18 in mind the context: The detention that is being examined here is the detention of a  
19 human being who has never been found to pose a danger to the community or to be  
20 likely to flee if released.” *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn.  
21 2019). With that context, “[c]ourts have found detention over seven months without  
22 a bond hearing weighs toward a finding that it is unreasonable.” *Amado v. United*  
23 *States Dep’t of Just.*, No. 25CV2687-LL(DDL), 2025 WL 3079052, at \*5 (S.D. Cal.  
24 Nov. 4, 2025). Mr. Diallo has been detained for over nine months. Exh. A at ¶ 2.  
25 This factor therefore favors a bond hearing.

26 \_\_\_\_\_  
27 <sup>3</sup> 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 Second, Mr. Diallo has reason to anticipate significant future detention.  
2 Mr. Diallo’s case is currently on appeal to the BIA. Exh. A at ¶ 3. And if his appeal  
3 is denied, he will have the opportunity to continue on to the Ninth Circuit. All told,  
4 the appellate “process may take up to two years or longer.” *Banda*, 385 F. Supp. 3d  
5 at 1119. Because “Petitioner’s future detention can last several more months or even  
6 years[,]” this factor favors Mr. Diallo. *Abdul Kadir v. Larose*, No. 25CV1045-LL-  
7 MMP, 2025 WL 2932654, at \*5 (S.D. Cal. Oct. 15, 2025).

8 Third, the delay factor is favors Mr. Diallo. During his detention, he acted  
9 expeditiously to appeal his case. Exh. A at ¶ 3. But from the EOIR website and Mr.  
10 Diallo’s understanding, it appears that the BIA has not issued a briefing schedule  
11 in the near-nine months since the appeal was lodged. *Id.* at ¶ 3; EOIR,  
12 <https://acis.eoir.justice.gov/en/>. That unjustified delay is not any fault of Mr.  
13 Diallo’s.

14 Fourth, Mr. Diallo’s conditions of confinement weigh in favor of a bond  
15 hearing, because “Petitioner’s confinement [in an immigration detention center] is  
16 ‘indistinguishable from penal confinement.’” *Abdul Kadir*, 2025 WL 2932654, at  
17 \*5 (quoting *Kydyrali*, 499 F. Supp. 3d at 773).

18 The fifth factor favors Mr. Diallo, because he may prevail in defending his  
19 asylum denial on appeal.

20 Under any test, then, Mr. Diallo is entitled to a bond hearing.

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

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

25 **V. Prayer for relief**

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

- 27 1. Order Respondents to immediately release Petitioner from custody,  
28 subject to the conditions of his preexisting parole;

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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 should 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;
3. In the alternative—if and only if this Court rejects the parole-based arguments—order a bond hearing at which the government bears the burden to prove danger or flight by clear and convincing evidence, and stipulate that the government must make a record of the bond hearing available to counsel upon request; and
4. Order any other relief that the Court deems just and proper.

Respectfully submitted,

Dated: April 12, 2026

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