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

13 **EMMA REYES-RIZO,**

14 **Petitioner,**

15 **v.**

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

25 **Respondents.**

26 **CIVIL CASE NO.: 26-cv-3740-JLS-**
27 **JLB**

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

INTRODUCTION

Emma Reyes-Rizo is a citizen of Nicaragua who was released from custody in 2021 so that she could seek asylum in the United States. Even though there was no decision in Ms. Reyes-Rizo's asylum case at the time, she was arrested and re-detained on April 27, 2026 when she appeared for her credible fear interview. ICE took her into custody without giving her any paperwork or any opportunity to contest her re-detention. She has been detained ever since.

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

STATEMENT OF FACTS

Ms. Reyes-Rizo fled her native country of Nicaragua because of violence she experienced there. Declaration of Emma Reyes-Rizo, Exhibit A at ¶ 1. Because of this fear, Ms. Reyes-Rizo came to the United States on July 27, 2021 to seek asylum. ¶ 1. She was arrested immediately and detained. *Id.* at ¶ 2. Shortly after, ICE released her onto parole. *Id.* at ¶ 2. She was not put on supervision and instead told to submit her asylum application within the first year of her arrival. *Id.* at ¶ 2. She did just that. *Id.* at ¶ 2.

In January of 2026, Ms. Reyes-Rizo finally received an interview appointment for her credible fear interview. *Id.* at ¶ 3. On April 27, 2026, she

1 appeared for her credible fear interview appointment in Miami, Florida. *Id.* at ¶ 4.
 2 When she arrived at that appointment, she was arrested by ICE. *Id.* at ¶ 4. Though
 3 she doesn't remember the arrest well, she does not remember receiving any
 4 paperwork or notice related to her arrest. *Id.* at ¶ 4.

5 Ms. Reyes-Rizo has been in custody since she was detained on April 27,
 6 2026. *Id.* at ¶ 5. She was moved from Florida, where she lived, to Otay Mesa
 7 Detention Center. *Id.* Ms. Reyes-Rizo's asylum case is still pending. *Id.* at ¶ 6. She
 8 has a master calendar hearing set for July 22, 2026. *Id.* at ¶ 6.

9 CLAIMS FOR RELIEF

10 **I. ICE failed to comply with its own regulations in revoking Ms. Reyes-** 11 **Rizo's parole under 8 C.F.R. § 212.5, violating the Administrative** 12 **Procedures Act and Due Process.**

13 When Ms. Reyes-Rizo was detained on April 27, 2026, no one told her that
 14 her parole was revoked, so it is unclear whether a revocation occurred. *See* Exh. A
 15 at ¶ 4. Either way, the government's actions violate the Administrative Procedures
 16 Act and Due Process.

17 Under the Administrative Procedures Act (APA), an agency action may be
 18 held unlawful and set aside if it is "arbitrary, capricious, an abuse of discretion, or
 19 otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). An action is an
 20 abuse of discretion if the agency "entirely failed to consider an important aspect
 21 of the problem, offered an explanation for its decision that runs counter to the
 22 evidence before the agency, or is so implausible that it could not be ascribed to a
 23 difference in view or the product of agency expertise." *Nat'l Ass'n of Home*
 24 *Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle*
 25 *Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43
 26 (1983)). For a challenged agency action to be upheld, the agency "must explain
 27 the evidence which is available, and must offer a rational connection between the
 28 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. Reyes-Rizo's parole, it violated the APA. If the agency did *not* revoke her parole, then it inexplicably violated its own decision by illegally detaining Ms. Reyes-Rizo 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 Ms. Reyes-Rizo was still on parole, yet the agency decided to detain her. *Motor Vehicle Mfrs.*, 463 U.S. at 52. And nothing suggests that there *was* a "rational" reason for this choice, given that Ms. Reyes-Rizo had filed an asylum application and complied with all the conditions of her parole, including showing up to her immigration appointment. 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 her parole, it also violated the APA. Per ICE regulations, a person shall only be "returned to the custody from which she 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. Reyes-Rizo's] parole" was to allow her to apply for asylum, that purpose has not yet "been

served” because her 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.*

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

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

II. The Due Process Clause requires providing Ms. Reyes-Rizo with notice and a chance to be heard before revoking her release.

Additionally, “the revocation of [Ms. Reyes-Rizo’s] parole without justification or consideration of [her] 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. Reyes-Rizo was “entitled to notice of the reasons for revocation of [her] 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*, 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 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

1 giving her an opportunity to be heard.” *Salazar*, 2025 WL 3063629, at *4. “Civil
 2 immigration detention is permissible only to prevent flight or protect against danger
 3 to the community.” *Perez*, 2025 WL 3171742, at *5. But here, “[s]ince DHS’s initial
 4 determination that Petitioner should be paroled because she posed no danger to the
 5 community and was not a flight risk, there is no evidence that these findings have
 6 changed.” *Id.*

7 “Third, the Government’s interest in detaining Petitioner without notice,
 8 reasoning, and a hearing is low.” *Salazar*, 2025 WL 3063629, at *5 (cleaned up).
 9 “Detention for its own sake, to meet an administrative quota, or because the
 10 government has not yet established constitutionally required pre-detention
 11 procedures is not a legitimate government interest.” *Pinchi v. Noem*, 792 F. Supp.
 12 3d 1025, 1036 (N.D. Cal. 2025).

13 Thus, because Respondents did not provide “proper notice, reasoning, and a
 14 pre-deprivation hearing” before revoking parole, Ms. Reyes-Rizo’s re-detention
 15 violated the Due Process Clause. *Salazar*, 2025 WL 3063629, at *5.

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

17 Resolution of a detention-based habeas petition may require an evidentiary
 18 hearing. *Owino v. Napolitano*, 575 F.3d 952, 956 (9th Cir. 2009). Ms. Reyes-Rizo
 19 hereby requests such a hearing on any material, disputed facts.

20 **IV. Prayer for relief**

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

- 22 1. Order Respondents to immediately release Petitioner from custody,
 23 subject to the conditions of her preexisting parole;
- 24 2. Order that, prior to any re-detention of Petitioner, Petitioner is entitled to
 25 notice of the reasons for revocation of her parole and a hearing before an
 26 immigration judge to determine whether detention is warranted. The
 27 government should bear the burden of establishing, by clear and
 28

1 convincing evidence, that Petitioner poses a danger to the community or
2 a risk of flight at that hearing;

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

5 Respectfully submitted,
6

7 Dated: July 16, 2026

s/ Hannah Pineiro Basalone

Hannah Pineiro Basalone

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