



United States Attorney
Eastern District of New York

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June 12, 2026

BY ECF

Honorable Nina R. Morrison
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Jose Manuel Sanchez Panora v. Markwayne Mullin, et al.*, No. 26-cv-3425
(Morrison, J.)

Dear Judge Morrison:

This Office represents the Respondents in this habeas action, in which Petitioner Jose Manuel Sanchez Panora ("Petitioner") challenges his detention by U.S. Immigration and Customs Enforcement ("ICE"). See ECF No. 1 ("Petition" or "Pet."). Respondents respectfully write in response to the Court's June 9, 2026 Order ("June 9 Order") directing Respondents to file a letter stating, *inter alia*, the statutory provision under which Respondents assert the authority to detain Petitioner; if Respondents assert the authority to detain Petitioner under 8 U.S.C. § 1225(b)(2), whether Respondents take the position that Petitioner's detention accords with the statutory and constitutional requirements set forth in the Second Circuit's decision in *Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026), and whether the conference scheduled for June 18, 2026 at 12:00 p.m. is necessary.

While reserving all rights, including the right to appeal, Respondents submit this letter in lieu of a formal memorandum of law to conserve judicial and party resources and to expedite the Court's consideration of this case, in light of *Da Cunha* and Your Honor's decision in *Hyppolite v. Noem, et. al.* 808 F. Supp. 3d 474 (E.D.N.Y. October 6, 2025). Respondents respectfully submit that a conference is not necessary.

A. Relevant Background

Petitioner unlawfully entered the United States on or about December 6, 2022, near Paso Del Norte, Texas. Ex. A. He was thereafter encountered by a U.S. Border Patrol agent ("CBP") and acknowledged that he was a citizen and national of Ecuador without proper immigration documents allowing him to enter or remain in the United States legally. *Id.* Petitioner was taken into custody by CBP. *Id.*

On December 13, 2022, Petitioner was paroled from ICE custody pursuant to §212(d)(5)(A) of the Immigration and Nationality Act [8 U.S.C. §1182(d)(5)(A)], for a period until February 13, 2023. Ex. B. On December 14, 2022, Petitioner was enrolled in an Alternatives

To Detention (“ATD”) program as a condition of his parole. Ex. C. Petitioner’s parole expired on February 13, 2023. Ex. B.

On June 2, 2026, ICE encountered Petitioner on the ninth floor at 26 Federal Plaza, New York, New York. Ex. A. Officers determined that Petitioner had no immigration status or permission to be in the United States, amenable to arrest and to removal proceedings and the execution of a Notice to Appear (“NTA”). Ex. D. ICE issued a Form I-200, Warrant for Arrest of Alien, based upon the execution of a charging document, *i.e.*, the NTA; and based upon biometric confirmation of the subject’s identity and a records check of federal databases that affirmatively indicated that Petitioner lacked immigration status. *Id.* ICE took him into custody pursuant to the Warrant for Arrest of Alien. *Id.*

Petitioner was also served a Form I-862, Notice to Appear (“NTA”), which charged him with being removable pursuant to INA § 212(a)(6)(A)(i) [8 U.S.C. § 1182(a)(6)(A)(i)] as an alien present in the United States without being admitted or paroled. Ex. E. The NTA was filed with the Executive Office for Immigration Review (“EOIR”), which initiated removal proceedings against Petitioner. *Id.*

Also on June 2, 2026, ICE completed an I-286 Custody Determination form reflecting that Petitioner would be detained. Ex. F. Petitioner requested an IJ review his custody determination. *Id.* This Form I-286 was filed with EOIR. *Id.*

Petitioner has an initial master calendar hearing on June 12, 2026, at the Varick Immigration Court. Ex. G.

B. Discussion

On April 28, 2026, the United States Court of Appeals for the Second Circuit issued its decision in *Da Cunha*. The Second Circuit held that § 235(b)(2)(A) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1225(b)(2)(A), does not apply to aliens who are present in the United States after entering the country without inspection and admission, and who were not apprehended at or near the border at the time of entry. 175 F.4th at 69. Rather, the Second Circuit held that § 236(a) of the INA, 8 U.S.C. § 1226(a) (“Section 1226(a)”) would apply in those circumstances.¹

ICE’s position is that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2)(A). Although Respondents respectfully disagree with *Da Cunha* and *Hyppolite*, respondents acknowledge that those decisions are controlling here, and that under those decisions, Petitioner is being detained pursuant to 8 U.S.C. § 1226(a).

Therefore, Respondents respectfully submit that the Court can decide this matter without further briefing or argument. Notwithstanding its submission of this letter in lieu of a formal brief, Respondents reserve all rights, including the right to appeal.

¹ For purposes of a potential future appeal, in the event *Cunha* is vacated, stayed, or overruled, Respondents respectfully preserve their arguments that § 1225(b)(2)(A) applies.

* * * *

Respondents thank the Court for its time and consideration in this matter.

Respectfully submitted,

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