
² The statute gives the Attorney General discretion to release an alien who falls under this section only if the alien's release is necessary to provide protection to a witness, a potential witness, or a person cooperating with a criminal investigation, and then only if the alien will not pose a danger to the safety of others or flight risk. See

276 F.3d 523 (9th Cir. 2002); Patel v. Zemski, 275 F.3d 299 (3rd Cir. 2001). Both Circuits held that mandatory detention of aliens after they have been found subject to removal but who have not yet been ordered removed violates their due process rights unless they have the opportunity for an individualized bail hearing

“special justification” is required to justify civil detention. See id.

⁴ The Kim Court did not hold that a lawful permanent resident alien in removal proceedings has an absolute right to bail, but only that such an alien has a right to an individualized bail hearing with reasonable promptness, tailored to his or her particular circumstances, to determine whether the alien is a flight risk or a danger to the community. Kim

Id. at 305, 307, 309.

constitute an “aggravated felony.” Ojogwu’s appeal on these issues will remain unresolved. Due process requires that Ojogwu, as a lawful permanent resident, receive the opportunity for an individualized bond

Date:

ANN D. MONTGOMERY
UNITED STATES DISTRICT JUDGE