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

12 YUXING GAO,

13 Petitioner,

14 v.

15 MARKWAYNE MULLIN, Secretary of
16 the Department of Homeland Security,
17 TODD BLANCHE, Acting Attorney
General, TODD M. LYONS, Acting
Director, Immigration and Customs
Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
Office, JEREMY CASEY, Warden at
Imperial Regional Detention Facility,

18 Respondents.
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Civil Case No.: 26-cv-2671-JLS-DEB

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

INTRODUCTION

Yuxing Gao is a citizen of China who was paroled into the United States in 2023 so that she could seek asylum in the United States. She submitted a timely asylum application, attended all her check in appointments, and has no criminal history. But on July 26, 2025, ICE arrested Ms. Gao and took her into custody with no notice or explanation. Because this violated the regulations, the Administrative Procedures Act, and due process, this Court should order her immediate release.

STATEMENT OF FACTS¹

Ms. Gao was born in China and entered the United States on December 23, 2023, through the southern border. She was released into the United States shortly thereafter to allow her to apply for asylum.

After entering the United States, Ms. Gao applied for asylum and complied with all her check in requirements. She has no criminal history.

On July 26, 2025, ICE agents took Ms. Gao into custody. They did not tell her why they were revoking their decision to release her, nor did they give her an informal interview.

ICE took Ms. Gao to the Imperial Regional Detention Facility and placed her in removal proceedings. An IJ ordered her removed on October 17, 2025; however, she filed a timely appeal to the BIA. That appeal remains pending.

¹ Undersigned counsel has tried multiple times to arrange a legal call with Ms. Gao but has been unable to do so. These facts are based on the details asserted in her pro se petition at Docket 1.

CLAIM FOR RELIEF

I. Count One: ICE failed to comply with its own regulations in revoking Ms. Gao's release under 8 C.F.R. § 212.5, violating the Administrative Procedures Act, the regulations, and due process.

When ICE detained Ms. Gao on July 26, 2025, it did not say why it was revoking its decision to release her. This violated the regulations, the Administrative Procedures Act, and due process.

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

Here, the agency did not “offer a rational connection between the facts found and the choice made”—i.e., the fact that Ms. Gao had previously been released, yet the agency decided to detain her even though she had committed no violations. *Motor Vehicle Mfrs*, 463 U.S. at 52. And nothing suggests that there was a “rational” reason for this choice, given that Ms. Gao had timely applied for asylum and complied with all the conditions of her release. This was the epitome of an “arbitrary” and “capricious” act under the APA. 5 U.S.C. § 706(2)(A).

1 The agency's actions also violated the regulations. Per ICE regulations, a
2 person shall only be "returned to the custody from which he was paroled" when
3 "the purposes of such parole . . . have been served." 8 U.S.C. § 1182(d)(5)(A); *see*
4 *also* 8 C.F.R. § 212.5(e)(2)(i) (parole may only be terminated "upon
5 accomplishment of the purpose for which parole was authorized"); *Y-Z-L-H*, 2025
6 WL 1898025, at *12 (same). Alternatively, the regulations permit revocation of
7 parole when "neither humanitarian reasons nor public benefit warrants the
8 [noncitizen's] continued presence." 8 C.F.R. § 212.5(e)(2)(i). But under either
9 scenario, parole shall only be "terminated upon written notice to the alien." 8
10 C.F.R. § 212.5(e)(2)(i). So under the statute and the regulations, the agency may
11 only revoke parole and re-detain a noncitizen when the parole's purpose is served
12 or no humanitarian reasons warrant it *and* the noncitizen receives written notice.

13 None of this occurred here. Because "the purpose[] of [Ms. Gao's] parole"
14 was to allow her to apply for asylum, that purpose has not yet "been served"
15 because her asylum claim is still pending before the agency. 8 U.S.C.
16 § 1182(d)(5)(A). And the humanitarian reasons for parole—to avoid unnecessary
17 detention when an asylum seeker poses no danger or flight risk—remains the
18 same. Put differently, "upon Petitioner's entry into the United States, Respondents
19 determined that Petitioner was suitable for release. Respondents have not
20 provided a reasoned explanation or any changed circumstances that would justify
21 their current departure from their prior decision." *Y-Z-L-H v. Bostock*, 792 F.
22 Supp. 3d 1123, 1146 (D. Or. 2025). Under the APA, "[i]t is Respondents' burden
23 to provide a reasoned explanation for their action," which they will not be able to
24 do. *Id.*

25 What's more, Ms. Gao never received any written notification of a
26 revocation under 8 C.F.R. § 212.5(e). So if the agency revoked her parole, this
27 decision violated both the statute and the regulation and was "not in accordance
28 with law" under the APA. 5 U.S.C. § 706(2)(A).

1 Multiple courts have released parolees on this basis. *See Arias v. Larose*,
2 No. 3:25-CV-02595-BTM-MMP, 2025 WL 3295385, at *3 (S.D. Cal. Nov. 25,
3 2025); *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D.
4 Cal. Oct. 1, 2025); *Salazar v. Casey*, No. 25-cv-2784 JLS-VET, 2025 WL
5 3063629 (S.D. Cal. Nov. 3, 2025); *Perez v. LaRose*, No. 25-cv-02620-RBM-JLB,
6 2025 WL 3171742 (S.D. Cal. Nov. 13, 2025); *Y-Z-L-H v. Bostock*, No. 25-cv-
7 965-SI, 2025 WL 1898025, at *13 (D. Or. July 9, 2025). Because Ms. Gao is in
8 the same position as these individuals, this Court should do the same and order
9 her immediate release.

10 Additionally, “[t]he Fifth Amendment guarantees that ‘[n]o person shall be
11 ... deprived of life, liberty, or property, without due process of law.’” *Salazar*,
12 2025 WL 3063629, at *3 (quoting U.S. Const. amend. V). “[T]he Due Process
13 Clause applies to all ‘persons’ within the United States, including aliens, whether
14 their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v.*
15 *Davis*, 533 U.S. 678, 693 (9th Cir. 2001).

16 “Generally, due process protections depend on the situation and must
17 account for (1) the private interest at issue, (2) the risk of erroneous deprivation of
18 that interest through the procedures used, and (3) the Government's interest.”
19 *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct.
20 1, 2025); (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). Weighing those
21 considerations here, Respondents violated the Due Process Clause by revoking
22 parole with no notice or hearing.

23 “First, Petitioner has a private interest in remaining free, which developed
24 over the [months] he resided in the United States.” *Id.* at *10. It does not matter
25 that parole is temporary or discretionary. “For example, *Morrissey v. Brewer*, 408
26 U.S. 471, 482 (1972)—though analyzing the criminal parole context—found that
27 ‘the liberty of a parolee, although indeterminate, includes many of the core values
28 of unqualified liberty and its termination inflicts a grievous loss on the parolee

1 and often others ... [thus it] must be seen within the protection of the [Fifth]
2 Amendment.” *Id.*

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

11 “Third, the Government's interest in detaining Petitioner without notice,
12 reasoning, and a hearing is low.” *Salazar*, 2025 WL 3063629, at *5 (cleaned up).
13 “Detention for its own sake, to meet an administrative quota, or because the
14 government has not yet established constitutionally required pre-detention
15 procedures is not a legitimate government interest.” *Pinchi v. Noem*, 792 F. Supp.
16 3d 1025, 1036 (N.D. Cal. 2025).

17 Thus, because Respondents did not provide “proper notice, reasoning, and a
18 pre-deprivation hearing” before revoking parole, Ms. Gao’s redetention violated
19 the Due Process Clause. *Salazar*, 2025 WL 3063629, at *5. *See also Perez v.*
20 *LaRose*, No. 3:25-CV-02620-RBM-JLB, 2025 WL 3171742, at *4 (S.D. Cal.
21 Nov. 13, 2025) (“[T]he revocation of [Ms. Gao’s] parole without justification or
22 consideration of [her] individualized circumstances violates the Due Process
23 Clause.”). Thus, Ms. Gao’s redetention violated the APA, the regulations, and due
24 process.

1 **II. 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). Ms. Gao hereby
4 requests such a hearing on any material, disputed facts.

5 **III. 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 pursuant to the previous conditions of her release;
9 2. Order that prior to any re-detention of Petitioner, that Petitioner is
10 entitled to notice of the reasons for revocation of her parole and a
11 hearing before an immigration judge to determine whether detention is
12 warranted. Respondents 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,

18 Dated: May 6, 2026

19 s/ Kara Hartzler

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