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

VITALII POPOV,

Petitioner,

v.

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

Respondents.

Case No.: 26-cv-3639-BAS-BJW

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

INTRODUCTION

Vitalii Popov is a political dissident from Russia who came to the United States in November 2023. After spending five months in detention applying for asylum, he was paroled into the United States. But on September 18, 2025, Respondents revoked Mr. Popov's parole in violation of the statute and regulations, which require notification and an informal interview at which he could contest his detention. 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. Popov was born in Russia. Exhibit A, Declaration of Vitalii Popov, at ¶ 1. He fled Russia because he is a political dissident and believes he will be killed if he is returned. *Id.* at ¶ 1.

On November 9, 2023, Mr. Popov presented himself at a port of entry and asked to apply for asylum. *Id.* at ¶ 2. He was taken into immigration custody and held until April 9, 2024, when he was paroled into the United States. *Id.* at ¶ 2.

After he was paroled, Mr. Popov moved to Miami, Florida. *Id.* at ¶ 3. By this time, the immigration judge had denied his asylum claim, and Mr. Popov had filed a timely notice of appeal to the Board of Immigration Appeals (BIA). *Id.* at ¶ 3.

While Mr. Popov's case was on appeal, he moved from Miami to New York. *Id.* at ¶ 4. He filed a notice of his change of address with ICE, but he did not realize he also had to file a change of address with the BIA. *Id.* at ¶ 4. Therefore, when the BIA denied his appeal on February 18, 2025, he did not receive a copy of it. *Id.* at ¶ 4.

In order to file a petition for review with the Fifth Circuit Court of Appeals, Mr. Popov needed to submit a copy of the BIA's order dismissing his appeal. *Id.*

1 at ¶ 5. Thus, he hired an immigration lawyer, who filed a Motion to Reissue
 2 Decision with the BIA on March 31, 2025. *Id.* at ¶ 5. That motion is still pending.
 3 *Id.* at ¶ 5.

4 On September 25, 2025, Mr. Popov was taken into custody without
 5 explanation and transferred to Otay Mesa Detention Center. *Id.* at ¶ 6. He
 6 requested a bond hearing, and the immigration judge (IJ) held a hearing on
 7 November 10, 2025. Exhibit B, Bond Memorandum of the Immigration Judge.

8 In this Bond Memorandum, the IJ noted that he had no jurisdiction to
 9 conduct a bond hearing. *Id.* at 1. Specifically, the IJ explained that Respondents
 10 had paroled Mr. Popov into the United States. *Id.* at 1. The IJ stated that both
 11 Respondents' evidence and the immigration court records reflect that Mr. Popov
 12 had "submitted a motion to reissue BIA's February 18, 2025 decision." *Id.* at 2.
 13 Because "[t]hat motion remains pending before the BIA," the IJ concluded that
 14 "his removal order is not currently 'administratively final.'" *Id.* at 2 ((citing INA
 15 § 241(a)(1)(B)(i)).

16 CLAIMS FOR RELIEF

17 I. Count One: ICE failed to comply with its own regulations and the 18 Administrative Procedures Act in revoking Mr. Popov's parole.

19 The most recent IJ to have considered Mr. Popov's case explained that
 20 Mr. Popov's Motion to Reissue the BIA's decision "remains pending before the
 21 BIA, such that his removal order is not currently 'administratively final.'" Exh. B
 22 at 2. In other words, the IJ was "unable to conduct a bond hearing" because
 23 Mr. Popov "is not currently being detained pursuant to INA § 241(a)(6)"—the
 24 post-final removal order statute. *Id.*

25 Because Mr. Popov's removal order is not "administratively final," he was
 26 still on parole, which Respondents unlawfully revoked. Under the Administrative
 27 Procedures Act (APA), an agency action may be held unlawful and set aside if it
 28 is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance

1 with law.” 5 U.S.C. § 706(2)(A). An action is an abuse of discretion if the agency
 2 “entirely failed to consider an important aspect of the problem, offered an
 3 explanation for its decision that runs counter to the evidence before the agency, or
 4 is so implausible that it could not be ascribed to a difference in view or the
 5 product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*,
 6 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State*
 7 *Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). For a challenged agency
 8 action to be upheld, the agency “must explain the evidence which is available, and
 9 must offer a rational connection between the facts found and the choice made.”
 10 *Motor Vehicle Mfrs.*, 463 U.S. at 52 (1983) (internal quotations omitted) (quoting
 11 *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

12 Here, regardless of whether the agency formally revoked Mr. Popov’s
 13 parole, it violated the APA. If the agency did *not* revoke his parole, then it
 14 inexplicably violated its own parole decision by detaining Mr. Popov. Doing so
 15 violated the APA because the agency did not “offer a rational connection between
 16 the facts found and the choice made”—i.e., the fact that Mr. Popov was still on
 17 parole, yet the agency decided to detain him. *Motor Vehicle Mfrs.*, 463 U.S. at 52.
 18 And nothing suggests that there *was* a “rational” reason for this choice, given that
 19 Mr. Popov had filed an asylum application and complied with all the conditions or
 20 his parole. This was the epitome of an “arbitrary” and “capricious” act under the
 21 APA. 5 U.S.C. § 706(2)(A).

22 But assuming the agency *had* revoked his parole, it also violated the APA.
 23 Per ICE regulations, a person shall only be “returned to the custody from which
 24 he was paroled” when “the purposes of such parole . . . have been served.” 8
 25 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. § 212.5(e)(2)(i) (parole may only be
 26 terminated “upon accomplishment of the purpose for which parole was
 27 authorized”); *Y-Z-L-H*, 2025 WL 1898025, at *12 (same). Alternatively, the
 28 regulations permit revocation of parole when “neither humanitarian reasons nor

1 public benefit warrants the [noncitizen's] continued presence.” 8 C.F.R.
2 § 212.5(e)(2)(i). But under either scenario, parole shall only be “terminated upon
3 written notice to the alien.” 8 C.F.R. § 212.5(e)(2)(i). So under the statute and the
4 regulations, the agency may only revoke parole and re-detain a noncitizen when
5 the parole’s purpose is served or no humanitarian reasons warrant it *and* the
6 noncitizen receives written notice.

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

19 What’s more, Mr. Popov never received adequate notification of a
20 revocation under 8 C.F.R. § 212.5(e). So if the agency revoked his parole, this
21 decision violated both the statute and the regulation and was “not in accordance
22 with law” under the APA. 5 U.S.C. § 706(2)(A).

23 In the case of someone released under § 241.13(i), the regulations also
24 explicitly require the interviewer to allow the re-detained person to “submit any
25 evidence or information that he or she believes shows there is no significant
26 likelihood he or she be removed in the reasonably foreseeable future, or that he or
27 she has not violated the order of supervision.” § 241.13(i)(3).
28

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

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

Additionally, “the revocation of [Mr. Popov’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). Mr. Popov 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 his 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*, 2025 WL 3063629, at *3 (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

1 considerations here, Respondents violated the Due Process Clause by revoking
2 parole with no notice or hearing.

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

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

19 “Third, the Government’s interest in detaining Petitioner without notice,
20 reasoning, and a hearing is low.” *Salazar*, 2025 WL 3063629, at *5 (cleaned up).
21 “Detention for its own sake, to meet an administrative quota, or because the
22 government has not yet established constitutionally required pre-detention
23 procedures is not a legitimate government interest.” *Pinchi v. Noem*, 792 F. Supp.
24 3d 1025, 1036 (N.D. Cal. 2025).

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

28

III. 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). Mr. Popov hereby requests such a hearing on any material, disputed facts.

IV. 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 his preexisting parole;
2. Order that prior to any re-detention of Petitioner, that Petitioner is entitled to notice of the reasons for revocation of his parole and a hearing before an immigration judge to determine whether detention is warranted. Respondents 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; and
3. Order any other relief that the Court deems just and proper.

Respectfully submitted,

Dated: July 8, 2026

s/ Kara Hartzler

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