

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

**Vikas Kumar v. Christopher LaRose, Warden, Otay Mesa Detention
Center, et al.**

Case No. 25-CV-3796 JLS (DDL) (S.D. Cal. Jan. 6, 2026) · No. 25-CV-3796 JLS (DDL) · Decided January 6,
2026

OPINION

Kumar

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 VIKAS KUMAR, Case No.: 25-CV-3796 JLS (DDL) 12 Petitioner,

ORDER GRANTING PETITION

13 v. FOR WRIT OF HABEAS CORPUS

14 CHRISTOPHER LAROSE, Warden, Otay (ECF No. 1) Mesa Detention Center, et al., 15
Respondents. 16 17 18 Presently before the Court is Petitioner Vikas Kumar’s Petition for Writ of
Habeas 19 Corpus pursuant to 28 U.S.C. § 2241 (“Pet.,” ECF No. 1). Also before the Court is 20
Respondents Christopher J. LaRose’s (Senior Warden, Otay Mesa Detention Center), 21 Daniel A.
Brightman’s (Acting Field Office Director, San Diego Office), Todd M. Lyons’s 22 (Acting
Director, U.S. Immigration and Customs Enforcement), Sirce Owen’s (Acting 23 Director for
Executive Office for Immigration Review), Kristi Noem’s (Secretary of the 24 Department of
Homeland Security), and Pamela Bondi’s (U.S. Attorney General) 25 (collectively,
“Respondents”) Response to Petition (“Ret.,” ECF No. 4) and Petitioner’s 26 Traverse
 (“Traverse,” ECF No. 5). For the reasons set forth below, the Court GRANTS 27 Petitioner’s
Petition for Writ of Habeas Corpus. 28 ///

1 BACKGROUND

2 Petitioner, an Indian national, alleges that he has been detained by the United States 3
Department of Homeland Security’s Immigration and Customs Enforcement division at 4 the Otay
Mesa Detention Center since December 24, 2025, when he was arrested while 5 delivering food to
a DoorDash customer located at the Marine Corps Base Camp 6 Pendleton. Pet. ¶ 15. On March
12, 2024, Petitioner entered the United States without 7 inspection or valid entry documents and
approached border officials informing them he 8 had a fear of returning to India. Id. ¶ 8. On
March 14, 2024, Petitioner was released on 9 conditional parole pursuant to 8 U.S.C. § 1226
“after a determination that he was neither a 10 fight risk nor a danger to the community.” Id. ¶ 9.

Since entering the U.S., Petitioner has 11 complied with all conditions of his parole, appeared for ICE check-ins, received work 12 authorization, issued a California driver’s license and a U.S. Social Security Card, and 13 applied for asylum. *Id.* ¶ 12. Petitioner now claims that he is detained by ICE in violation 14 of the Administrative Procedure Act, the Due Process Clause of the Fifth Amendment, and 15 8 U.S.C. § 1226. *Traverse* at 2.

16 LEGAL STANDARD

17 A federal prisoner challenging the execution of his or her sentence, rather than the 18 legality of the sentence itself, may file a petition for writ of habeas corpus in the district of 19 his confinement pursuant to 28 U.S.C. § 2241. See 28 U.S.C. § 2241(a). The sole judicial 20 body able to review challenges to final orders of deportation, exclusion, or removal is the 21 court of appeals. See generally 8 U.S.C. § 1252; see also *Alvarez–Barajas v. Gonzales*, 22 418 F.3d 1050, 1052 (9th Cir. 2005) (citing REAL ID Act, Pub. L. No. 109-13, 119 Stat. 23 231, § 106(a)). However, for claims challenging ancillary or collateral issues arising 24 independently from the removal process—for example, a claim of indefinite detention— 25 federal habeas corpus jurisdiction remains in the district court. *Nadarajah v. Gonzales*, 26 443 F.3d 1069, 1076 (9th Cir. 2006), abrogated on other grounds by *Jennings v. Rodriguez*, 27 138 S. Ct. 830 (2018); *Alvarez v. Sessions*, 338 F. Supp. 3d 1042, 1048–49 (N.D. Cal. 28 2018) (citations omitted).

1 DISCUSSION

2 I. Due Process 3 Petitioner argues that the summary revocation of his parole without notice or a 4 hearing violates the Due Process Clause. *Pet.* ¶ 71. The Court agrees. 5 The Fifth Amendment guarantees that “[n]o person shall be . . . deprived of life, 6 liberty, or property, without due process of law.” U.S. Const. amend. V. “[T]he Due 7 Process Clause applies to all ‘persons’ within the United States, including aliens, whether 8 their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 9 U.S. 678, 693 (9th Cir. 2001). “[I]t is well established that the Fifth Amendment entitles 10 aliens to due process of law in deportation proceedings.” *Reno v. Flores*, 507 U.S. 292, 11 306 (1993). The Due Process Clause generally “requires some kind of a hearing before the 12 State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S. 113, 127 13 (1990). “Even individuals who face significant constraints on their liberty or over whose 14 liberty the government wields significant discretion retain a protected interest in their 15 liberty.” *Pinchi v. Noem*, No. 25-cv-5632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 16 25, 2025) (citations omitted). Although the initial decision to detain or release an 17 individual may be within the government’s discretion, “the government’s decision to 18 release an individual from custody creates ‘an implicit promise,’ upon which that 19 individual may rely, that their liberty ‘will be revoked only if [they] fail[] to live up to the 20 . . . conditions [of release].’” *Id.* (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). 21 “Thus, even when ICE has the initial discretion to detain or release a noncitizen pending 22 removal proceedings, after that individual is released from custody [he] has a protected 23 liberty interest in remaining out of custody.” *Pinchi*, 2025 WL 2084921, at *3 (citing 24 *Romero v. Kaiser*, No. 22-cv-20508, 2022 WL

1443250, at *2 (N.D. Cal. May 6, 2022)). 25 Respondents suggest that because of Maldonado Bautista, Petitioner is detained 26 under 8 U.S.C. § 1226(a) and is only entitled to a bond hearing—making his other 27 constitutional claims moot. See Ret. at 2. The Court disagrees. On March 14, 2024, 28 Petitioner was determined to not be a danger to the community or a flight risk and was 1 released on conditional parole. Pet. ¶ 9. Petitioner has complied with all conditions of his 2 parole, appeared for ICE check-ins, received work authorization, issued a California 3 driver’s license and a U.S. Social Security Card, and applied for asylum. Id. ¶ 12. The 4 relief Petitioner is entitled to is not limited to a bond hearing; Petitioner has a protected 5 liberty interest in remaining out of custody. See, e.g., *Pinchi*, 2025 WL 2084921, at *4 6 (“[Petitioner’s] release from ICE custody after her initial apprehension reflected a 7 determination by the government that she was neither a flight risk nor a danger to the 8 community, and [Petitioner] has a strong interest in remaining at liberty unless she no 9 longer meets those criteria.”); *Noori*, 2025 WL 2800149, at *10 (“Petitioner is not an 10 ‘arriving’ noncitizen but one that has [been] present in our country for over a year. This 11 substantial amount of time indicates he is afforded the Fifth Amendment’s guaranteed due 12 process before removal.”); *Matute v. Wofford*, No. 25-cv-1206-KES-SKO (HC), 2025 WL 13 2817795, at *5 (E.D. Cal. Oct. 3, 2025) (finding petitioner had a protected liberty interest 14 in his release). 15 As Petitioner has a protected liberty interest, the Due Process Clause requires 16 procedural protections before he can be deprived of that interest. See *Matthews v. Eldridge*, 17 424 U.S. 319, 335 (1976). To determine which procedures are constitutionally sufficient 18 to satisfy the Due Process Clause, the Court must apply the *Matthews* factors. See 19 *Matthews*, 424 U.S. at 335. Courts must consider: (1) “the private interest that will be 20 affected by the official action”; (2) “the risk of an erroneous deprivation of such interest 21 through the procedures used, and the probable value, if any, of additional or substitute 22 procedural safeguards”; and (3) “the [g]overnment’s interest, including the function 23 involved and the fiscal and administrative burdens that the additional or substitute 24 procedural requirement would entail.” Id. 25 The Court finds that all three factors support a finding that the government’s 26 revocation of Petitioner’s parole without notification, reasoning, or an opportunity to be 27 heard, denied Petitioner of his due process rights. First, as discussed above, Petitioner has 28 a significant liberty interest in remaining out of custody pursuant to his conditional parole. 1 “Freedom from imprisonment—from government custody, detention, or other forms of 2 physical restraint—lies at the heart of the liberty [the Due Process Clause] protects.” 3 *Zadvydas*, 533 U.S. at 690. Petitioner has an interest in remaining with his community, 4 working, and continuing the process of seeking asylum. See *Morrissey*, 408 U.S. 471 at 5 482 (“Subject to the conditions of his parole, he can be gainfully employed and is free to 6 be with family and friends and to form the other enduring attachments of normal life.”). 7 Second, the risk of an erroneous deprivation of such interest is high as Petitioner’s 8 parole was revoked without providing him a reason for revocation or giving him an 9 opportunity to be heard. Pet. ¶ 71. Since DHS’s initial determination that Petitioner should 10 be paroled because he posed no danger to the community and was not a

flight risk, there is 11 no evidence that these findings have changed. See *Saravia v. Sessions*, 280 F. Supp. 3d 12 1168, 1760 (N.D. Cal. 2017) (“Release reflects a determination by the government that the 13 noncitizen is not a danger to the community or a flight risk.”). Petitioner has no criminal 14 record, has not been arrested or otherwise in criminal trouble, has work authorization, and 15 is working towards asylum status. Pet. ¶ 101. “Once a noncitizen has been released, the 16 law prohibits federal agents from rearresting him merely because he is subject to removal 17 proceedings.” *Saravia*, 280 F. Supp. 3d at 1760. “Rather, the federal agents must be able 18 to present evidence of materially changed circumstances—namely, evidence that the 19 noncitizen is in fact dangerous or has become a flight risk. . . .” *Id.* 20 Respondents, failing to address Petitioner’s Due Process argument in their response, 21 do not point to any material circumstances that have changed that would warrant 22 reconsideration of his parole. See generally Ret. “Where, as here, ‘the petitioner has not 23 received any bond or custody hearing,’ ‘the risk of an erroneous deprivation of liberty is 24 high’ because neither the government nor [Petitioner] has had an opportunity to determine 25 whether there is any valid basis for [his] detention.” *Pinchi*, 2025 WL 2084921, at *5 26 (quoting *Singh v. Andrews*, No. 25-cv-801-KES-SKO (HC), 2025 WL 1918679, at *7 (E.D. 27 Cal. July 11, 2025)) (cleaned up). 28 1 Third, the government’s interest in detaining Petitioner without notice, reasoning, 2 and a hearing is “low.” See *Pinchi*, 2025 WL 2084921, at *5; *Matute*, 2025 WL 2817795, 3 at *6; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. Nov. 22, 2019) (“If the 4 government wishes to re-arrest [Petitioner] at any point, it has the power to take steps 5 toward doing so; but its interest in doing so without a hearing is low.”). Respondents fail 6 to point to any burdens on the government if it were to have provided proper notice, 7 reasoning, and a pre-deprivation hearing. See generally Ret. 8 Therefore, because Respondents detained Petitioner by revoking his parole in 9 violation of the Due Process Clause, his detention is unlawful. See, e.g., *Alegria Palma v. 10 Larose et al.*, No. 25-cv-1942 BJC (MMP), slip op. at 14 (S.D. Cal. Aug. 11, 2025) 11 (granting a TRO based on a procedural due process challenge to a revocation of parole 12 without a pre-deprivation hearing); *Navarro Sanchez*, 2025 WL 2770629, at *5 (granting 13 a writ of habeas corpus releasing petitioner from custody to the conditions of her 14 preexisting parole on due process grounds).1 15 II. Attorney’s Fees 16 Petitioner has requested costs and attorney’s fees in this action pursuant to the Equal 17 Access to Justice Act (“EAJA”), 28 U.S.C. § 2412. Pet. at 36. The EAJA provides in part: 18 A party seeking an award of fees and other expenses shall, within 19 thirty days of final judgment in the action, submit to the court an 20 application for fees and other expenses which shows that the party is a prevailing party and is eligible to receive an award 21 under this subsection, and the amount sought, including an 22 itemized statement from any attorney . . . representing or appearing in behalf of the party stating the actual time expended 23 and the rate at which fees and other expenses were 24 25 1 The Court need not address Petitioner’s claim arising under the APA because the Petition can be resolved 26 on due process grounds. However, the Court notes that other courts have found violations of the APA based on similar grounds. See, e.g., *Navarro*

Sanchez, 2025 WL 2770629, at *4 (finding revocation of 27 petitioner's parole arbitrary and capricious because respondents did not state any reasons for the 28 revocation); Noori, 2025 WL 2800149, at *3 ("Petitioner's parole was revoked without an individualized l computed. The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be 3 determined on the basis of the record . . . which is made in the A civil action for which fees and other expenses are sought. 5 U.S.C. § 2412(d)(1)(B). 6 The Court will consider an application requesting reasonable fees and costs under 7 EAJA that is filed within thirty days of the judgment.

8 CONCLUSION

9 Based on the foregoing, the Court GRANTS Petitioner's Petition for Writ of Habeas 10 ||Corpus (ECF No. 1), and ORDERS Respondents to immediately release Petitioner from 11 custody subject to the conditions of his preexisting parole. The Court ORDERS, prior to 12 re-detention of Petitioner, that Petitioner is entitled to notice of the reasons for 13 || revocation of his parole and a hearing before a neutral decision maker to determine whether 14 || detention is warranted. The government shall bear the burden of establishing, by clear and 15 || convincing evidence, that Petitioner poses a danger to the community or a risk of flight. 16 || The Parties are ORDERED to file a Joint Status Report by January 12, 2026, confirming 17 ||that Petitioner has been released. Lastly, Petitioner's attorney is directed to submit an 18 || attorney fee application and corresponding billing records within thirty (30) days of this 19 || Order, and Respondents are instructed to file any opposition within fourteen (14) days of 20 || Petitioner's attorney fee application. 21 IT IS SO ORDERED. 22 ||Dated: January 6, 2026 23 we. A on. Janis L. Sammartino United States District Judge 25 26 || ———_ 27 This relief has been granted in similar matters. See, e.g., Matute, 2025 WL 2817795, at *8; Pinchi, 2025 28 || WL 2084921, at *5; Doe v. Becerra, 787 F. Supp. 3d 1083, 1097 (E.D. Cal. 2025); Martinez Hernandez y. Andrews, No. 25-CV-1035 JLT HBK, 2025 WL 2495767, at *14 (E.D. Cal. Aug. 28, 2025).