UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

ALFREDO JOSE JIMENEZ, Petitioner, v. **E.L. Tatum,** Warden, FCI-Berlin; **Patricia Hyde,** Acting Boston 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.*	)	Civ. No. 25-cv-326-PB-AJ

RESPONDENTS' MEMORANDUM OF LAW REGARDING BOND HEARING[1]

Petitioner, Alfredo Jose Jimenez (hereafter referred to as "Petitioner" or "Jimenez"), is a noncitizen who entered the United States unlawfully and is properly detained during the pendency of his removal proceedings. Jimenez nevertheless seeks immediate habeas relief and release. While Jimenez does not appear to have sought bond pending the determination of his habeas petition, the Court has directed the parties to brief whether he is in fact entitled to a bond hearing. Because he is lawfully detained, Petitioner cannot satisfy any 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

[1] Respondents have attached the following redacted exhibits: 2023 I-860, Expedited Removal Order (Ex. A); 2023 I-213, Record of Deportable/Inadmissible Alien (Ex. B); 2023 I-220A, Order of Release (Ex. C); 2025 I-213, Record of Deportable/Inadmissible Alien (Ex. D); 2023 Notice to Appear (Ex. E); 2025 I-200, Warrant) (Ex. F).

(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.N.H. Jan. 23, 2003) The court in *Glynn* explained that "in the absence of exceptional circumstances . . . the court will not grant [bond] 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." *Glynn*, 470 F.2d at 98. Similarly, the "ability to raise a substantial question of constitutional error, standing alone, is insufficient." *Id.*

II. ARGUMENT

Jimenez 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, Jimenez 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 [bond] during the pendency" of Petitioner's habeas proceedings, this Court should decline to hold a bond hearing. *Bader*, 2003 WL 163171, at *1.

An "applicant for admission" is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Section 1225 is the applicable immigration detention authority for all applicants for admission. Applicants for admission "fall into one of two categories, those covered by [8 U.S.C. § 1225(b)(1)] and those covered by [8 U.S.C. § 1225(b)(2)]." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section 1225(b)(1) applies to aliens subject to expedited removal. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV). Under the 2004 Designation, individuals who are "present in the U.S. [United States] without having been admitted or paroled" and were "encountered by an immigration officer within 100 air miles of the U.S. international land border" are properly placed in expedited removal proceedings. *See* Designating Aliens For Expedited Removal, 69 Fed. Reg. 48877 (Aug. 11, 2004).

If an alien placed in expedited removal proceedings claims a fear of removal to their home country, then the alien will receive an interview with an asylum officer in credible fear proceedings before the U.S. Citizenship and Immigration Services ("USCIS"). 8 U.S.C. § 1225(b)(1)(A)(ii). If the asylum officer issues a negative fear determination, then the alien may request a credible fear review by an Immigration Judge. *See generally* 8 U.S.C. § 1225(b)(1)(B), 8 C.F.R. § 1003.42. If the Immigration Judge finds that the alien established a credible fear, then the alien can be placed in 8 U.S.C. § 1230 removal proceedings before the Immigration Court, which is a separate proceeding from the credible fear review proceeding.

In *Matter of M-S-*, 27 I&N Dec. 509, 510 (BIA 2019), the Board of Immigration Appeals ("Board") considered whether individuals present without admission or parole placed in expedited removal and later transferred to 8 U.S.C. § 1230 removal proceedings after

establishing a credible fear of persecution or torture are subject to detention under 8 U.S.C. § 1225(b)(1) or eligible for a bond hearing under 8 U.S.C. § 1226(a). The Board held that aliens detained pursuant to 8 U.S.C. § 1225(b)(1) may only be released pursuant to the Department of Homeland Security's ("DHS") discretionary parole authority under 8 U.S.C. § 1182(d)(5), and unless released in DHS's discretion, the alien must be detained until removal proceedings conclude. *See* M-S-, 27 I&N Dec. at 519. Recently, in *Matter of Q. Li*, the Board clarified its' holding in *Matter of M-S-* and held that that where the parole is terminated, the alien can be properly returned to detention. 29 I&N Dec. 66, 66 (BIA 2025). Specifically, the Board noted that "[o]nce an alien is detained under section 235(b), DHS cannot convert the statutory authority governing her detention from section 235(b) to section 236(a) through the post-hoc issuance of a warrant." *Id.* at 69 n.4 (citing *Jennings*, 583 U.S. at 302).

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

1. The detention authority is under 8 U.S.C. § 1225(b)(1).

Jimenez is properly detained under 8 U.S.C. § 1225(b)(1) which mandates that he remain in detention during the pendency of his removal proceedings. Jimenez is considered an "applicant for admission" because he is an alien present in the United States without admission or parole. *See* 8 U.S.C. § 1225(a)(1).

In the present case, Jimenez falls squarely within the ambit of Section 1225(b)(1)'s mandatory detention requirement. Jimenez was properly placed in expedited removal proceedings on or about August 22, 2023, because he was an alien present without admission or

parole, who was encountered within 100 miles of the southwestern land border.[2] *See* 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV); Designating Aliens For Expedited Removal, 69 Fed. Reg. 48877 (Aug. 11, 2004). After claiming a fear, Jimenez was afforded the interview with an asylum officer, review by an Immigration Judge in credible fear review proceedings and then transferred to 8 U.S.C. § 1230 removal proceedings before the Immigration Court. 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. § 1225(b)(1)(B)(ii) (emphasis added).

Jimenez argues that he is not properly detained because, he alleges, he was paroled in 2023. However, this argument fails because a discretionary parole cannot change his status as an applicant for admission. Further, neither discretionary parole nor any particular form can change the statutory authority under which his immigration proceedings have progressed over the past two years, which is § 1225(b)(1). *See* M-S-, 27 I&N Dec. at 519; *Q. Li*, 29 I&N Dec. 69 n.4 (citing *Jennings*, 583 U.S. at 302).

Notwithstanding the mandate of mandatory detention for applicants for admission like Petitioner, immigration authorities retain limited jurisdiction to parole such applicants. 8 U.S.C. § 1182(d)(5); 8 C.F.R. § 212. However, parole is terminated automatically upon service on the alien of a Notice to Appear (NTA) in Immigration Court. *See id.* § 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

[2] The U.S. District Court for the District of Colombia has stayed the implementation and enforcement of the January 21, 2025, expedited removal designation; however, this order does not affect prior expedited removal designations, such as the 2004 Designation. *See Make the Road New York v. Noem*, No. 25-190 (D.D.C. filed Jan. 22, 2025).

alien shall forthwith return or be returned to the custody from which he was paroled.'" *Id.* at 69-70 (quoting 8 U.S.C. § 1182(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")). An alien 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).

Jimenez is subject to detention under 8 U.S.C. § 1225(b)(1) because he was properly placed in expedited removal proceedings at entry into the United States in 2023, and then he was transferred to removal proceedings after completion of credible fear proceedings. *See* M-S-, 27 I&N Dec. at 519; *Q. Li*, 29 I&N Dec. 69 n.4 (citing *Jennings*, 583 U.S. at 302). The only mechanism under the law that permits release is discretionary release by DHS. In Immigration Court, Jimenez would be ineligible for a bond hearing. *See id.*

Accordingly, Jimenez has not demonstrated a clear case on the law and the facts, and this Court should decline to order a bond hearing.

2. The detention authority is not under 8 U.S.C. § 1226(a).

In the Court's September 3, 2025 Order, the Court permitted the Petitioner leave to amend the Petitioner to "bring a claim that his detention without a bond hearing before an immigration judge violates the Immigration and Nationality Act because section 1226, not

section 1225(b), supplies the statutory authority for his present detention." D.N. 10 (citing 8 U.S.C. §§ 1225(b)(2)(A), 1226(a); 8 C.F.R. § 236.1(d)(1); *Romero v. Hyde*, Civ. No. 25-11631-BEM, 2025 WL 2403827, at *1 (D. Mass. Aug. 19, 2025); *Lopez Benitez v. Francis*, 25 Civ. 5937 (DEH), 2025 WL 2371588, at *8 (S.D.N.Y. Aug. 13, 2025)). Subsequently, Petitioner amended the Petition to allege that 8 U.S.C. § 1226(a) is the appropriate detention authority. D.N. 11.

Respondents oppose this amendment to the Petition and contend that the Petitioner is detained pursuant to 8 U.S.C. §§ 1225(b)(1), not subsection (b)(2) or § 1226(a). As explained above, applicants for admission "fall into one of two categories, those covered by [§ 1225(b)(1)] and those covered by [§ 1225(b)(2)]." *Jennings*, 583 U.S. at 287. Section 1225(b)(1) applies to aliens subject to expedited removal. *See id.*; 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV). Petitioner was properly placed into expedited removal proceedings upon entry at the southwestern border in 2023, and the case law that binds Immigration Judges holds that subsequent transfer to removal proceedings after establishing a credible fear does not change that detention authority, even if the Petitioner was released pursuant to DHS's discretion. *See* M-S-, 27 I&N Dec. at 519; *Q. Li*, 29 I&N Dec. 69 n.4 (citing *Jennings*, 583 U.S. at 302). If this Court finds otherwise, then it would allow for inconsistent application of the U.S. immigration laws and create opportunities for forum shopping, especially because this Petitioner has not exhausted their administrative remedies.

Further, Respondents note that the instant case is distinguishable from both *Romero v. Hyde* and *Lopez Benitez v. Francis*. *See Romero v. Hyde*, Civ. No. 25-11631-BEM, 2025 WL 2403827, at *1 (D. Mass. Aug. 19, 2025); *Lopez Benitez v. Francis*, 25 Civ. 5937 (DEH), 2025

WL 2371588, at *8 (S.D.N.Y. Aug. 13, 2025)). Neither Romero nor Lopez Benitz were placed into expedited removal proceedings upon their entry into the United States or at anytime thereafter. *See id.* In both of those cases, the respondents argued that Romero and Lopez Benitz were subject to mandatory detention under subsection (b)(2) of section 1225, not (b)(1). *See id.* Because the statutory detention authority analyzed in *Romero v. Hyde* and *Lopez Benitez v. Francis* was completely different from the instant case, Respondents contend that this Court would err if the Court were to rely on those opinions. To be clear, *Romero v. Hyde* and *Lopez Benitez v. Francis* are neither controlling because they were decided in different jurisdictions, nor are they on point because they analyze a completely different subsection of § 1225.

The Petitioner alleges that because the Petitioner was released on an order of recognizance that his detention authority shifted from § 1225 to § 1226(a). D.N. 12. However, "[a]n Order of Recognizance . . . is a form of conditional parole . . . ." *Quinonez Mercado as next friend of Abarca-Jovel v. Department of Homeland Security*, Civ. No. 25-12066-JEK, 2025 WL 2430423, at *1 n.3 (D. Mass. Aug. 22, 2025). Respondents contend that release on parole does not change the detention authority. *See Q. Li*, 29 I&N Dec. at 66, 69 n.4 (finding that the subsequent issuance of a warrant under §1226(a) does not change the detention authority and that release on parole does not change the detention authority). Further, Respondents contend that the most appropriate venue for these arguments in the Immigration Court, where Petitioner has the right to appeal to the Board of Immigration Appeals.

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," Jimenez can only be considered for release on bond during the pendency of his habeas petition if he demonstrates

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

As set forth above Petitioner is properly detained under 8 U.S.C § 1225(b)(1). Detention under that statute does not violate due process. 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).

The Supreme Court has held that applicants for admission such as Petitioner are only entitled to the protections set forth by statute and that "the Due Process Clause provides nothing more." *Thuraissigiam*, 591 U.S. at 140.

The Supreme Court has explained that applicants for admission lack any constitutional due process rights with respect to admission aside from the rights provided by statute: "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned," *Mezei*, 345 U.S. at 212, and "it is not within the province of any court, unless expressly authorized by law, to review [that] determination." *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950). The Supreme Court reaffirmed "[its] century-old rule regarding the due process rights of an alien seeking initial entry" in Thuraissigiam, explaining that an individual who illegally crosses the border—like Petitioner—is an applicant for admission and "has only those rights regarding admission that Congress has provided by statute." *Thuraissigiam*, 591 U.S. at 139-40. This Court should apply the "century-old rule" reaffirmed in *Thuraissigiam* and conclude that Petitioner's due process rights are coextensive with the rights provided him under statute, and he is therefore properly detained.

Because Petitioner does not demonstrate a substantial constitutional error, he is not entitled to a bond hearing.

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 [bond] 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 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. In fact, Petitioner does not even claim to be under threat of immediate removal. Being detained at all may not be desirable, however being detained properly according to statute cannot be considered an extraordinary circumstance. Thus, even if Petitioner 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

For the above 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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By: /s/ Raphael Katz

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