

**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

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

Pursuant to the Court’s order issued September 3, 2025, Petitioner Alfredo Jose Jimenez hereby submits a supplemental brief addressing the extent to which the new claim put forward in his Amended Petition for Writ of Habeas Corpus (Doc. No. 11) entitles him to a bail hearing pending adjudication on the merits.

LAW and ARGUMENT

I. This Court has inherent authority to grant bail pending the adjudication on the merits of Mr. Jimenez’s Amended 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)).

Here, Mr. Jimenez meets that standard because, following the government's clarification of his status at the time of his release from custody in 2023, Doc. No. 9 at 5, he now has a clear case on the facts and the law.

II. The government's admission makes this a clear case on the facts and the law.

Mr. Jimenez was issued a Notice to Appear (NTA) in Immigration Court in August 2023 while in DHS custody, then released shortly thereafter. Doc. No. 11, Ex. 1 ¶ 7; Ex. 6. The NTA charged Mr. Jimenez as being present in the United without being admitted or paroled and indicated that he was not an arriving alien. Doc. No. 11, Ex. 6.

When Mr. Jimenez initially filed his Petition for Writ of Habeas Corpus, he believed he had been released due to a grant of humanitarian parole pursuant to 8 U.S.C. § 1182(d)(5)(A). Doc. No. 1 at ¶ 49. The government then clarified that Mr. Jimenez did not have a grant of humanitarian parole pursuant to § 1182(d)(5)(A) when he was released in August 2023. Doc. No. 9 at 5. Nevertheless, Mr. Jimenez was released from immigration custody. Doc. No. 11, Ex. 1 at ¶ 7. He was thus released on his own recognizance.

Under this factual scenario, Mr. Jimenez is a person present in the United States without being admitted or paroled and is detained pursuant to 8 U.S.C. § 1226(a). The only authority under which DHS could have released Mr. Jimenez in August 2023 is by conditionally releasing

him pursuant to 8 U.S.C. § 1226(a)(2)(B).¹ DHS may revoke that conditional release, but if they do, Mr. Jimenez is then clearly entitled by the statute to a custody redetermination hearing before an immigration judge. 8 CFR § 236.1(d)(1).

Courts across the country have found that people detained near the border and released without being admitted or granted humanitarian parole, then re-detained months or years later, are subject to detention under § 1226(a) and not § 1225(b). *See, e.g., Romero v. Hyde*, Civ. No. 25-11631-BEM, 2025 WL 2403827, at *1 (D. Mass. Aug. 19, 2025) (collecting cases); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025).

Mr. Jimenez's NTA supports the government's assertion that he was not released on humanitarian parole. The government charged Mr. Jimenez as being “an alien present in the United without being admitted or paroled” and declined to designate him as an “arriving alien.” *See Martinez*, 2025 WL 2084238, at *6 (NTA charge of being “an alien present in the United without being admitted or paroled” and not an “arriving alien” supports the conclusion that Petitioner was released pursuant to § 1226(a) following issuance of the NTA).

Since Mr. Jimenez was released on his own recognizance in August 2023 and has lived inside the United States for two years since then, it is clear he is not seeking admission and is instead a noncitizen present in the United States without being admitted or paroled. The law is clear that such individuals are subject to 8 U.S.C. § 1226(a).

¹ While this form of release is termed “conditional parole” in the statute, 8 U.S.C. § 1226(a)(2)(B), it is not considered parole for the purposes of an analysis of whether a person is “present in the United States without being admitted or paroled” pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). *See Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007)

CONCLUSION

For the reasons stated above, Mr. Jimenez is entitled to a bail hearing pending adjudication on the merits of his Amended Petition for Writ of Habeas Corpus.

Respectfully submitted,

ALFREDO JOSE JIMENEZ, Petitioner,

By his attorneys,

Dated: September 5, 2025

/s/ Kara Thorvaldsen

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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 5, 2025