

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

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JAIME IVAN DUCHI-NAULA,)	
)	
<i>Petitioner,</i>)	Civ. No: 25-CV-247-LM-AJ
v.)	
E.L. Tatum, Jr.,)	
Warden, FCI-Berlin;)	
)	
Patricia Hyde,)	
Acting Boston Field Office Director)	
Immigration and Customs Enforcement;)	
)	
Todd Lyons,)	
Acting Director)	
U.S. Immigration and Customs Enforcement;)	
)	
Kristi Noem,)	
Secretary)	
U.S. Department of Homeland Security,)	
)	
Pamela Bondi,)	
U.S. Attorney General,)	
)	
<i>Respondents.</i>)	
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RESPONDENTS' MEMORANDUM OF LAW REGARDING BOND

An Immigration Judge (IJ) has twice ruled that Petitioner is within a class of aliens subject to mandatory detention pending removal proceedings pursuant to 8 U.S.C. § 1225(b). Though Petitioner could appeal the IJ's determination to the Board of Immigration Appeals, Petitioner instead seeks immediate habeas relief by way of a petition asking this Court to order

the IJ to conduct a bond hearing to which the IJ has already determined Petitioner is not statutorily entitled. Moreover, Petitioner seeks an order from this Court directing that he be released on bond during the pendency of his habeas petition.

Petitioner cannot satisfy either of the requisite tests that would permit this Court to conduct a bond hearing; accordingly, the Court must decline to do so.

I. LEGAL STANDARD

“[A] district court entertaining a petition for habeas corpus has inherent power to release the petitioner pending determination of the merits.” *Woodcock v. Donnelly*, 470 F.2d 93, 94 (1st Cir. 1972) (per curiam). In the First Circuit, a court may entertain the release on bond of a habeas petitioner pending a final decision only if: 1) the petitioner has a clear case on the law and facts, or 2) exceptional circumstances are present *and* the petitioner demonstrates a substantial claim of constitutional error. *Glynn v. Donnelly*, 470 F.2d 95, 98 (1st Cir. 1972); *Bader v. Coplan*, No. Civ. 02-508-JD, 2003 WL 163171, at *4 (D. NH Jan. 23, 2003). The court in *Glynn* explained that “in the absence of exceptional circumstances . . . the court will not grant bail prior to the ultimate final decision unless petitioner presents not merely a clear case on the law, . . . but a clear, and readily evident, case on the facts. Merely to find that there is a substantial question is far from enough.” *Id.* at 98. Similarly, the “ability to raise a substantial question of constitutional error, standing alone, is insufficient.” *Id.*

Petitioner cannot satisfy either of the relevant tests. He does not have a “clear case” on the law and the facts that his immigration detention is unlawful—in fact, his immigration detention is mandated by statute. Likewise, he cannot show a substantial claim of constitutional error because the Supreme Court has upheld the constitutionality, time and again, of mandatory

immigration detention without a bond hearing for applicants for admission like Petitioner. *See, e.g., Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953) (expressly holding that the continued exclusion and detention without a hearing of an arriving alien did not deprive the alien of any statutory or constitutional rights). Having failed to make “the extraordinary showing required for this Court to grant bail during the pendency” of Petitioner’s habeas proceedings, this Court should decline to hold a bond hearing. *Bader v. Coplan*, 2003 WL 163171, at *1.

II. ARGUMENT

A. Petitioner Cannot Establish a Clear Case on the Law and the Facts that he is Entitled to the Relief he Seeks.

Petitioner is an alien seeking admission and thus properly detained pursuant to § 1225(b). *See* 8 U.S.C. §§ 1225(b)(1) and (b)(2). The detention of aliens seeking admission to the United States is mandated by statute. 8 U.S.C. § 1225(b).¹ Aliens seeking admission to the United States at ports of entry are subject to inspection by a Customs and Border Protection (CBP) officer and carry the burden of demonstrating their admissibility into the United States. *See* 8 U.S.C. § 1225(a)(3); 8 C.F.R. § 235.1(f). If an applicant for admission indicates an intention to apply for asylum and is found to have a credible fear of persecution, Section 1225 mandates that “the alien *shall be detained* for further consideration of the application for asylum.” 8 U.S.C.

¹ The term “admission” is defined by the INA to mean “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A); *see also* 8 C.F.R. § 1235.1 (setting forth inspection procedures). An alien who is seeking admission is known as “an applicant for admission,” 8 U.S.C. § 1225(a)(1). An alien like Petitioner who is temporarily paroled into the United States has not been “admitted” for immigration purposes and is still considered an applicant for admission. 8 U.S.C. § 1182(d)(5)(A); *see also Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 137 (2020) (explaining that “aliens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are ‘treated’ for due process purposes ‘as if stopped at the border.’” *Id.* (citations omitted)); *Matter of Q. LI*, 29 I & N Dec. 66, 68 (2025).

1225(b)(1)(B)(ii) (emphasis added). Otherwise, if the CBP officer determines that “an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall be detained* for a proceeding under section 1229a.” 8 U.S.C. § 1225(b)(2) (emphasis added).

As explained by the Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), these statutory provisions “mandate detention of applicants for admission until [removal] proceedings have concluded.” *Id.* at 297. In declining to find a statutory requirement to conduct bond hearings for such applicants for admission, the Supreme Court explained that “nothing in the statutory text imposes any limit on the length of detention ... and neither [statutory provision] says anything whatsoever about bond hearings.” *Id.* As such, Petitioner’s detention without a bond hearing or individualized review of his continued detention is lawful pursuant to the plain language of the statute and Supreme Court precedent.

Notwithstanding this mandate, immigration authorities retain limited discretion to parole into the United States temporarily an alien like Petitioner who is an applicant for admission. 8 U.S.C. § 1182(d)(5); 8 C.F.R. § 212. Such discretion is exercised “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5). In particular, regulations provide that ICE or CBP may grant parole to aliens subject to detention under § 1225 if the alien is “neither a security risk nor a risk of absconding,” *and* (1) has a serious medical condition; (2) is pregnant; (3) falls within certain categories of juveniles; (4) will be a witness; or (5) if continued detention is otherwise “not in the public interest.” 8 C.F.R. § 212.5(b); *see also* 8 C.F.R. § 235.3(e). Parole is terminated automatically upon service on the alien of a Notice to Appear (NTA) in Immigration Court. *See* 8 C.F.R. § 212.5(e)(2)(i); *see also Matter of Q*, LI, 29 I & N Dec. 66, 70 (2025). “When parole granted by DHS is

terminated, ‘the alien shall forthwith return or be returned to the custody from which he was paroled.’” *Q. LI*, 29 I & N Dec. at 69-70 (quoting INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5(e)(2)(i) (2025) (providing that when parole granted to an alien is terminated “he or she shall be restored to the status that he or she had at the time of parole”)).

Petitioner acknowledges that he was properly classified as an applicant for admission subject to § 1225(b) at the time of his arrival in the United States. Petition, DN 1, at 2. He argues, however, that the approval of his Form I-360, an application for a special immigrant visa, “changes his classification to ‘an immigrant who is present in the United States.’” *Id.* (citing *Rodriguez v. Perry*, 747 F. Supp. 3d 911, 916 (E.D. Va. 2024)). Petitioner is wrong.

Though his I-360 has been approved, Petitioner is currently ineligible to apply for adjustment of his status to that of lawful permanent resident because there is no special immigrant visa currently available to him. As is evident from the face of the document notifying Petitioner that his Form I-360 was approved, the approval itself is not the legal equivalent of a visa. I-797, Notice of Action, DN 1-2, at 26. Moreover, the USCIS policy guidance on which Petitioner relies specifies that “SIJ classification does not render an alien lawfully present [and] *does not confer lawful status.*” Policy Alert, DN 1-2 at 107 (emphasis added). Accordingly, the mere approval of Petitioner’s Form I-360 did not change his status from that of an applicant for admission for purposes of § 1225(b).

At best, Petitioner’s argument that approval of his Form I-360 shifts the statutory authority for his detention from § 1225(b) to § 1226(a) raises a “substantial question” as to whether he is entitled to a bond hearing under § 1226(a). But his only authority for that argument is a non-binding decision from a district court in Virginia that appears to conflate the

granting of an I-360 with a change in lawful status. *See Rodriguez*, 747 F. Supp. 3d at 914 (“On January 30, 2017, USCIS approved [the petitioner’s] SIJ petition, *thereby granting him SIJ status.*”) (emphasis added). The erroneous view of SIJ “status” reflected in the *Rodriguez* decision is entitled to no deference by this Court, particularly in light of the USCIS documents provided by Petitioner that clearly state that “SIJ classification . . . *does not confer lawful status.*” Policy Alert, DN I-2 at 107 (emphasis added).²

The *Rodriguez* case is insufficient to establish, at this early stage, a “clear case on the law and the facts” that would permit this Court to exercise its authority to release Petitioner on bail pending resolution on the merits.³ Accordingly, Petitioner has not demonstrated a clear case on the law and the facts and this Court should decline to order a bond hearing.

B. Petitioner’s Detention Does Not Raise a Substantial Claim of Constitutional Error

Because he cannot demonstrate a “clear case on the law and the facts,” Petitioner can only be considered for release on bond during the pendency of his habeas petition if the Court

² Importantly, *Rodriguez* is also distinguishable from the instant case on the facts because at the time the petitioner in *Rodriguez* filed his habeas petition, his immigration proceedings had been administratively closed and he had a pending I-485, Application to Adjust Status to Lawful Permanent Resident. *Rodriguez*, 747 F. Supp. 3d at 915. In other words, unlike Petitioner, the *Rodriguez* petitioner’s SIJ petition had not merely been approved, but an immigrant visa had been allocated to him and he had already applied to adjust his status to that of lawful permanent resident. *Id.*

³ Moreover, a recent BIA decision squarely rejects Petitioner’s legal argument, as the Board explained in *Matter of Q. LI* that “once an alien is detained under [1225(b)], DHS cannot convert the statutory authority governing her detention from [1225(b)] to section [1226(a)] through the post-hoc issuance of a warrant.” *Matter of Q. LI*, I & N Dec. 66, 71 fn. 4 (2025).

finds both exceptional circumstances and a substantial claim of constitutional error. Neither are present here.

Petitioner's alleged constitutional claim is very closely tied to the legal argument he advances regarding the statutory authority for his detention. This is because the process to which he is entitled depends entirely on the statute under which he is detained. But for the reasons set forth in the preceding section, Petitioner's legal argument that such authority has shifted to § 1226(a) is tenuous at best. Ultimately, it is the resolution of this legal question that will be determinative of the merits of Petitioner's habeas petition, assuming the Court elects to consider Petitioner's unexhausted claim. But in this posture where the legal arguments on the merits are not yet fully developed and the Court is only contemplating whether to hold a bond hearing, the Court should not assume that Petitioner's tenuous legal argument will ultimately carry the day. Because Petitioner has not made a clear showing that his detention is governed by § 1226(a), he has not raised a substantial claim of constitutional error in the denial of his request for a bond hearing before the IJ.

Assuming that the statutory authority for his detention remains § 1225(b), there is no substantial claim of constitutional error in the IJ's finding that Petitioner is not entitled to a bond hearing. Courts have long recognized that detention during a removal proceeding is "a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003); see also *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *Wong Wing v. United States*, 163 U.S. 228, 235 (1896). In the case of applicants for admission like Petitioner, "[w]hen an alien arrives at a port of entry—for example, an international airport—the alien is on U.S. soil, but the alien is not considered to have entered the

country ...”. *Thuraissigiam*, 591 U.S. at 139. Stated further, “even those [arriving aliens] paroled elsewhere in the country for years pending removal—are ‘treated’ for due process purposes ‘as if stopped at the border.’” *Id.* (citations omitted). Applying the “century-old rule regarding the due process rights of an alien seeking initial entry[.]” the Court explained that such aliens have “only those rights regarding admission that Congress has provided by statute.” *Id.* at 139-40.

Collectively, the case law establishes that an alien seeking admission requests a privilege, not a right, and Congress’ mandate that such aliens be detained without bond while their proceedings are pending is constitutionally permissible. *See, e.g., Landon v. Plasencia*, 459 U.S. 21, 32 (1982) (collecting cases); *see also Demore*, 538 U.S. at 526 (reiterating the Supreme Court’s “longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings.”)⁴

C. Petitioner Has Not Established Exceptional Circumstances

Finally, Petitioner has not established that exceptional circumstances are present in his case. Courts have interpreted this element as requiring a showing of “some circumstances making this application exceptional and deserving of special treatment in the interests of justice.” *Shaw v. Riendeau*, Civil No. 19-cv-1122-SE-AJ, 2025 WL 920617, at *1 (D. N.H. Feb. 28, 2025). Courts have found, for instance, that “the risk that COVID-19 presents to high-risk detainees is an extraordinary circumstance that justifies a bail hearing.” *Gomes v. U.S. Dept. of Homeland Sec’y*, 460 F.Supp.3d 132, 152 (D. N.H. May 14, 2020). Indeed, “[s]evere health

⁴ Where the legal landscape is less clear is when immigration detention becomes “unreasonably prolonged.” *See Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner here does not allege that his detention has become “unreasonably prolonged.”

issues have been the prototypical but rare case of extraordinary circumstances that justify release pending adjudication of habeas.” *Id.* (quoting *Coronel v. Decker*, 449 F. Supp. 3d 274, 289 (S.D. N.Y. 2020) (collecting cases). But Petitioner alleges no such extraordinary circumstances here. Thus, even if he had raised a “significant claim of constitutional error,” which he has not, he would be ineligible for release on bail because “a substantial question of constitutional error, standing alone, is insufficient.” *Glynn*, 470 F.2d at 98.

III. CONCLUSION

Petitioner has failed to make “the extraordinary showing required for this Court to grant bail during the pendency” of his habeas proceedings. *Bader v. Coplan*, 2003 WL 163171, at *1. He has not demonstrated a clear case on the law and the facts that his detention is unlawful, nor does his detention raise a substantial claim of constitutional error. Petitioner’s circumstances, while perhaps sympathetic, are not extraordinary. For these reasons, the requisite standard for bail pending resolution of the habeas petition has not been met, and this Court should decline to hold a bond hearing.

Respectfully submitted,

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