FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HYUNG JOON KIM,

COUNSEL

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OPINION

W. FLETCHER, Circuit Judge:

We consider a constitutional challenge to § 236(c) of the

Amendment. On August 10, 1999, after Kim had been in cus-

1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D)
of this title,

release of government witnesses or those assisting govern-

never entered runs throughout immigration law."). Further, the status of an alien who has been paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5) is the same as that of an alien detained at the border: such an alien has not "entered" the United States. See

manent resident aliens are highly educated or exceptionally

tion, and if the no-bail provision is valid he or she will be unable to see his or her son, daughter, husband, wife, father, or mother except in detention facilities during the pendency of the removal proceedings. Such facilities are sometimes at

The question before us, however, is more specific. It is whether Congress has adopted a constitutionally permissible means of detention and removal of lawful permanent resident aliens. On this question we take guidance from Zadvydas, in which the Supreme Court last Term addressed detention of

detention only in those limited circumstances where the government has provided a "special justification " outweighing the individual's liberty interest:

> [G]overnment detention violates [the Due Process] Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow non-punitive circumstances, where a special justification, such as harm-threatening mental illness, outweighs the individu-
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lished law that removal proceedings are civil. See INS v. Lopez-Mendoza, 468 U.S. 1032, 1038 (1984). Following Zadvydas, we thus must analyze § 1226(c) to determine whether the government has provided a sufficiently strong"special

IIRIRA[,] bail was available . . . as a corollary to the possibility of discretionary relief from deportation; now that this possibility is so remote, so too is any reason for release pending removal."). The government thus contends that without no-bail detention, it will be unable to ensure that removable aliens will actually be removed.

We are not persuaded. First, IIRIRA did not eliminate all avenues of relief for persons subject to § 1226(c). An alien convicted of an aggravated felony may be eligible for withholding of removal if (1) removal to a particular country might threaten the alien's life or freedom because of the

the definition of aggravated felony to include "more minor

"successfully deported." Id

B. Danger to the public

We next consider the government's interest in protecting

which the government had to prove beyond a reasonable

and that the alien be given the right to appeal this decision, to move for reconsideration, or to seek discretionary cancellation of removal. "As a result, aliens . . . do not arrive at their removable status without thorough, substantial procedural safeguards." Id. at 2514.

Second, Justice Kennedy pointed to 12 rleratisal pmul-n,

decided prior to the Court's decision in St. Cyr , which preserved § 212(c) discretionary relief and thus made a final removal order less likely for many aliens.

More important, the panel in Parra made two critical mistakes, one legal and one factual. First, Parra analyzed the liberty interest of the detained alien based on the erroneous legal assumption that he or she has no right to remain in the United States once removal proceedings have begun. In analyzing an alien's liberty interest in release during removal proceedings, Parra stated, "Persons subject to § 1226(c) have forfeited any legal entitlement to remain in the United States[.] . . . The pri-

such an alien has a right to an individualized determination of