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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 Antony Yair QUISPE CARDENAS

CASE NO.: 3:26-cv-02352-JO-JLB

11 Petitioner,

12 v.

**Amended¹ Petition
for a
Writ of Habeas Corpus**

13 CHRISTOPHER LAROSE, Warden at
14 Otay Mesa Detention Center,

15 Respondents.
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26 ¹ Federal Rule of Civil Procedure 15(a)(1)(A) permits a party to “amend its
27 pleading once as a matter of course no later than 21 days after serving it or 21 days
28 after service of a responsive pleading.” Fed. R. Civ. Pro. 15(a)(1)(A) (punctuation
altered). It is less than 21 days since the traverse was filed. Mr. Quispe Cardenas
therefore files this amended petition as of right.

INTRODUCTION

Mr. Quispe Cardenas ("Petitioner") is a 22-year-old citizen and national of Peru. He came to the USA on or about December 26, 2022, to seek asylum, withholding of removal, or protection under the Convention Against Torture after fleeing persecution in Peru on account of his harm and torture from his ex-partner's family. The persecution he fears includes [REDACTED]

Petitioner was released on parole on December 31, 2022. He has had no departures since his arrival. He is not married. He has one child. Petitioner lived and worked in the U.S. for over 3 years before he was re-detained. On information and belief, he has one criminal arrest. The alleged arrest² resulted from retail theft in the value of less than \$500 (misdemeanor), for which he served two days in the Salt Lake County Jail before being picked up on an ICE detainer.

Respondents commenced removal proceedings against him in immigration court on or around January 23, 2026, entitling him to present his asylum claim with the due process rights under 8 U.S.C. § 1229a. Since then, Petitioner has remained in Respondent's custody and has attended his immigration court hearings. On or about March 24, 2026, he filed a Form I-589 Application for Asylum, Withholding of Removal, and protection under the Convention Against Torture with the immigration court.

² Counsel has searched the Utah Court Xchange website (<https://apps.utcourts.gov/XchangeWEB/XchangeWebServle>) and had zero results for any theft convictions for Petitioner, using his full name, and date of birth as well as variations of his name. On information and belief, Petitioner was never convicted of retail theft.

1 While it is unclear whether the government has formally revoked Mr.
2 Quispe Cardenas parole or release, the government's actions are unlawful
3 regardless. If the agency did not revoke his parole or release, then it violated that
4 by re-detaining him. And if the agency *did* revoke it, then it did so in violation of
5 the statute and regulations, which require written notification and a determination
6 that the purposes of the parole or release have been served, as well as the
7 Constitution, which requires pre-deprivation notice and hearing. Either way, the
8 agency's actions violated the Administrative Procedures Act and the Due Process
9 Clause. Thus, this Court should reinstate his release. His continued detention is
10 unnecessary and Petitioner respectfully requests that the petition be granted and
11 he be released while his immigration proceedings continue.

12 CLAIMS FOR RELIEF

13 **I. Count 1: ICE failed to comply with its own regulations in revoking Mr.**
14 **Quispe Cardenas parole release under 8 C.F.R. § 212.5, violating the**
15 **Administrative Procedures Act and Due Process.**

16 Petitioner restates, realleges, and incorporates by reference each and every
17 allegation claimed in his original writ of Habeas Corpus.

18 When ICE detained Mr. Quispe Cardenas on or about January 23, 2026, it
19 did not say that it was revoking his parole or release, so it is unclear whether a
20 revocation occurred. Either way, the government's actions violate the
21 Administrative Procedures Act and Due Process.

22 Under the Administrative Procedures Act (APA), an agency action may be
23 held unlawful and set aside if it is "arbitrary, capricious, an abuse of discretion, or
24 otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). An action is an
25 abuse of discretion if the agency "entirely failed to consider an important aspect
26 of the problem, offered an explanation for its decision that runs counter to the
27 evidence before the agency, or is so implausible that it could not be ascribed to a
28 difference in view or the product of agency expertise." *Nat'l Ass'n of Home*

1 *Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle*
2 *Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43
3 (1983)). For a challenged agency action to be upheld, the agency “must explain
4 the evidence which is available, and must offer a rational connection between the
5 facts found and the choice made.” *Motor Vehicle Mfrs*, 463 U.S. at 52 (1983)
6 (internal quotations omitted) (quoting *Burlington Truck Lines, Inc. v. United*
7 *States*, 371 U.S. 156, 168 (1962)).

8 Here, regardless of whether the agency formally revoked Mr. Quispe
9 Cardenas’ release, it violated the APA. If the agency did *not* revoke his release,
10 then it inexplicably violated its own release decision by detaining Petitioner.
11 Doing so violated the APA because the agency did not “offer a rational
12 connection between the facts found and the choice made”—i.e., the fact that Mr.
13 Quispe Cardenas was still on release, yet the agency decided to detain her. *Motor*
14 *Vehicle Mfrs*, 463 U.S. at 52. And nothing suggests that there *was* a “rational”
15 reason for this choice, given that Mr. Quispe Cardenas complied with all the
16 conditions of his release. This was an “arbitrary” and “capricious” act under the
17 APA. 5 U.S.C. § 706(2)(A).

18 But assuming the agency *had* revoked his release, it also violated the APA.
19 Per ICE regulations, a person shall only be “returned to the custody from which
20 he was paroled” when “the purposes of such parole . . . have been served.” 8
21 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. § 212.5(e)(2)(i) (parole may only be
22 terminated “upon accomplishment of the purpose for which parole was
23 authorized”); *Y-Z-L-H*, 2025 WL 1898025, at *12 (same). Alternatively, the
24 regulations permit revocation of parole when “neither humanitarian reasons nor
25 public benefit warrants the [noncitizen’s] continued presence.” 8 C.F.R.
26 § 212.5(e)(2)(i). But under either scenario, parole shall only be “terminated upon
27 written notice to the alien.” 8 C.F.R. § 212.5(e)(2)(i). So under the statute and the
28 regulations, the agency may only revoke parole and re-detain a noncitizen when

1 the parole's purpose is served or no humanitarian reasons warrant it *and* the
2 noncitizen receives written notice.

3 None of this occurred here. Because “the purpose of Mr. Quispe Cardenas
4 release” was to allow him to apply for asylum, that purpose has not yet “been
5 served” because his asylum claim is still pending. 8 U.S.C. § 1182(d)(5)(A). And
6 the humanitarian reasons for release—to avoid unnecessary detention when an
7 asylum seeker poses no danger or flight risk—remains the same. Put differently,
8 “upon Petitioner's entry into the United States, Respondents determined that
9 Petitioner was suitable for release. Respondents have not provided a reasoned
10 explanation or any changed circumstances that would justify their current
11 departure from their prior decision.” *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123,
12 1146 (D. Or. 2025). Under the APA, “[i]t is Respondents’ burden to provide a
13 reasoned explanation for their action”. *Id.*

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

18 Several courts have released petitioners on this basis. *See Faizyan v. Casey*,
19 Case No.: 3:25-cv-02884-RBM-JLB, 2025 WL 3208844, at *7 (S.D. Cal. Nov. 17,
20 2025) (reaching the same conclusion as to the revocation of a petitioner’s release
21 on his own recognizance); *Lopez v Marrero*, 3:26-cv-2077-JES-VET. ALSO *See*
22 *Arias v. Larose*, No. 3:25-CV-02595-BTM-MMP, 2025 WL 3295385, at *3 (S.D.
23 Cal. Nov. 25, 2025); *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL
24 2800149 (S.D. Cal. Oct. 1, 2025); *Salazar v. Casey*, No. 25-cv-2784 JLS-VET,
25 2025 WL 3063629 (S.D. Cal. Nov. 3, 2025); *Perez v. LaRose*, No. 25-cv-02620-
26 RBM-JLB, 2025 WL 3171742 (S.D. Cal. Nov. 13, 2025); *Y-Z-L-H v. Bostock*, No.
27 25-cv-965-SI, 2025 WL 1898025, at *13 (D. Or. July 9, 2025);
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1 **II. Count 2: The Due Process Clause required notice and a chance to be**
2 **heard before release was revoked.**

3 Additionally, “the revocation of Mr. Quispe Cardenas’ release without
4 justification or consideration of his individualized circumstances violates the Due
5 Process Clause.” *Perez v. LaRose*, No. 3:25-CV-02620-RBM-JLB, 2025 WL
6 3171742, at *4 (S.D. Cal. Nov. 13, 2025). Petitioner was “entitled to notice of the
7 reasons for revocation of his release and a hearing before an immigration judge to
8 determine whether detention is warranted” before ICE revoked his release. *Id.* at
9 *7. Due process demands a hearing prior to the government’s decision to terminate
10 a person’s liberty. By failing to provide such a hearing, Respondents have violated
11 Mr. Quispe Cardenas’ constitutional right to due process. Accordingly, this Court
12 should grant the instant petition for a writ of habeas corpus, and order Petitioner’s
13 immediate release. A post-deprivation hearing cannot serve as an adequate
14 procedural safeguard because it is after the fact and cannot prevent an erroneous
15 deprivation of liberty.

16 “The Fifth Amendment guarantees that ‘[n]o person shall be ... deprived of
17 life, liberty, or property, without due process of law.’” *Salazar*, 2025 WL 3063629,
18 at *3 (quoting U.S. Const. amend. V). “[T]he Due Process Clause applies to all
19 ‘persons’ within the United States, including aliens, whether their presence here is
20 lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693
21 (9th Cir. 2001).

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

1 “First, Petitioner has a private interest in remaining free, which developed
2 over the 28 months she resided in the United States.” *Id.* at *10. It does not matter
3 that release is temporary or discretionary. “For example, *Morrissey v. Brewer*, 408
4 U.S. 471, 482 (1972)—though analyzing the criminal parole context—found that
5 ‘the liberty of a parolee, although indeterminate, includes many of the core values
6 of unqualified liberty and its termination inflicts a grievous loss on the parolee and
7 often others ... [thus it] must be seen within the protection of the [Fifth]
8 Amendment.’” *Id.*

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

17 “Third, the Government's interest in detaining Petitioner without notice,
18 reasoning, and a hearing is low.” *Salazar*, 2025 WL 3063629, at *5 (cleaned up).
19 “Detention for its own sake, to meet an administrative quota, or because the
20 government has not yet established constitutionally required pre-detention
21 procedures is not a legitimate government interest.” *Pinchi v. Noem*, 792 F. Supp.
22 3d 1025, 1036 (N.D. Cal. 2025).

23 Thus, because Respondents did not provide “proper notice, reasoning, and a
24 pre-deprivation hearing” before revoking release, Mr. Quispe Cardenas’ detention
25 violated the Due Process Clause. *Salazar*, 2025 WL 3063629, at *5.
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1 **III. This Court must hold an evidentiary hearing on any disputed facts.**

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

5 **IV. Prayer for relief**

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

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

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17 Respectfully submitted,

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19 Dated: April 21, 2026

/s/ David Szeles

20 David Szeles,
21 Attorney for Petitioner
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