UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JHON RODRIGUEZ ORELLANA,

Petitioner,

-against-

LaDeon FRANCIS, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Todd LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement; Kristi NOEM in her official capacity as Secretary of Homeland Security; Pam BONDI, in her official capacity as Attorney General,

Respondents.

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Civil Action No.
25-cv-4212

(Merchant, J.)

RESPONDENTS' REPLY IN FURTHER SUPPORT OF THEIR MOTION FOR RECONSIDERATION

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September 15, 2025

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PRELIMINARY STATEMENT

Respondents respectfully submit this reply memorandum of law in further support of their motion for reconsideration of the Court's August 19, 2025 Memorandum and Order ("Order") granting the Petition for Writ of Habeas Corpus ("Petition"). For the reasons in Respondents' opening memorandum of law ("Mem.") and the reasons set forth below—among them the recent reversal of a district court decision upon which the Court and Petitioner relied—the Court should grant the motion for reconsideration.

ARGUMENT

I. PETITIONER FAILS TO OVERCOME RESPONDENTS' SHOWING THAT RECONSIDERATION IS WARRANTED

A. Section 1252(a)(2)(B)(ii) Bars Judicial Review of Parole Termination

As Respondents argued in their opening brief, the Order incorrectly declined to address whether 8 U.S.C. § 1252(a)(2)(B)(ii) bars jurisdiction over the discretionary decision to terminate parole and instead assumed it *arguendo*. *See* Mem. at 4-6.[1] The Court should address this threshold jurisdictional question and find that, because 8 U.S.C. § 1182(d)(5) (the "Parole Statute") expressly renders parole termination discretionary, the Court lacks jurisdiction.

Petitioner offers no response to Respondents' argument that the Court should have reached the jurisdictional issue. Instead, he asserts, without elaboration, that the authority Respondents cited for the proposition that parole termination is jurisdictionally barred "lack the rigorous textual analysis . . . required under [*Ozturk*]." *See* Mem. at 5; Petitioner's Response in Opposition to Respondents' Motion for Reconsideration ("Opp.") at 2. Petitioner misstates the *Ozturk* standard. *Ozturk* requires only that the Parole Statute's "language specifically render[] [the] determination

[1] Citing *Ozturk v. Hyde*, 136 F.4th 382, 395 (2d Cir. 2025); *Samirah v. O'Connell*, 335 F.3d 545, 549 (7th Cir. 2003); *Hassan v. Chertoff*, 593 F.3d 785, 789 (9th Cir.) (per curiam) (similar), *cert. denied*, 561 U.S. 1007 (2010).

[discretionary]" in order to bar jurisdiction. *See Ozturk*, 136 F.4th at 395. Here, the language "*in the opinion of the Secretary*" is clearly discretionary and satisfies *Ozturk*. *See* Mem. at 5; 8 U.S.C. § 1182(d)(5).

Respondents also established that, although § 1252(a)(2)(B)(ii) does not bar courts from reviewing an agency's compliance with mandatory, non-discretionary procedures, that narrow exception does not apply here.[2] *See* Mem. at 5. Notwithstanding his allegations regarding the procedure, what Petitioner actually seeks is reversal of agency's discretionary parole termination and release from custody. *See* Pet. at 25 (seeking "writ of habeas corpus ordering Respondents to immediately release Petitioner from custody without restraints on his liberty"). That is jurisdictionally barred.[3] The Court should address the jurisdictional issue and find that § 1252(a)(2)(B)(ii) requires dismissal of Count 3 for lack of jurisdiction.

B. Respondents Complied with Statutory and Regulatory Standards

As Respondents established in their opening memorandum, the Order found arbitrary and capricious conduct based on two premises, both of which were incorrect. *First*, it found that Respondents provided inadequate notice because they did not "engage[] in an individualized analysis to determine whether the purpose of Petitioner's parole had been accomplished" or "conclude[] that humanitarian reasons and the public benefit no longer warranted Petitioner's presence in the United States." Order at 9.[4] Petitioner argues the same in his Opposition. Opp. at

[2] As discussed *infra*, the non-existent procedural "defects" alleged by Petitioner constitute an attempt to circumvent the jurisdictional bar and seek district court review of a discretionary agency decision.

[3] Petitioner also argues in opposition that Respondents failed to cite "controlling authority" demonstrating that the Parole Statute's parole-termination procedure is discretionary rather than mandatory. *See* Opp. at 2-3. The Court declined to reach the issue. *See* Order. at 6.

[4] The Court also found that Respondents failed to provide sufficient evidence that Petitioner received *any* notice "let alone adequate notice" because they failed "specify[] the precise contents of the email" and failed to a "attach a copy" of the email. *See* Order at 11. However, as Respondents argued, they did provide adequate evidence of notice. *See* Mem. at 7; Declaration of Graham S. Dudley ("Dudley Decl.") ¶ 3; Supplemental Declaration of Michael Charles dated August 14, 2025) ("Supp. Charles Decl.") ¶ 7. Further, although it was not in the record at the time the Order

3-4. That is incorrect—the relevant regulation governing parole termination merely requires "written notice," not an individualized reason. *See* Mem. at 7-8. (citing 8 C.F.R. § 212.5(e)). Respondents' position is supported by last week's decision in *Doe v. Noem*, -- F.4th --, 2025 WL 2630395 at *8 (1st Cir. Sept. 12, 2025), which reversed a district court decision that the Court relied on. Order at 8. The First Circuit held that the Parole Statute does *not* require that parole termination decisions be made on an individual, case-by-case basis; instead, it permits *en masse* parole termination. *Id.* The Court reasoned that

> the statutory text … reflects a deliberate choice on the part of Congress to require the Secretary to implement a case-by-case approach to granting parole, but not to end such grants. The statutory text, therefore, favors an interpretation that the "case-by-case" requirement only limits the Secretary's discretion to grant parole.

Id. The First Circuit's reasoning directly contradicts this Court's holding that Immigration and Customs Enforcement ("ICE") acted arbitrarily and capriciously by failing to terminate parole on a case-by-case basis.[5]

Second, Respondents established that the Court erred in finding arbitrary and capricious agency action based on an inapposite regulation, 8 C.F.R. § 235.3(b)(6). *See* Mem. at 7-8; Order at 11.[6] The regulation that governs parole termination is 8 C.F.R. § 212.5(e), which permits DHS to terminate an alien's parole in its discretion. 8 C.F.R. § 235.3(b), by contrast, governs expedited removal.

Petitioner concedes—as he must—that § 235.3(b)(6) does not apply to parole termination. *See* Opp. at 4. He argues that the regulation is nevertheless "relevant" to the parole termination

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was issued, Respondents have submitted an additional declaration attaching the text of the email notification. *See* Second Declaration of Graham S. Dudley ("Second Dudley Decl.").

[5] The Order stated that "Respondents have admittedly failed, as the statute requires, to make a 'case-by-case' determination as to the revocation of Petitioner's parole." Order at 10.

[6] The Order mistakenly held that "§ 235.3(b)(6) outlines the process that DHS itself asserts it must follow when it revokes a particular person's parole." *See* Order at 11.

because Respondents initiated expedited removal after his parole was terminated. *See id.* Petitioner is mistaken. Neither § 212.5(e) nor § 235.3(b) provides an avenue for an alien to challenge the termination of his parole. *See generally* 8 C.F.R. §§ 235.3(b); 212.5(e). Instead, § 235.3(b) provides an alien who is *presently* on parole a reasonable opportunity to prove that fact to the examining immigration officer prior to expedited removal. *See* 8 C.F.R. § 235.3(b)(6). Here, however, Petitioner's parole status is not in dispute. The record conclusively demonstrates that Petitioner had been paroled, but that his parole had been terminated, on notice, months prior to initiation of expedited removal, rendering the procedural framework in § 235.3(b)(6) inapplicable. *See* Dudley Decl. ¶ 3; Charles Decl. ¶¶ 7-8.[7] Thus, the Court, on reconsideration, should find that there was no arbitrary or capricious agency action.

C. The APA Claim Is Barred

Respondents established that the Court should have denied Count 3—an APA claim—on the threshold ground that the APA is not the applicable in this habeas case. *See* Mem. at 11 (citing *Trump v. J.G.G.*, 145 S. Ct. 1003 (2025)). Petitioner argues that *J.G.G.* addresses only challenges under the Alien Enemies Act ("AEA"), and "does not control the claims presented here under the Immigration and Nationality Act." *See* Opp. at 5. Petitioner reads *J.G.G.* too narrowly. Significantly, the Supreme Court relied on decisions that did not involve the AEA, thus demonstrating that *J.G.G.* is not limited to AEA cases. *See, e.g.*, *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953) (Immigration and Nationality Act); *Peyton v. Rowe*, 391 U.S. 54, 67 (1968) (state prisoner). Because Petitioner challenges his confinement, his claims must be brought in habeas, and his APA claims should be dismissed. *Raspoutny v. Decker*, 708 F. Supp. 3d 371, 381 (S.D.N.Y. 2023) (immigration detention case). Furthermore, the Order's lack of a discussion of this threshold

[7] *See also* Second Dudley Decl. ¶¶ 3-4.

question is itself grounds for reconsideration.

D. Petitioner Failed to Identify a Protected Liberty Interest

Respondents established that the Order failed to address another threshold question: whether Petitioner can demonstrate a protected liberty interest in the discretionary benefit of parole. *See* Mem. at 11-12 (citing cases). Respondents established that he cannot. *Id.* Petitioner offers no response to these arguments. This warrants reconsideration and denial of Count 3.

E. Remand Is the Only Proper Remedy

Respondents established that the proper remedy under the APA to cure any procedural defect is remand to the agency; immediate release was an inapposite remedy. Mem. at 12-13. Petitioner argues that that under *Guertin v. United States*, 743 F.3d 382 (2d Cir. 2014), "the remand principle "is not absolute." Opp. at 5. But *Guertin* identified only one exception to the rule, *i.e.*, where there is "compelling evidence" in the record that the plaintiff or petitioner would prevail on remand. *Guertin*, 743 F.3d at 388. Petitioner does not argue, even in conclusory terms, that this narrow exception applies here. If the Court remands to ICE, any procedural defects the Court finds could be cured. Petitioner also relies on the incorrectly decided *Mata Velasquez v. Kurzdorfer*, No. 25-cv-493. 2025 WL 1953796 (W.D.N.Y. July 16, 2025), which made no mention of the APA. Thus, if *arguendo* there was a procedural defect, the Court should remand to ICE.

CONCLUSION

For the foregoing reasons and the reasons set forth in their opening memorandum, Respondents respectfully request that the Court reconsider its Order granting the Petition for Writ of Habeas Corpus and either (i) deny Plaintiff's APA claim for parole termination (Count 3) as unreviewable or for failing to state a claim, and also deny the rest of the claims for the reasons set forth in the Opposition and letter dated August 14, 2025; or (ii) alternatively, if the Court does not deny the Petition outright, reconsider the release under the APA and instead remand to DHS to

address any deficiencies in its parole termination decision; and (iii) grant such other further relief that the Court deems just and proper.

Dated: Brooklyn, New York
September 15, 2025

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