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January 18, 2026

Via ECF
Honorable Karen M. Williams, U.S.D.J.
United States District Court
Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, NJ 08101

Re: *Chacon v. Rokosky, et al.*, No. 26-119 (KMW)
Expedited Answer to § 2241 Petition

Dear Judge Williams:

This Office represents Respondents in this habeas action brought by Petitioner Marlon Omar Vargas Chacon, challenging his detention by U.S. Immigration and Customs Enforcement ("ICE"). On January 13, 2026, the Court entered a text order finding Petitioner subject to detention under 8 U.S.C. § 1226(a) based on the recent decisions of *Rivera Zumba v. Bondi*, No. 25-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025), and *Rivas Rodriguez v. Rokosky*, No. 25-17419 (CPO), 2025 WL 3485628 (D.N.J. Dec. 3, 2025). *See* ECF No. 3. The Court also ordered Respondents to provide Petitioner a bond hearing under 8 U.S.C. § 1226(a) by 5:00 p.m. on January 19, 2026, or to file an expedited answer by 12:00 p.m. on January 18, 2026, if they "contend that Petitioner's detention is distinguishable from the cases in this district previously addressing §1225." *Id.* Respondents respectfully submit that this case is distinguishable from cases like *Rivera Zumba* and *Rivas Rodriguez*. Those cases interpreted 8 U.S.C. § 1225, whereas Petitioner's detention here is governed by 8 U.S.C. § 1231(a). As discussed below, Petitioner's detention is lawful under § 1231(a) because he is subject to a reinstated final order of removal and his detention comports with due process. The Court should deny the petition.[1]

[1] The Court's January 13, 2026, text order also prohibited Respondents from transferring Petitioner from the District of New Jersey or removing him from the United States during the pendency of these proceedings. *See* ECF No. 3. ICE has informed this Office that five days prior to the Court's order, on January 8, 2026, ICE transferred Petitioner from the Elizabeth Contract Detention Facility to the Port Isabel Service Processing Center in Texas.

I. Background: Petitioner Has a Reinstated Final Removal Order

Petitioner is a citizen of Ecuador. *See* ECF No. 2 ("Pet."), ¶ 1; *see also* Ans. Ex. A ("2020 I-213"). On August 13, 2020, a U.S. Border Patrol Agent encountered Petitioner near the Texas border and, after interviewing him, found Petitioner had unlawfully entered the United States four days prior. *See* 2020 I-213, at 2; *see* Ans. Ex. B ("I-867A"). U.S. Border Patrol processed Petitioner for expedited removal. *See* Ans. Ex. C ("I-860"); *see also* 2020 I-213, at 2; Ans. Ex. D ("I-296"); Pet. ¶ 2.

On September 16, 2020, following a credible fear review in which Petitioner provided testimony, an Immigration Judge determined Petitioner had not established eligibility for asylum, withholding of removal, or protection under the Convention Against Torture. *See* Ans. Ex. E ("I-869"); Ans. Ex. F ("I-863"); Ans. Ex. G ("IJ Order"). The Immigration Judge issued a final order of removal. *See* IJ Order. Petitioner does not dispute the existence of the final removal order, *see* Pet. ¶ 3, nor challenge his initial detention pending expedited removal and credible fear proceedings in 2020.

Petitioner remained in detention for about 16 days, from the date of the final removal order on September 16 until he was removed from the United States on or about October 2, 2020. *See* Ans. Ex. H ("2026 I-213"), at 2. Thereafter, Petitioner re-entered the United States "without inspection" in September of 2021. Pet. ¶ 5.

On January 5, 2026, ICE arrested Petitioner during a targeted enforcement operation in Hackensack, New Jersey. *See* 2026 I-213; *see also* Pet. ¶ 9. On the same date, ICE had reinstated the final removal order under 8 U.S.C. § 1231(a)(5) and 8 C.F.R. § 241.8 after an ICE Supervisory Detention and Deportation Officer determined Petitioner is a noncitizen subject to a final order of removal who illegally reentered the United States after his removal under that final order. *See* Ans. Ex. I ("I-871"). ICE issued an administrative warrant for Petitioner's arrest based on the reinstated order of removal *See* Ans. Ex. J ("I-205"). And ICE Provided Petitioner written notice of the reinstated removal order and, according to the notice document, Petitioner declined to make a statement contesting the reinstatement. *See* I-871. Petitioner remains in detention subject to a reinstated final order of removal. *Id.*; *see also* Ans. Ex. K ("I-294").

II. Petitioner's Post-Final-Order Detention is Lawful

Petitioner filed the instant habeas petition on January 8, 2026, claiming that his "detention is unlawful because it was effectuated without statutory authority and without the individualized procedural protections required by the Due Process Clause of the Fifth Amendment, such as an individual assessment, or 'any' process, prior or contemporaneously to his detention." Pet. ¶ 11. The Court should dismiss or deny the petition for the reasons below.

A. Petitioner's Detention Arises Under 8 U.S.C. § 1231(a)

As an initial matter, Petitioner's claims appear largely based on the notion that ICE has detained him under 8 U.S.C. § 1225(b), *see* Pet. ¶¶ 47-54, 75-77, when in fact ICE has lawfully detained him pursuant to 8 U.S.C. § 1231(a) because he is subject to a reinstated final order of removal, *see* I-871, I-294. By its plain terms, 8 U.S.C. § 1231(a)(5) authorizes DHS to reinstate a prior order of removal upon finding "that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal." 8 U.S.C. § 1231(a)(5). That is what happened here. And in such circumstances, "'the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under [the immigration laws], and the alien shall be removed under the prior order at any time after the reentry." *Id.* In short, Petitioner's detention arises under 8 U.S.C. § 1231 because "§ 1231, not § 1226, governs the detention of aliens subject to reinstated orders of removal." *Johnson v. Guzman Chavez*, 594 U.S. 523, 526 (2021).

B. Petitioner's Post-Final-Order Detention is Constitutional

Where, as here, a noncitizen is subject to a final order of removal, there is a 90-day "removal period," during which the government "shall" remove the noncitizen. 8 U.S.C. § 1231(a)(1). Detention during this period is mandatory. *See* 8 U.S.C. § 1231(a)(2). Here, Petitioner has been in post-final-order detention for approximately 29 days total—16 days in 2020, plus 13 days since his recent arrest—which is well within the 90-day removal period during which detention is mandatory.[2] As a result, Petitioner is not eligible for a bond hearing. *See* 8 U.S.C. §§ 1231(a)(2), (5); *Guzman Chavez*, 594 U.S. at 526.

Nor is Petitioner's detention unconstitutionally prolonged. As noted above, the INA provides for a mandatory 90-day detention period for noncitizens subject to final orders of removal, and here, Petitioner has been detained for less than 30 days during that period. In addition, as courts in this District have recognized, prolonged-detention challenges to post-final-order detentions "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

[2] Consistent with a recent decision from this Court, Respondents calculate the detention period for purposes of § 1231(a) by adding up the total time "spent in post-final order detention," even if that includes separate periods of post-final-order detention. *Patel v. Bondi*, No. 25-16218 (KMW), 2025 WL 3294353, at *2 (D.N.J. Nov. 26, 2025); *but see Tadros v. Noem*, No. 25-4108 (EP), 2025 WL 1678501, at *3 (D.N.J. June 13, 2025) (finding removal period ran in terms of consecutive days from date final removal order issued, not time in detention).

expired at the time the Petition was filed; any earlier challenge to post-removal-order detention is premature and subject to dismissal."); *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); *see also Munoz-Saucedo v. Pittman*, 789 F. Supp. 3d 387, 400 (D.N.J. 2025) (disagreeing with decisions like *Kevin A.M.* and granting writ for under 6 months of detention in third-country removal case where court found likelihood of removal was not reasonably foreseeable).

Third Circuit precedent forecloses Petitioner's remaining due process challenges to his detention. *See* Pet. ¶¶ 38-39 (alleging, even if § 1231(a)(5) applies, the recent arrest and detention violated due process because ICE did not make "individualized custody determination" or provide Petitioner notice and opportunity to be heard before arresting him); *see also id.* ¶¶ 55-71. As an initial matter, a noncitizen "subject to reinstatement 'has no right to a hearing before an immigration judge'" prior to reinstatement. *Ponta-Garcia v. Atty' Gen.*, 557 F.3d 158, 161 (3d Cir. 2009) (quoting 8 C.F.R. § 241.8(a)). Rather, to effectuate reinstatement, "an immigration officer must find that (1) the alien was subject to a prior order of removal; (2) the alien is the same person as the one named in the prior order (*i.e.,* confirmation of identity) and (3) the alien unlawfully reentered the country." *Ponta-Garcia v. Atty' Gen.*, 557 F.3d 158, 161 (3d Cir. 2009) (citing 8 C.F.R. § 241.8(a)(1)-(3)). The relevant regulation also allows for notice of the reinstatement and allows the noncitizen to make a "written or oral statement contesting the determination." *Id.* (quoting 8 C.F.R. § 241.8(b)). [3] That process was followed here. *See* I-871. An immigration officer correctly concluded that Petitioner met each of the three requirements in 8 C.F.R. § 241.8(a)(1)-(3) that allow for reinstatement: Petitioner (1) was ordered removed on September 16, 2020; (2) subsequently removed on October 2, 2020; and (3) unlawfully reentered the country thereafter. *See* I-871; *see also* IJ Order; 2026 I-213; Pet. ¶ 5. Petitioner received notice of the reinstatement order and an opportunity to provide a statement contesting the reinstatement determination, which he waived. *See* I-871. The Court should reject Petitioner's due process claims concerning the process by which ICE initiated reinstatement of his removal order.

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[3] The Third Circuit has upheld the constitutionality of these regulations in the face of a due process challenge, finding that 8 C.F.R. § 241.8 represents a reasonable construction of § 1231(a)(5), which "makes quite clear Congress's intent to expedite and streamline reinstatement determinations," while recognizing, in the context of reinstatement, noncitizens "have already been ordered removed, and thus have already been provided with the requisite procedures and review." *Ponta-Garcia*, 557 F.3d at 162; *see also id.* at 163 ("Remembering that a reinstatement determination can only be applied to a person who was already subject to a prior order of removal with its attendant pre- and post-order protections, there is no issue of constitutional concern.").

Petitioner's claim that he was arrested without a warrant, *see* Pet. ¶ 10, is also without merit. There is no warrant requirement prior to reinstating a final order of removal and initiating post-final-order detention. *See* 8 U.S.C. § 1231(a)(5), 8 C.F.R. § 241.8. More to the point, ICE in this case issued a warrant for Petitioner's arrest on January 5, 2026. *See* I-205.

For the reasons above, 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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