



U.S. Department of Justice

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Via ECF

Honorable Evelyn Padin, U.S.D.J.
United States District Court
Martin Luther King Building & U.S. Courthouse
50 Walnut Street
Newark, NJ 07102

**Re: *Coelho Albernaz v. Soto, et al.*, No. 26-942 (EP)
Expedited Answer to § 2241 Petition**

Dear Judge Padin:

This Office represents Respondents in this habeas action brought by Petitioner Rita de Cassia Coelho Albernaz, challenging her detention by U.S. Customs and Immigration Enforcement ("ICE"). On January 30, 2026, the Court entered a text order holding that Petitioner is subject to detention under 8 U.S.C. § 1226(a) based on the recent decisions of *Lomeu v. Soto*, No. 25-16589 (EP), 2025 WL 2981296 (D.N.J. Oct. 23, 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 February 6, 2026, or to file an expedited answer by February 4, 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 *Lomeu* 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 she is subject to a reinstated final order of removal and her detention comports with due process. The Court should deny the petition.

I. Background: Petitioner Has a Reinstated Final Removal Order

Petitioner is a citizen of Brazil. See ECF No. 1 ("Pet."), ¶¶ 1, 16; see also Ans. Ex. A ("2026 I-213"). On June 4, 2005, U.S. Border Patrol encountered Petitioner near the Texas border, found Petitioner had unlawfully entered the United States and issued her a Notice to Appear. See 2026 I-213, at 2. On September 7, 2005, an immigration judge ordered Petitioner's removal from the United States in absentia

and Petitioner voluntarily departed on September 9, 2009 pursuant to that order. *See* 2026 I-213, at 2. On or about February 1, 2022, Petitioner unlawfully re-entered the United States near the Texas border. *See id.* at 2-3; *see also* Pet. ¶ 18. On May 19, 2025, Petitioner filed an application for Immediate Family Member of a T1 Recipient (“T-Visa”), which remains pending. *Id.* at 3; *see also* Pet. ¶ 22.

On January 29, 2026, ICE arrested Petitioner when she reported to the ICE Enforcement and Removal Operations (“ERO”) field office in Newark, New Jersey. *See* 2026 I-213 at 2; *see also* Pet. ¶ 23-24. On the same date, ICE had determined that Petitioner is subject to removal under 8 U.S.C. § 1231(a)(5) and 8 C.F.R. § 241.8 after an ICE Supervisory Detention and Deportation Officer had identified Petitioner as a noncitizen subject to a final order of removal, who illegally reentered the United States following her removal pursuant to that final order. *See* Ans. Ex. B (“I-871”). ICE issued an administrative warrant for Petitioner’s arrest based on the reinstated order of removal. *See* Ans. Ex. C (“I-205”).

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

Petitioner filed the instant habeas petition on January 30, 2026, claiming that her “continued detention, without notice, without a bond hearing, and despite her serious medical condition, violates the Due Process Clause of the Fifth Amendment.” Pet. ¶ 7. 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 her pending T-Visa application entitles her to potential relief from removal so post-removal detention under 8 U.S.C. § 1231(a) is not appropriate. That is not correct. ICE has lawfully detained her pursuant to 8 U.S.C. § 1231(a) because she is subject to reinstated final order of removal, *see* I-871, I-205, and whatever relief Petitioner may be entitled to does not undo the prior order of removal. 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 7 days, which is well within the mandatory 90-day removal period during which detention is mandatory.¹ 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. In addition, as courts in this District have recognized, such challenges to a post-removal-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 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 her detention. *See* Pet. ¶¶ 39-49 (alleging that arrest and detention violated due process because ICE did not provide Petitioner an opportunity to be seek bond). 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

¹ 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). ICE records indicate Petitioner’s only period of post-final-order detention began on January 29, 2026. *See* 2026 I-213 at 2.

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)).² Here, that process was followed. *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 of a final removal order: Petitioner (1) was ordered removed on September 7, 2005; (2) subsequently voluntarily departed on September 9, 2009; and (3) unlawfully reentered the country thereafter. *See* I-871; *see also* 2026 I-213; Pet. ¶ 18. And Petitioner received notice and an opportunity to provide a statement contesting the reinstatement determination. *See* I-871. The Court should reject Petitioner’s due process claims concerning the reinstatement of her removal order.

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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² The Third Circuit has upheld 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.”)