

1 LEXIS 33030, 2010 WL 890044, at *2 (N.D. Cal. March 8, 2010) (citing cases from the First, Second,
2 Third, Fifth, Sixth, Seventh, Tenth and District of Columbia Circuit Courts of Appeal). The bail
3 standard for an incarcerated person seeking collateral review is markedly different from the standard
4 applied to a pretrial detainee because an incarcerated habeas corpus petitioner requesting post-conviction
5 relief has already been convicted, and thus, he is no longer presumed innocent. *Aronson v. May*, 85 S.
6 Ct. 3, 13 L. Ed. 2d 6 (1964); *Glynn v. Donnelly*, 470 F.2d 95, 98 (1st Cir. 1972). The court's discretion
7 in granting bail pending a decision on a habeas corpus petition is to be "exercised very sparingly."
8 *Cherek v. United States*, 767 F.2d 335, 337 (7th Cir. 1985).

9 To obtain such relief, a petitioner must demonstrate: (1) that the claim raises a substantial
10 question and there is a high probability of success on the merits; and (2) the case is extraordinary
11 involving special circumstances. *In re Roe*, 257 F.3d at 1080. Exceptional circumstances may exist and,
12 in the court's discretion, warrant a petitioner's release on bail where: (1) petitioner's health is seriously
13 deteriorating while he is incarcerated, *Woodcock v. Donnelly*, 470 F.2d 93, 94 (1st Cir. 1972) (per
14 curiam); *Johnston v. Marsh*, 227 F.2d 528, 532 (3rd Cir. 1955) (Hastie, J., concurring); (2) there is an
15 extraordinary delay in the processing of a petition, *Glynn*, 470 F.2d at 98; and (3) the petitioner's
16 sentence would be completed before meaningful collateral review could be undertaken, *Boyer v. City*
17 *of Orlando*, 402 F.2d 966 (5th Cir. 1968).

18 In this case, after reviewing the petition and the moving papers, the court concludes that
19 petitioner fails to show that the merits of his claims are so strong as to indicate a high probability of his
20 success. Additionally, petitioner fails to show that exceptional circumstances exist that require his
21 immediate release pending disposition of his habeas petition.

22 **IT IS THEREFORE ORDERED** that petitioner's motions for release or appeal (ECF Nos. 40,
23 42, 43) are **DENIED**.

24 DATED this 13 day of December, 2011.

25 Edward C. Reed.
26 UNITED STATES DISTRICT JUDGE