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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Y-Z-L-H, an adult,

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

Petitioner,

**SUR-REPLY IN SUPPORT OF
RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS**

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,¹**

Respondents.

¹ For “core” habeas challenges brought under 28 U.S.C. § 2241, that is, challenges to present physical custody, the only proper respondent is the immediate custodian of the habeas petitioner, “not the Attorney General or some other remote supervisory

In accordance with the parties' agreement and the Court's June 20, 2025, Order, ECF 24, Respondents submit this sur-reply to address issues raised by Count Two of Petitioner's petition for habeas corpus.

Count Two asserts an Administrative Procedure Act ("APA") claim challenging Petitioner's detention. Among other things, the claim contends Petitioner has been unlawfully detained after Respondents "categorically revok[ed] his] parole . . . without consideration of his individualized facts and circumstances." Pet. ¶ 72. It also claims that Respondents have "abused their discretion" by detaining Petitioner "because there have been no changes to his facts or circumstances since the agency made its initial determination to parole him into the United States." Pet. ¶ 75.

This Court should deny Count Two. First, the Court lacks jurisdiction to review Count Two's challenge to discretionary decisions concerning Petitioner's parole. And even if the Court had jurisdiction, Petitioner's continued detention is lawful under the INA and is not in violation of the APA because Petitioner is an "arriving alien" subject to expedited removal.

official." *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Thus, the United States Attorney General, the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"), and the Secretary of Homeland Security are not proper respondents to this core habeas petition, because none of those officials have any immediate responsibility for Petitioner's detention. *See id.* at 440 n.13 ("[T]he proper respondent is the person responsible for maintaining – not authorizing – the custody of the prisoner.").

BACKGROUND

When Petitioner presented himself at a port of entry, he was an “arriving alien” who was eligible for expedited removal under 8 U.S.C. § 1225(b)(1)(A)(i) and 8 C.F.R. § 235.3(b)(1)(i). ECF 11 (“Wilson Decl.”), ¶ 4, Ex. 1 at 1. Petitioner was paroled into the United States under 8 U.S.C. § 1182(d)(5) for a temporary period. *Id.* ¶ 4.

On April 11, 2025, Petitioner received a Notice of Termination of Parole (“April 2025 Notice”). ECF 18 (“Stopher Decl.”), Ex. E. That Notice states DHS is “now exercising its discretion to terminate [Petitioner’s] parole” and that his parole would be terminated on April 18, 2025, unless “it expires sooner.” *Id.* Petitioner’s parole ended on April 18, 2025. *See* Wilson Decl. ¶ 7.

In their June 12, 2025, Response to Petition for Writ of Habeas Corpus (“Response”), ECF 10, Respondents stated that Petitioner’s parole terminated automatically under 8 C.F.R. § 212.5(e)(1) and that his parole was “authorized only until April 18, 2025.” ECF 10 at 12-13. These statements were based on ICE’s understanding of the facts at that time. After reviewing Petitioner’s June 17, 2025, submissions, and upon further investigation, Respondents acknowledge that when Petitioner was paroled in July 2023, his parole was set to expire on July 19, 2025, but that his parole was later terminated effective April 18, 2025.

ARGUMENT

A. The Court Lacks Jurisdiction to Review the Discretionary Decision to Revoke Parole.

Count Two challenges the April 2025 termination of Petitioner's parole. *E.g.*, Pet. ¶ 72. However, the decision to grant or revoke parole is a discretionary decision under 8 U.S.C. § 1182(d)(5)(A). That statutory provision states:

The "Secretary of Homeland Security may" in her "discretion parole into the United States temporarily under such conditions as [s]he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit² any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States."

8 U.S.C. § 1182(d)(5)(A).

Under 8 U.S.C. § 1252(a)(2)(B)(ii), "no court shall have jurisdiction to review . . . any other decision or action . . . the authority for which is specified . . . to be in the discretion of the . . . Secretary."

Accordingly, the discretionary decision to terminate Petitioner's parole is unreviewable by this Court. *See Hassan v. Chertoff*, 593 F.3d 785, 790 (9th Cir. 2010) (finding that "district court properly rejected [plaintiff's] argument

²Page 12 of the Response states "But the fact that Petitioner was granted temporary parole for humanitarian reasons alters neither his arriving alien status nor the result in this case." Instead, that sentence should state: But the fact that Petitioner was granted temporary parole Section 1182(d)(5)(A) alters neither his arriving alien status nor the result in this case.

that it had jurisdiction to review the revocation of advance parole as an ultra vires”); *Syed v. Mayorkas*, No. 3:23-cv-00083-IM, 2023 WL 6596330, at *3 (D. Or. Oct. 10, 2023) (citing *Vasquez Romero v. Garland*, 999 F.3d 656, 665 (9th Cir. 2021)) (“[P]arole decisions are unreviewable by federal courts.”); *cf. Garcia v. Reynaud*, No. 3:22-cv-00276-IM, 2023 WL 3073501, at *4 (D. Or. Apr. 25, 2023) (noting that “the Ninth Circuit has applied the jurisdictional bar found in Section 1252(a)(2)(B)(i) to agency determinations made outside of the context of removal proceedings”). Even if § 1252(a)(2)(B)(ii) does not foreclose judicial review of the discretionary termination of parole, the APA separately forecloses judicial review. *See* 5 U.S.C. § 701(a)(2) (foreclosing review of agency action “committed to agency discretion by law”); *see also Syed*, 2023 WL 6596330, at *3 (finding § 701(a)(2) prevents the court from reviewing DHS’s decision to deny parole).

B. ICE’s Detention of Petitioner is Lawful under 8 U.S.C. § 1225(b) Because He is an “Arriving Alien” and his Parole Ended on April 18, 2025.

Petitioner misconstrues ICE’s detention authority as one that requires Petitioner to be in expedited removal proceedings before being subject to mandatory detention. But, as discussed in the Response, because Petitioner is an “arriving alien,” ICE has authority to detain a Petitioner even though he is currently in removal proceedings under 8 U.S.C. § 1229(a).

Petitioner argues that he is not subject to expedited removal or mandatory detention because he is not an “arriving alien” and because he was paroled. He is incorrect on both counts.

First, Petitioner asserts that he has been in the United States for almost two years. Based on this fact, he argues that he cannot be deemed an “arriving alien.” Reply at 12. But, once Petitioner’s parole was terminated, he returned “to the custody from which he was paroled[.]” 8 U.S.C. § 1182(d)(5)(A). The statute requires that, “thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” *Id.*; see 8 U.S.C. § 1101(a)(13)(B) (“An alien who is paroled under section 1182(d)(5) of this title . . . shall not be considered to have been admitted.”). In other words, despite his nearly two-year presence within the United States, once his temporary parole terminated, Petitioner returned to the same position he was in when he arrived; that is, an “arriving alien” subject to mandatory detention under 8 U.S.C. § 1225(b).

Second, Petitioner argues that his temporary parole, which was originally set to expire on July 19, 2025, has not yet terminated because the April 18, 2025, termination was not based on an “individualized determination.” Reply at 14 n.5, 16–17. According to Petitioner, § 1182(d)(5)(A) establishes that parole must be both granted and revoked on an individual, case-by-case basis. The plain text of that statute does not support this interpretation.

Section 1182(d)(5)(A) states the “Secretary of Homeland Security may . . . in [her] discretion parole into the United States temporarily under such conditions as [s]he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States[.]” But the statute imposes no such limitations on the *terminations* of parole, other

than that Secretary’s exercise of “discretion,” on denying parole or determining that in her “opinion” the “purposes of such parole . . . have been served[.]” 8 U.S.C. § 1182(d)(5)(A). Congress’s inclusion of a case-by-case requirement for granting—but not terminating—parole indicates parole terminations need not be individualized.³

Finally, Petitioner appears to argue that, even if his parole expired, “DHS was required to permit him to renew his parole application[.]” Reply at 19–20. But Petitioner cites no authority that obligates DHS to make a determination on a renewed parole application.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition as to Count Two.

Dated this 25th day of June, 2025.

Respectfully submitted,

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District of Oregon

/s/ Joshua Keller
JOSHUA KELLER
Assistant United States Attorney
Attorneys for Respondents

³ Although Petitioner asserts that, on June 5, 2025, he did not receive notice of parole termination under 8 C.F.R. § 212.5(e)(2)(i)), he does not contest that he received adequate notice of parole termination on April 11, 2025. Indeed, he admits that he received the April 2025 Notice. See Reply at 14 n.5.