U.S. Department of Justice

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December 31, 2025

By ECF
Hon. Karen M. Williams, U.S.D.J.
U.S. District Court for the District of New Jersey
Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets Room 1050
Camden, NJ 08101

Re: *Sanango v. Soto*, No. 25-cv-18328
Expedited Answer to § 2241 Habeas Petition

Dear Judge Williams:

This Office represents the Respondents in the above-referenced immigration habeas matter brought by Petitioner Manuel Jesus Sanango. Petitioner is detained under 8 U.S.C. § 1231(a) because he is subject to a final order of removal. The Court should deny the Petition.

I. Background

Petitioner is a citizen and native of Ecuador. *See* Ex. A, Dec. 7, 2025 Form I-213. In November 2008, an immigration judge granted Petitioner voluntary departure by December 22, 2008, which would convert to a removal order if the Petitioner failed to depart by that date. *Id.*; *see* Ex. B, records from 2008-2009 immigration case. Petitioner failed to voluntarily depart by the deadline, so the order for voluntary departure was vacated and an order for removal was entered. Exs. A, B. Petitioner waived any appeal of the immigration judge's decisions, thereby rendering the order of removal final. Ex. B; *see also* 8 C.F.R. § 1241.1(f). U.S. Immigration and Customs Enforcement ("ICE") removed him in January 2009 under that final order of removal. Exs. A, B. Petitioner's removal was subject to a warning that he would be inadmissible for 10 years based on his final removal order. Ex. B; *see* 8 U.S.C. § 1229c(d)(1)(B). According to his Petition, Petitioner re-entered the United States shortly after his removal, in February 2009. Pet. ¶ 14, ECF No. 1.

On December 7, 2025, the Department of Homeland Security ("DHS") arrested Petitioner. Ex. A. A Deportation Officer reinstated his prior order of removal and issued written warnings and guidance regarding removal. Ex. C, Reinstated Order with attachments. Petitioner is detained at Delaney Hall in New Jersey. Pet. ¶ 2.

II. Procedural History

Petitioner initiated this action on December 9, 2025. *See* Pet. He asserted claims for alleged violations of his Fifth Amendment due process rights and of § 236(a) of the Immigration and Naturalization Act ("INA"), 8 U.S.C. § 1226(a). He states that he "has not received an individualized hearing before a neutral decisionmaker to assess whether his ongoing detention is warranted due to dangerousness or flight risk" and argues that he is detained under 8 U.S.C. § 1225(b)(2). Pet. ¶¶ 16, 19, 28. Petitioner seeks release from detention or a bond hearing under 8 U.S.C. § 1226(a). Pet., Prayer for Relief and n.6.

On December 29, 2025, the Court ordered Respondents to answer by noon on Wednesday, December 31, 2025, or, in the alternative, to seek a bond hearing for Petitioner by 5 p.m. on January 5, 2026. ECF No. 3.[1] Respondents requested an extension of that deadline to midnight on December 31, 2025, which is pending. ECF No. 5.

III. Argument

For the reasons that follow, the Court should deny Petitioner habeas relief.

A. Petitioner's Improper Detention and Due Process Claims Do Not Warrant Relief

Petitioner first argues his detention violates 8 U.S.C. § 1226(a) and the due process clause of the Fifth Amendment. However, Petitioner is subject to a final order of removal because an order of removal was entered by an immigration judge when the Petitioner failed to depart from the United States after a grant of voluntary departure, and he waived any appeal of those decisions. Exs. A, B; *see* 8 C.F.R. § 1241.1(f). As a result, his detention arises under 8 U.S.C. § 1231(a), not § 1226(a). Petitioner's § 1226(a) arguments have no merit, and he is entitled to neither a bond hearing nor release. Further, because he is less than one month into his detention, he cannot prevail on a due process claim here.

Where, as here, an alien is subject to a final order of removal, there is a 90-day "removal period," during which the government "shall" remove the alien. 8 U.S.C. § 1231(a)(1). Detention during this period is mandatory. *See* 8 U.S.C. § 1231(a)(2). That

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[1] As of the filing of this answer, the Court has not enjoined Respondents from transferring Petitioner or removing him from the United States.

mandatory detention period for Petitioner began on December 7, 2025 when DHS arrested and detained him, then reinstated his final order of removal. Ex. A. *But see Tadros v. Noem*, No. 25-4108 (EP), 2025 WL 1678501 (D.N.J. June 13, 2025); *Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 398 (D.N.J. 2025).

There are at least three potential outcomes in the event DHS does not remove an alien during the 90-day mandatory removal period. First, the government may release the alien subject to conditions of supervised release. *See* 8 U.S.C. § 1231(a)(3). Second, the government may extend the removal period if the alien "fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." 8 U.S.C. § 1231(a)(1)(C). And finally, the government may further detain certain categories of aliens, including those "inadmissible" under 8 U.S.C. § 1182. *See* 8 U.S.C. § 1231(a)(6). Continued detention under this latter category is often referred to as the "post-removal-period." *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021). The INA does not place an explicit time limit on how long detention during the "post-removal-period" can last. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 579 (2022). But the Supreme Court has held that the government may only detain aliens in the post-removal-period for the time "reasonably necessary to bring about that alien's removal from the United States." *Zadvydas*, 533 U.S. at 689. And the Supreme Court further clarified that a six-month period of detention is "presumptively reasonable." *Id.* at 701. "After this 6-month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.*

Here, Petitioner is less than 30-days into the mandatory 90-day removal period during which DHS is required to detain him and initiate the removal process. Based on *Zadvydas*, any challenge to a post-removal-order detention by an alien who has been detained "for less than six months must be dismissed as premature." *Kevin A.M. v. Essex Cnty. Corr. Facility*, No. 21-11212 (SDW), 2021 WL 4772130, at *2 (D.N.J. Oct. 12, 2021); *see also Luma v. Aviles*, No. 13-6292 (ES), 2014 WL 5503260, at *4 (D.N.J. Oct. 29, 2014) ("To state a claim under *Zadvydas*, the presumptively reasonable six-month removal period must have expired at the time the Petition was filed; any earlier challenge to post-removal-order detention is premature and subject to dismissal."); *Cesar v. Achim*, 542 F. Supp. 2d 897, 902 (E.D. Wis. 2008) (collecting cases). *But see Wang v. Noem*, 25-cv-18053-CPO (D.N.J.), ECF No. 31 (ordering immediate release under *Zadvydas* of an alien subject to a final order of removal).

Accordingly, Respondents respectfully request that the Court deny habeas relief and deny the Petition. We thank the Court for its attention to this matter.

Respectfully submitted,

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Enclosures (Exs. A, B)
cc: Counsel of Record (by ECF)