State of New Jersey
OFFICE OF THE PUBLIC DEFENDER
Appellate Section
ALISON PERRONE
Appellate Deputy
520 Market Street, 5th Floor
Camden, New Jersey 08102
Tel. 856.614.3525 · Fax 973-877-1239
Cody.Mason@opd.nj.gov

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

JENNIFER N. SELLITTI
Public Defender

July 9, 2025

CODY T. MASON
Deputy Public Defender II
ID NO. 150312015
Of Counsel and on the Brief

LETTER BRIEF ON BEHALF OF PLAINTIFF-APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2328-24

JEAN-CLAUDE WRIGHT,	:	CIVIL ACTION
Plaintiff-Appellant,	:	On Appeal from a Final Decision of the New Jersey State Parole
v.	:	Board Declining to Recalculate Parole Commencement Date.
NEW JERSEY STATE PAROLE BOARD,	:	
Defendant-Respondent.	:	

APPELLANT IS NOT CONFINED

Your Honors:

Please accept this letter in lieu of a formal brief pursuant Rule 2:6-2(b).

TABLE OF CONTENTS

PAGE NOS.

INDEX TO APPENDIX

TABLE OF JUDGMENTS, ORDERS AND RULINGS

PRELIMINARY STATEMENT

The sole issue in this case is whether a person's term of mandatory parole supervision imposed pursuant to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, is "tolled" if the person is civilly detained after being released from state prison. The Parole Board has taken the position that such tolling is required and that a term of NERA parole cannot commence until the person is released "to the community." Based on this view, the Board has concluded that appellant Jean-Claude Wright's term of NERA parole did not commence upon his release from state prison in 2018, but rather upon his release from civil immigration detention in 2021. As a result, Wright's five-year term of NERA parole will not end until December 2026, over seven years after he completed his term of incarceration and was released from prison.

The Board's claimed authority to toll a term of NERA parole based on a person's civil detention is entirely novel and unsupported. There is no such tolling provision in NERA or any other relevant statute. And recognizing such a provision would render superfluous the only actual tolling provision included under NERA, which applies to individuals serving another term of incarceration. Basic tenets of statutory interpretation compel the conclusion that the Board acted unlawfully and unconstitutionally when it purported to delay the start of Wright's term of NERA parole from 2018 until 2021.

This Court must therefore reverse the Board's final agency decision declining to correct Wright's parole start date. Additionally, this Court must order the Board to immediately change Wright's parole start date to the day he was released from prison and to communicate that date to the Department of Corrections, so that Wright's term of NERA parole can be concluded.

PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

In 2010, Jean-Claude Wright was convicted of six offenses, including first-degree robbery, N.J.S.A. 2C:15-1a. (Pa 22)[2] Wright was sentenced to an aggregate term of eleven years in prison, with five years of mandatory parole supervision, pursuant to the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2. (Pa 22-25) Under N.J.S.A. 2C:43-7.2c, Wright's term of NERA parole should have "commence[d] upon the completion of the sentence of incarceration imposed by the court" unless he was "serving a sentence of incarceration for another crime at the time" he completed his NERA sentence.

Wright completed his sentence of incarceration and was released from state prison on November 20, 2018. (Pa 26-27) Upon release, however, Wright was civilly detained by U.S. Immigration and Customs Enforcement (ICE). (Pa 5) Wright remained in ICE detention until December 1, 2021. Ibid.

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[1] These sections are combined given their interrelated nature and for clarity.

[2] Pa = Appendix to appellant's brief

At some point, the Parole Board communicated to the Department of Corrections (DOC) that Wright's term of NERA parole supervision commenced on December 1, 2021, the date he was released from ICE custody, rather than on November 20, 2018, the date he was released from state prison. (Pa 11) As a result of the Board's determination, Wright's five-year term of NERA parole supervision is not set to be completed until December 1, 2026. (Pa 5, 11) Had the Board instead found that Wright's term of NERA parole supervision commenced upon his release from prison, his term of supervision would have been completed on November 20, 2023. (Pa 11, 27)

Counsel for Wright became aware of the Board's determination, and its effect on Wright's term of parole supervision, in December 2024. (Pa 9) Counsel then engaged in multiple exchanges with Wright's Hearing Officer, the Board's Legal Support Unit, and DOC Classification Services about Wright's parole supervision commencement date. (Pa 5-13)

On February 5, 2025, counsel received a letter from Anthony Pegues, the manager of the Board's Legal Support Unit, confirming that the Board had determined that Wright's NERA parole did not commence until he was released from ICE custody. (Pa 5) Pegues explained "that the Department of Law and Public Safety - Division of Law provided legal advice to the effect that [NERA parole] supervision is to be served in the community[,]" such that

its service "remains tolled" if an individual "remains in custody following the completion of a sentence imposed pursuant to N.J.S.A. 2C:43-7.2[.]" Ibid. Pegues further explained that this "tolling" provision applies regardless of whether the continued custody "is criminal in nature or civil in nature" and that NERA parole only starts to run when "the offender is released to the community." Ibid. Thus, in Wright's case, the Board determined that "the period of mandatory supervision did not commence until the date of December 1, 2021, when he was released from the custody of U.S. Immigration and Customs Enforcement (ICE) to the community." Ibid.

That same day, counsel responded by noting that "N.J.S.A. 2C:43-7.2 does not include a tolling provision relating to civil confinement" and requesting guidance on obtaining a final agency decision. (Pa 7-8) Despite previously indicating that the Board had determined the commencement date for Wright's NERA parole term, Pegues responded that "the Department of Corrections is responsible for the calculation of an offender's mandatory supervision expiration date" and that any additional inquiries "must be directed to the Department of Corrections Classification Services." (Pa 7)

Counsel contacted DOC Classification Services the next day. (Pa 11-13) On February 10, counsel received an email response from Lisa Palmiere, the Director of Classification Services. (Pa 11) Palmiere advised that "[t]his

doesn't seem to be a question of max date or release from confinement but a question of [mandatory parole supervision] application." Ibid. More specifically, Palmiere explained that when someone "is not immediately released into the community upon their custodial max, [the Board] provides [the DOC] with the date [parole supervision] begins" and that it was the Board, not the DOC, that had "reported" that Wright's NERA parole did not start until his release from ICE detention. Ibid. Thus, Palmiere indicated that the Board, not the DOC, was the proper agency to address Wright's parole start date. Ibid.

That same day, counsel again emailed Pegues. (Pa 6) Counsel relayed the information received from Palmiere and requested that the Board "reconsider this issue, conclude that Mr. Wright's parole supervision should have started upon his release from prison in 2018, and . . . inform the DOC accordingly[.]" Ibid. Counsel emailed Pegues again four days later, ibid., and submitted a letter seeking a final agency decision on February 21. (Pa 2-4)

On April 2, the Board issued a final agency decision declining to correct Wright's NERA parole commencement date. (Pa 1) In doing so, the Board explained that it "declined to consider the merits" because it had "no jurisdiction" over the matter. Ibid. More specifically, the Board noted that "the Department of Corrections, not the State Parole Board, is responsible for computing . . . the expiration date of any term of supervision" and that Wright

therefore had to "direct [his] concerns regarding same to the Department of Corrections." Ibid. The Board made this determination even though it otherwise acknowledged that Wright was challenging his parole "commencement date" and without addressing the appended communications from Palmiere and Pegues establishing that the Board, not the DOC, was responsible for determining that commencement date. (Pa 1-13)

Wright filed a notice of appeal on April 4, 2025. (Pa 15-17) On June 9, this Court granted Wright's motion to accelerate his appeal. (Pa 18) On June 27, the Board filed its statement of items comprising the record. (Pa 19-20)

LEGAL ARGUMENT

POINT I

WRIGHT'S TERM OF MANDATORY PAROLE SUPERVISION IMPOSED PURSUANT TO THE NO EARLY RELEASE ACT WAS REQUIRED TO COMMENCE UPON HIS RELEASE FROM STATE PRISON AND COULD NOT BE TOLLED DURING HIS CIVIL DETENTION BY FEDERAL IMMIGRATION AUTHORITIES. (Pa 1)

Wright completed his sentence of incarceration and was released from state prison on November 20, 2018. (Pa 26-27) Pursuant to N.J.S.A. 2C:43-7.2c, Wright's five-year term of NERA parole supervision should have commenced on that date, as his release from prison represented "the completion of the sentence of incarceration imposed by the court" and because he was not "serving a sentence of incarceration for another crime at the time[.]" As a result, Wright's term of parole supervision should have immediately commenced upon his release, and it should have been completed five years later, on November 20, 2023. Over six-and-a-half years after his release from prison, however, Wright remains under NERA parole supervision, "in the legal custody" of the DOC. N.J.S.A. 2C:43-7.2c.

This is because the Parole Board has unilaterally determined that Wright's term of NERA parole supervision did not commence upon his release from state prison, but rather upon his release from civil immigration detention

over a year later. According to the Board, NERA parole "remains tolled until the offender is released to the community" regardless of "whether the continued confinement is criminal in nature or civil in nature[.]" (Pa 5) Thus, according to the Board, Wright's term of NERA parole supervision was "tolled" while he was detained by U.S. Immigration and Customs Enforcement (ICE) and did not commence until "he was released from the custody of [ICE] to the community" on December 1, 2021. Ibid.

This conclusion is unsupported by any authority. And it has had the effect of unlawfully extending Wright's time in custody beyond the sentence imposed, in violation of his constitutional rights to due process and fundamental fairness. U.S. Const. Amend. XIV; N.J. Const. art. I, ¶ 1; see State v. Njango, 247 N.J. 533, 549-51 (2021) (finding violation of constitutional right to fundamental fairness when a person's time in custody, including on NERA parole, "exceeds the sentence imposed by the trial court"); see also State v. Rosado, 131 N.J. 423 (1993) (noting "parole is the legal equivalent of imprisonment"). This Court must therefore reverse the final agency decision and direct the Board to find that Wright's term of parole commenced upon his release from prison on November 20, 2018.

Courts "ordinarily employ a deferential standard when reviewing a Parole Board administrative determination in the specialized area of parole

supervision[.]" Williams v. New Jersey State Parole Board, 255 N.J. 36, 46 (2023) (citation omitted). However, "in matters of statutory interpretation -- like here -- [] review is de novo[.]" Ibid. (citation omitted). This Court thus owes no deference to the Board and must conduct its own analysis to determine whether the Legislature intended the start date of NERA parole to be tolled during a person's civil confinement.

"Discerning 'the Legislature's intent is the paramount goal when interpreting a statute and, generally, the best indicator of that intent is the statutory language.'" Ibid. (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)). Courts must "ascribe to the statutory words their ordinary meaning and significance and read them in context with related provisions so as to give sense to the legislation as a whole[.]" DiProspero, 183 N.J. at 492 (citations omitted). "If the language of a statute is clear, a court's task is complete" and there is no need to consider extrinsic materials. State v. Lopez-Carrera, 245 N.J. 596, 613 (2021) (citations omitted).

"It is not the function of [the court] to 'rewrite a plainly-written enactment of the Legislature []or presume that the Legislature intended something other than that expressed by way of the plain language.'" DiProspero, 183 N.J. at 492 (second alteration in original) (quoting O'Connell v. State, 171 N.J. 484, 488 (2002)). Courts "cannot 'write in an additional

qualification which the Legislature pointedly omitted[,]'" ibid. (quoting Craster v. Bd. of Comm'rs of Newark, 9 N.J. 225, 230 (1952)), or "give the statute any greater effect than its language allows." In re Freshwater Wetlands Protection Act Rules, 180 N.J. 478, 489 (2004) (quoting In re Valley Rd. Sewerage Co., 154 N.J. 224, 242 (1998) (Garibaldi, J., dissenting)). Courts must also "strive for an interpretation that gives effect to all of the statutory provisions and does not render any language inoperative, superfluous, void or insignificant." G.S. v. Dep't of Human Servs., 157 N.J. 161, 172 (1999) (citation omitted). Applying these basic principles quickly reveals that a term of NERA parole cannot be tolled based on a person's civil confinement.

As noted, N.J.S.A. 2C:43-7.2c provides that a term of NERA parole generally "shall commence upon the completion of the sentence of incarceration imposed by the court[.]" The statute does not grant the Board or any other entity discretion to depart from this timing provision. See State v. A.M., 252 N.J. 432, 452 (2023) (quoting Harvey v. Essex Cnty. Bd. of Freeholders, 30 N.J. 381, 391 (1959)) (noting the terms "must" and "shall" "are generally mandatory"). The Board, moreover, has not claimed such discretion as a matter of policy, and has instead echoed the timing provisions contained in N.J.S.A. 2C:43-7.2c in its Administrative Code. See N.J.A.C. 10A:71-3.54(c) (stating term of NERA parole generally "shall commence upon

the completion of the sentence of incarceration imposed by the court").

The only statutory exception to this timing provision is for cases where the defendant is "serving a sentence of incarceration for another crime at the time the defendant completes the sentence of incarceration imposed" pursuant to NERA. N.J.S.A. 2C:43-7.2c. In those cases, "the term of parole supervision shall commence immediately upon the defendant's release from incarceration." Ibid. This provision plainly only applies to those serving a "sentence of incarceration" and does not to apply when a person, like Wright, is detained in relation to a civil matter. See I.N.S. v. Lopez-Mendoza, 468 U.S. 1032, 1038 (1984) (noting immigration proceedings are "a purely civil action"); see also Shuhaiber v. Illinois Dep't of Corr., 980 F.3d 1167, 1170 (7th Cir. 2020) (explaining once defendant "entered [ICE's] custody on [an] immigration detainer he ceased being confined for any violation of criminal law").

N.J.S.A. 2C:43-7.2c does not include any other exceptions to the general timing provision, let alone for individuals in civil detention. Recognizing such an exception would therefore rewrite the statute to include "an additional qualification which the Legislature pointedly omitted[.]'" DiProspero, 183 N.J. at 492 (quoting Craster, 9 N.J. at 230). If the Legislature wanted to delay commencement of NERA parole whenever a person is civilly detained, it would have said so. That the Legislature did not include such a provision,

while including a tolling provision for individuals serving a different term of incarceration, plainly indicates that it did not intend to delay a term of NERA parole based on a person's civil detention. Reading in such a provision, moreover, would render superfluous the only tolling provision included by the Legislatures, as individuals "serving a sentence of incarceration for another crime[,]" N.J.S.A. 2C:43-7.2c, would necessarily be included in the larger group of individuals who have not been "released to the community." (Pa 5)

In other words, rather than adhering the plain language of N.J.S.A. 2C:43-7.2c, the Board seeks to rewrite the statute to read that:

> The term of parole supervision shall commence upon the completion of the sentence of incarceration imposed by the court pursuant to subsection a. of this section unless the defendant is ~~serving a sentence of incarceration for another crime~~ [in civil or criminal custody] at the time the defendant completes the sentence of incarceration imposed pursuant to subsection a., in which case the term of parole supervision shall commence immediately upon the defendant's release ~~from incarceration~~ [to the community].

Such an alteration, of course, is beyond the authority of both the Board and the courts and cannot be condoned as a matter of statutory interpretation.

This Court must therefore reject the Board's unsupported interpretation and must conclude, consistent with the plain text of N.J.S.A. 2C:43-7.2c, that Wright's term of NERA parole was not tolled during his time in ICE custody.

Rather, because Wright was not serving another term of incarceration, his term of NERA parole was required to commence when he was released from state prison on November 20, 2018. Accordingly, this Court must order the Board to immediately correct the commencement date for Wright's term of NERA parole to November 20, 2018, and to communicate this commencement date to the DOC so as to ensure that Wright is not further unlawfully held in custody beyond the sentence imposed by the trial court. Njango, 247 N.J. at 549-51.

POINT II

THE PAROLE BOARD CALCULATED WRIGHT'S PAROLE COMMENCEMENT DATE BASED ON AN ERRONEOUS STATUTORY INTERPRETION AND IS RESPONSIBLE FOR CORRECTING THAT ERROR. (Pa 1)

In ordering the above-requested relief, this Court should also reject the Board's assertion that any error was the fault of the DOC, and not the Board. Specifically, the Board claimed in its final decision that it lacked "jurisdiction" over the appeal and that Wright could only address his "concerns" to the DOC because the DOC, "not the State Parole Board, is responsible for computing . . . the expiration date of any term of supervision." (Pa 1) This attempt to avoid responsibility is misplaced and should be rejected for two main reasons.

First, it overlooks that Wright's challenge is to his parole supervision's commencement date, not its "expiration date[,]" as the Board has claimed.

Ibid. Wright has consistently and clearly sought correction of the parole commencement date. See (Pa 2) (requesting Board "correct the start date"); (Pa 6) (arguing "parole supervision should have started upon [Wright's] release from prison"). And the Board has even recognized as much at other points. See (Pa 1) (noting appeal "pertain[ed] to the commencement date of the term of mandatory supervision"); (Pa 5) (noting issue concerned "commencement date of [Wright's] period of mandatory supervision"). The Board's belief that it lacked jurisdiction was therefore premised upon a basic, and inexplicable, misunderstanding as to the key issue in dispute.

That decision was also made without the Board recognizing that the Board, not the DOC, is responsible for determining when a term of NERA parole commences. It is the Board, not the DOC, that has adopted rules for determining when NERA parole commences. N.J.A.C. 10A:71-3.54(c). It is the Board, not the DOC, that has adopted the challenged legal guidance concerning when NERA parole commences for individuals in civil detention. (Pa 5) And it is the Board, not the DOC, that determined that Wright's term of parole did not commence until he was released from ICE custody. (Pa 11)

In other words, Wright is challenging his parole commencement date, which was calculated by the Board based on its own faulty legal interpretation. The Board is therefore responsible for the legal error at the heart of this case

and must be responsible for correcting that error. Thus, this Court should reject the Board's efforts to avoid responsibility, order it to immediately correct Wright's parole commencement date to November 20, 2018, and order it to immediately communicate that correction to the DOC. Such relief, while incapable of changing the fact that Wright has served excess time in custody due to the Board's errors, will at least ensure that his term in custody is not further extended beyond the sentence imposed by the trial court.

CONCLUSION

For the foregoing reasons, Wright respectfully requests that this Court reverse the Parole Board's final agency decision, hold that Wright's term of NERA parole supervision commenced upon his release from state prison, and order the Board to immediately communicate this correction to the DOC.

Respectfully submitted,

JENNIFER N. SELLITTI
Public Defender
Attorney for Defendant-Appellant

BY: 

CODY T. MASON
Deputy Public Defender II
Attorney ID No. 150312015

State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO BOX 116
TRENTON, NJ 08625-0116

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

MATTHEW J. PLATKIN
Attorney General

MICHAEL C. WALTERS
Acting Director

August 11, 2025

VIA ECOURTS
Marie C. Hanley, Clerk
Superior Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex
P.O. Box 006
Trenton, New Jersey 08625

Re: Jean-Claude Wright v. New Jersey State Parole Board
Docket No. A-2328-24

Civil Action: On appeal from a Final Agency Decision of the New Jersey State Parole Board

Letter Brief on Behalf of Respondent New Jersey State Parole Board Addressing the Merits of the Appeal

Dear Ms. Hanley:

Please accept this letter brief on behalf of respondent New Jersey State Parole Board addressing the merits of the appeal.

TABLE OF CONTENTS

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS[1]

Appellant, Jean-Claude Wright, has appealed from the Board's April 2, 2025 final decision declining to address his request to recalculate the commencement and expiration date of his mandatory parole supervision (MPS) term due to a lack of jurisdiction. (Pa1-4).

On April 8, 2010, a jury convicted Wright of two counts each of robbery (first degree) and aggravated assault (fourth degree), and one count each of possession of a weapon for an unlawful purpose (second degree) and terroristic threats (third degree). (Pa22; Pa26-27). On February 9, 2011, Wright was sentenced under the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2, to an aggregate custodial term of eleven years, subject to an eighty-five percent parole ineligibility period and followed by a five-year MPS term. (Pa22; Pa25; Pa26-27).

On November 20, 2018, Wright completed his maximum term of incarceration, and he was released to an Immigration and Customs Enforcement (ICE) detainer. (Pa1; Pa3; Pa9; Pa27). He remained confined on the ICE

[1] Because the Procedural History and Counterstatement of Facts are closely related, they are combined for efficiency and the court's convenience.

detainer until December 1, 2021, when he was released to the community, at which time he began serving his five-year MPS term. (Pa2-3; Pa9).

On December 20, 2024, Ronald Cathel, a Board employee, sent an e-mail to an attorney employed by the Office of the Public Defender (OPD) regarding the calculation of Wright's sentence, and specifically, the date of commencement of Wright's MPS term. (Pa9). In the e-mail, Cathel advised that Wright's five-year MPS term began on December 1, 2021, the date he was released from ICE custody, and thus, would expire on December 1, 2026. (Pa9). Cathel explained that the MPS term was tolled and did not commence until Wright was released from ICE custody. Ibid.

On February 3, 2025, Cody T. Mason, Esq., of the OPD, sent an e-mail responding to Cathel's e-mail, arguing that the MPS term was not tolled during the period that Wright was in ICE custody, and that the MPS term expired on November 23, 2023, or five years from the date that his custodial sentence expired. Ibid. Mason asserted that the time that Wright spent in ICE custody was "irrelevant" because the detainer was civil and not criminal. Ibid. Mason further argued that Wright remained on MPS for more than a year beyond the expiration of the MPS term, and that this violated his constitutional rights under State v. Njango, 247 N.J. 533 (2021). (Pa9-10). Mason requested that the Board

recalculate Wright's "parole eligibility" date and immediately terminate his parole supervision. (Pa10).

On February 5, 2025, Anthony G. Pegues, Esq., Manager of the Board's Legal Support Unit, sent a letter to Mason in response to the February 3 e-mail regarding the commencement date of Wright's MPS term. (Pa5). Pegues explained that, when an offender remains in custody following the completion of a custodial sentence imposed under NJSA 2C:43-7.2, regardless of whether the continued confinement is criminal or civil, the service of MPS term remains tolled until the offender is released to the community. Ibid. In addition, on the same date, Pegues directly responded to Mason's February 3, 2025 e-mail, explaining that the Department of Corrections (DOC), and not the Parole Board, "is responsible for the calculation of an offender's mandatory supervision expiration date." (Pa7). Pegues further explained that any inquiries regarding an MPS expiration date be directed to the DOC's Classification Services office, and that Lisa Palmiere is the Director of that office. Ibid.

On February 6, 2025, Mason sent an e-mail to Palmiere re-asserting his arguments that Wright's MPS term was not tolled during the period that he spent in ICE custody, that the time that Wright spent in ICE custody was irrelevant because the detainer was civil and not criminal, and that that the MPS term

expired on November 23, 2023. (Pa11-12). Mason again cited Njango in support of his arguments, and requested that the DOC recalculate Wright's mandatory supervision expiration date. (Pa12-13).

On February 10, 2025, Palmiere responded to the February 6 e-mail, stating that the issue raised in the e-mail was seemingly not related to a maximum sentence date, but rather, was related to a question of "MPS application." (Pa11). Palmiere noted that the DOC is responsible for calculating the maximum release date of the custodial term, and is responsible for calculating the expiration of the MPS term, but that the MPS expiration date "is contingent upon the Actual Supervision Begin Date provided by the [Parole Board]." Ibid. Palmiere also noted the Board's position that the MPS term is to be served in the community, and that if an offender remains confined following completion of a NERA custodial sentence, regardless of whether the continued confinement is criminal or civil in nature, service of the MPS term remains tolled until the offender is released into the community. Ibid.

On February 21, 2025, Mason submitted an administrative appeal to the Board regarding the commencement date of Wright's MPS term, re-stating his arguments that: the MPS term should have commenced on November 20 2018, and expired on November 23, 2023; that the time that he spent in ICE custody

was "irrelevant" because the detainer was civil and not criminal; and that he had remained on MPS for more than a year beyond the expiration of the MPS term. (Pa2-4). Mason again relied upon Njango to argue that the time that Wright has spent serving his MPS term exceeded the sentence that the court imposed, requested that the Board recalculate the commencement date of Wright's MPS term, and terminate his parole supervision. (Pa4).

On April 2, 2025, the Board responded to the administrative appeal. (Pa1). The Board declined to consider the merits of the appeal due to a lack of jurisdiction. As the Board explained,

> the Department of Corrections, not the State Parole Board, is responsible for computing an offender's maximum sentence expiration date and the expiration date of any term of supervision. As the Department of Corrections and the State Parole Board are separate and distinct agencies, you must direct your concerns regarding same to the Department of Corrections.
>
> [Ibid.]

This appeal followed on July 9, 2025. (Pa14-16).

ARGUMENT

POINT I

THE BOARD'S DECISION DECLINING TO ADJUDICATE WRIGHT'S ADMINISTRATIVE APPEAL REGARDING THE CALCULATION OF HIS MAXIMUM SENTENCE DATE SHOULD BE AFFIRMED BECAUSE IT PROPERLY CONCLUDED THAT IT LACKED JURISDICTION TO DECIDE THE APPEAL [RESPONDING TO APPELLANT'S POINT II].

In declining to address the merits of Wright's administrative appeal, the Board correctly found that it lacked jurisdiction to adjudicate the appeal because the Department of Corrections, not the Board, is responsible for computing an offender's maximum sentence expiration date and the expiration date of any term of supervision. (Pa1).

In his brief, Wright claims that he is only challenging the commencement date of his MPS term. (Ab13-14). However, as Wright made clear in his administrative appeal, his challenge to the commencement date invariably impacts the expiration date of his MPS term, and the relief he seeks is the immediate termination of his supervision. (Pa2-4). In addressing the administrative appeal, the Board found that Wright was, in fact, seeking an adjustment in the expiration date of his MPS term. (Pa1-4).

Judicial review of administrative agency determinations is limited to evaluating whether the agency acted arbitrarily or abused its discretion in rendering its decisions. In re AG Law Enf't Directive Nos. 2020-5 & 2020-6, 246 N.J. 462, 489 (2021); In re State & Sch. Emps. Health Benefits Comm'n's Implementation of Yucht, 233 N.J. 267, 279 (2018); In re Herrmann, 192 N.J. 19, 27-28 (2007); Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980). In conducting this limited review, courts accord agency actions presumptions of validity and reasonableness, and the burden is on the challenging party to show that the agency's actions were unreasonable. In re AG Law Enf't Directive, 246 N.J. at 489. This deferential standard, which "recognizes the 'agency's expertise and superior knowledge of a particular field,'" is consistent with "the strong presumption of reasonableness that an appellate court must accord an administrative agency's exercise of statutorily delegated responsibility." Ibid. (citations omitted).

In this case, the Board correctly concluded that it lacked jurisdiction to adjudicate the appeal because the Department of Corrections, and not the Board, is responsible for computing an offender's maximum sentence date, including the expiration of a mandatory supervision term. See Ries v. Dep't of Corrs., 396 N.J. Super. 235, 238 (App. Div. 2007) ("The Department of Corrections is

entrusted with the legal authority, among other things, 'to provide for the custody, care, discipline, training and treatment of adult offenders committed to State correctional institutions or on parole[.]'") (quoting N.J.S.A. 30:1B-6) (alteration in original). Thus, the court should affirm the Board's decision that it lacked jurisdiction to adjudicate Wright's administrative appeal because it was a reasonable interpretation of its authority to decide the issue on appeal.

POINT II

IN THE ALTERNATIVE, THE COURT SHOULD FIND THAT WRIGHT'S CONFINEMENT ON AN ICE DETAINER FOLLOWING THE EXPIRATION OF HIS CUSTODIAL TERM TOLLED THE COMMENCEMENT OF HIS NERA MANDATORY SUPERVISION TERM UNTIL HE WAS RELEASED TO THE COMMUNITY [RESPONDING TO APPELLANT'S POINT I].

In the alternative, if the court chooses to address the merits of Wright's case, it should reject his argument that his MPS term was not tolled during his confinement on the ICE detainer. (Ab7-13).

As noted, under NERA, when a court imposes a period of parole ineligibility, it shall also impose a five-year term of parole supervision if the defendant is sentenced for a first-degree crime. N.J.S.A. 2C:43-7.2(c). Regarding the mandatory period of parole supervision, NERA further provides that

> [t]he term of parole supervision shall commence upon the completion of the sentence of incarceration imposed by the court pursuant to subsection a. of this section unless the defendant is serving a sentence of incarceration for another crime at the time he completes the sentence of incarceration imposed pursuant to subsection a., in which case the term of parole supervision shall commence immediately upon the defendant's release from incarceration. During the term of parole supervision the defendant shall remain in release status in the community . . . .
>
> [Ibid.]

NERA provides that the period of mandatory parole supervision shall commence immediately upon release from incarceration, and specifies that the defendant's status is one of "release status in the community." Ibid. NERA thus distinguishes between incarceration and "release status in the community"; it is designed to ensure that supervision begins as soon as a person is released into the community. Ibid. This literal, plain reading of the statute controls here and must prevail. Where the language of a statute is plain and clearly reveals the meaning of a statute, the sole function is to enforce the statute in accordance with its terms. State v. Bigham, 119 N.J. 646, 651 (1990). Thus, under the plain language of NERA, the MPS term does not commence while the offender is in custody on a detainer, but only commences upon the date the offender is actually released from confinement and into the community.

With this appeal, Wright argues that, under the plain language of NERA, his five-year MPS term commenced on the date that his custodial sentence expired, November 20, 2018, and therefore, it expired on November 20, 2023. (Ab7-13). He argues that the term "incarceration" used in NERA can only refer to a State prison term, and that the statute only provides for tolling of the MPS term when an offender is serving a sentence of incarceration for another crime at the time he completes the sentence of incarceration imposed under NERA. (Ab11). According to Wright, the MPS term is not tolled during a period of civil detention, including ICE detention, following expiration of the NERA custodial term. (Ab11-13). However, Wright misreads the NERA statute and the relevant case law.

Wright relies upon Njango, 247 N.J. at 549-51, to argue that his MPS term was not tolled during the time he spent confined on the ICE detainer, as he equates his time spent in ICE detention with "excess time" spent serving his prison sentence. (Ab8; Ab13). But, Njango is clearly distinguishable from this case and does not support Wright's argument.

In Njango, the offender served an excess of one year and seven months in State custody beyond his proper custodial sentence due to an error by the New Jersey sentencing court in not awarding his prior service credits. Id. at 546. The

Court, based on the common law doctrine of fundamental fairness, found that the excess time that Njango served in prison should be credited towards the remaining period of his MPS term. Id. at 550-51. The Court relied on the fact that Njango should have been serving his mandatory-supervision term during the excess period of detainment, but had been unable to do so because of what the Court concluded had been "inequitable and arbitrary decision-making," referring to the sentencing court's error. Id. at 550. The Court relied solely upon New Jersey common law and the doctrine of fundamental fairness in finding that excess time spent in prison due to an error by the sentencing court in not awarding his prior service credits should be credited against the MPS term. Ibid. Thus, Njango has limited application, specifically to the factual scenario involved in that case resulting from error by the sentencing court in not awarding appropriate credits and its impact on the MPS term. Njango does not involve nor address the issue of whether a supervised release term should be tolled when an individual remains confined because of an active detainer following the expiration of a NERA custodial term.

According to Wright, the Board's position regarding the tolling of the MPS term is "unsupported by any authority." (Ab8). Wright is wrong. While the issue before the court has not been addressed by New Jersey courts, it has

been addressed by the United States Supreme Court and numerous federal appeals courts under a federal criminal statute that is analogous to NERA. 18 U.S.C. § 3624 provides for a supervised release term following a custodial term, which federal courts have held is tolled under the exact scenario that is at issue in this case.

The United States Supreme Court determined that a supervised release term did not commence until an individual was released from confinement. United States v. Johnson, 529 U.S. 53, 57 (2000). The Court found that, under 18 U.S.C. § 3624(e), "the ordinary, commonsense meaning of release is to be freed from confinement." Ibid. Thus, the Court concluded that supervised release does not commence while an individual remains in any type of custody, and can only commence when the defendant is released into the community. Id. at 58.

The majority of the other federal courts, including the Second, Fourth, Seventh and Eighth Circuit Courts of Appeal, that have addressed this issue under 18 U.S.C. § 3624, have also held that continued confinement following release from the initial custodial term, including confinement resulting from an ICE detainer and a civil commitment detainer, tolls service of the supervised release term until release to the community. These courts have followed

Johnson's reasoning that a supervised release term commences only when an individual is no longer imprisoned by any authority and is available for supervision by the supervising authority (Probation or Parole). See United States v. Freeman, 99 F.4th 125, 127-28 (2d Cir. 2024) (federal term of supervised release commenced upon subsequent release from state imprisonment); United States v. Harris, 118 F.4th 875, 885 (7th Cir. 2024) (finding that the plain language of § 3624 requires that the term of federal supervised release was tolled during the time appellant was incarcerated in state prison for violating his state supervised release); United States v. Maranda, 761 F.3d 689, 690-91 (7th Cir. 2014) (agreeing with two circuit courts that appellant "was not 'released from imprisonment' while awaiting the outcome of his [civil commitment proceeding] under the Adam Walsh Act" or "until he was actually freed from custody"); United States v. Neuhauser, 745 F.3d 125, 128-30 (4th Cir. 2014) ("Johnson . . . lends support to the view that supervised release commences on a date that a person is freed from confinement, irrespective of whether that confinement resulted from a criminal or civil statute"); United States v. Mosby, 719 F.3d 925, 929-30 (8th Cir. 2013) (finding that appellant's "supervised release began as a matter of law on the day that he was 'freed from confinement'").

Two federal appeals courts, however—the Fifth and Ninth Circuits—have held that civil detention following incarceration does not meet the definition of "imprisonment" under 18 U.S.C. § 3624(e), and therefore does not toll the supervised release term. In United States v. Garcia-Rodriguez, 640 F.3d 129, 132 (5th Cir. 2011), the Fifth Circuit considered the ICE question under the federal statute and distinguished it from the decision in Johnson by determining that under the federal statute the administrative detention by ICE is not the same as "imprisonment" by the Bureau of Prisons. The Garcia court held that Johnson did not directly consider whether administrative detention by ICE qualifies as "imprisonment" such that a prisoner's transfer from the federal Bureau of Prisons custody to ICE custody would not constitute being "released from imprisonment." Ibid.

In United States v. Turner, 689 F.3d 1117, 1118 (9th Cir. 2012), a two to one panel majority of the Ninth Circuit held that civil detention pending the outcome of a civil commitment hearing (under the federal civil commitment statute) does not meet the definition of "imprisonment" under 18 U.S.C. § 3624, and therefore, does not toll the supervised release term. The Turner majority concluded that, "[d]etention . . . pending a civil commitment hearing after a defendant's term of imprisonment has expired does not fit the definition of a

person 'imprisoned in connection with a conviction'" under 18 U.S.C. § 3624(e). Id. at 1125.

Notably, three of the Courts of Appeals' decisions cited above criticized and distinguished the Turner decision. In so doing, these courts found that the Turner majority's interpretation of the term "imprisonment" under 18 U.S.C. § 3624(e) was too narrow, and that "imprisonment" includes civil detention following a term of incarceration imposed on a criminal conviction. Maranda, 761 F.3d at 698; Neuhauser, 745 F.3d at 130-31; Mosby, 719 F.3d at 930. As the Neuhauser court held, "[u]nder the statute's plain language, any imprisonment, regardless of whether it is imposed pursuant to a criminal conviction, prevents supervised release from commencing." 745 F.3d at 131 (emphasis in original).

The Third Circuit has not addressed the issue of whether and when a supervised release term is tolled under 18 U.S.C. § 3624(e). However, the Third Circuit has addressed the type of scenario that occurred in Njango. In United States v. Jackson, 523 F.3d 234, 239 (3d Cir. 2008), the Third Circuit found that excess time served in prison may be credited towards the remaining period of supervised release. The court, citing the Supreme Court's decision in Johnson, relied upon the federal statute, 18 U.S.C. § 3583(e), which provides that a court

can reduce or terminate a term of supervised release under certain circumstances, including in the interests of justice. Ibid. The Jackson court concluded that, "a likely credit against a defendant's term of supervised release for an excess term of imprisonment still remains valid after Johnson." Ibid.

In United States v. Prophet, 989 F.3d 231, 235 (3d Cir. 2021), the Third Circuit, citing Jackson, reaffirmed that excess time spent in prison may be credited against a term of supervised release. As explained, in these cases, a reduction in the federal supervised release term resulting from excess time spent in prison is provided for under the noted federal statute permitting reduction or termination of the supervised release term. 18 U.S.C. § 3583(e). Notably, in both cases, the defendants argued, as in Njango, that they had spent excess time in prison due to a sentencing court error. Jackson, 523 F.3d at 237; Prophet, 989 F.3d at 233-34.

In Wright's case, as discussed, he did not spend "excess time in prison" following the expiration of his custodial term, as occurred in Njango. Rather, following the expiration of his custodial term in November 2018, he remained confined on an ICE detainer until he was released from that confinement to the community on December 1, 2021. (Pa1-3; Pa9; Pa27).

In light of the above, the court should find that the period that Wright spent in custody on the ICE detainer tolled the MPS term, which did not commence until he was released to the community. As the Supreme Court made clear in Johnson, 529 U.S. at 57, the supervised release term begins when "freed from confinement," which includes civil detention. Thus, Wright's MPS term did not begin until December 1, 2021, as it would be contrary to the Supreme Court's holding in Johnson to adopt Wright's position that his term of supervised release began before he was released from ICE custody. This conclusion is consistent with the distinct and important purposes of supervised release. As the Supreme Court explained in Johnson, 529 U.S. at 59, "[c]ongress intended supervised release to assist individuals in their transition to community life. Supervised release fulfills rehabilitative ends, distinct from those served by incarceration." This same purpose clearly applies to serving an MPS term under NERA. See J.I. v. N.J. State Parole Bd, 228 N.J. 204, 221 (2017) ("the ultimate purpose of parole 'is to help [offenders] reintegrate into society as constructive individuals.'") (quoting Morrissey v. Brewer, 408 U.S. 471, 477-78 (1972)) (alteration in original). To start a term of supervised release while an individual is still physically confined would frustrate one of its key purposes which is to help individuals as they transition into the community. Ibid.

CONCLUSION

For these reasons, the court should affirm the Board's decision that it lacked jurisdiction to decide Wright's administrative appeal. In the alternative, the court should find that his MPS term was tolled during his confinement on the ICE detainer, and that his MPS term expires on December 1, 2026.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: s/*Christopher C. Josephson*
Christopher C. Josephson
Deputy Attorney General
(Attorney ID#014101999)
christopher.josephson@law.njoag.gov

Janet Greenberg Cohen
Assistant Attorney General
Of Counsel

c: Cody T. Mason, Esq. (Via ecourts)

State of New Jersey
OFFICE OF THE PUBLIC DEFENDER
Appellate Section

PHIL MURPHY
Governor

TAHESHA WAY
Lt. Governor

JENNIFER N. SELLITTI
Public Defender

ALISON PERRONE
Appellate Deputy
520 Market Street, 5th Floor
Camden, New Jersey 08102
Tel. 856.614.3525 · Fax 609.777.1795
Cody. Mason@opd.nj.gov

August 21, 2025

CODY T. MASON
Deputy Public Defender
Attorney ID No. 150312015

Of Counsel and
On the Letter Brief

REPLY LETTER BRIEF ON BEHALF OF APPELLANT

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2328-24

JEAN-CLAUDE WRIGHT,	:	CIVIL ACTION
Plaintiff-Appellant,	:	On Appeal from a Final Decision of the New Jersey State Parole
v.	:	Board Declining to Recalculate Parole Commencement Date.
NEW JERSEY STATE PAROLE BOARD,	:	
	:	
Defendant-Respondent.		

APPELLANT IS NOT CONFINED

Your Honors:

Please accept this letter brief filed in lieu of a formal reply brief pursuant to Rules 2:6-5 and 2:6-2(b).

TABLE OF CONTENTS

PAGE NOS.

INDEX TO REPLY APPENDIX

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Plaintiff-appellant Jean-Claude Wright relies on the procedural history and statement of facts from his opening brief.

LEGAL ARGUMENT

Wright relies on the legal arguments included in his previously filed brief and adds the following:

POINT I

WRIGHT'S TERM OF NO EARLY RELEASE ACT PAROLE SUPERVISION WAS REQUIRED TO COMMENCE UPON THE COMPLETION OF HIS TERM OF INCARCERATION AND COULD NOT BE DELAYED DUE TO HIS SUBSEQUENT CIVIL IMMIGRATION DETENTION.

As explained in his opening brief, Wright's term of NERA parole supervision was required to commence when he completed his term of incarceration and could not be tolled by his time in civil immigration detention. This is because the plain text of N.J.S.A. 2C:43-7.2c provides that a "term of parole supervision shall commence upon the completion of the sentence of incarceration[.]" The only exception, which does not apply here, is if a defendant is "serving a sentence of incarceration for another crime at the time the defendant completes the sentence of incarceration[,]" in which case "the term of parole supervision shall commence immediately upon the defendant's release from incarceration." Ibid. The statute does not include any

other tolling exceptions, let alone an exception that would justify the Board delaying Wright's term of supervision based on his civil detention.

Nonetheless, the Board continues to argue that it had the authority to toll Wright's term of NERA parole supervision for over three years. The Board's arguments largely consist of what it calls a "literal, plain reading" of N.J.S.A. 2C:43-7.2c, and its attempts to analogize case law concerning a federal supervised release statute. Both arguments are wrong and must be rejected.

The Board is first mistaken in arguing that the plain text of N.J.S.A. 2C:43-7.2c "provides that the period of mandatory parole supervision shall commence immediately upon release from incarceration" and cannot begin until the "person is released into the community." (Db 11)[1] To start, and as already noted, the commencement of NERA parole supervision is only tied to the defendant's "release from incarceration" if the defendant is "serving a sentence of incarceration for another crime at the time [he] completes the sentence of incarceration" for his NERA offense. N.J.S.A. 2C:43-7.2c. In all other cases, including here, the term of supervision "shall commence upon the completion of the sentence of incarceration[.]" Ibid. The State's claim that NERA parole always commences upon "release from incarceration" (Db 11),

[1] Db = Defendant-respondent's response brief
Pra = Appendix to plaintiff-appellant's reply brief

as will be discussed in more detail below, is thus inaccurate.

Also inaccurate is the Board's claim that N.J.S.A. 2C:43-7.2c indicates that NERA parole only commences when a person is "released into the community." Ibid. For support, the Board points to a sentence in N.J.S.A. 2C:43-7.2c, which states that "[d]uring the term of parole supervision the defendant shall remain in release status in the community in the legal custody of the" Department of Corrections (DOC) and "shall be supervised by" the Board "as if on parole[.]" The Board claims that this sentence, which follows the sentence outlining when NERA parole commences, and which the Board only partially cites, "clearly reveals" that supervision "only commences" when the defendant is "released from confinement and into the community." (Db 11)

The cited language, however, does not say this. Indeed, this language is not included in the sentence that outlines when NERA parole commences, and which only identifies a single, different tolling exception. See State v. S.B., 230 N.J. 62, 69 (2017) (declining to find additional statutory exemption when "[t]he Legislature decidedly and explicitly" created "only" one exemption); see also United States v. Johnson, 529 U.S. 53, 58 (2000) ("When Congress provides exceptions in a statute, it does not follow that courts have authority to create others."). It does not employ language like that used by the Legislature to explain when NERA parole commences. See State v. Munafo, 222 N.J. 480,

488 (2015) (citation omitted) ("[A] court may not rewrite a statute or add language that the Legislature omitted."); see also S.B., 230 N.J. at 68 (citation omitted) ("In order to construe the meaning of the Legislature's selected words, we can also draw inferences based on the statute's overall structure and composition."). And reading the cited language to create a new tolling exception for any time not spent "in the community" would render superfluous the tolling exception for individuals serving other terms of incarceration.[2] See State in Interest of K.O., 217 N.J. 83, 91 (2014) ("[E]very effort should be made to avoid rendering any part of the statute superfluous.").

The plain text of the statute therefore shows that this sentence does not create an additional tolling exception for whenever a person is not "in the community." Rather, it merely defines the legal status of NERA parolees, who "remain in release status in the community in the legal custody of" the DOC

[2] It is hard to overstate just how superfluous the Board's interpretation would render the existing tolling exception. The current exception only delays NERA parole if the defendant is imprisoned pursuant to "a sentence of incarceration for another crime[.]" N.J.S.A. 2C:43-7.2c. By its plan language, this exception only applies if a person is actively serving a sentence of incarceration and would not apply to any other types of confinement, including pretrial detention, civil commitment, and immigration detention. The Board's exception, in contrast, would apply to any confinement, civil or criminal, going far beyond the narrow exception outlined in N.J.S.A. 2C:43-7.2c, as well as how courts have interpreted the broader and more generic language governing federal supervised release, as discussed below. The Board's exception could also be read to "toll" a person's supervised release whenever they are taken out of "the community" following their initial release, despite N.J.S.A. 2C:43-7.2c not including such a provision.

while being "supervised by" the Board "as if on parole[.]" N.J.S.A. 2C:43-7.2c; see also N.J.S.A. 30:4-123.51b(a) (explaining NERA parolees "remain on release status in the community" and that the Board may "revoke the person's release status"); Hobson v. New Jersey State Parole Bd., 435 N.J. Super. 377, 382 (App. Div. 2014) (explaining protections for people on NERA parole "facing revocation of release status"). The Board's brief, confusingly, seems to even acknowledge this fact. See (Db 11) (noting language "specifies that the defendant's status is one of 'release status in the community'").

The Board is also off-base in claiming support from federal case law concerning 18 U.S.C. § 3624(e), which provides that a term of federal supervised release "commences on the day the person is released from imprisonment[.]" According to the Board, this case law supports its position because 18 U.S.C. § 3624(e) is "analogous" to N.J.S.A. 2C:43-7.2c and because federal courts have determined that "supervised release does not commence while an individual remains in any type of custody," including civil immigration detention. (Db 13-15) The Board is mistaken.

The first problem is that this case law does not even support the proposition for which it is cited: that federal supervised release is tolled by civil immigration detention. Contrary to this claim, the only circuit court to have addressed this question has held that a term of supervised release is not

tolled by immigration detention, such that the defendant's term commences "the moment he [i]s transferred" from prison to ICE custody. United States v. Garcia-Rodriguez, 640 F.3d 129, 130, 134 (5th Cir. 2011). And other circuit courts have similarly held or suggested that supervised release is not tolled by civil detention. See United States v. Turner, 689 F.3d 1117, 1118, 1121 (9th Cir. 2012) (holding defendant's supervised release "was not tolled during his civil detention" and "could run while [he was] civilly detained"); see also United States v. Neuhauser, 745 F.3d 125, 131 n.5 (4th Cir. 2014) (noting there "may be reasons" to hold supervised release is not tolled by "civil commitment"); United States v. Perez, 251 Fed.Appx. 523, 524 (10th Cir. 2007) (Pra 2) (noting defendant's "supervised release began to run as soon as he was transferred to ICE custody"). Despite the Board's claims, no other published case has even addressed whether supervised release is tolled by immigration detention, let alone answered that question in the affirmative.[3]

[3] The Board claims that "federal courts, including the Second, Fourth, Seventh and Eight Circuit Courts" have "addressed this issue" and have "held that continued confinement following release from the initial custodial term, including confinement resulting from an ICE detainer . . . tolls service of the supervised release term[.]" (Db 14) None of the cited opinions, however, addressed whether supervised release is tolled by immigration detention, let alone held that it is. (Db 14-15); see United States v. Freeman, 99 F.4th 125, 127-28 (2d Cir. 2024) (holding term was tolled by state imprisonment); United States v. Maranda, 761 F.3d 689, 694-98 (7th Cir. 2014) (holding term was tolled by continued incarceration for civil commitment hearing); Neuhauser, 745 F.3d at 127-31 (same); United States v. Mosby, 719 F.3d 925, 928-

Thus, even if 18 U.S.C. § 3624(e) was "analogous" to N.J.S.A. 2C:43-7.2c, the cases interpretating that statute would suggest that Wright's supervision was not tolled by his detention, and instead commenced "the moment he was transferred" to ICE custody. Garcia-Rodriguez, 640 F.3d at 134.

The second problem is that, contrary to the Board's claims, 18 U.S.C. § 3624(e) is not "analogous" to N.J.S.A. 2C:43-7.2c. This is for a few reasons.[4]

Most basically, as noted, 18 U.S.C. § 3624(e) provides that a "term of supervised release commences on the day the person is released from imprisonment[.]" (Emphasis added). The cases determining when a term of supervised release commences have therefore focused on interpreting when a person is "released from imprisonment." See, e.g., Johnson, 529 U.S. at 58 (interpreting phrase to mean "freed from confinement" such that supervised release only commences after release from prison); United States v. Freeman,

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30 (8th Cir. 2013) (same). The Board likewise overstates the Supreme Court's holding in Johnson to mean that "supervised release does not commence while an individual remains in any type of custody[.]" (Db 14) In reality, the Court only held that "[s]upervised release does not run while an individual remains in the custody of the Bureau of Prisons[,]" Johnson, 529 U.S. at 57, without addressing "whether other types of 'confinement'" toll supervised release. Garcia-Rodriguez, 640 F.3d at 132. In sum, the cases cited by the Board either did not address whether supervised released is tolled by immigration detention or held that such detention does not toll supervised release. Its representations to the contrary are, to put it mildly, inaccurate.

[4] Another difference is that federal courts can reduce or terminate a term of supervised released, 18 U.S.C. § 3583(e), based on the "equitable considerations" that arise from a tolled commencement date. Johnson, 529 U.S. at 60.

99 F.4th 125, 127-28 (2d Cir. 2024) (holding defendant was not "released from imprisonment" after completing federal sentence because he was then imprisoned on state charges); Neuhauser, 745 F.3d at 127-31 (holding defendant was not "released from imprisonment" when his "release from confinement" was "stayed" pursuant to statute allowing for civil commitment hearing); United States v. Maranda, 761 F.3d 689, 694-98 (7th Cir. 2014) (same); United States v. Mosby, 719 F.3d 925, 928-30 (8th Cir. 2013) (same).

N.J.S.A. 2C:43-7.2c, in contrast, provides that NERA parole supervision generally commences "upon the completion of the sentence of incarceration[.]" (Emphasis added). The cited federal case law therefore not only involves a different statute but interprets language that is entirely distinct from the language employed in N.J.S.A. 2C:43-7.2c.[5] How federal courts have interpreted the phrase "released from imprisonment" pursuant to 18 U.S.C. § 3624(e) sheds no light on the meaning of N.J.S.A. 2C:43-7.2c.[6]

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[5] N.J.S.A. 2C:43-7-2.c does, of course, include a slightly more analogous provision for when a defendant is "serving a sentence of incarceration for another crime at the time [he] completes the sentence of incarceration" for the NERA offense, in which case supervision commences "upon the defendant's release from incarceration." That tolling provision, however, is not at issue, as the Board does not dispute. And even if it was, civil immigration detention is not "incarceration," Garcia-Rodriguez, 640 F.3d at 134, and especially not incarceration pursuant to a "sentence" for "another crime." N.J.S.A. 2C:43-7.2c.

[6] Some of the cited case law is even more attenuated. United States v. Harris, 118

That said, the different terminology employed in the two statutes, along with some of the cited federal case law, is helpful in interpreting N.J.S.A. 2C:43-7.2c, just not in a way that benefits the Board. The Legislature could have replicated 18 U.S.C. § 3624(e) if it wanted NERA parole to only commence upon a person's release from incarceration. Indeed, it employed similar language for individuals who are serving another term of incarceration. N.J.S.A. 2C:43-7.2c. The Legislature, however, did not make that decision, and instead chose to tie the commencement of NERA parole, in the ordinary case, to "the completion of the sentence of incarceration[.]" Ibid.

This word choice was not an accident. Although the sentence of incarceration and the release from incarceration "are related, for the latter cannot begin until the former expires[,]" the "terms are not interchangeable." Johnson, 529 U.S. at 58-59. Rather, a defendant will "complete[] serving his lawful sentences" when his "term of imprisonment should have ended" but will only be released from imprisonment "on the day [he] in fact is freed from confinement." Id. at 58; see also Turner, 689 F.3d at 1120 (explaining "'term

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F.4th 875, 882-83 (7th 2024), for example, dealt with a part of 18 U.S.C. § 3624(e) that provides that a "term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days." N.J.S.A. 2C:43-7.2c does not include a similar provision. And even if it did, such a provision would be irrelevant, as Wright was held in civil immigration detention, not "imprisoned in connection with" a criminal conviction.

of imprisonment' refers to the sentence imposed by the sentencing judge"). A sentence of incarceration, in other words, is a legal concept that can be completed or expire before the defendant is released to the community.

This is demonstrated by the Board's cited case law. See Johnson, 529 U.S. at 58 (holding supervised release did not commence until defendant was released from prison even though "he completed serving his lawful sentences" years earlier); Maranda, 761 F.3d at 694 (rejecting argument that supervised release "began on the day [defendant's] prison sentence expired, rather than on the day he was physically released from custody"); Neuhauser, 745 F.3d at 125-26 (rejecting argument that supervised release "began when [defendant's] term of imprisonment ended" rather than upon "his release from prison" years later); Mosby, 719 F.3d at 928-29 (rejecting argument that supervised release began when defendant's "prison term ended" rather than when was "released" from prison years later). It is inherent to N.J.S.A. 2C:43-7.2c, which specifically envisions a situation in which a "defendant completes the [NERA] sentence of incarceration" while still imprisoned for "a sentence of incarceration for another crime[.]" It has been recognized by our Supreme Court. See State Njango, 247 N.J. 533, 543, 548 (2021)[7] (addressing remedy

[7] Although Wright has cited Njango to explain how N.J.S.A. 2C:43-7.2 has been interpreted and for the principle that a person is denied their rights if they are held

for defendant who was "wrongfully imprisoned beyond the term of incarceration"). And it is even acknowledged by the Board. See (Db 3-4) (noting "Wright completed his maximum term of incarceration" before ICE detention); (Db 10) (noting Wright was confined "following the expiration of his custodial term"); (Db 12) (noting Wright's "custodial sentence expired" on November 20, 2018); (Db 18) (noting Wright "remained confined" by ICE "following the expiration of his custodial term in November 2018").

N.J.S.A. 2C:43:7.2c, unlike 18 U.S.C. § 3624(e), thus ties the commencement of NERA parole to the defendant's legal completion of his sentence, not his release from custody. That Wright's term of NERA parole commenced once he completed his sentence and entered ICE custody is thus not only permitted under the statute but required.[8] It is, moreover, consistent with our Supreme Court's case law, which has clarified that a person's term of NERA parole supervision can commence even while they remain incarcerated.

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in custody for more time than his sentence allows, he has not and does not argue that his case presents the same legal or factual scenario as in Njango. The State's claims to the contrary are therefore inaccurate and its efforts to distinguish this case from Njango, as well its discussion of Third Circuit cases addressing credit issues somewhat like those present in Njango, are irrelevant. (Db 12-13, 17-18)

[8] Indeed, the language employed by the Legislature is the exact type of language that the U.S. Supreme Court found would allow a term of supervised release to run while a person is still incarcerated. See Johnson, 529 U.S. at 57 (suggesting such an outcome if the statute provided that supervised release commences "on the day the person is released or on the earlier day when he should have been released").

See Njango, 247 N.J. at 545-51 (holding term of NERA parole must be reduced by any time served in prison beyond sentence of incarceration).

Finally, holding that Wright's term of NERA parole commenced when he was transferred to ICE custody does not conflict with the purposes of NERA parole. In arguing to the contrary, the Board cites to the U.S. Supreme Court's admonition that supervised release is intended "to assist individuals in their transition to community life" and "fulfills rehabilitative ends" that are "distinct from those served by incarceration." (Db 19) (quoting Johnson, 529 U.S. at 59). This argument overlooks that terms of supervised release can be served during civil detention. Garcia-Rodriguez, 640 F.3d at 134. And, just as significantly, it ignores that "[u]nder our jurisprudence," NERA parole is "punishment" aimed at protecting the public, a goal that is equally "satisfied" by continued detention. Njango, 247 N.J. at 547, 550 (citation omitted).

Thus, the Board's arguments must be rejected because they conflict with the plain text of N.J.S.A. 2C:43-7.2c, basic tenets of statutory construction, and even the federal case law cited in its brief. The Legislature has made clear that NERA parole commences when a person's term of incarceration is complete. For Wright, that occurred on November 20, 2018, the day he completed his term of incarceration and was released from state prison. The Legislature did not create an exception that would allow the Board to delay

Wright's term of NERA parole for three years based on his civil immigration detention, and it is not within the authority of the Board or the courts to create such an exception. The matter must therefore be remanded for the Board to change Wright's parole commencement date to November 20, 2018.

POINT II

THE BOARD ACKNOWLEDGES THAT IT CALCULATED WRIGHT'S CONTESTED PAROLE COMMENCEMENT DATE, FURTHER SHOWING IT IS THE APPROPRIATE AGENCY TO RECALCULATE THAT DATE ON REMAND.

The Board continues to claim that it "lacked jurisdiction to adjudicate the appeal" and that Wright must instead seek redress from the DOC, which "is responsible for computing . . . the expiration date of any term of supervision." (Db 8) At the same time, the Board acknowledges that Wright's legal argument relates to "the commencement date" of his supervision term, not its expiration date. Ibid. It also concedes that the Board calculated Wright's supervision commencement date based on its "position" that NERA parole "is to be served in the community." (Db 6) In other words, the Board acknowledges that it is the agency responsible for the legal error in issue.

Nonetheless, the Board disclaims responsibility for resolving the error. In doing so, the Board asks this Court to focus not on the legal questions in issue but rather on their downstream consequences. Specifically, the Board

asserts that the DOC is the appropriate agency to address the appeal, despite not having determined the disputed commencement date, because the "challenge to the commencement date invariably impacts the expiration date" of the supervision term. (Db 8) In other words, the Board argues that it has no role in this appeal because any change in Wright's supervision commencement date would lead to "an adjustment in the expiration date" by the DOC. Ibid.

This is nonsensical. Wright is challenging his NERA parole supervision commencement date. The Board calculated that date based on its interpretation of N.J.S.A. 2C:43-7.2c. The Board is therefore the appropriate agency for correcting the commencement date regardless of how the DOC may respond to such a correction. Indeed, to hold otherwise would seemingly insulate any parole decision that ends up affecting the DOC, including the denial of parole, from judicial scrutiny. This is not, and cannot be, the law.[9]

That said, this Court should reach the merits of the appeal in the interests of justice and judicial economy even if it accepts the Board's argument. Delaying judicial review would serve no benefit because the issue of whether NERA parole is tolled by civil immigration detention has been fully litigated,

[9] The Board also argues that its jurisdictional finding is entitled to a presumption of "validity and reasonableness[.]" (Db 9) But "[s]ubject matter jurisdiction is a question of law" that courts review de novo. State v. Coviello, 252 N.J. 539, 552 (2023) (citation omitted). Nonetheless, the Board's conclusion is not only wrong, but so unreasonable that reversal would be required under a deferential standard.

because we already know that the DOC has denied interest in the case (Pa 11), and because our courts have allowed similar questions to be resolved on remand. See Njango, 247 N.J. 546 n.4, 551 n.5 (charging the Board "and/or" the DOC with determining when defendant completed term of incarceration and allowing the Board to "rely on or be assisted by" the DOC to determine when NERA parole expired). Any delay, moreover, would irreparably harm Wright, who would be forced to seek additional, futile, administrative review, while continuing to serve time in custody beyond his sentence.

CONCLUSION

For the foregoing reasons, and the reasons stated in Wright's opening brief, this Court should find that Wright's term of NERA parole supervision commenced upon his release from state prison and remand the matter for the Board to correct his parole supervision commencement date accordingly.

Respectfully submitted,

JENNIFER N. SELLITTI
Public Defender
Attorney for Defendant-Appellant

BY: 
CODY T. MASON
Deputy Public Defender
Attorney ID No. 150312015