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

13 JOSUE JONATHAN POLANCO-
14 GARCIA,

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, JEREMY CASEY, Warden at
25 Imperial Regional Detention Center,

26 Respondents.

CIVIL CASE NO.: 26-cv-3662-RBM-
AHG

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

INTRODUCTION

Josue Jonathan Polanco-Garcia is a citizen of Honduras who was released from custody in 2023 so that he could seek asylum in the United States. Even though there was no decision in Mr. Polanco-Garcia's asylum case at the time, he was arrested in January 2026, placed on an immigration hold, and transferred to ICE custody in April 2026. He has never been convicted of a crime, but ICE still took him into custody without giving him any paperwork or any opportunity to contest his re-detention. He has been detained ever since.

While it is unclear whether the government has formally revoked their decision to release Mr. Polanco-Garcia, the government's actions are unlawful regardless. If the agency did not revoke this decision, then it violated that parole by detaining him. And if the agency *did* revoke their decision to release him, 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.

This Court should therefore reinstate Mr. Polanco-Garcia's release immediately.

STATEMENT OF FACTS

Mr. Polanco-Garcia fled his native country of Honduras to seek asylum in the United States. Declaration of Josue Jonathan Polanco-Garcia, Exhibit A at ¶ 1.

On December 7, 2023, Mr. Polanco-Garcia entered the United States. Exh. A at ¶ 2. He was immediately arrested and detained by Border Patrol. Exh. A at ¶ 2. Four days later, he was released from custody onto parole. Exh. A at ¶ 2. While released, Mr. Polanco-Garcia attended all of his check-ins and appointments. Exh. A at ¶ 3. He had an immigration date set for November 27, 2027. Exh. A at ¶ 3.

On January 26, 2026, Mr. Polanco-Garcia was riding his bike when he was

1 arrested by a police officer in Orange County, Florida. Exh. A at ¶ 4. He was
2 brought to the county jail and held there for two months. Exh. A at ¶ 4. After two
3 months, a judge ordered he be released. Exh. A at ¶ 4. But because he had an
4 immigration hold, he was transferred into ICE custody from jail. Exh. A at ¶ 4. ICE
5 transported him from Florida to Imperial Regional Detention Facility. Exh. A at ¶
6 5. Mr. Polanco-Garcia has been detained continuously since his initial arrest on
7 January 26, 2026. Exh. A at ¶ 5.

8 On June 11, 2026, an immigration judge ordered Mr. Polanco-Garcia
9 removed. Exh. A at ¶ 6. He has filed an appeal with the BIA that is currently
10 pending. Exh. A at ¶ 6. If the BIA dismisses his appeal, he will appeal to the Ninth
11 Circuit. Exh. A at ¶ 6.

12 CLAIMS FOR RELIEF

13 **I. ICE failed to comply with its own regulations in revoking Mr. Polanco-** 14 **Garcia's parole under 8 C.F.R. § 212.5, violating the Administrative** 15 **Procedures Act and Due Process.**

16 When Mr. Polanco-Garcia was detained by ICE in April 2026, no one told
17 him his parole was revoked, so it is unclear whether a revocation occurred. *See*
18 Exh. A at ¶¶ 4–5. Either way, the government's actions violate the Administrative
19 Procedures Act and Due Process.

20 Under the Administrative Procedures Act (APA), an agency action may be
21 held unlawful and set aside if it is “arbitrary, capricious, an abuse of discretion, or
22 otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). An action is an
23 abuse of discretion if the agency “entirely failed to consider an important aspect
24 of the problem, offered an explanation for its decision that runs counter to the
25 evidence before the agency, or is so implausible that it could not be ascribed to a
26 difference in view or the product of agency expertise.” *Nat'l Ass'n of Home*
27 *Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle*
28 *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 Mr. Polanco-Garcia’s parole, it violated the APA. If the agency did *not* revoke his parole, then it inexplicably violated its own decision by illegally detaining Mr. Polanco-Garcia in April 2026. 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 Mr. Polanco-Garcia was still on parole, yet the agency decided to detain him. *Motor Vehicle Mfrs*, 463 U.S. at 52. And nothing suggests that there *was* a “rational” reason for this choice, given that Mr. Polanco-Garcia had filed an asylum application and complied with the conditions of his parole. This was the epitome of an “arbitrary” and “capricious” act under the APA. 5 U.S.C. § 706(2)(A).

But assuming the agency *had* revoked his 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

1 the parole's purpose is served or no humanitarian reasons warrant it *and* the
2 noncitizen receives written notice.

3 None of this occurred here. Because “the purpose[] of [Mr. Polanco-
4 Garcia’s] parole” was to allow him to apply for asylum, that purpose has not yet
5 “been served” because his asylum claim is still pending on appeal. 8 U.S.C. §
6 1182(d)(5)(A). And the humanitarian reasons for parole—to avoid unnecessary
7 detention when an asylum seeker poses no danger or flight risk—remains the
8 same. Put differently, “upon Petitioner’s entry into the United States, Respondents
9 determined that Petitioner was suitable for parole. Respondents have not provided
10 a reasoned explanation or any changed circumstances that would justify their
11 current departure from their prior decision.” *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d
12 1123, 1146 (D. Or. 2025). Under the APA, “[i]t is Respondents’ burden to
13 provide a reasoned explanation for their action,” which they will not be able to do.
14 *Id.*

15 What’s more, Mr. Polanco-Garcia never received any written notification
16 of a revocation under 8 C.F.R. § 212.5(e). If the agency did revoke his parole, this
17 decision violated both the statute and the regulation and was “not in accordance
18 with law” under the APA. 5 U.S.C. § 706(2)(A).

19 Several courts have released parolees on this basis. *See, e.g., Devilmar v.*
20 *LaRose*, No. 3:26-CV-01748-JES-MSB, 2026 WL 1042439, at *2 (S.D. Cal. Apr.
21 17, 2026); *Perez v. Noem*, No. 3:25-CV-03777-CAB-JLB, 2026 WL 102643, at *2
22 (S.D. Cal. Jan. 14, 2026); *Arias v. Larose*, No. 3:25-CV-02595-BTM-MMP, 2025
23 WL 3295385, at *3 (S.D. Cal. Nov. 25, 2025); *Perez v. LaRose*, No. 25-cv-02620-
24 RBM-JLB, 2025 WL 3171742 (S.D. Cal. Nov. 13, 2025); *Salazar v. Casey*, No.
25 25-cv-2784 JLS-VET, 2025 WL 3063629 (S.D. Cal. Nov. 3, 2025); *Noori v.*
26 *LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct. 1, 2025);
27 *Y-Z-L-H v. Bostock*, No. 25-cv-965-SI, 2025 WL 1898025, at *13 (D. Or. July 9,
28 2025).

II. The Due Process Clause requires providing Mr. Polanco-Garcia with notice and a chance to be heard before revoking his parole.

Additionally, “the revocation of [Mr. Polanco-Garcia’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. Polanco-Garcia 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 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 [months] 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

1 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 [him] a reason for revocation or
5 giving [him] an opportunity to be heard.” *Salazar*, 2025 WL 3063629, at *4. “Civil
6 immigration detention is permissible only to prevent flight or protect against danger
7 to the community.” *Perez*, 2025 WL 3171742, at *5. But here, “[s]ince DHS's initial
8 determination that Petitioner should be paroled because [he] posed no danger to the
9 community and was not a flight risk, there is no evidence that these findings have
10 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, Mr. Polanco-Garcia’s re-
19 detention violated the Due Process Clause. *Salazar*, 2025 WL 3063629, at *5.

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

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

24 **IV. Prayer for relief**

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

- 26 1. Order Respondents to immediately release Petitioner from custody,
27 subject to the conditions of his preexisting parole;
28

2. Order that, prior to any re-detention of Petitioner, 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. The government 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. Order any other relief that the Court deems just and proper.

Respectfully submitted,

Dated: July 14, 2026

s/ Hannah Basalone

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