

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROLAND IVONIN,

Petitioner,

v.

25-CV-06673-EAW

PHILIP L. RHONEY, in his official capacity as Acting Deputy
Field Office Director, Buffalo Field Office, U.S. Immigration &
Customs Enforcement, et al.

Respondents.

**RESPONDENTS MEMORANDUM OF LAW IN REPLY TO PETITIONER'S
OPPOSITION AND IN FURTHER SUPPORT OF THE MOTION TO DISMISS**

Petitioner's argument is flawed, as is the court's decision in *Campbell*, for the main reason that it disregards decades of Supreme Court precedent regarding the legal status of arriving aliens. While both Petitioner and our sister district to the south recognize the "legal entry fiction", their interpretation of it would whittle it down to nothing. Essentially, every alien paroled into the United States would at some nebulous and undefined point become something "more" and entitled to more rights than what the statute provides them. Not only is this unworkable, it flies in the face of statutory language. 8 U.S.C. § 1182(d)(5)(A) ("The Attorney General may . . . parole into the United States temporarily . . . any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served **the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.**")

(boldface added). Petitioner and the *Campbell* court would ignore this statutory provision and convert a paroled alien into something else, not dealing with him in the same manner as that of any other applicant for admission and not returning him to the custody from which he was paroled.

Likewise, Petitioner's presence or admission in the past is unavailing to him now. He most recently entered the United States on parole as an arriving alien. The Supreme Court has made clear that "[f]or purposes of the immigration laws, moreover, the legal incidents of an alien's entry remain unaltered whether he has been here once before or not. He is an entering alien just the same, and may be excluded if unqualified for admission under existing immigration laws." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 213 (1953).

Lastly, although Petitioner argues that Supreme Court precedent dealt with admission more so than detention, this Court has previously noted that "[w]hile *Thuraissigiam* was decided in the admission context, it cited and reaffirmed the continuing vitality of *Mezei*, which addressed the issue of detention." *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 334 (W.D.N.Y. 2021).

In sum, Petitioner here is an arriving alien who last entered the United States on parole. For him, and arriving aliens like him, due process is whatever the procedure authorized by Congress, including the decisions of executive or administrative officers acting within powers expressly conferred by Congress. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138 (2020). Here, that does not include a bond hearing or release from custody, and thus the Petition should be dismissed.

CONCLUSION

For the reasons set forth above, Respondents respectfully request that this Court dismiss the Petition in its entirety.

Respectfully submitted,

MICHAEL DIGIACOMO
United States Attorney
Western District of New York

BY: /s/ADAM A. KHALIL
Assistant United States Attorney
100 State Street, Suite 500
Rochester, New York 14614
(585) 399-3979
adam.khalil@usdoj.gov

CONCLUSION

For the reasons set forth above, Respondents respectfully request that this Court dismiss the Petition in its entirety.

Respectfully submitted,

CONCLUSION

For the reasons set forth above, Respondents respectfully request that this Court dismiss the Petition in its entirety.

Respectfully submitted,