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9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**
12

13 NESTOR JESUS MOREIRA-
14 OSTRIZA,

15 Petitioner,

16 v.

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

26 Respondents.
27
28

Civil Case No.: 26-cv-2983-BJC-JLB

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

INTRODUCTION

Nestor Jesus Moreira Ostraiza is a citizen of Ecuador who fled for his life. He was paroled into the United States in October 2024, and was applying for asylum in removal proceedings. But on March 3, 2026, ICE agents pulled Mr. Moreira-Ostraiza's car over and arrested him without any notice or explanation.

Respondents have revoked Mr. Moreira-Ostraiza's parole in violation of the statute and regulations, which require written notification and a determination that the purposes of the parole have been served. Alternatively, the Due Process Clause of the Fifth Amendment of the Constitution requires redeprivation notice and hearing. Either way, the agency's actions violated the Administrative Procedures Act and the Due Process Clause, and this Court should order his immediate release.

STATEMENT OF FACTS

Mr. Moreira-Ostraiza was born in Ecuador and is 26 years old. Exhibit A, Declaration of Nestor Jesus Moreira-Ostraiza, at ¶ 1. He fled Ecuador because he feared for his life. *Id.* at ¶ 1.

Mr. Moreira-Ostraiza made an appointment using the CBP One app and came to the port of entry for his appointment in October 2024. *Id.* at ¶ 2. He was detained for several hours. *Id.* at ¶ 2. Immigration officials then paroled him into the United States so that he could apply for asylum. *Id.* at ¶ 2.

Mr. Moreira-Ostraiza began living in San Diego and was placed in removal proceedings. *Id.* at ¶ 3. He received a work permit and a Social Security number. *Id.* at ¶ 3. He has no criminal history. *Id.* at ¶ 3.

On March 3, 2026, Mr. Moreira-Ostraiza was driving his car when he was pulled over by ICE. *Id.* at ¶ 4. An agent asked to see his papers and then took him into custody. *Id.* at ¶ 4. *Id.* at ¶ 4. They did not tell Mr. Moreira-Ostraiza why they were arresting him, nor did they give him any paperwork or an informal interview

1 at which he could contest his detention. *Id.* at ¶ 4. Mr. Moreira-Ostraiza was then
 2 transferred to the Otay Mesa Detention Center, where his removal proceedings
 3 have continued. *Id.* at ¶ 5.

4 CLAIMS FOR RELIEF

5 **I. Count One: ICE failed to comply with its own regulations and the** 6 **Administrative Procedures Act in revoking Mr. Moreira-Ostraiza's** 7 **parole.**

8 When ICE took Mr. Moreira-Ostraiza into custody on March 3, 2026, it did
 9 not say whether it was revoking his parole. Exh. A at ¶ 4. Either way, the
 10 government's actions violated the regulations and the Administrative Procedures
 11 Act.

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. Moreira-
 27 Ostraiza's parole, it violated the APA. If the agency did *not* revoke his parole,
 28 then it inexplicably violated its own parole decision by detaining Mr. Moreira-

1 Ostraiza. Doing so violated the APA because the agency did not “offer a rational
2 connection between the facts found and the choice made”—i.e., the fact that
3 Mr. Moreira-Ostraiza was still on parole, yet the agency decided to detain him.
4 *Motor Vehicle Mfrs*, 463 U.S. at 52. And nothing suggests that there *was* a
5 “rational” reason for this choice, given that Mr. Moreira-Ostraiza had filed an
6 asylum application and complied with all the conditions of his parole. This was
7 the epitome of an “arbitrary” and “capricious” act under the APA. 5 U.S.C.
8 § 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. Moreira-
23 Ostraiza’s] parole” was to allow him to apply for asylum, that purpose has not yet
24 “been served” because his asylum claim is still pending. 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. Moreira-Ostraiza never received any written notification
7 of a revocation under 8 C.F.R. § 212.5(e). So if the agency revoked his parole,
8 this decision violated both the statute and the regulation and was “not in
9 accordance with law” under the APA. 5 U.S.C. § 706(2)(A).

10 Numerous courts have released parolees on this basis. *See, e.g., Arias v.*
11 *Larose*, No. 3:25-CV-02595-BTM-MMP, 2025 WL 3295385, at *3 (S.D. Cal.
12 Nov. 25, 2025); *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149
13 (S.D. Cal. Oct. 1, 2025); *Salazar v. Casey*, No. 25-cv-2784 JLS-VET, 2025 WL
14 3063629 (S.D. Cal. Nov. 3, 2025); *Perez v. LaRose*, No. 25-cv-02620-RBM-JLB,
15 2025 WL 3171742 (S.D. Cal. Nov. 13, 2025); *Y-Z-L-H v. Bostock*, No. 25-cv-
16 965-SI, 2025 WL 1898025, at *13 (D. Or. July 9, 2025). Because Mr. Moreira-
17 Ostraiza is in the same position as these individuals, this Court should do the
18 same and order his immediate release.

19 **II. Count Two: The Due Process Clause required notice and a chance to**
20 **be heard before parole was revoked.**

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

1 “The Fifth Amendment guarantees that ‘[n]o person shall be ... deprived of
2 life, liberty, or property, without due process of law.’” *Salazar*, 2025 WL
3 3063629, at *3 (quoting U.S. Const. amend. V). “[T]he Due Process Clause
4 applies to all ‘persons’ within the United States, including aliens, whether their
5 presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*,
6 533 U.S. 678, 693 (9th Cir. 2001).

7 “Generally, due process protections depend on the situation and must
8 account for (1) the private interest at issue, (2) the risk of erroneous deprivation of
9 that interest through the procedures used, and (3) the Government's interest.”
10 *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct.
11 1, 2025); (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). Weighing those
12 considerations here, Respondents violated the Due Process Clause by revoking
13 parole with no notice or hearing.

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

22 “Second, the risk of an erroneous deprivation of such interest is high as
23 Petitioner's parole was revoked without providing [him] a reason for revocation or
24 giving [him] an opportunity to be heard.” *Salazar*, 2025 WL 3063629, at *4.
25 “Civil immigration detention is permissible only to prevent flight or protect
26 against danger to the community.” *Perez*, 2025 WL 3171742, at *5. But here,
27 “[s]ince DHS's initial determination that Petitioner should be paroled because [he]
28

1 posed no danger to the community and was not a flight risk, there is no evidence
2 that these findings have changed.” *Id.*

3 “Third, the Government’s interest in detaining Petitioner without notice,
4 reasoning, and a hearing is low.” *Salazar*, 2025 WL 3063629, at *5 (cleaned up).
5 “Detention for its own sake, to meet an administrative quota, or because the
6 government has not yet established constitutionally required pre-detention
7 procedures is not a legitimate government interest.” *Pinchi v. Noem*, 792 F. Supp.
8 3d 1025, 1036 (N.D. Cal. 2025).

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

12 **III. This Court must hold an evidentiary hearing on any disputed facts.**

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

16 **IV. Prayer for relief**

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

- 18 1. Order Respondents to immediately release Petitioner from custody,
19 subject to the conditions of his preexisting parole;
- 20 2. Order that prior to any re-detention of Petitioner, that Petitioner is
21 entitled to notice of the reasons for revocation of his parole and a
22 hearing before an immigration judge to determine whether detention is
23 warranted. Respondents bear the burden of establishing, by clear and
24 convincing evidence, that Petitioner poses a danger to the community or
25 a risk of flight at that hearing; and

1 3. Order any other relief that the Court deems just and proper.

2 Respectfully submitted,

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4 Dated: June 8, 2026

s/ Kara Hartzler

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