



U.S. Department of Justice

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January 22, 2026

Via ECF

Honorable Christine P. O'Hearn, U.S.D.J.
United States District Court
Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, NJ 08101

**Re: *Alves Sarmiento v. Warden, et al.*, No. 26-574 (CPO)
Expedited Answer to § 2241 Petition**

Dear Judge O'Hearn:

This Office represents Respondents in the above habeas matter filed by a noncitizen challenging the legality of his detention by U.S. Immigration and Customs Enforcement ("ICE") pursuant to 8 U.S.C. § 1187. We respectfully submit this expedited letter answer in light of the Court's recent decision in *Molina v. Soto*, No. 25-16880 (EP), 2025 WL 3281820, at *2 (D.N.J. Nov. 25, 2025) (granting petition in § 1187 matter) and prior decisions on the same issue, *Gjergj G. v. Edwards*, No. 19-5059 (SDW), 2019 WL 1254561 at *2 (D.N.J. Mar. 18, 2019), and *Emila N. v. Ahrendt*, No. 19-5060 (SDW), 2019 WL 1123227 at *3 (D.N.J. Mar. 12, 2019). Respondents acknowledge that this Petition involves the same statutory arguments and similar salient facts as those in *Molina*, and we appreciate the importance of efficient resolution of this habeas petition, and the preservation of the Court's and the parties' resources.

The Court's January 20, 2026, Order, ECF No. 3, directs Respondents to serve an expedited answer which "shall respond to the Petition paragraph by paragraph," along with a "legal memoranda, or letter brief," justifying Petitioner's detention and supporting the justification with certified records. *See id.* ¶¶ (1)-(8). The Order also set a hearing for January 22, 2026, at which "Respondents shall produce at least one witness with personal knowledge and/or institutional knowledge sufficient to testify competently regarding Petitioner's immigration proceedings and history thereof, as well as his detention history, the basis for his detention, and Respondents' efforts to effectuate removal." *Id.* at 2.

Upon receipt of the Order, this Office promptly notified ICE of the required information, and ICE informed this Office that they were working diligently to gather responsive documents. ICE has provided this Office with responsive documents under its custody or control, all of which are discussed below, and while ICE was able to identify a witness to appear in this instance, Respondents recognize that they have not satisfied the Court's Order in full, including by failing to provide a certification for this response. Respondents further recognize that the Order expressly gave Respondents notice that the failure to comply with the Order "shall result in an Order of immediate release without further notice or an opportunity to be heard." Respondents accordingly will be prepared to promptly release Petitioner upon order of the Court.

Nevertheless, Respondents respectfully offer the following explanation regarding Petitioner's detention and the attached documents in response to the Court's order. In addition, in accordance with the Court's Order, ECF No. 3 at 2, Respondents affix an Answer to the end of this letter brief which responds to the specific allegations, paragraph by paragraph, in the Petition. *See* Ex. 1 (Answer)

Respondents have detained Petitioner without bond under 8 U.S.C. § 1187(c)(2)(E), because, according to ICE records, Petitioner entered the United States under the Visa Waiver Program (VWP) on January 22, 2015, for a period not to exceed April 21, 2015. Ans. Ex. 2 (2026 Form I-213), at 2. Petitioner, however, overstayed and, on January 13, 2026, ICE detained him without bond in accordance with § 1187 to execute his removal from the United States. *See Id.* at 2; *see also* Pet. ¶ 9 ("Petitioner has continuously resided in the United States for more than ten (10) years." That same day, Petitioner was issued a Notice of Intent to Issue a Final Administrative Removal Order, Ans. Ex. 3, Notice to Alien Ordered Removed/Departure Verification, Ans. Ex. 4, and a Visa Program Waiver Final Administrative Removal Order, Ans. Ex. 5. Respondents therefore respectfully submit that Petitioner is lawfully detained under § 1187 pending his removal from the United States. *See Matter of A-W*, 25 I&N Dec. 45, 47-48 (2009) (holding statutory authority for applicant's detention is contained in 8 U.S.C. § 1187(c)(2)(E), not 8 U.S.C. § 1226).

Under § 1187 VWP, certain aliens may enter the United States for up to 90 days without a visa providing the aliens waive their rights to challenge any action for their removal "other than on the basis of an application for asylum." 8 U.S.C. § 1187(b)(2). Petitioner does not allege that he has filed an application for asylum, *see Pet.*, and ICE intends to remove him for overstaying under § 1187.¹ Removal of a VWP

¹ Petitioner asserts that he is married to a U.S. citizen and that he filed an I-130 petition, which is still pending. ICE has provided this Office no basis to dispute those facts. Petitioner, however, asserts that he "is eligible to adjust status to that of a Lawful Permanent Resident here in the United States." Pet. ¶¶ 13, 15. That is incorrect. Petitioner cannot contest his removal based upon his marriage to a U.S.

alien “shall be effected without referral of the alien to an immigration judge” unless the alien applies for asylum. 8 C.F.R. § 217.4(b).

The VWP statute states that a participating country must, within three weeks of issuance of a final order, accept the repatriation of any citizen, former citizen, or national of that country against whom that final order is issued. 8 U.S.C. § 1187(c)(2)(E). The statute cautions, however, that there is no duty owed by the United States or any right owed to the alien with respect to removal or release under this provision. *Id.* The statute further notes that the statute creates no cause of action or claim against a United States official “to compel the release, removal, or consideration for release or removal of any alien.” *Id.* In other words, the statute mandates Petitioner’s detention until his removal is executed. *But see Gjergj G. v. Edwards*, No. 19-5059 (SDW), 2019 WL 1254561 (D.N.J. Mar. 18, 2019) (holding § 1226(a) governed petitioner’s detention and requiring a bond hearing); *Emila N. v. Ahrendt*, No. 19-5060 (SDW), 2019 WL 1123227 (D.N.J. Mar. 12, 2019) (same).

Respondents acknowledge that their Answer to this Petition makes the same statutory arguments made in *Molina v. Soto*, No. 25-16880 (EP), 2025 WL 3281820, (D.N.J. Nov. 25, 2025), and that this Petition asserts materially similar facts to that case. Respondents accordingly submit this expedited answer given the similar issues, the importance of efficient resolution of this habeas petition, and the preservation of the Court’s and the parties’ resources.

We thank the Court for its time and attention to this matter.

Respectfully submitted,

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citizen. *See Bradley v. Attorney General United States*, 603 F.3d 235, 242 (3d Cir. 2010) (“We agree and hold that, although Bradley was once statutorily eligible under 8 U.S.C. § 1255(c)(4) for the adjustment he now seeks, he may not, after the expiration of his 90-day stay, adjust his status as a defense to removal. Bradley’s VWP waiver squarely forecloses him from contesting his removal on this basis.”).

/s/ Alex Silagi
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