UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

JAIME IVAN DUCHI-NAULA,	
Petitioner,	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,	
Respondents.	

RESPONDENTS' SUPPLEMENTAL MEMORANDUM OF LAW REGARDING BOND

The Board of Immigration Appeals (BIA) has recently held that an alien like Petitioner who is "an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for

any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a)." *Matter of Q. LI*, 29 I. & N. Dec. 66, 69 (2025) (emphasis added). Petitioner was arrested by immigration authorities shortly after crossing the border without inspection in December 2022. Though authorities could have placed him into expedited removal proceedings under 8 U.S.C. § 1225(b)(1), they instead placed him into full removal proceedings under § 1225(b)(2). He was paroled into the United States. Petitioner's argument that the approval of his SIJ petition some two years later shifts the authority for his detention to § 1226(a) ignores the BIA's clear precedent that aliens in this posture remain subject to mandatory detention under § 1225, subject only to DHS's discretionary parole authority. *Q. LI*, 29 I. & N. Dec. at 69-70.

The Board's decisions in *Matter of Q. LI* and *Matter of M-S-*, 27 I. & N. Dec. 509, 518 (2019), make clear that the statutory authority for detention is driven by the circumstances surrounding the alien's initial encounter with immigration authorities.[1] If that encounter subjects the alien to the mandatory detention provisions of § 1225, the alien "is ineligible for *any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a)*." *Matter of Q. LI*, 29 I. & N. Dec. 66, 69 (2025) (emphasis added); *see also Matter of M-S-*, 27 I. & N. Dec.

---

1 Petitioner erroneously suggests that Respondents' position is that "all noncitizens who have not been admitted to the United States shall be mandatorily detained." DN 13 at 3. This is an inaccurate statement of the law and of Respondents' position. *Matter of M-S-* explains that aliens like Petitioner who "are physically present within the U.S. without having been admitted or paroled, (ii) are encountered by an immigration officer within 100 air miles of any U.S. international land border, and (iii) cannot establish that they have ben physically present in the U.S. continuously for the 14-day period immediately prior to the date of encounter" are subject to expedited removal and the mandatory detention provisions of § 1225. 27 I & N Dec. 509, 511 (2019). By contrast, aliens who have not been admitted or paroled but who can establish that they have been physically present in the United States continuously for the 2-year period immediately preceding their encounter with immigration authorities are exempt from expedited removal proceedings and their detention is governed instead by § 1226. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

509, 518 (2019) ("aliens subject to expedited removal procedures . . . (including those aliens who are referred after a positive credible fear determination . . . for proceedings under section 240 of the Act) are covered by section [1225], not section [1226].") (internal quotation marks and citations omitted); *id.* at 519 fn. 1 ("[A]liens who have never been admitted into the United States do not have a presumptive constitutional entitlement to be released into the country.")

The approval of Petitioner's SIJ petition does not change his status as an applicant for admission (a fact Petitioner does not appear to dispute, see DN 13 at fn. 1), and the law is well settled that applicants for admission have no statutory or constitutional entitlement to a bond hearing, *see Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953); *Matter of M-S-*, 27 I. & N. Dec. at 519 fn. 1 ("[A]liens who have never been admitted into the United States do not have a presumptive constitutional entitlement to be released into the country."). Petitioner's argument that his subsequent arrest pursuant to an administrative arrest warrant converts the authority for his detention to § 1226 was flatly rejected by the BIA in *Q. LI*. *See* 29 I. & N. at 71 fn. 4 ("Once an alien is detained under section [1225(b)], DHS cannot convert the statutory authority governing . . . detention from section [1225(b)] to section [1226(a)] through the post-hoc issuance of a warrant.") Rather, the Board expressly held that "an applicant for admission who was arrested without a warrant while arriving in the United States and thereafter placed in removal proceedings, is detained under section [1225(b)(2)] until the conclusion of removal proceedings." *Id.* at 71. Petitioner's removal proceedings remain pending, and he therefore remains subject to § 1225(b) notwithstanding the approval of his SIJ petition.

Finally, there is no case law to support the proposition that Petitioner's detention, which has lasted approximately six weeks as of the date of the filing of his petition, has become so unreasonably prolonged as to constitute a due process violation. In the context of post-removal order detention, the Supreme Court has held that detention of six months is presumptively reasonable and that detention beyond six months may continue to be reasonable so long as removal is reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678, 701-02 (2001). The Supreme Court has not squarely addressed the constitutional implications of prolonged *pre-removal* order detention nor has it defined when pre-removal order detention may become "unreasonably prolonged." But in light of *Zadvydas* and other controlling precedent upholding the constitutionality of pre-removal order detention, it is doubtful that Petitioner's detention of less than two months would qualify as "unreasonably prolonged." *See, e.g., Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953).

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,

JOHN J. MCCORMACK
Acting United States Attorney

Dated: July 6, 2025

By: /s/ Kasey A. Weiland
Kasey A. Weiland
Assistant U.S. Attorney
NH Bar # 272395
53 Pleasant Street, 4th Floor
Concord, New Hampshire 03301
(603) 225-1552
[illegible] usdoj.gov