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10 **IN THE UNITED STATES DISTRICT COURT**
 11 **FOR THE DISTRICT OF ARIZONA**

12 Artyk Osmonaliev,

13 Petitioner,

14 v.

15 John Cantu, *et al.*,

16 Respondents.
 17

No. 2:25-cv-03531-JJT-DMF

**RESPONSE TO PETITION FOR
 WRIT OF HABEAS CORPUS**

18 Respondents, by and through counsel, respond to the Petition for a Writ of Habeas
 19 Corpus (Doc. 1). Petitioner Artyk Osmonaliev is a national of Kyrgyzstan who came to the
 20 United States without entry documents. He was determined to be inadmissible at a port of
 21 entry but was paroled into the United States pending his removal. He came into DHS
 22 custody most recently after he was arrested by Phoenix police, and he was denied bond as
 23 an “arriving alien.” In this habeas petition, Petitioner seeks a Court order directing ICE to
 24 immediately release him from immigration detention, and to enjoin Respondents from
 25 removing him from the District of Arizona pending disposition of this action. Respondents
 26 respectfully request that this Court deny the Petition because Petitioner has been lawfully
 27 detained and may not be released on bond. For these reasons, which are explained fully
 28 below, the Court should deny the Petition.

1 **I. Factual Background.**

2 Petitioner Artyk Osmonaliev, a native of Kyrgyzstan, presented himself for
3 admission at Nogales, Arizona on May 22, 2023. Declaration of Christopher Apodaca,
4 Deportation Officer, Enforcement and Removal Operations, attached as Exhibit A, at ¶¶
5 4–5.¹ At that time, he did not have documents that would entitle him to enter the United
6 States. *Id.* at ¶5. That same day, Immigration and Customs Enforcement (“ICE”) placed
7 Petitioner into removal proceedings under the Immigration and Nationality Act (“INA”)
8 Section 212(a)(7)(A)(i)(I). *Id.* at ¶ 6. At that time, ICE paroled Petitioner into the United
9 States under 8 U.S.C. § 1182(d)(5). *Id.* at ¶ 6; Doc. 1 at 49. Petitioner remained at liberty
10 until he was arrested by state police in Phoenix on September 9, 2025, at which point, he
11 was returned to federal custody the next day. *Id.* at ¶¶ 7–8. Petitioner requested a bond
12 hearing two weeks later, but the immigration court denied his request on the grounds that
13 Petitioner was ineligible for bond as an arriving alien. *Id.* at ¶¶ 10–11.

14 **II. Argument.**

15 **A. Petitioner’s detention is lawful because he is an applicant for admission.**

16 Petitioner argues that his detention is unlawful because Respondents denied him a
17 bond hearing based on a finding that he was categorically ineligible for release. Petitioner
18 argues that denying him a bond hearing with individualized findings constitutes a violation
19 of his due process rights. Further, Petitioner argues that the revocation of his parole is
20 arbitrary and capricious, and it may be reversed under the Administrative Procedure Act.
21 However, Petitioner has no due process right to a bond hearing, and ICE’s decision to
22 revoke his parole was not arbitrary and capricious, nor is the decision reviewable by this
23 Court.

24 Federal immigration law groups aliens who come to the United States into two broad
25 categories: aliens who are admissible into the United States, *see* 8 U.S.C. §§ 1181–1189

26
27 ¹ Respondent claims that he arrived on September 21, 2022. Doc. 1 at ¶ 49.
28 However, the copy of the Notice to Appear that Petitioner provided states that he presented
himself to immigration officials in Nogales on May 22, 2023. Doc. 1, Exhibit A at 1.
Petitioner’s signature appears on the certificate of service showing that he was personally
served on that date. *Id.* at 2.

1 (governing which aliens are admissible), and aliens who are not. An alien who does not
2 have documentation authorizing entry into the United States is inadmissible. 8 U.S.C. §
3 1182 (a)(7)(A)(i). A federal immigration officer must inspect all aliens who want to enter
4 United States territory to determine whether the aliens are admissible. 8 U.S.C. §
5 1225(a)(3) (“All aliens . . . who are applicants for admission or otherwise seeking
6 admission or readmission to or transit through the United States *shall be inspected* by
7 immigration officers.”) (emphasis added). If, during an inspection, an immigration officer
8 determines that an alien is “not clearly and beyond a doubt entitled to be admitted,” the
9 officer must detain the alien for removal proceedings. 8 U.S.C. § 1225(b)(2)(A).

10 Even an otherwise-inadmissible alien may be temporarily paroled into the United
11 States for “urgent humanitarian reasons,” if the Secretary of Homeland Security chooses
12 to do so. 8 U.S.C. § 1182(d)(5). However, if the Secretary exercises his discretion in this
13 way, the alien is not considered admitted to the United States and, if and when the Secretary
14 revokes parole, “the alien shall forthwith return or be returned to the custody from which
15 he was paroled and thereafter his case shall continue to be dealt with in the same manner
16 as that of any other applicant for admission to the United States.” *Id.* The Secretary’s
17 decision to revoke parole is not reviewable by any court. 8 U.S.C. § 1226(e).

18 Aliens detained under 8 U.S.C. § 1225(b)(2) may be detained through the
19 completion of their removal proceedings without bond, *Jennings v. Rodriguez*, 583 U.S.
20 281, 300–01, 305–06 (2018), and immigration judges are prohibited from releasing such
21 aliens on bond. *See* 8 C.F.R. § 1003.19(h)(2)(i) (“[A]n immigration judge may not
22 redetermine conditions of custody imposed by the Service with respect to . . . [a]rriving
23 aliens in removal proceedings, including aliens paroled after arrival pursuant to [8 U.S.C.
24 § 1182(d)(5).]”); *see also* 8 C.F.R. § 1001.1(q) (defining an “arriving alien” as “an
25 applicant for admission coming or attempting to come into the United States at a port-of-
26 entry . . . even if paroled pursuant to [8 U.S.C. § 1182(d)(5)], and even after any such parole
27 is terminated or revoked”).

28 Petitioner presented himself for inspection at the Nogales port of entry. Exhibit A

1 at ¶ 5. Immigration officials inspected him and determined that he was inadmissible
2 because he did not have valid entry documents. *Id.* at ¶ 6; Doc. 1, Exhibit A at 1. The
3 officials immediately designated him for removal as an “arriving alien” and granted him
4 parole into the United States. Exhibit A at ¶ 6; Doc. 1, Exhibit A at 1. ICE then revoked
5 his parole and detained him again later, *see* Exhibit A at ¶ 9, but his parole did not alter his
6 status as an “arriving alien,” nor as an “applicant for admission.” 8 U.S.C. § 1182(d)(5); 8
7 C.F.R. § 1003.19(h)(2)(i). In fact, when ICE revoked Petitioner’s parole, the law required
8 them to “return [him] . . . to the custody from which he was paroled”—that is, mandatory
9 detention under 8 U.S.C. § 1225(b)(2)(A). 8 U.S.C. § 1182(d)(5). Petitioner’s detention is
10 therefore required by law, and it thus cannot constitute a violation of his due process rights.

11 Petitioner’s various arguments to the contrary are inapposite. Petitioner cites to
12 *Zadvydas v. Davis*, 533 U.S. 678 (2001) repeatedly to support his argument that all
13 immigration detention must be “reasonably related to the purpose of ensuring a
14 noncitizen’s removal from the United States.” *See, e.g.*, Doc. 1 at ¶ 63. However, Petitioner
15 misrepresents the holding of *Zadvydas*. *Zadvydas* stands only for the proposition that an
16 alien *under a final order of removal* may not be detained indefinitely. *See Zadvydas*, 533
17 U.S. at 689. Petitioner concedes that he has not been ordered removed yet, *see* Doc. 1 at ¶
18 55, so the rule laid out in *Zadvydas* does not apply to him. In fact, the Supreme Court has
19 clarified that *Zadvydas* does not apply to detention under 8 U.S.C. § 1225(b), and that
20 Section 1225(b) detention without bond is constitutional. *Jennings*, 583 U.S. at 299–301.

21 Petitioner likewise makes extensive arguments about whether “[n]oncitizens who
22 were not deemed ‘arriving aliens’ at the time of inspection” may nonetheless be considered
23 subject to Section 1225(b)(2) mandatory detention. *See* Doc. 1 at ¶¶ 31–41. However,
24 Respondent fails to recognize that he *was* deemed an “arriving alien” at the time he was
25 inspected. Doc. 1, Exhibit A at 1. These arguments therefore do not apply to him and do
26 not justify his release.

27 The rest of Petitioner’s arguments amount to a challenge to ICE’s exercise of
28 discretion to revoke his parole, which this court has no jurisdiction to review. Petitioner

1 argues that he was constitutionally entitled to an “individualized determination of whether
2 he is a safety or flight risk” under the Fifth Amendment. Doc. 1 at ¶ 67. But Petitioner
3 points to no authority constraining ICE’s discretion in that way, and several courts have
4 held that there is no liberty interest in Section 1182(d)(5) parole, so its revocation does not
5 implicate due process concerns. *Wong v. Immigr. and Naturalization Serv.*, 373 F.3d 952,
6 967–68 (9th Cir. 2004); *see also Gisbert v. United States Att’y Gen.*, 988 F.2d 1437, 1443
7 (5th Cir. 1993); *Lorenzo v. Taylor*, 2018 U.S. Dist. LEXIS 32803 at *2–3 (D.N.J. February
8 28, 2018). Inadmissible parolees “[have] no right to be at large” in the United States, so
9 Petitioner cannot claim that he has any liberty interest in remaining outside of immigration
10 custody. *See Ofosu v. McElroy*, 98 F.3d 694, 700 (2d. Cir. 1996). In other words, because
11 Petitioner cannot state a valid claim under the Fifth Amendment, all he has done is ask this
12 Court to review the decision to revoke his parole, which this court cannot do. 8 U.S.C. §
13 1226(e). Because this Court has no jurisdiction to entertain these claims, it should deny the
14 petition.

15 Notably, seeking judicial review under the Administrative Procedure Act (APA) is
16 not properly sought through a habeas petition. *See Flores-Miramontes v. INS.*, 212 F.3d
17 1133, 1140 (9th Cir. 2000) (“For purposes of immigration law, at least, ‘judicial review’
18 refers to petitions for review of agency actions, which are governed by the Administrative
19 Procedure Act, while habeas corpus refers to habeas petitions brought directly in district
20 court to challenge illegal confinement.”).

21 Further, the APA permits judicial review of an agency action only if “there is no
22 other adequate remedy in a court[.]” *see* 5 U.S.C. § 704, which means that a federal court
23 lacks jurisdiction over an APA claim if another statute would allow a court to review the
24 allegedly unlawful agency action, *See Coos Cty. Bd. of Cty. Cm’rs v. Kempthorne*, 531
25 F.3d 791, 810 (9th Cir. 2008) (citing 5 U.S.C. § 704); *Brem-Air Disposal v. Cohen*, 156
26 F.3d 1002, 1004–05 (9th Cir. 1998) (“Under APA § 10(c), codified at 5 U.S.C. § 704,
27 federal courts lack jurisdiction over APA challenges whenever Congress has provided
28 another ‘adequate remedy.’ * * * ‘If a plaintiff can bring suit against the responsible federal

1 agencies under [another statute], this action precludes an additional suit under the APA.’ ”
2 (quoting *Env'tl. Def. Fund v. Tidwell*, 837 F. Supp. 1344, 1356 (E.D.N.C. 1992))).

3 Petitioner’s challenge to the revocation of his parole is quintessentially a challenge
4 to his detention now that his parole has been revoked and the relief he seeks is release from
5 detention. An adequate alternative to this APA challenge to his alleged illegal confinement
6 has been brought with this petition for writ of habeas corpus. Because his petition for writ
7 of habeas corpus is adequate to challenge his detention, there exists no APA jurisdiction to
8 challenge his detention pursuant to the revocation of his previously granted discretionary
9 parole into the United States. *See Lucas R. v. Azar*, No. CV185741DMGPLAX, 2018 WL
10 10483438, at *6 (C.D. Cal. Sept. 6, 2018).

11 Finally, to the extent Petitioner’s challenge under the Administrative Procedure Act
12 (“APA”) is not barred under 8 U.S.C. § 1226(e) or otherwise improper, it must fail because
13 Petitioner was not prejudiced by the procedural error that he alleges. Petitioner argues that
14 ICE’s failure to follow its procedures in revoking his parole justifies his release. However,
15 to prevail on an APA challenge, a petitioner must show that the alleged error was not
16 harmless. *Cal. Wilderness Coalition v. Dep’t of Energy*, 631 F.3d 1072, 1108 (9th Cir.
17 2011). Here, Petitioner has made no such showing. The error that Petitioner alleges is that
18 ICE did not consider whether “neither humanitarian reasons nor public benefit” justify his
19 continued parole. Doc. 1 at ¶ 76. First, as discussed above, Petitioner has neither a right
20 nor a cognizable liberty interest in being at large in the United States, so Petitioner cannot
21 point to any particular harm done to him. Second, even if Petitioner’s redetention were a
22 legally cognizable harm, ICE clearly determined that Petitioner’s parole was no longer
23 justified when it took him from the custody of the Phoenix police department. The fact that
24 Petitioner was arrested by state police clearly has “a rational connection” to ICE’s decision
25 to revoke his parole. *See* Doc. 1 at ¶ 77 (citing *Dep’t of Com. v. New York*, 139 S. Ct. 2551,
26 2569 (2019)) Because no court may review ICE’s exercise of discretion to revoke parole,
27 8 U.S.C. § 1226(e), this Court may not provide relief based on its own independent
28 analysis.

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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2025, I electronically transmitted the attached documents by Electronic Mail to :

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