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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
Portland Division**

Y-Z-L-H-, an adult,

Petitioner,

v.

DREW BOSTOCK, Seattle Field Office
Director, Immigration and Customs
Enforcement and Removal Operations
("ICE/ERO"); TODD LYONS, Acting
Director of Immigration Customs
Enforcement ("ICE"); U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT; KRISTI
NOEM, Secretary of the Department of
Homeland Security ("DHS"); U.S.
DEPARTMENT OF HOMELAND
SECURITY; and PAMELA BONDI, Attorney
General of the United States,

Respondents.

Case No. 3:25-CV-00965-SI

Agency No. A XXX-XXX 

**PETITIONER'S REPLY IN
SUPPORT OF PETITION FOR WRIT
OF HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241**

ORAL ARGUMENT REQUESTED

Expedited Hearing Requested

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PETITIONER'S REPLY

Y-Z-L-H- seeks an order from this court to free him from unlawful Executive detention. “At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.” *INS v. St. Cyr*, 533 U.S. 289, 301 (2001), *superseded on other grounds by statute as stated in Patel v. U.S. Att’y Gen.*, 971 F.3d 1258, 1270 (11th Cir. 2020). The writ is meant to do exactly what Y-Z-L-H- seeks: prevent the Respondents—a whole set of immigration agencies with vast resources, who have at their disposal a punitive detention system and masked agents roving courthouses to arrest immigrants and asylum-seekers—from setting themselves above the law in order to detain him.

His petition should be granted because Respondents assert a statutorily impossible basis for Y-Z-L-H-’s detention and offer no coherent explanation for why they have detained a law-abiding individual released on parole. Their regulations and policies direct that, under the facts presented, Y-Z-L-H- should not have been detained at all on June 5 and that every day of his detention remains unlawful. Respondents’ jurisdictional arguments are without merit because the challenge here is at the core of habeas: the legality of detention. Respondents have issued no removal order in this case, and therefore the jurisdictional bars of 8 U.S.C. § 1252(a) and (g) are inapplicable.

The court should grant the petition and order Y-Z-L-H- released, or, at a minimum, grant him bail under conditions established by the Court until such time as the litigation of the matter can be resolved.

I. INTRODUCTION

Until June 5, 2025, Y-Z-L-H- believed he was moving through an immigration process governed by law, but things rapidly changed. Respondents thought the law was too fair,¹ so they manipulated the system and detained Y-Z-L-H- based on that manipulation.

On June 5, 2025, Y-Z-L-H- arrived for his immigration court hearing knowing that he had followed *every* request from the immigration authorities and *every* rule of the immigration process at *every* stage. Fearing for his life in Mexico after receiving threats from the notorious and dangerous [REDACTED] Y-Z-L-H- sought protection in the United States, as was his right under 8 U.S.C. § 1158. Petitioner's Decl., Dkt. 14 ¶¶ 3-4. As instructed by the U.S. government, he scheduled an appointment to enter the country through the CBP One App; he attended that appointment and expressed his desire to seek asylum; and he was released on parole pursuant to 8 U.S.C. § 1182(d)(5). *Id.* ¶ 4. He moved to Oregon and began a life, conscientiously complying with U.S. immigration law. He applied for and was granted work authorization through July 19, 2025, based on the duration of his parole. *Id.* ¶ 5. He timely submitted his asylum application to the Portland Immigration Court, explaining why he merits a grant of asylum. *Id.* He applied for extended work authorization based on his asylum application, which was granted the

¹ Amanda Terkel & Lawrence Hurley, "Trump, asked if he has to 'uphold the Constitution,' says, 'I don't know'", NBC News (May 4, 2025), available at <https://www.nbcnews.com/politics/trump-administration/trump-asked-uphold-constitution-says-dont-know-rcna204580> (citing the President's response about providing due process where he explained that the administration would have to provide "2 million or 3 million trials," that he "was elected to get [immigrants] the hell out of here, and the courts are holding [him] from doing it"); *see also*, Ernst Fränkel, *The Dual State: A Contribution to the Theory of Dictatorship* 3, 24-25, 39 (Oxford U. Press 1941) (explaining how two states arose in Germany in the 1900s with the "co-existence of legal order and lawlessness" where executive officials "exercise[d] their discretionary prerogatives" to create the zones of "arbitrary actions" against the politically unpopular).

day before his June 5 hearing and is valid through the year 2030. *Id.*; Stopher Decl. Dkt. 18, Ex. F. He has not engaged in criminal activity and has no criminal record. Petitioner's Decl. ¶ 7-8.

But the rules that applied to his case did not matter. The Executive Branch decided—without giving Y-Z-L-H- notice, an opportunity to respond, or indeed any substantive reason for their decision—to change the rules in disregard of Due Process and the law governing parole. On June 5, 2025, Respondent ICE moved to dismiss Y-Z-L-H's active asylum proceedings. Before Petitioner left the courthouse, multiple masked men handcuffed and arrested him. Y-Z-L-H-, who had never been arrested before, “felt very afraid” and “did not understand why they were handcuffing [him]”; he also felt “alone” and “very scared because their faces were covered.” *Id.* ¶¶ 6-7. Although Y-Z-L-H-'s attorney sought to speak with him, Respondents rushed Y-Z-L-H- across the Oregon state border to detain him without access to counsel or any explanation of what was happening. *Id.* ¶ 10. That night he slept alongside several other men on the floor of a cell in a location unknown to him or to his counsel team. *Id.* ¶ 11. The next day he was transferred to another facility, where he again slept on the floor because “there were about 110 too many people at the facility and [] there was no space for them to sleep.” *Id.* ¶ 12.

Y-Z-L-H- has now been separated from his community and detained for over two weeks in an overcrowded facility where he is deprived of privacy for legal calls and even when using the toilet. Stopher Decl. ¶¶ 11-12. He does “not understand why I am being treated this way” when “I followed the rules to seek asylum in the correct way.” Petitioner's Decl. ¶ 15.

II. THE COURT HAS HABEAS JURISDICTION TO ORDER PETITIONER'S RELEASE.

The Court has subject matter jurisdiction over Count Two, which seeks Y-Z-L-H-'s release from custody. Respondents argue that section 1252(g) deprives this Court of jurisdiction over Petitioner's habeas petition. They are incorrect because this Court has jurisdiction under 28 U.S.C.

§ 2241, and no jurisdiction-stripping provision of the INA applies. This Court also retains jurisdiction under the Suspension Clause of the U.S. Constitution.

A. Section 1252(g) of the INA does not bar jurisdiction to grant release.

Respondents contend that 8 U.S.C. § 1252(g) prevents this court from reviewing Petitioner’s claims. Dkt. 10 at 16. But they misconstrue this “narrow” statutory provision. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487 (1999) (hereinafter “*AADC*”). Far from barring “all claims relating in any way to deportation proceedings,” *Catholic Social Services, Inc. v. INS*, 232 F.3d 1139, 1150 (9th Cir. 2000), section 1252(g) simply limits review of three discrete, enumerated acts: namely, DHS’s discretionary decisions “to commence proceedings, adjudicate cases, or execute removal orders.” 8 U.S.C. § 1252(g); *accord AADC*, 525 U.S. at 482-83.²

Here, none of Petitioner’s claims challenge these discrete, enumerated acts. Respondents argue that section 1252(g) prohibits review of “any request for this Court to enjoin ICE’s decision to dismiss Petitioner’s recently-commenced removal proceedings . . . and place him instead into expedited removal proceedings.” Dkt. 10 at 17. But Petitioner’s Count Two does not challenge such a decision. Instead, Petitioner challenges Respondents’ decision to *detain* Y-Z-L-H- even though he had been granted parole under 8 U.S.C. § 1182(d)(5) that neither expired nor was revoked with the requisite written notice and individualized consideration of his case and circumstances. *See infra* § III.B.3. Detention decisions are not among the three discretionary acts rendered unreviewable by section 1252(g).

None of Respondents’ cases say otherwise. *See* Dkt. 10 at 17. In *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007), the Petitioner’s detention “arose from Rocha’s decision to commence expedited removal proceedings.” Here, Respondents concede that Y-Z-L-H- is not in expedited removal proceedings – he remains in section 1229a proceedings through the conclusion

² Although *AADC* references the “Attorney General’s” discretionary determinations, that decision predates the Homeland Security Act of 2002, which transferred prosecutorial functions from the Attorney General to DHS. *See* 6 U.S.C. §§ 202, 557, 651; 8 U.S.C. § 1103(a)(1).

of his administrative appeal. Dkt. 11 ¶ 13. And even if he were in expedited removal proceedings, habeas would still be an appropriate vehicle for him to seek release from unlawful custody. *See Sissoko*, 509 F.3d at 949 (“because Sissoko was never issued an expedited removal order, a habeas petition under 8 U.S.C. § 1252(c)(2) could have been successful in remedying his allegedly false arrest”). In *Saadullov v. Garland*, No. 3:23-cv-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024), the court applied section 1252(g) because the petitioner’s arrest was based solely on the government’s decision to commence new removal proceedings following the petitioner’s criminal charges. *See id.* (explaining that the petitioner’s parole was revoked under 8 C.F.R. § 212.5(e)(1) when he “was served with a Notice to Appear, initiating removal proceedings”). *Rauda v. Jennings*, 55 F.4th 773 (9th Cir. 2021) and *Anderson v. Moniz*, No. 21-cv-11584, 2022 WL 375231, (D. Mass. Feb. 7, 2022) are both also substantially distinguishable, as the cases speak to jurisdiction over *the execution of a removal order*, not an unlawful detention, for which habeas is the correct route. *See Rauda*, 55 F.4th at 777 (“Matias seeks to enjoin the government from removing him or in other words, enjoin ‘action by the Attorney General to ... *execute* removal orders against [Matias]’”) (emphasis added); *Anderson*, 2022 WL 375231, at *1-2 (noting that petitioner sought a stay of removal). None of these cases involved what we have here—a petitioner who challenges not a decision to commence proceedings, to adjudicate a case, or to execute a removal order, but a petitioner who challenges Respondents’ decision to detain him without regard to the law governing his parole.

Moreover, even if Petitioner were currently in expedited removal proceedings, section 1252(g) does not bar this Court’s review of legal questions. As the Ninth Circuit has explained, a “district court may consider a purely legal question that does not challenge the Attorney General’s discretionary authority, even if the answer to that legal question—a description of the relevant law—forms the backdrop against which the Attorney General later will exercise discretionary authority.” *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004); *see also Madu v. U.S. Attorney Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006) (“While [§ 1252(g)] bars courts from

reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions.”). Here, Petitioner’s Count Two asks the Court to interpret the legal “backdrop” against which Respondents may seek to detain him – namely, to find that Petitioner may not be detained without written notice of the individualized revocation of his parole, in contravention of federal regulations, the INA, and his Due Process rights.

B. No other provision of 8 U.S.C. § 1252 limits this Court’s jurisdiction over Count Two.

Respondents do not argue that any other provision of the INA restricts this Court’s jurisdiction, *see* Dkt. 10, and none does. “[T]he REAL ID Act’s jurisdiction-stripping provisions do *not* remove federal habeas jurisdiction over petitions that do not directly challenge a final order of removal.” *Trinidad y Garcia v. Thomas*, 683 F.3d 952, 958 (9th Cir. 2012) (Thomas, J., concurring) (citing *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075 (9th Cir. 2006)). Petitioner does not seek review of an order of removal (since none has been issued in this case), *see* 8 U.S.C. § 1252(a)(5); nor does he seek review of a “any action taken . . . to remove him from the United States,” *id.* § 1252(b)(9). He challenges his unlawful detention, a challenge which “fall[s] within the core of the writ of habeas corpus and thus must be brought in habeas.” *Trump v. J. G. G.*, 145 S. Ct. 1003, 1005 (2025) (internal quotations omitted). As this Court has affirmed, “claims that are independent of or collateral to the removal process . . . are excluded from the PFR process and, thus, may be heard in federal district courts.” *Innovation L. Lab v. Nielsen*, 342 F. Supp. 3d 1067, 1076 (D. Or. 2018) (internal quotations omitted); *see also Nadarajah*, 443 F.3d at 1075-76 (affirming district court jurisdiction over habeas corpus petition that did not challenge a final order of removal).

To the extent Petitioner’s challenges reach the scope of the expedited removal statute as applied to his case, his challenge centers on the fact of whether any expedited removal order was issued against him – a fact that Respondents do not dispute. *See* Dkt. 11 ¶¶ 13, 15. Congress specifically provided for habeas jurisdiction in this circumstance. *See* 8 U.S.C. § 1252(e)(2)(B). Thus, no provision of the INA bars this Court’s review of Petitioner’s claims.

C. The Court retains jurisdiction under the Suspension Clause.

Even if a statute purported to strip this Court of jurisdiction over Petitioner’s claims, the Court would nonetheless have jurisdiction under the Suspension Clause, which provides that “[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion³ the public Safety may require it.” U.S. Const. Art. I § 9, cl. 2. If this Court lacks jurisdiction to hear Y-Z-L-H’s claims, there is *no* other adequate forum that would allow Y-Z-L-H—an asylum seeker who has developed substantial ties to the United States—to challenge his unlawful detention. Such a “miscarriage[] of justice” would undoubtedly run afoul of the Suspension Clause, the “fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action.” *Harris v. Nelson*, 394 U.S. 286, 290–91 (1969). Further, the Ninth Circuit has recognized that the Suspension Clause can be triggered when a petitioner is

³ Respondents do not dispute that the Writ of Habeas Corpus has not been suspended. While the Executive has suggested the existence of an “invasion” and has justified sending the military to Los Angeles to “liberate” “a city of criminals;” there has been no determination from Congress that either an invasion or a rebellion exists. *See* Donald J. Trump (@realDonaldTrump), Truth Social (Jun 15, 2025 at 5:43 PM) <https://truthsocial.com/@realDonaldTrump/posts/114690267066155731>; Stephen Miller (@StephenM), X (Jun 9, 2025 at 2:26 PM) <https://x.com/StephenM/status/1932187550598250953>; Anthony L. Fisher, “Kristi Noem says the feds are coming to ‘liberate’ Los Angeles,” MSNBC (Jun. 13, 2025, 3:00 AM) available at <https://www.msnbc.com/opinion/msnbc-opinion/kristi-noem-alex-padilla-detained-los-angeles-ice-rcna212764>.

requesting relief from custody. *Rauda*, 55 F.4th at 780 (quoting *Hamama v. Adducci*, 912 F.3d 869, 880 (6th Cir. 2018)). This is exactly the case for Y-Z-L-H-, who seeks relief from unlawful executive detention.

As an asylum seeker who has spent almost two years in the United States, Y-Z-L-H- is entitled to invoke the protections of the Suspension Clause. *See Boumediene v. Bush*, 553 U.S. 723, 739 (2008) (asking whether certain parties can invoke the Suspension Clause in light of any special status). The Clause, at “the absolute minimum . . . protects the writ as it existed” when the Constitution was adopted in 1789. *St. Cyr*, 533 U.S. at 301 (citation and internal quotation marks omitted). At that time, habeas corpus “provided a vehicle to challenge all manner of detention by government officials,” and the Suspension Clause “could be invoked by aliens already in the country who were held in custody pending deportation.” *D.H.S. v. Thuraissigiam*, 591 U.S. 103, 137 (2020). Y-Z-L-H falls squarely in this category. Unlike a noncitizen who was “apprehended within hours of surreptitiously entering the United States,” *Castro v. United States Dep’t of Homeland Sec.*, 835 F.3d 422, 445 (3d Cir. 2016), or a mere 25 yards from the border, *Thuraissigiam*, 591 U.S. at 107, Y-Z-L-H- has developed substantial ties to the United States—he has lived here for almost two years; he has been paroled; he has received work authorization; and he has complied with all requests from immigration officials and appeared at all of his immigration court hearings. Dkt, 14 at ¶ 5-6. He has built friendships and is a productive part of the Oregon community. *Id.* Accordingly, Y-Z-L-H- can properly invoke the Suspension Clause. *See Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (explaining that a noncitizen’s constitutional status changes after he “gains admission to our country” and begins developing community ties); *United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990) (“[Noncitizens] receive constitutional protections when they have come within the territory of the United States and developed substantial

connections with this country.”); *Osorio-Martinez v. Att’y Gen. United States of Am.*, 893 F.3d 153, 178 (3d Cir. 2018) (holding that jurisdiction-stripping provision of the INA violated the Suspension Clause as applied to recipients of special immigrant juvenile status). Because Y-Z-L-H- is entitled to invoke the Suspension Clause, this Court must exercise jurisdiction over his claims. To ensure that the Great Writ is not unlawfully suspended, a prisoner must have “a meaningful opportunity to demonstrate that he is being held pursuant to ‘the erroneous application or interpretation’ of relevant law,” *Boumediene*, 553 U. S. at 779 (quoting *St. Cyr*, 533 U.S. at 302), and the reviewing court “must have sufficient authority to conduct a meaningful review of both the cause for detention and the Executive’s power to detain,” *id.* at 783. The need for habeas review is “most pressing” where, as here, a person is in executive detention, as such prisoners, unlike those imprisoned pursuant to a criminal sentence, have not been offered the procedural safeguards of a criminal trial prior to their detention. *Id.* at 783.

In this case, the Executive Branch has detained Y-Z-L-H- in contravention of the laws governing his parole, including federal regulations, the INA, and the Due Process Clause. But without this Court’s review, there are no adequate procedures through which Y-Z-L-H- can show that his detention is unlawful. *See Boumediene*, 553 U.S. at 771 (asking whether, despite the existence of a “statute stripping jurisdiction to issue the writ,” “Congress has provided adequate substitute procedures for habeas corpus”). The pending BIA appeal is only designed to evaluate what happened during Y-Z-L-H-’s removal proceedings, 8 CFR § 1003.1(b), and any expedited removal proceedings would ask only whether Y-Z-L-H- has a credible fear of persecution, 8 U.S.C. § 1225(b)(1)(A)(i), not whether Respondents properly revoked Y-Z-L-H-’s parole in order to detain him. In other words, if Y-Z-L-H- is to have any opportunity “to demonstrate that he is being held pursuant to ‘the erroneous application or interpretation’ of relevant law,” *Boumediene*,

553 U.S. at 779 (quoting *St. Cyr*, 533 U.S. at 302), it must be because this Court exercises habeas jurisdiction.

For these reasons, the Suspension Clause provides for jurisdiction over Y-Z-L-H-'s claims.

III. RESPONDENTS ASSERT NO LAWFUL BASIS FOR Y-Z-L-H-'S DETENTION.

Respondents assert a statutorily impossible basis for Y-Z-L-H-'s detention and offer no coherent explanation for their decision to detain a law-abiding individual released on parole. Their regulations and policies direct that, under the facts presented, Y-Z-L-H- should not have been detained at all on June 5 and that every day of his detention remains unlawful. Because Respondents cannot identify the applicable detention authority, Y-Z-L-H-'s detention is inherently arbitrary and unlawful.

A. Petitioner's detention is not authorized by §§ 1225(b)(1)(A)(i) or (B)(iii)(IV).

Respondents describe the "true cause" of Y-Z-L-H-'s detention as authorized under 8 U.S.C. § 1225(b)(1)(A)(i) and 8 U.S.C. § 1225(b)(1)(B)(iii)(IV). Dkt at 2 ("As an 'arriving alien,' he remains subject to the statutory expedited removal provisions, which mandate his continued detention. *See* 8 U.S.C. § 1225(b)(1)(A)(i), (B)(iii)(IV)."); Dkt. 11 § 16; 28 U.S.C. § 2243 (requiring the return to provide the "true cause" of the detention). But by Respondents' own admission, neither statutory provision applies to Y-Z-L-H-.

Section 1225(b)(1)(A)(i) does not apply because Petitioner is not in expedited removal proceedings. This provision, § 1225(b)(1)(A)(i), is commonly referred to as "expedited removal." It allows a low-level agent to order removal of certain noncitizens quickly from the United States "without further hearing or review" unless a noncitizen expresses a fear of return or an intent to apply for asylum. *Id.* § 1225(b)(1)(A)(i). After expressing such fear or intent, the noncitizen must be referred for a credible fear interview by an asylum officer. *Id.* § 1225(b)(1)(A)(ii). For the period

of time during the credible fear process, the statute provides that the noncitizen “shall be detained” until the credible fear determination has been made and must remain detained until removal if they do not pass the credible fear interview. *Id.* § 1225(b)(1)(B)(iii)(IV).

But Y-Z-L-H- is *not* in expedited removal proceedings. Dkt. 10 at 10; Dkt. 11 ¶ 13. Respondents concede – as they must – that Y-Z-L-H- remains in removal proceedings under 8 U.S.C. § 1229a (colloquially known as section 240 proceedings, referring to the INA) at least pending adjudication of his administrative appeal. Therefore Respondents cannot assert 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) to detain him.

B. Petitioner’s detention is not authorized by a non-codified “anticipatory” ICE detention power.

ICE has asserted a wholly nonexistent basis for Y-Z-L-H-’s detention: a purported authority to detain him “in anticipation of processing [him] for expedited removal proceedings.” Dkt. 11 ¶ 10. Unsurprisingly, Respondents cite no statute authorizing the detention of someone whom they would like to subject, hypothetically, to expedited removal in the future. No such statute exists. There is no anticipatory authority to detain someone to perhaps initiate expedited removal in the future.

Respondents themselves concede that Y-Z-L-H- cannot be placed in expedited removal unless and until the dismissal of his section 1229a proceedings becomes final – which is anything but certain, given his pending appeal. *See* Dkt. 11 ¶ 15; Dkt. 18 ¶ 10. Respondents do not contest that Y-Z-L-H-’s § 1229a proceedings were pending at the time of his arrest and remain pending as of this filing. Notably, when masked ICE officers arrested Y-Z-L-H- inside the courthouse, it was just minutes after the immigration judge had issued his order dismissing Petitioner’s case. Dkt. 17 at ¶ 3. But that order was not final. By regulation, Y-Z-L-H- had thirty days to appeal the immigration judge’s June 5, 2025, decision in his case. *See* 8 C.F.R. § 1240.15. Even if an appeal

is not filed, the immigration judge's order is not final until the thirty-day period has run. 8 C.F.R. § 1003.39 ("the decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken whichever occurs first."). If an appeal is filed, as it was here, then the order does not become final at least until the BIA dismisses the appeal. *Id.* As a result, Y-Z-L-H- currently remains in § 1229a proceedings and may not be subjected to expedited removal – or its mandatory detention authority – under § 1225(b)(1).

Additionally, even absent his pending appeal, Y-Z-L-H- cannot be subject to expedited removal if his § 1229a proceedings are dismissed as a final matter. By the statute's plain language, he does not fit into either of the two categories of noncitizens to whom expedited removal may properly apply: (1) noncitizens who are "arriving,"⁴ and (2) noncitizens who have "not been admitted or paroled." 8 U.S.C. § 1225(b)(1)(A)(iii)(II). Y-Z-L-H- cannot be deemed "arriving" because he has been present in the United States for almost two years. He has *arrived*. *Accord. Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d 1168, 1201 (S.D. Cal. 2019) (referencing legislative history behind the term "arriving" to encompass those "attempting to enter, at the point of entry, or just having made entry" to the United States). Likewise, he was paroled – by Respondents – into the United States. Indeed, when Y-Z-L-H- appeared for his CBP One appointment, Respondents made the decision to issue him an NTA and place him in section 1229a proceedings *instead of* processing him through expedited removal. *See* U.S. Customs and Border Protection ("CBP"), *CBP One Mobile Application* (archived as of Jan. 16, 2025), available at <https://web.archive.org/web/20250116051135/https://www.cbp.gov/about/mobile-apps->

⁴ An "arriving" noncitizen is "an applicant for admission coming or attempting to come into [or transit through] the United States at a port-of-entry" or who has been interdicted in U.S. or international waters and brought to the United States. 8 C.F.R. § 1001.1(q).

directory/cbponc (explaining that CBP “evaluate[s] all individuals to determine the appropriate processing disposition,” and distinguishing between “Individuals processed for Expedited Removal proceedings” and “Individuals issued a Notice to Appear”).

Because it is uncontested that Y-Z-L-H- is in section 1229a proceedings, and because he may not properly be placed in expedited removal proceedings even if his current proceedings are dismissed, Respondents have no authority to detain him anticipatorily under the expedited removal provisions of 8 U.S.C. §§ 1225(b)(1)(a)(i) or 1225(b)(1)(B)(iii)(IV).

C. Petitioner’s detention is not authorized based on any prior expiration of parole.

Respondents assert that Y-Z-L-H-’s parole expired on its own terms on April 18, 2025, pursuant to 8 C.F.R. § 212.5(e)(1), and he thus is “returned to the custody from which he was paroled.” *See* Dkt. 10 at 12-13, citing 8 U.S.C. § 1182(d)(5)(A); *id.* n. 5. As a factual matter, Respondents are incorrect that Petitioner’s parole has expired.

The parties do not dispute that Y-Z-L-H- has not left the United States. *See* 8 C.F.R. § 212.5(e)(1)(i). Instead, Respondents argue that Y-Z-L-H-’s parole “was authorized only until April 18, 2025” and “terminated automatically after the expiration date”. Dkt. No. 10 at 10-14. Respondents cite 8 C.F.R. § 212.5(e)(1) to argue that Y-Z-L-H-’s parole was terminated “at the expiration of the time for which parole was authorized.” Dkt. 10 at 12-13.

But Respondents are factually incorrect that Y-Z-L-H-’s parole was set to expire on April 18, 2025. *Id.* Y-Z-L-H-’s grant of parole was valid at least until July 19, 2025. This fact is made clear by his (c)(11) Employment Authorization Document (“EAD”), which Respondent DHS issued based on the validity period of his parole. Dkt. 22 at Ex. D. Y-Z-L-H-’s (c)(11) EAD was issued as valid through July 19, 2025. *Id.* Y-Z-L-H-’s (c)(11) EAD, based on the validity of his parole grant, is clear evidence that his parole has not yet terminated “on its expiration date.” *See* 8

C.F.R. § 212.5(c)(1)(ii); Dkt. 22 Ex. D. Because Y-Z-L-H- was granted parole that was valid at least through July 19, 2025, 8 C.F.R. § 212.5(e)(1) does not apply, as the validity period of his grant has not expired.⁵

D. Respondents' June 5 re-detention of Y-Z-L-H- was unlawful.

Even if Y-Z-L-H-'s initial duration of parole had expired, or if by their actions on June 5 the Respondents sought to terminate or revoke his parole early, the Respondents erred procedurally and substantively by re-detaining him. If Respondents sought to revoke his parole, Petitioner was entitled to notice and an opportunity to respond. If Petitioner's parole expired, he was entitled to have an individualized determination made as to whether he can be re-paroled.⁶ DHS's arrest of

⁵ Respondents have submitted a sworn statement from ICE officer Cleveland Wilson that "Petitioner's period of authorized paroled [sic] ended on April 18, 2025." Dkt. 11 ¶ 7. As explained above, Petitioner's parole did not expire by its own terms on this date. Petitioner notes that this date corresponds with the categorical mass termination e-mails that Y-Z-L-H- received on April 11, 2025, which state that his parole would terminate "7 days from the date of this notice." See Dkt. 18 Ex. E. To the extent that Respondents intend to argue that this e-mail ended Y-Z-L-H-'s parole, this purported revocation was not an individualized determination and is thus not a lawful termination of Petitioner's parole. See *infra* § IV.D. The categorical termination e-mail that Y-Z-L-H- received in April 2025 contains no individualized determination that his parole should be revoked. See Dkt. 18 Ex. E. By contrast, the notice was one of tens of thousands of e-mails received by noncitizens who had waited to enter the U.S. through an appointment made on the CBP One App, as directed by Respondent DHS under the prior administration. See Miriam Jordan, Jazmine Ulloa, & Hamed Aleaziz, "They Followed the Rules. Now Thousands of Migrants Are Told, 'Leave.'", New York Times (Apr. 14, 2025), available at <https://www.nytimes.com/2025/04/14/us/migrants-trump.html> (describing pro forma termination notices sent to tens of thousands of e-mail addresses, including some U.S.-citizen attorneys, without any individualized consideration of facts or pending legal pathways). Notably, the generic termination message that Y-Z-L-H- received purported not only to deny his parole, but also improperly directed him to leave the country "immediately," despite his pending asylum proceedings. Dkt. 18 Ex. E.

⁶ It seems in many ways that the Respondents acted lawlessly on June 5, 2025 in their zeal to use their "power to achieve the very important goal of delivering the single largest Mass Deportation Program in History" by arresting and detaining Y-Z-L-H-. Having done so before the ink was dry (and the appeal period had elapsed) on the immigration judge's order and then rushing to move

Y-Z-L-H- on June 5, 2025, minutes after his immigration court hearing, was unlawful because it was an implied revocation of his parole that failed to comply with the INA, federal regulations, and Petitioner's due process rights.

When Respondents detained Y-Z-L-H- on June 5, 2025, they provided no written parole revocation, conducted no individualized analysis of whether Petitioner's parole should be revoked, and articulated no explanation for their decision to change course so dramatically and detain and transfer Petitioner based on his individualized circumstances. As a result, their decision to detain Y-Z-L-H- violates the APA. *See* Dkt. 1, Count 2 (¶¶ 68-76); 5 U.S.C. § 706(2)(A) (directing courts to "hold unlawful and set aside agency action" that is arbitrary and capricious); *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (requiring an agency to articulate a "satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made"); *see also Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) (holding that "where a previous bond determination has been made by an immigration judge, no change should be made by a District Director absent a change of circumstance"); *Saravia v. Sessions*, 280 F. Supp. 3d

him out of the district before he could file this habeas with the District Court, it appears they are now trying to belatedly justify his detention. *See* Donald J. Trump, @realDonaldTrump, Truth Social (June 15, 2025 5:43pm),

<https://truthsocial.com/@realDonaldTrump/114690267066155731> ("ICE Officers are herewith ordered, by notice of this TRUTH, to do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History."); Donald J. Trump, @realDonaldTrump, Truth Social, May 11, 2025, 1:03pm,

<https://truthsocial.com/@realDonaldTrump/114490277514269016> ("Our Country has been INVADED by 21,000,000 Illegal Aliens, many of whom are Murderers and Criminals of the Highest Order, and if we aren't allowed to remove them because of a radicalized and incompetent Court System, the USA will quickly and violently become a CRIME RIDDEN THIRD WORLD NATION, NEVER TO SEE GREATNESS AGAIN."). Whether on June 5 Y-Z-L-H-'s parole had expired and DHS unlawfully blocked him from reapplying, or his parole was valid and DHS was attempting to revoke it unlawfully is not entirely clear. In either case, Y-Z-L-H- challenges the results of their actions: his unlawful executive detention.

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1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (noting that DHS has incorporated *Matter of Sugay* “into its practice, requiring a showing of changed circumstances . . . where the previous release decision was made by a DHS officer”).

1. The INA requires parole to be granted or revoked “only on a case-by-case basis”.

The INA provides that DHS “may . . . in [the Secretary’s] discretion parole” an arriving asylum seeker into the United States on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A). Release on parole is an “express exception” to detention and is a “specific provision authorizing release.” *Jennings v. Rodriguez*, 583 U.S. 231, 300 (2018). The plain language of the statute establishes that parole must be both granted and revoked on an individual, case-by-case basis: 8 U.S.C. § 1182(d)(5)(A) directs that parole may be granted “only on a case-by-case basis” and may be terminated “when the purposes of such parole shall . . . have been served.”

The Supreme Court determined in *Jean v. Nelson*, 472 U.S. 846, 856-57 (1985), that the direction that the Attorney General may “in his discretion parole” requires immigration authorities to consider a putative parolee’s individual circumstances in determining whether release on parole is appropriate. *See, e.g., Marczak v. Greene*, 971 F.2d 510, 515 (10th Cir. 1992) (noting *Jean* requires that immigration authorities “make individualized determinations of parole”); *accord. Diaz v. Schiltgen*, 946 F. Supp. 762, 764-65 (N.D. Cal. 1996) (observing that under predecessor version of parole statute, “[t]he District Director is required to ‘make individualized determinations of parole’”). “[I]n each case a district director must determine whether a particular person is likely to flee, and whether that person’s continued detention would be in the public interest.” *Marczak*, 971 F.2d at 515. As the Tenth Circuit explained, construing *Jean*, “as a logical matter, we do not see how an immigration official could base his decision on a general rule, given the Supreme

Court’s requirement that the district director ‘make individualized determinations of parole.’” *Id.* at 515 (emphasis omitted). Unlike the predecessor version of the parole statute, the current version expressly states that parole should be considered on a “case-by-case basis,” 8 U.S.C. § 1182(d)(5)), making it all the clearer that individualized review is required. *See also Doe v. Noem*, 2025 WL 1099602 at *18 (concluding that by the terms of the statute, such termination must attend to the reasons an individual alien received parole”); *Doe v. Noem*, 2025 WL 1505688, at *1 (1st Cir. May 5, 2025) (observing that “[c]ommon sense suggests . . . that parole given only on a case-by-case basis is to be terminated only on such a basis” and pointing to individualized statutory language of § 1182(d)(5)).⁷ By contrast, courts have explained that immigration authorities do “not have the discretion to categorically terminate grants of parole,” *see Doe*, 2025 WL 1099602 at *13; and may not “decide[] parole applications based on broad, non-individualized policies,” *see Marczak*, 971 F.2d at 515; *accord Diaz*, 946 F. Supp. at 765.

2. Any purported revocation of parole by DHS on June 5 was unlawful.

After Petitioner arrived to seek protection in the United States., Respondents released him on parole pursuant to a case-by-case determination under 8 U.S.C. § 1182(d)(5). *See* Dkt. 22 Ex. A. To the extent that Respondents implicitly revoked that parole status on June 5, they did so by failing to provide him with notice of the revocation and an opportunity to respond and without a lawful individualized determination on the facts of his case.

Respondents failed to assess the humanitarian benefit or public interest in Y-Z-L-H-’s case because they failed to consider either the purpose of his parole or the uncontroverted evidence that his detention is not in the public interest because he is neither a flight risk or a danger to the

⁷ The Supreme Court issued a stay of the relief ordered by the district court, without providing any analysis or reasoning. *Svetlana Doe v. Noem*, No. 25-1384 (U.S. May 29, 2025).

community. 8 C.F.R. § 212.5(b)(5); ICE Parole Directive 11002.1, *Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture*, ¶ 6.2 (Dec. 8, 2009) (interpreting “aliens whose continued detention is not in the public interest” to mean that “he or she presents neither a flight risk nor danger to the community”).⁸

Instead, Respondents based their decision on a set of impermissible factors, including their incorrect determination that Y-Z-L-H- was subject to detention under the expedited removal statute and their intent to categorically detain asylum-seekers like Y-Z-L-H- to punish them and deter others from lawfully seeking asylum. *See, e.g.*, E.O. 14165, *Securing Our Borders*, 90 Fed. Reg. 8467, 67-68 (Jan. 20, 2025) (“It is the policy of the United States to take all appropriate action to secure the borders of our Nation through the following means . . . (b) Deterring and preventing the entry of illegal aliens into the United States; (c) Detaining, to the maximum extent authorized by law, aliens apprehended on suspicion of violating Federal or State law, until such time as they are removed from the United States”); *id.* (“The Secretary of Homeland Security shall take all appropriate actions to detain, to the fullest extent permitted by law, aliens apprehended for violations of immigration law until their successful removal from the United States . . . including the termination of the practice commonly known as ‘catch-and-release,’ whereby illegal aliens are routinely released into the United States shortly after their apprehension for violations of immigration law.”); Brittany Gibson & Stef W. Kight, *Scoop: Stephen Miller, Noem tell ICE to supercharge immigrant arrests* (May 28, 2025), Axios, (DHS Secretary “demand[ing] that immigration agents seek to arrest 3,000 people a day” and that the “increased pressure on agents comes as border-crossing numbers have plummeted”), available at

⁸ Available at:

https://www.ice.gov/doclib/foia/policy/11002.1_ParoleArrivingAliensCredibleFear.pdf.

<https://www.axios.com/2025/05/28/immigration-ice-deportations-stephen-miller>; Pres. Donald Trump, @realDonaldTrump, Truth Social (June 15, 2025, 5:43pm) (“ICE Officers are herewith ordered, by notice of this TRUTH, to do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History.”).

DHS failed to provide adequate notice of its intent to revoke Y-Z-L-H-’s parole status, which is particularly required given his steadfast compliance with this parole and its attendant conditions. After DHS made its decision to parole him, federal regulations specify that Y-Z-L-H-’s parole terminates on its expiration date, when he departs the United States, or “upon the accomplishment of the purpose for which parole was authorized.” 8 C.F.R. §§ 212.5(e)(1), (2)(i). If none of these three conditions is met, parole may only be terminated following written notice of an *individualized determination* that “neither humanitarian reasons nor public benefit warrants the continued presence of the [noncitizen] in the United States.” 8 C.F.R. § 212.5(e)(2)(i) (emphasis added). Respondents met none of these requirements when deciding to detain Y-Z-L-H- on June 5. DHS did not provide any advance notice of their intent to revoke his parole on June 5; to the contrary, DHS concealed its intent and covertly stationed its agents outside the immigration court. To this date, Petitioner has received no written notice of parole revocation to justify his detention since June 5, 2025. On that basis alone, Y-Z-L-H-’s current and continued detention is in violation of federal regulations which require individualized determinations of parole revocation to be “upon written notice.” *See* 8 C.F.R. § 212.5(e)(2)(i).

3. If his parole had expired, Petitioner was entitled to have his re-parole application considered prior to his re-detention.

Even if his parole had expired (which Petitioner contests), DHS was required to permit him to renew his parole application; because nothing material has changed in the circumstances of his case, it was arbitrary and capricious and an abuse of discretion to re-detain him. The evidence is

uncontroverted that Y-Z-L-H-'s continuation of parole serves the significant public interest because he is neither a flight risk nor a danger to the community. *See* ICE Parole Directive 11002.1 at ¶ 6.2. Since his grant of parole, Petitioner has conscientiously met the legal requirements of his asylum case and has committed no crimes. Indeed, it was while diligently attending his immigration court hearing that Petitioner was taken into custody by Respondents. Dkt. 14 ¶¶ 8, 15. The only meaningful change in Petitioner's personal facts and circumstances favors renewal of his parole because in the course of his nearly two years of U.S. residency, he has established community ties, complied with his parole requirements, and attended his immigration court hearings. Additionally, the continued parole of Y-Z-L-H- demonstrates humanitarian benefit as the purpose of his parole – to attend his removal proceedings in order to present his claim for protection in the U.S. – has not concluded.

IV. CONCLUSION

For the aforementioned reasons, Petitioner's detention is unlawful and the court should order Respondents to release Y-Z-L-H-.

Dated: June 23, 2025.

/s/ Stephen W Manning

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