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7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 SCARLETH JUNIETH RODRIGUEZ
12 PACHECO,

13 Petitioner,
14

15 v.

16 MARKWAYNE MULLIN, Secretary of
17 the Department of Homeland Security,
18 TODD BLANCHE, Acting Attorney
19 General, TODD M. LYONS, Acting
20 Director, Immigration and Customs
21 Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
Office, CHRISTOPHER LAROSE,
Warden of Otay Mesa Detention Center,

22 Respondents.
23
24
25
26

Case No.: 26-cv-2621-BTM-DEB

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

27 ¹ The Court appointed Federal Defenders of San Diego, Inc, conditioned on
28 Ms. Rodriguez Pacheco's qualification for appointed counsel. ECF 3. Her
financial eligibility is included in a declaration attached to this amended petition.

INTRODUCTION

In spring 2022, when he was 17 years old, Scarleth Rodriguez Pacheco came to the United States border. She was fleeing violent persecution in Nicaragua based on her political activism. DHS arrested her after she had entered the country, decided she did not pose a flight risk or a danger, and released her on conditional parole so that she could pursue her asylum claim. She timely filed her asylum claim. She moved to Florida and had her first immigration court hearing scheduled in late February 2026.

On February 1, 2026, Ms. Rodriguez Pacheco was the victim in a bad car accident. When police came to the scene of the accident, they called ICE. ICE detained Mr. Rodriguez Pacheco and transferred her across the country. It did not provide her with a basis for her detention, whether or why it was revoking her parole, or an opportunity to contest that revocation or request alternative conditions of release. This civil immigration habeas petition explains that her detention violates the Fifth Amendment's Due Process Clause.

This Court should order Ms. Rodriguez Pacheco's immediate release onto her existing conditional parole conditions and order that Respondents "not cause Petitioner to be re-detained during the pendency of h[er] removal proceedings without prior leave of this Court." *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1147 (D. Or. 2025); *see also Darji v. LaRose*, No. 26-cv-549-JLS-DEB, 2026 WL 323076 (S.D. Cal. Feb. 6, 2026); *Noori v. LaRose*, __ F. Supp. 3d __, 2025 WL 2800149, *9-*13 (S.D. Cal. Oct. 1, 2025); *Delfin-Ricardo v. Noem*, No. 26-cv-136-RSH-BJW, 2026 WL 353357, *1-*2 (S.D. Cal. Feb. 9, 2026); *Modrekiladze v. LaRose*, No. 26-cv-271-JEW-DEB, 2026 WL 242041, *2-*4 (S.D. Cal. Jan. 29, 2026); *Lozada v. LaRose*, No. 25-cv-3614-LL-KSC, 2026 WL 184205 (S.D. Cal. Jan. 23, 2026) (finding similar violations for unlawful revocations of humanitarian or conditional parole and ordering release).

1 **STATEMENT OF FACTS AND BACKGROUND**

2 Scarleth Junieth Rodriguez Pacheco is a Nicaraguan national who entered
3 the United States in spring 2022. Exhibit A, Declaration of Ms. Rodriguez
4 Pacheco, ¶¶ 1–2. She had fled persecution on account of her political activism,
5 originating in the protest movements in Nicaragua of April 18, 2018. *Id.* at ¶ 4;
6 *see, e.g.,* Inter-American Commission on Human Rights, *Nicaragua: Six years*
7 *after social protests, IACHR urges reestablishment of democracy, end to*
8 *repression and impunity* (Apr. 18, 2024).²

9 She explains that she “was in Border Patrol custody for two days” upon her
10 arrival in the United States, and “then they released [her] into the United States.
11 [She] did not have to pay a bond.” Exhibit A ¶ 2.

12 She was then subject to supervision conditions by ICE. She explains,

13 I was given a phone to call in to ICE to report. I would receive a
14 call from an ICE officer every Tuesday and I had to send a
15 photograph in response. I had this requirement for six months. At
16 the end of six months, I went to my ICE check-in in Miramar,
17 Florida, and they told me I did not need to call in with this phone
anymore. They told me my first court date was on February 26,
2026, that I just needed to attend that, and that I did not have to
check in with ICE beforehand.

18 Exhibit A ¶ 3.

19 Her experience indicates she was subject to an “Order of Release on
20 Recognizance.” *See* Sample Form I-220A Order of Release on Recognizance,
21 ASAP (Oct. 3, 2025)³; *see also* International Refugee Assistance Project, *Basic*
22 *Information For People Released into the US by US Government Authorities:*
23 *What It Means to Receive An “Order of Release on Recognizance* (June 12, 2025)
24 (noting that people on this form of release receive ICE check-in dates and can
25

26
27 ² Available at https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2024/075.asp.

28 ³ Available at <https://asaptogether.org/en/form-i220a/>.

1 have reporting requirements).⁴

2 This order is also called one of “conditional parole.” *Garcia-Henriquez v.*
 3 *LaRose*, 2026 WL 323328, *2 (S.D. Cal. Feb. 6, 2026). To issue conditional
 4 parole, DHS determined Ms. Rodriguez Pacheco was “detained pursuant to
 5 Respondents’ discretionary authority under [8 U.S.C.] § 1226.” *Faizyan v. Casey*,
 6 No. 25-cv-2884-RBM-JLB, 2025 WL 3208844, * 5 (S.D. Cal. Nov. 17, 2025). It
 7 also made an individualized determination that she was neither a danger to the
 8 community nor a flight risk. *See Ramirez-Bibiano v. LaRose*, No., 2025 WL
 9 3632748, *4 (S.D. Cal. Dec. 15, 2025) (explaining this point).

10 Ms. Rodriguez Pacheco moved to Florida, complied with all her ICE
 11 conditions, and timely applied for asylum. Exhibit A ¶¶ 4–5. Her asylum
 12 application is still pending, as far as she knows. *Id.* Her first immigration court
 13 date was scheduled for February 26, 2026. *Id.* ¶ 3.

14 On February 1, 2026, Ms. Rodriguez Pacheco was in a bad car crash in
 15 Miami. *Id.* ¶ 6. The car she was riding in had been hit from behind. *Id.* When
 16 police arrived at the scene of the accident, they turned her and her husband over to
 17 ICE. *Id.*

18 Ms. Rodriguez Pacheco has never received written notice that her
 19 conditional parole had been revoked. She has never learned why or had a chance
 20 to explain why her parole should not be revoked. She explains, “No one from ICE
 21 has ever told me why I’m here. I keep asking and asking and they just say,
 22 ‘Because you are an illegal.’” *Id.* ¶ 8.

23 Ms. Rodriguez Pacheco was transferred from Florida across the country.
 24 Between early March and April 24, 2024, she was detained at Otay Mesa. *Id.* ¶ 7.
 25 Her habeas petition was signed and sent while she was detained at Otay Mesa.

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 28 ⁴ Available at <https://support.iraplegalinfo.org/hc/en-us/articles/15908200910100-Basic-Information-For-People-Recently-Released-into-the-US-by-US-Government-Authorities>.

1 ECF No. 1 (dated April 21, 2026, and filed on the court's docket on April 24,
 2 2026). She was transferred to California City Detention Center before this Court
 3 ordered that she remain in Otay Mesa. ECF No. 3.

4 LEGAL ARGUMENT

5 **I. Summarily revoking Ms. Rodriguez Pacheco's parole and subjecting** 6 **her to detention violates Due Process.**

7 The Due Process Clause of the Fifth Amendment forbids the government
 8 from depriving any person of liberty without due process of law. U.S. Const.
 9 amend. V. "Freedom from imprisonment—from government custody, detention,
 10 or other forms of physical restraint—lies at the heart of the liberty" that the Due
 11 Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing
 12 *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

13 An individual released from immigration custody has a constitutionally
 14 protected liberty interest in remaining free from detention. *Morrissey v. Brewer*,
 15 408 U.S. 471, 482, 92 S. Ct. 2593, 2601, 33 L. Ed. 2d 484 (1972); *see also*
 16 *Sanchez v. LaRose*, 25-cv-2396, 2025 WL 2770629, at * 3 (S.D. Cal.). Thus,
 17 Petitioner has a fundamental interest in liberty and being free from official
 18 restraint.

19 "Even when ICE has the initial discretion to detain or release a noncitizen
 20 pending removal proceedings, after that individual is released from custody [he]
 21 has a protected liberty interest in remaining out of custody." *Pinchi v. Noem*, 792
 22 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025). (internal citation omitted). That liberty
 23 interest "is not limited to a bond hearing;" people who receive conditional parole
 24 have "a protected liberty interest in remaining out of custody." *Kumar v. LaRose*,
 25 No. 25-cv-3796-JLS-DDL, 2026 WL 40873, *2 (S.D. Cal. Jan. 6, 2026); *accord*,
 26 *e.g.*, *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at
 27 *11 (E.D. Cal. Aug. 21, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV-07492-
 28 RFL, 2025 WL 2578207, at *3 (N.D. Cal. Sept. 5, 2025); *Y-Z-L-H v. Bostock*, No.

1 3:25-CV-965-SI, 2025 WL 1898025, at *13 (D. Or. July 9, 2025).

2 To determine which procedures are constitutionally sufficient to satisfy the
3 Due Process Clause, the Court must apply the *Matthews* factors. *See Matthews v.*
4 *Eldridge*, 424 U.S. 319, 335 (1976). Courts must consider: (1) “the private
5 interest that will be affected by the official action”; (2) “the risk of an erroneous
6 deprivation of such interest through the procedures used, and the probable value,
7 if any, of additional or substitute procedural safeguards”; and (3) “the
8 Government’s interest, including the function involved and the fiscal and
9 administrative burdens that the additional or substitute procedural requirement
10 would entail.” *Id.*

11 All three factors support a finding that the government’s revocation of
12 Ms. Rodriguez Pacheco’s conditional parole without reasoning or an opportunity
13 to be heard denied her of her due process rights. First, Ms. Rodriguez Pacheco has
14 a significant liberty interest in remaining out of custody pursuant to her
15 conditional parole. “Freedom from imprisonment—from government custody,
16 detention, or other forms of physical restraint—lies at the heart of the liberty [the
17 Due Process Clause] protects.” *Zadvydas*, 533 U.S. at 690. She also has an
18 interest in remaining in the community. *See Morrissey v. Brewer*, 408 U.S. 471,
19 482 (1972) (“Subject to the conditions of his parole, he can be gainfully employed
20 and is free to be with family and friends and to form the other enduring
21 attachments of normal life.”).

22 Second, the risk of an erroneous deprivation of such interest is high as
23 Ms. Rodriguez Pacheco’s parole was revoked without providing her a reason for
24 revocation or giving her an opportunity to be heard. When she was paroled, the
25 government made a finding that she did not pose a danger to the community and
26 was not a flight risk. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1760 (N.D.
27 Cal. 2017) (“Release reflects a determination by the government that the
28 noncitizen is not a danger to the community or a flight risk.”). “Once a noncitizen

1 has been released, the law prohibits federal agents from rearresting him merely
 2 because he is subject to removal proceedings.” *Id.* “Rather, the federal agents
 3 must be able to present evidence of materially changed circumstances—namely,
 4 evidence that the noncitizen is in fact dangerous or has become a flight risk.” *Id.*
 5 “Where, as here, ‘the petitioner has not received any bond or custody hearing,’
 6 ‘the risk of an erroneous deprivation of liberty is high’ because neither the
 7 government nor [Petitioner] has had an opportunity to determine whether there is
 8 any valid basis for her detention.” *Pinchi*, 2025 WL 2084921 at *5 (cleaned up).

9 Third, the Government’s interest in detaining Ms. Rodriguez Pacheco
 10 without proper notice and reasoning or a hearing is “low.” *Id.*; *see also Matute*,
 11 2025 WL 2817795 at *6; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal.
 12 Nov. 22, 2019) (“If the government wishes to re-arrest [Petitioner] at any point, it
 13 has the power to take steps toward doing so; but its interest in doing so without a
 14 hearing is low.”).

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

21 **II. This Court has jurisdiction to consider Ms. Rodriguez Pacheco’s claim.**

22 In cases raising similar claims, the government has argued that this Court
 23 lacks jurisdiction to consider or grant relief under 8 U.S.C. §§ 1252(g) and
 24 1252(b)(9). This argument fails here.

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 As a result, in *Noori*, 2025 WL 2800149 at *1, Judge Curiel explained that
 16 he had jurisdiction over a similar claim. He explained, “Petitioner challenges the
 17 legality of the revocation of humanitarian parole in violation of the law and
 18 dismissal of ongoing removal proceedings without due process.” *Id.* So even
 19 assuming the agency’s revocation of parole “constitutes a decision or action to
 20 adjudicate cases,” that action is not “in the discretion” of the agency under
 21 § 1252(g) where it was “not performed in accordance with the mandatory
 22 procedures.” *Id.* (quoting *Sharkey v. Quarantillo*, 541 F.3d 75, 86 (2d Cir. 2008)
 23 (alterations omitted)). So too here.

24 Finally, “jurisdiction attaches on the initial filing for habeas corpus relief,
 25 and it is not destroyed by a transfer of the petitioner and the accompanying
 26 custodial change.” *Francis v Rison*, 894 F.2d 353, 354 (9th Cir. 1990) (internal
 27 quotation marks omitted). Ms. Rodriguez Pacheco was at the Otay Mesa
 28 Detention Center on April 21, 2026, at the time her initial *pro se* petition was

1 signed, and also at the time this petition was filed with the Court on April 24,
2 2026. *See* ECF No. 1; *Hernandez v. Spearman*, 764 F.3d 1071, 1074 (9th Cir.
3 2014) (explaining the prison mailbox rule in *pro se* habeas litigation). Because
4 this amended petition properly names her warden at the time of filing, its
5 “amendments ‘relate[] back’ to the original date of filing,” and it thus “complies
6 with the immediate custodian requirement.” *Khalil v. President, United States*,
7 164 F.4th 259, 272 (3d Cir. 2026).

8 **CLAIM AND PRAYER FOR RELIEF**

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

12 Accordingly, Petitioner respectfully requests that this Court:

- 13 1. Order Respondents to immediately release Petitioner from custody
14 under the same conditions of her humanitarian parole;
- 15 2. Order Respondents to not cause Petitioner to be re-detained during
16 the pendency of her removal proceedings without prior leave of this
17 Court; and
- 18 3. Order all other relief that the Court deems just and proper.

19
20 Respectfully submitted,

21 Dated: May 7, 2026

s/ Jessie Agatstein

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