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**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

<p>YONATHAN ARCINIEGAS CARRILLO,</p> <p><i>Petitioner,</i></p> <p>v.</p> <p>CHRISTOPHER LAROSE, Facility senior warden at the Otay Mesa Detention Facility, PATRICK DIVVER, Director of the U.S. Immigration and Customs Enforcement San Diego Field Office, TODD LYONS, acting Director of U.S. Immigration and Customs Enforcement, MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security, and TODD BLANCHE, Acting U.S. Attorney General.</p>	<p><b>CIVIL CASE NO.: 26-CV-2719-JLS- BJW</b></p> <p><b>TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS</b></p>
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**1. Mr. Arciniegas Carrillo possesses a protected liberty interest in remaining out of custody, even though his parole status had expired at the time of his re-detention.**

The government takes the view that because Mr. Arciniegas Carrillo's parole had expired at the time he was detained, the government did not violate his due process rights when it re-detained him without providing him with a pre-deprivation hearing. However, Mr. Arciniegas Carrillo had been paroled into the United States and timely filed an application for asylum. He was living and working in the United States as a law-abiding member of his community. The liberty interest at issue here applies to individuals who are paroled into the United States and released to attend removal proceedings. *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at \*11 (E.D. Cal. Aug. 21, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2578207, at \*3 (N.D. Cal. Sept. 5, 2025); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at \*13 (D. Or. July 9, 2025).

Mr. Arciniegas Carrillo filed his asylum application on March 12, 2025, well in advance of the September 11, 2025, hearing that was originally scheduled when Mr. Arciniegas Carrillo was served the Notice to Appear. Dkt. 4, at p. 10. His parole was valid through March 21, 2026. Ex. A. Thus, as a noncitizen who previously entered the United States and was living in San Diego for more than

two years while on parole with a timely filed and pending asylum application, Petitioner has a protected liberty interest in remaining out of custody.

Although the government served Mr. Arciniegas Carrillo with a notice that it had determined he should remain in custody, the government had previously found that he was eligible for release when it granted him parole on March 21, 2024. Dkt. No. 4, at p. 10; Ex. A. As the government notes in its return, “to be released on conditional parole, there must be a finding by ICE that the immigrant does not pose a risk of flight or danger to the community.” *See Ortega-Cervantes v. Gonzalez*, 501 F.3d 1111, 1115 (9th Cir. 2007). Dkt. 4, p. 3. This means that upon admitting Mr. Arciniegas Carrillo on parole, ICE determined that he was neither a danger or a flight risk and should be released. The government offers no explanation for its sudden about face, a seemingly arbitrary decision that has had devastating consequences for Mr. Arciniegas Carrillo. The government has offered no evidence that Mr. Arciniegas Carrillo acted in a way that violated the conditions of parole. Nor has the government offered any evidence that Mr. Arciniegas Carrillo is a danger or a flight risk.

While the government has discretion to revoke parole, it may not do so in a manner that violates Mr. Arciniegas Carrillo’s constitutional rights. Because Mr. Arciniegas Carrillo had previously been granted parole, due process requires that

he be provided with a pre-deprivation bond hearing if the government seeks to re-detain him. *See Valdez v. Joyce*, 2025 WL 1707737, \*4 (S.D.N.Y. 2025).

**2. Petitioner was not afforded notice and a hearing before the government revoked parole.**

The government argues that because parole is discretionary and is made on a case-by-case basis, and because ICE has the authority to revoke its parole decisions, Mr. Arciniega Carrillo's parole was lawfully revoked. However, at no time did ICE provide Mr. Arciniegas Carrillo with notice and the opportunity to be heard regarding its decision to revoke parole. Nor did ICE articulate to Mr. Arciniegas Carrillo the basis for its revocation of parole. While Mr. Arciniegas Carrillo does not dispute that the government has the authority to revoke parole, due process requires notice and a hearing before a neutral decision maker before Petitioner is re-detained by immigration authorities. *See Garcia v. Andrews*, No. 1:25-CV-01006-JLT, 2025 WL 2420068, at \*11 (E.D. Cal. Aug. 21, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2578207, at \*3 (N.D. Cal. Sept. 5, 2025); *Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at \*13 (D. Or. July 9, 2025); *see also, Mathews v. Eldrige*, 424, U.S. 319 (1976).

The Due Process Clause prohibits deprivations of life, liberty, and property without due process of law. U.S. Const. amend. V. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533

U.S. at 693. To determine which procedures are constitutionally sufficient to satisfy the Due Process Clause, the Court applies the three-part test established in *Mathews*, 424 U.S. 319. The Court must consider: (1) “the private interest that will be affected by the official action;” (2) the “risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;” and (3) “the Government’s interest including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Id.* at 335.

Here, all three factors support a finding that Respondents’ revocation of Petitioner’s conditional parole without an opportunity to be heard deprived Petitioner of his due process rights. First, Petitioner has a significant liberty interest in remaining out of custody pursuant to his conditional parole. “Even individuals who face significant constraints on their liberty or over whose liberty the government wields significant discretion retain a protected interest in their liberty.” *Pinchi*, 792 F. Supp. 3d at 1032. Although the initial decision to detain or release an individual may be within the government’s discretion, “the government’s decision to release an individual from custody creates ‘an implicit promise,’ upon which that individual may rely, that their liberty ‘will be revoked only if [they] fail[] to live up to the . . . conditions of release.’” *Id.* (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)); *see also Zadvydas*, 533 U.S. at 690 (“Freedom

from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects.”); *Morrissey*, 408 U.S. at 482 (“Subject to the conditions of his parole, he can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life.”); *Oliveros*, 2025 WL 2677125, at \*7.

“Second, the risk of an erroneous deprivation of such interest is high as Petitioner’s parole was revoked without . . . giving [him] an opportunity to be heard.” *Gonzalez Salazar v. Casey*, Case No.: 25-CV-2784 JLS, 2025 WL 3063629, at \*4 (S.D. Cal. Nov. 3, 2025); *see also Singh v. Andrews*, No. 1:25-CV-00801-KES, 2025 WL 1918679, at \*7 (E.D. Cal. July 11, 2025) (finding where, as here, Petitioner “has not received any bond or custody redetermination hearing,” the “risk of an erroneous deprivation of liberty is high”). “Civil immigration detention is permissible only to prevent flight or protect against danger to the community.” *Pinchi*, 792 F. Supp. 3d at 1035 (citing *Zadvydas*, 533 U.S. at 690). Here, there is no evidence that Petitioner’s detention would serve either purpose. “Since DHS’s initial determination that Petitioner should be paroled because [he] posed no danger to the community and was not a flight risk, there is no evidence that these findings have changed.” *Gonzales Salazar*, 2025 WL 3063629, at \*3 (citing *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017) (“Release

reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.”).

Third, Respondents’ interest in detaining Petitioner without a hearing is low. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (“If the government wishes to re-arrest [the petitioner] at any point, it has the power to take steps toward doing so; but its interest in doing so without a hearing is low.”); *Pinchi*, 792 F. Supp. 3d at 1036 (“Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest.”). “Therefore, because Respondents detained Petitioner by revoking [his] parole in violation of the Due Process Clause, [his] detention is unlawful.” *Gonzalez Salazar*, 2025 WL 3063629, at \*5.

### **3. This Court should grant immediate release not a bond hearing before the Immigration Judge**

Because the government terminated Mr. Arciniegas Carrillo’s liberty interest without providing him notice and a hearing, this Court should join courts other courts that have granted immediate release in similar cases and order immediate release rather than a bond hearing before the immigration court.

In *Ramirez-Tesera v. Wamsley*, the District Court for the Western District of Washington granted immediate release in a case with similar facts. 800 F. Supp.3d 1130 (W.D. Wash. 2025). Mr. Ramirez-Tesera had been paroled into the United

States and filed for asylum. *Id.* at His parole had expired at the time of his re-detention by ICE. *Id.* In analyzing Mr. Ramirez-Tesera’s due process interest, the court noted that “when he was released from his initial detention on parole, Petitioner took with him a liberty interest which is entitled to the full protections of the due process clause.” *Id.* at 1136, citing *Doe v. Becerra*, 787 F. Supp.3d 1083 (E.D. Cal. 2025). The court further explained that the liberty interest, “did not expire along with Petitioner’s parole agreement. Once established, Petitioner’s interest in liberty is a constitutional right which may only be revoked through methods that comport with due process.” *Id.* Like in *Ramirez-Tesera*, here, “the government does not explain why they found Petitioner to be eligible for parole” on March 21, 2024, but not in 2026 after he had established ties to the community and timely “filed an asylum application.” *Id.* The Court found that Mr. Ramirez-Tesera’s immediate release was necessary “to restore the status quo.” *Id.* at 1138.

Similarly, in *Abdiselan A.A. v. Bondi*, the Petitioner was paroled into the United States, his parole had expired, but his timely filed asylum application remained pending. No. 26-358 (JRT/ECW), 2026 WL 242445 (D. Minn. Jan. 29, 2026). The Court ordered immediate release because the Petitioner had been paroled in and applied for asylum. *Id.* at 1. The Court also focused on the fact that the government had arrested the petitioner without a warrant. In Mr. Arciniegas Carrillo’s case, the government attached a warrant to its Return. Dkt. No. 4 at p.

15. However, notably, the warrant is not a judicial warrant but was instead issued by Customs and Border Protection. *Id.* Moreover, the warrant was signed at 3:18 pm on April 18, 2026. *Id.* Mr. Arciniegas had been detained without a warrant at approximately 6:45 am on April 18, 2026. *Id.* at p. 5. The rationale of *Abdiselan A.A.* should therefore apply to Mr. Arciniegas Carrillo's case and this Court should order immediate release.

In *Bueno v. O'Neill*, the Petitioner had been paroled into the United States in December 2022 and parole had expired prior to his re-detention in January 2026. No. 26-306, 2026 WL 413325 (E.D. Penn. Feb. 13, 2026). The government argued that it could properly detain the Petitioner because he had originally been placed in expedited removal proceedings. *Id.* at 3. Because he had been paroled into the United States and therefore had a liberty interest in remaining free from detention, the Court found that the *Mathews* factors weighed heavily in the petitioner's favor and ordered immediate release. *Id.*

This case is similar to the three cases cited above. Because Mr. Arciniegas Carrillo had been paroled into the United States, timely filed an application for asylum and had not violated the conditions of parole, this Court should grant his habeas petition. The Court should order his re-release on parole under the same terms and conditions as had been previously imposed. If the government wishes to re-detain Petitioner, the government must provide Petitioner with notice of the

reasons for the revocation of his parole and a pre-deprivation hearing before a neutral decision maker.

Respectfully submitted,

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