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DASNEY MADRID VELASQUEZ

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DASNEY MADRID VELASQUEZ,

Petitioner,

v.

MARKWAYNE MULLIN, et al,

Respondents.

Case No. 26-cv-03451-DMS-AHG

Amended Petition for a Writ of Habeas Corpus

I. Introduction.

Daisy Madrid Velasquez is a citizen of Honduras who was released so that she could seek asylum in the United States. But though her asylum case remains pending on appeal, ICE arrested her after she was stopped for a traffic violation. She has filed a petition for a writ of habeas corpus. ECF 1.

Ms. Madrid Velasquez had a bond hearing at which the immigration judge ruled she was ineligible to seek bond, in light of *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). *Yajure Hurtado* held, contrary to decades of prior practice, that inadmissible immigrants are not eligible for bond under § 1226(a), even if they have been living in the United States for years or decades. Instead, the BIA held that all inadmissible immigrants are subject to the mandatory detention provisions in 8 U.S.C. § 1225(b)(2)(A). *Id.* at 218, 223.

The government acknowledged that District Courts across the country, including this one, have rejected the holding of *Yajure Hurtado*. ECF 4. The issue is even clearer now: The Ninth Circuit recently held that an alien found within the United States is not an "arriving alien" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *Rodriguez Vazquez v. Bostock*, No. 25-6842, 2026 WL 2196424, at *3 (9th Cir. July 30, 2026.)

The petition should be granted for another reason: Ms. Madrid Velasquez was paroled into the United States to seek asylum. When Ms. Madrid Velasquez was detained, she was not told whether or why her parole was being revoked.

While it is unclear whether the government has formally revoked Ms. Madrid's parole, the government's actions are unlawful regardless. If the agency did not revoke her parole, then it violated that parole by detaining her. And if the agency did revoke her parole, then it did so in violation of the statute and regulations, which require written notification and a determination that the purposes of the parole have been served, as well as the Constitution, which requires pre-deprivation notice and hearing. Either way, the agency's actions violated the Administrative Procedures Act and the Due Process Clause. Thus, this Court should reinstate her release.

II. Statement of facts.

Ms. Madrid Velasquez fled her native country of Hondurus and came to the United States seeking asylum, entering around December 2023. Exh. A. She was released into the United States while her claim was pending, and remained here for over two years. *Id.*

In approximately January 2026, Ms. Madrid Velasquez was stopped by local authorities for driving on a suspended license and with a burnt-out license plate light. ICE detained her, and she has remained in custody ever since.

On April 30, 2026 Ms. Madrid Velasquez lost her asylum case and was ordered removed. She appealed this decision, and the appeal is still pending. ECF

1-6.

Claims for Relief

I. Count 1: ICE failed to comply with its own regulations in revoking Ms. Madrid Velasquez's parole under 8 C.F.R. § 212.5, violating 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, regardless of whether the agency formally revoked Ms. Madrid Velasquez's parole, it violated the APA. If the agency did not revoke her parole, then it inexplicably violated its own parole decision by detaining Ms. Madrid Velasquez. Doing so violated the APA because the agency did not "offer a rational connection between the facts found and the choice made"—i.e., the fact that Ms. Madrid Velasquez was still on parole, yet the agency decided to detain her. *Motor Vehicle Mfrs*, 463 U.S. at 52.

But assuming the agency had revoked her parole, it also violated the APA. Per ICE regulations, a person shall only be "returned to the custody from which he was paroled" when "the purposes of such parole . . . have been served." 8 U.S.C.

§ 1182(d)(5)(A); see also 8 C.F.R. § 212.5(e)(2)(i) (parole may only be terminated "upon accomplishment of the purpose for which parole was authorized"); *Y-Z-L-H*, 2025 WL 1898025, at *12 (same). Alternatively, the regulations permit revocation of parole when "neither humanitarian reasons nor public benefit warrants the [noncitizen's] continued presence." 8 C.F.R. § 212.5(e)(2)(i). But under either scenario, parole shall only be "terminated upon written notice to the alien." 8 C.F.R. § 212.5(e)(2)(i). So under the statute and the regulations, the agency may only revoke parole and re-detain a noncitizen when the parole's purpose is served or no humanitarian reasons warrant it and the noncitizen receives written notice.

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

II. Count 2: The Due Process Clause required notice and a chance to be heard before parole was revoked.

Additionally, "the revocation of [Ms. Madrid Velasquez's] parole without justification or consideration of his individualized circumstances violates the Due Process Clause." *Perez v. LaRose*, No. 3:25-CV-02620-RBM-JLB, 2025 WL 3171742, at *4 (S.D. Cal. Nov. 13, 2025). Ms. Madrid Velasquez was "entitled to notice of the reasons for revocation of his parole and a hearing before an

immigration judge to determine whether detention is warranted" before ICE revoked her parole. *Id.* at *7.

"The Fifth Amendment guarantees that '[n]o person shall be ... deprived of life, liberty, or property, without due process of law.'" *Salazar v. Casey*, 2025 U.S.Dist.LEXIS 216353, (S.D.Cal. Nov. 3, 2025, No. 25-CV-2784 JLS-VET) at *9 (quoting U.S. Const. amend. V). "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis,* 533 U.S. 678, 693 (9th Cir. 2001).

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

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

"Second, the risk of an erroneous deprivation of such interest is high as Petitioner's parole was revoked without providing [her] a reason for revocation or giving [her] an opportunity to be heard." *Salazar*, U.S.Dist.LEXIS 216353, at *12. "Civil immigration detention is permissible only to prevent flight or protect

against danger to the community." *Perez*, 2025 WL 3171742, at *5. But here, "[s]ince 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." *Id.*

"Third, the Government's interest in detaining Petitioner without notice, reasoning, and a hearing is low." *Salazar*, U.S.Dist.LEXIS 216353, at *14 (cleaned up). "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." *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1036 (N.D. Cal. 2025).

Thus, because Respondents did not provide "proper notice, reasoning, and a pre-deprivation hearing" before revoking parole, Ms. Madrid Velasquez's redetention violated the Due Process Clause. *Salazar*, U.S.Dist.LEXIS 216353, at *14.

III. Count 3: Detaining Petitioner Without a Bond Hearing Violates the Fifth Amendment's Due Process Clause.

Ms. Madrid Velasquez had a bond hearing at which the immigration judge ruled she was ineligible to seek bond, in light of *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). As described above, the government has already acknowledged that numerous District Courts have rejected the holding of *Yajure Hurtado*. ECF 4. The Ninth Circuit has now confirmed that the BIA's position in *Yajure Hurtado* must be rejected. *Rodriguez Vazquez v. Bostock*, No. 25-6842, 2026 WL 2196424, at *3 (9th Cir. July 30, 2026.) To the extent the petition is not granted on the parole-based grounds argued above, it must be granted on this basis.

IV. This Court must hold an evidentiary hearing on any disputed facts.

Resolution of a detention-based habeas petition may require an evidentiary hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Ms. Madrid

Velasquez hereby requests such a hearing on any material, disputed facts.

V. Prayer for relief

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

1. Order Respondents to immediately release Petitioner from custody, subject to the conditions of her preexisting parole;

2. Order that prior to any re-detention of Petitioner, that Petitioner is entitled to notice of the reasons for revocation of her parole and a hearing before an immigration judge to determine whether detention is warranted. Respondents should bear the burden of establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or a risk of flight at that hearing;

3. In the alternative—if and only if this Court rejects the parole-based arguments—order a bond hearing at which the government bears the burden to prove danger or flight by clear and convincing evidence, and stipulate that the government must make a record of the bond hearing available to counsel upon request; and

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

Respectfully submitted,

Date: August 17, 2026

/s/Benjamin B. Kington
BENJAMIN B. KINGTON
Attorney for Petitioner
DASNEY MADRID VELASQUEZ