

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

Alfredo Jose Jimenez,)
)
 Petitioner,)
)
 vs.)
)
Esker Tatum, Warden, FCI-Berlin;)
)
Patricia Hyde, Acting Field Office Director,)
 Boston, U.S Immigration and Customs)
 Enforcement;)
)
Todd Lyons, Acting Director, U.S. Immigration)
 and Customs Enforcement;)
)
Kristi Noem, Secretary, U.S. Department of)
 Homeland Security)
)
 Respondents.)
 _____)

Case No: 1:25-cv-00326-LM-AJ

BRIEF IN SUPPORT OF PETITIONER’S ENTITLEMENT TO A BAIL HEARING

Pursuant to the Court’s order issued August 29, 2025, Petitioner Alfredo Jose Jimenez hereby submits a brief in support of his entitlement to a bail hearing pursuant to this Court's inherent authority to release a petitioner seeking habeas relief.

INTRODUCTION

Immigration authorities arrested Petitioner Alfredo Jose Jimenez as he exited a routine immigration court hearing for no articulable reason and have held him in immigration detention for over a month. Civil immigration detention, as is true of any government detention, must serve a legitimate government purpose, and here there is none.

This Court has inherent authority to grant bail pending the adjudication on the merits of Mr. Jimenez’s Petition for Writ of Habeas Corpus (Doc. No. 1) and Mr. Jimenez’s circumstances meet the standard for the Court to hold a bail hearing. Mr. Jimenez demonstrates a substantial claim of constitutional error – he has been arbitrarily deprived of liberty in violation of his substantive due process rights. Exceptional circumstances are also present so that without prompt release the habeas remedy will be ineffective. In detaining Mr. Jimenez, the government seeks to gain a litigation advantage in their removal proceeding against him. Mr. Jimenez’s detention could prevent him from obtaining the immigration relief he is entitled to and cause him to be ordered removed prior to obtaining habeas relief. The government’s actions here fit into a shocking pattern of excessive detention that seeks to curtail the ability of asylum seekers to vindicate their rights to protection from persecution in the United States.

LAW and ARGUMENT

This Court has inherent authority to grant bail pending the adjudication on the merits of Mr. Jimenez’s Petition for Writ of Habeas Corpus.

“[A] district court entertaining a petition for habeas corpus has inherent power to release the petitioner pending determination of the merits.” *Gomes v. U.S. Dep’t of Homeland Sec.*, 460 F. Supp. 3d 132, 144 (D.N.H. 2020) (quoting *Woodcock v. Donnelly*, 470 F.2d 93, 94 (1st Cir. 1972)). A court may grant bail to a habeas petitioner 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. *Id.* (citing *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.N.H. Jan. 23, 2003)).

I. Mr. Jimenez demonstrates a substantial claim of constitutional error because he has been arbitrarily detained for no legitimate government purpose.

When Mr. Jimenez entered the United States in summer of 2023, he was placed in expedited removal proceedings and was properly subject to mandatory detention as someone arrested near the border who not yet demonstrated a credible fear of return to his home country. *See* Doc. No. 1, Ex. 1 at ¶¶ 4-5; 8 U.S.C. § 1225(b)(1)(A)(i). Following a determination by an immigration judge that he had a credible fear, DHS could have chosen to continue his detention. 8 U.S.C. § 1225(b)(1)(B)(ii); *see also Matter of M-S-*, 27 I&N Dec. 509, 510 (A.G. 2019). However, DHS chose not to do so – the agency determined that there was no need to deprive Mr. Jimenez of liberty and released him on parole pursuant to 8 U.S.C. § 1182(d)(5)(A) so that he could pursue his asylum claim as a free person in the United States. Doc. No. 1, Ex. 1 at ¶7; *see also Matter of M-S-*, 27 I&N Dec. at 510 (a person transferred from expedited removal proceedings to full proceedings may only be released pursuant to 8 U.S.C. § 1182(d)(5)(A)).

To grant Mr. Jimenez parole, DHS made four determinations: (1) that he was not a security risk, (2) that he was not at risk of absconding, (3) that his fear of persecution in his home country warranted parole for urgent humanitarian reasons, and (4) that allowing him to pursue his asylum claim outside of custody was in the public interest. 8 C.F.R. § 212.5(b). Having made those determinations that custody is unnecessary and even contrary to the public interest, DHS had no reason to re-detain Mr. Jimenez, and thus no authority to do so.

Congress promulgated the humanitarian parole statute to allow individuals to remain free in the United States when urgent humanitarian reasons or significant public benefit warranted it. 8 U.S.C. § 1182(d)(5)(A). Fleeing persecution in one's home country and seeking asylum in the United States is an urgent humanitarian reason meriting a parole grant. U.S. Citizenship and

Immigration Serv., *Guidance on Evidence for Certain Types of Humanitarian or Significant Public Benefit Parole Requests* (Last updated Oct. 11, 2022).¹

Termination of parole prior to the end of the parole term requires written notice, and a determination that either the purpose of the parole has been accomplished or that neither humanitarian reasons nor public benefit warrants the continued presence of the noncitizen in the United States. 8 C.F.R. § 212.5(e)(2)(i). Upon expiration of the term of parole, if removal cannot be executed within a reasonable time, the parole shall be renewed, absent a determination that the public interest requires that the noncitizen remain in custody. 8 C.F.R. § 212.5(e)(1), (2)(i). Thus, this regulatory scheme, in line with the constitutional requirement against arbitrary detention, requires a legitimate reason for a return to custody and does not give DHS unfettered discretion to re-detain a person at will once it has granted the person parole.

Re-detention, after an undisturbed determination that custody is not warranted, not only violates the statutory scheme but is unmoored from any legitimate government objective such that it runs afoul of the Constitution's promise of freedom from arbitrary detention. *Demore v. Kim*, 538 U.S. 510, 532 (2003) (Kennedy, J., concurring) ("Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention"); *Kong v. United States*, 62 F.4th 608, 616 (1st Cir. 2023) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)) ("Continued detention is unconstitutional unless it serves [legitimate government] aims"); *Jennings v. Rodriguez*, 583 U.S. 281, 332 (2018) (Breyer, J., dissenting) ("[T]he Constitution does not authorize arbitrary detention.") (addressing the constitutional limits of the INA's mandatory detention statutes, which the majority remained silent on).

¹ Available at <https://www.uscis.gov/humanitarian/humanitarian-or-significant-public-benefit-parole-for-noncitizens-outside-the-united-states/guidance-on-evidence-for-certain-types-of-humanitarian-or-significant-public-benefit-parole-requests>.

When Mr. Jimenez was first detained shortly after entry to the United States, the government clearly had a legitimate reason to detain him pursuant to 8 U.S.C. § 1225(b) – first because removal appeared imminent through the expedited removal process, and then, once Mr. Jimenez showed a credible fear, to mitigate any unknown security or flight risk he may pose while his claims for relief were adjudicated. However, once DHS determined that Mr. Jimenez’s detention was not warranted for any of these reasons, their legitimate government interest in detaining him ceased to exist. As higher Courts have noted over and over again, lack of immigration status in and of itself is not a reason to detain someone. *See Jennings*, 583 U.S. at 286 (Purpose of detention during removal proceedings is to give immigration officials time to determine a noncitizen’s status without running the risk of the noncitizen’s either absconding or engaging in criminal activity before a final decision can be made); *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022) (noting that the INA only authorizes the detention of some noncitizens during removal proceedings); *Zadvydas*, 533 U.S. at 690 (detention of noncitizen with no legal right to remain in the United States is unconstitutional where it serves no legitimate government purpose); *Kong*, 62 F.4th at 616 (1st Cir. 2023) (same).

Mr. Jimenez’s current detention accomplishes no legitimate government aim and thus cannot be constitutional. The government does not consider Mr. Jimenez to be a danger to the community and has no reason to. Doc. No. 1, Ex. 1 at ¶¶ 7, 8-14. The location of his arrest, at the New York Immigration Court after he appeared at a hearing, eviscerates any government contention that his detention is necessary to ensure his appearance at removal proceedings. *Id.* at ¶¶ 14-15. Mr. Jimenez was paroled for urgent humanitarian reasons to be considered for asylum relief, and he is diligently pursuing that claim, so the humanitarian reasons that he was paroled

for continue to exist. *Id.* at ¶¶ 10, 14. Finally, no circumstances have occurred that would disturb the determination that his detention is not in the public interest.

Mr. Jimenez placed his trust in the lawful processes afforded to him to seek protection from persecution in the United States. The government's position appears to be that while Mr. Jimenez diligently seeks that relief, he has no choice but to be subjected to a game of catch and release at the whim of the Executive. That is not what the statutory scheme nor the Constitution allows.

II. **Exceptional circumstances are present here.**

Exceptional circumstances are those that make the grant of bail necessary to make the habeas remedy effective. *Gomes*, 460 F. Supp. 3d at 144; *compare Mahdawi v. Trump*, 781 F. Supp. 3d 214, 233 (D. Vt. 2025) (exceptional circumstances exist to grant bail where Petitioner is neither a danger nor a flight risk, his constitutional rights are at stake, and government's actions follow at pattern of excess) *with Mapp v. Reno*, 241 F.3d 221, 230 (2d Cir. 2001) (no exceptional circumstances exist because Petitioner does not seek release as remedy so bail will not make the habeas remedy effective).

The government's actions in this case fit into a broader pattern of persistent unlawful arbitrary action. Doc. No. 1, Ex. 2 (press articles detailing widespread arbitrary arrests at the New York immigration Court); *Mata Velasquez v. Kurzdorfer* 1:25-cv-00493-LJV, Doc. No. 63 (W.D.N.Y. July 16, 2025) (order granting habeas relief to Petitioner arbitrarily detained at the New York Immigration Court); *Lopez Benitez v. Francis*, 1:25-cv-05937-DEH, Doc. No. 16 (S.D. N.Y. Aug. 13, 2025) (same); *African Communities Together v. Lyons*, 1:25-cv-06366-PKC, Doc. No. 1 (S.D.N.Y. Aug. 1, 2025) (complaint seeking injunctive relief to enjoin arbitrary arrests at New York Immigration Court); *Flores Salazar v. Moniz*, No. CV 25-11159-LTS, 2025 WL 1703516, at *8 (D. Mass. June 11, 2025) (habeas relief granted where government offered

no explanation for arbitrary detention) *Fuenmayor Pacheco v. FCI Berlin, Warden*, 1:25-cv-00200-LM-TSM, Doc. No. 1 (D.N.H. May 27, 2025) (petition for writ of habeas corpus detailing arbitrary detention); *Arias Lara v. FCI Berlin, Warden*, 1:25-cv-00229-LM-AJ, Doc. No. 1 (D.N.H. June 13, 2025) (same); *Mahdawi*, 781 F. Supp. 3d at 233 (“The wheel of history has come around again, but as before these times of excess will pass. In the meantime, this case [...] is extraordinary in the sense that it calls upon the ancient remedy of habeas to address a persistent modern wrong.”).

The government’s only purpose in detaining individuals whom they otherwise do not have a legitimate reason to detain is to gain a litigation advantage in their immigration court proceedings. *See Avalos Ramos v. Moniz*, 1:25-cv-10268-AK, Doc. No. 12-1, Declaration of Keith Chan at ¶ 14 (D. Mass. Feb. 25, 2025) (Attached to this brief as Exhibit A) (Admitting that ICE re-detained the Petitioner for the sole reason of expediting his immigration court proceeding, and this tactic stems from ICE’s increased effort to remove individuals, even those with pending claims for relief).

If Mr. Jimenez is not granted bail pending adjudication on the merits, the government will reap the reward of its unlawful action, gaining a litigation advantage in Mr. Jimenez’s immigration court proceeding and potentially preventing him from obtaining the relief he is entitled to. Because of his detention, Mr. Jimenez’s removal proceeding has been put on a fast track for adjudication. *See* Immigration Court Practice Manual § 9.1(e)² (“Proceedings for detained aliens are expedited.”). At the same time, it is now substantially more difficult for him to gather evidence and research legal issues to fully litigate his claims. *See* Cindy S. Woods, *Barriers to Due Process for Indigent Asylum Seekers in Immigration Detention*, 17 Mitchell

² Available at <https://www.justice.gov/eoir/reference-materials/ic/chapter-9/1>.

Hamline L. R. 320, 335 (2019) (detailing barriers to litigating asylum claims while detained).³ Mr. Jimenez is unrepresented in immigration court proceedings and has little hope of securing counsel. *See id.* at 335 (14% of detained individuals obtain immigration counsel, compared to 66% of non-detained individuals).

If the Court grants habeas relief, but Mr. Jimenez has been ordered removed due to the government's unlawful tactics, that relief will be cold comfort to Mr. Jimenez. Thus, exceptional circumstances are present that require the grant of bail to make the habeas remedy effective.

CONCLUSION

This Court thus has authority to release Petitioner on bail pending the adjudication of his Petition for Writ of Habeas Corpus.

Respectfully submitted,

ALFREDO JOSE JIMENEZ, Petitioner,

By his attorneys,

Dated: September 3, 2025

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³ Available at <https://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1165&context=mhllr>.

Certificate of Service

I, Claire Maguire, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). I am not aware of any non-registered participant.

/s/ Claire Maguire

Dated: September 3, 2025