

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

AARON RAMIREZ,

Petitioner,

v.

SESSIONS, et al.,

Respondents.

Case No.: 17cv1161 MMA (JLB)

**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS;**

[Doc. No. 1]

**DENYING AS MOOT MOTION FOR
PRELIMINARY INJUNCTION**

[Doc. No. 2]

Petitioner Aaron Ramirez has filed a petition for writ of habeas corpus (“petition”) pursuant to Title 28, United States Code, section 2241, seeking his release from the custody of the Department of Homeland Security, Immigration and Customs Enforcement (“ICE”).¹ See Doc. No. 1. In addition, Petitioner moves the Court for an order preliminarily enjoining his detention by ICE, pending a final resolution of his

¹ District courts have jurisdiction to adjudicate habeas petitions brought by aliens challenging executive detention. *Trinidad y Garcia v. Thomas*, 683 F.3d 952, 956 (9th Cir. 2012) (citing *INS v. St. Cyr*, 533 U.S. 289, 301-03 (2001)).

1 petition. *See* Doc. No. 2. The government filed a return to the petition, to which
2 Petitioner replied. *See* Doc. Nos. 9, 11. For the reasons set forth below, the Court
3 **DENIES** the petition and **DENIES AS MOOT** Petitioner’s motion for injunctive relief.²

4 BACKGROUND

5 On March 6, 2017, Petitioner, a Mexican National and Legal Permanent Resident
6 of the United States, applied for permission to enter into the United States from Mexico
7 through the Otay Mesa, California, Port of Entry. Petitioner was driving a vehicle
8 bearing California license plates. A narcotics detection dog alerted to the rear
9 undercarriage area of the vehicle. During the secondary inspection of the vehicle,
10 officers discovered twenty-five packages, which field-tested positive for cocaine and
11 methamphetamine. During a post-arrest interview, Petitioner admitted knowledge of the
12 drugs within the vehicle, and stated he was to be paid \$3,000 to deliver the drugs to San
13 Diego.

14 On March 15, 2017, ICE issued a Notice to Appear charging Petitioner as being
15 removable due to “reason to believe [he] is or has been an illicit trafficker in any
16 controlled substance or in any listed chemical (as defined in section 102 of the Controlled
17 Substances Act),” in violation of Section 212(a)(2)(C)(i) of the Immigration and
18 Nationality Act. *See* Pet. Ex. A. In support of the charge, ICE relied on Petitioner’s
19 March 6, 2017 arrest. Petitioner has been detained in ICE custody since his release on
20 bond in the underlying criminal proceedings.

21 DISCUSSION

22 Petitioner argues that ICE lacks the statutory authority to detain him because he
23 was paroled into the United States under 8 U.S.C. § 1182(d)(5)(A). This section of the
24

25
26 ² The Court need not hold an evidentiary hearing if the issues can be conclusively decided on the basis
27 of the record. *See Blackledge v. Allison*, 431 U.S. 63, 76 (1977); *see also United States v. Mejia-Mesa*,
28 153 F.3d 925, 929 (9th Cir. 1998). Here, the record conclusively establishes that Petitioner is not
entitled to the writ he seeks, therefore an evidentiary hearing is neither warranted nor required under 28
U.S.C. § 2243.

1 Immigration and Nationality Act (“INA”) provides, in pertinent part:

2 The Attorney General may . . . in his discretion parole into the United States
3 temporarily under such conditions as he may prescribe only on a case-by-case
4 basis for urgent humanitarian reasons or significant public benefit any alien
5 applying for admission to the United States, but such parole of such alien shall
6 not be regarded as an admission of the alien and when the purposes of such
7 parole shall, in the opinion of the Attorney General, have been served the alien
8 shall forthwith return or be returned to the custody from which he was paroled
9 and thereafter his case shall continue to be dealt with in the same manner as
10 that of any other applicant for admission to the United States.

11 8 U.S.C. 1182(d)(5)(A). The statute permits the Attorney General to parole³ aliens into
12 the United States for, among other purposes and as relevant here, criminal prosecution.
13 *See Matter of Badalamenti*, 19 I. & N. Dec. 623, 626 (1988) (“It is clear from the
14 legislative history of this provision that Congress intended to empower the Attorney
15 General to parole an alien for the purpose of prosecution.”).

16 By the statute’s own terms, parole under Section 1182(d)(5)(A) is temporary, and
17 subject to revocation or termination. Pursuant to 8 C.F.R. § 212.5(e)(1), the applicable
18 implementing regulation, the parole of an alien “shall be automatically terminated
19 without written notice . . . at the expiration of the time for which parole was authorized,”
20 when parole was initially granted. In this case, the expiration date was recorded on the I-
21 94 Arrival/Departure Record created at the time of Petitioner’s apprehension at the
22 border. According to the I-94 card, Petitioner was paroled into the United States “until
23 April 6, 2017.” *See* Pet. Ex. F. Petitioner’s parole would have automatically terminated
24 on April 6, 2017. However, Petitioner’s parole terminated prior to that date.

25 As noted above, ICE served Petitioner with a Notice to Appear on March 15, 2017,
26 charging him as being removable due to “reason to believe [he] is or has been an illicit

27 ³ Under these circumstances, “[p]arole is the legal fiction whereby an alien is allowed to be physically
28 present in the United States for a specific purpose.” *Barney v. Rogers*, 83 F.3d 318, 320 n.1 (9th Cir.
1996).

1 trafficker in any controlled substance or in any listed chemical (as defined in section 102
2 of the Controlled Substances Act).” *See* Pet. Ex. A. “When a charging document is
3 served on the alien, the charging document will constitute written notice of termination of
4 parole, unless otherwise specified.” 8 C.F.R. § 212.5(e)(2)(i). Therefore, Petitioner’s
5 parole terminated on March 15, 2017, when he was served with the Notice to Appear.
6 Once his parole terminated, Petitioner had to be “returned to the custody from which he
7 was paroled.” 8 U.S.C. § 1182(d)(5)(A).

8 In sum, although Petitioner was initially paroled into the United States under
9 Section 1182(d)(5)(A), it appears his parole was temporary and set to automatically
10 terminate on April 6, 2017. On March 15, 2017, the Attorney General charged Petitioner
11 and initiated removal proceedings, thereby terminating his parole. It was within the
12 Attorney General’s discretion to decide that the purpose of Petitioner’s parole had been
13 served, *see* 8 U.S.C. § 1182(d)(5)(A), a decision which Petitioner challenges, but this
14 Court lacks jurisdiction to review. *Hassan v. Chertoff*, 593 F.3d 785, 789 (9th Cir. 2010)
15 (noting that “judicial review of a discretionary determination is . . . expressly precluded
16 by 8 U.S.C. § 1252(a)(2)(B)(ii).”). When his parole terminated, Petitioner was “restored
17 to the status that he . . . had at the time of parole,” 8 C.F.R. § 212.5(e)(2)(i), according
18 ICE the authority to detain Petitioner as “an alien seeking admission” who “is not clearly
19 and beyond a doubt entitled to be admitted” into the United States. 8 U.S.C. §
20 1225(b)(2)(A).

21 Moreover, Petitioner is not being detained in violation of his Fifth Amendment
22 rights. Petitioner argues that his “detention in ICE custody is guaranteed to deprive him
23 of either his Fifth Amendment right to avoid self-incrimination or his Fifth Amendment
24 right to a meaningful and fair opportunity to apply for relief, neither of which is
25 constitutionally permissible.” Pet. at 10. Petitioner has not yet had to make the choice,
26 and in any event, this Court is not the appropriate forum to adjudicate the issue. *See* 8
27 U.S.C. § 1252(a)(2)(D) (jurisdiction to review substantial constitutional claims or
28 questions of law arising out of removal proceedings lies with the courts of appeal).

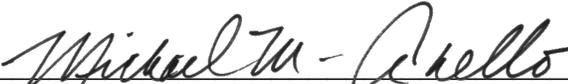
1 Nor does Petitioner's detention run afoul of his right to procedural due process.
2 Petitioner was paroled into the United States based on the pending criminal proceedings.
3 He was provided with notice on the I-94 card that his temporary parole would
4 automatically expire, but he was served with a Notice to Appear prior to the expiration
5 date. The Notice to Appear constituted notice that the Attorney General had exercised
6 his discretion to initiate removal proceedings and terminate Petitioner's parole. *See* 8
7 C.F.R. § 212.5(e)(2)(i). Petitioner received the process he was due.

8 **CONCLUSION**

9 Based on the foregoing, the Court concludes that Petitioner is not in Respondents'
10 "custody in violation of the Constitution or laws or treaties of the United States." 28
11 U.S.C. § 2241(c)(3). Accordingly, the Court **DENIES** the petition for writ of habeas
12 corpus and **DENIES AS MOOT** Petitioner's motion for preliminary injunctive relief.
13 The Clerk of Court is instructed to enter judgment accordingly and close the case.⁴

14 **IT IS SO ORDERED.**

15 DATE: July 24, 2017

16 
17 HON. MICHAEL M. ANELLO
18 United States District Judge
19
20
21
22
23
24

25 _____
26 ⁴ The Court notes that Title 28, section 2253, as amended by the Anti-Terrorism and Effective Death
27 Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996), does not require that Petitioner receive
28 a certificate of appealability ("COA") in order to appeal. *See Forde v. United States Parole Comm'n*,
114 F.3d 878, 879 (9th Cir. 1997) (citing 28 U.S.C. § 2253(c)(1)); *see also Harrison v. Ollison*, 519
F.3d 952, 958 (9th Cir. 2008) ("The plain language of § 2253(c)(1) does not require a petitioner to
obtain a COA in order to appeal the denial of a § 2241 petition.").