

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS**

**DELOME OSTIAN JOHANNES
FAVI,**)
)
)
 Petitioner,)
)
 v.)
)
 CHAD KOLITWENZEW,)
)
 Respondent,)
)
)
 UNITED STATES OF AMERICA,)
)
 Interested Party.)

Case No. 20-cv-2087

ORDER

SUE E. MYERSCOUGH, U.S. District Judge:

Petitioner Delome Ostian Johannes Favi, currently in immigration detention at the Jerome Combs Detention Center in Kankakee, Illinois, has filed an Emergency Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and Complaint for Injunctive Relief (Doc. 1). Petitioner seeks immediate release from custody. In light of the Court’s findings as stated below, Petitioner’s request for immediate release is GRANTED.

DISCUSSION

A hearing was held today and the Court considered the evidence presented by the parties in their briefs and at the hearing. The Court finds that it has authority to issue injunctive relief pursuant to Fed. R. Civ. P. 65(b), as well as through the court's inherent power in habeas corpus cases to order a Petitioner's release pending the decision of their case, as the Seventh Circuit has held in Cherek v. United States, 767 F.2d 335, 337 (7th Cir. 1985) (“[F]ederal district judges in habeas corpus and section 2255 proceedings have inherent power to admit applicants to bail pending the decision of their case . . .”).

Further, the Court finds that Petitioner's immediate release from custody is appropriate and necessary. The Court finds the petitioner will suffer irreparable harm if his immediate relief is not granted. Petitioner has preexisting medical conditions, including a history of serious pneumonia, that puts him at a uniquely high risk of contracting COVID-19 and suffering serious complications, including potentially death, if he contracts the virus. The Court further finds that despite the additional precautions the Government states that the detention center is taking, they are

inadequate to protect the Petitioner and sufficiently address his health needs. And, while there is no direct evidence that the virus is in the detention facility, it is also true that testing has been limited throughout the country and individuals can spread the virus without showing symptoms. Moreover, the Court joins other courts from across the country that have found that the courts need not wait until the virus erupts in a prison to act. Accordingly, the Court finds that by remaining in detention, Petitioner faces an imminent risk of severe harm and potentially death, which constitutes an irreparable harm.

The Court further finds that Petitioner has a likelihood of success on the merits of his habeas corpus case. Petitioner argues his constitutional right under the due process clause for safety in government custody is being violated. While the Government argues that this challenge is not properly brought in a habeas corpus petition because it concerns conditions of confinement, courts across the country have disagreed with this argument and have also found this claim likely to be meritorious. Moreover, Petitioner also argues that his due process rights are being violated because he has been detained for over nine months without the

right to a bond hearing pursuant to 8 U.S.C. § 1225(b)(2)(A). The Government has not suggested that Petitioner's actions have led to the delay and have not provided any timeline of when his I-130 visa petition and application for adjustment of status might be adjudicated. While the Government argues that there is no implicit reasonableness limitation regarding the length of detention under this statute pursuant to the Supreme Court's decision in Jennings v. Rodriguez, 138 S.Ct. 830 (2018), Jennings did not foreclose a claim that detention is unconstitutional as applied when the detention becomes constitutionally unreasonable. Such a claim has succeeded in this district on similar facts to Petitioner, see Baez-Sanchez v. Kolutwenzew, 360 F. Supp. 3d 808, 815 (C.D. Ill. 2018), and, at this time, the Court finds that this claim can be heard in a habeas corpus petition and is likely to succeed.

Finally, the Court finds that Petitioner's release would be in the public interest both because the public has an interest in upholding the constitution and because of obvious risk to public health. While the Court recognizes that the Government has an interest in enforcing immigration laws, the Court finds that Petitioner would not be a flight risk, especially in light of his family

ties, and in light of the need to quarantine during this pandemic. Further, the Court finds that Petitioner is not a danger to society. While he has a prior conviction for Corrupt Business Influence in Indiana, this was not a violent crime and the state of Indiana has already stayed the remainder of his criminal sentence and he has paid a substantial portion of his restitution.

CONCLUSION

Accordingly, for the reasons stated, the Court has chosen to exercise its inherent authority in habeas corpus and under Fed. R. Civ. P. 65(b) to grant Petitioner Delome Ostian Johannes Favi bail pending the resolution of his Petition for Writ of Habeas Corpus. Petitioner's request for immediate release is GRANTED.

Respondent and the U.S. Immigration and Customs Enforcement shall immediately release Petitioner pending further order of the Court pursuant to the conditions of bond.

ENTER: April 10, 2020

/s/ Sue E. Myerscough
SUE E. MYERSCOUGH
UNITED STATES DISTRICT JUDGE