U.S. Department of Justice

United States Attorney
Eastern District of New York

271 Cadman Plaza East
Brooklyn, New York 11201

February 5, 2026

By ECF
Honorable LaShann DeArcy Hall
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Sanchez v. Genalo, et al.*, No. 26-cv-476 (DeArcy Hall, J.)

Dear Juge DeArcy Hall:

This Office represents Respondents in this action filed by Petitioner Victor Ignacio Caivinagua Sanchez seeking a writ of habeas corpus, which asks for declaratory relief that the statute providing the detention authority over him is 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)(A), and for release. Petitioner also sought a Temporary Restraining Order ("TRO") focused on barring his removal from the United States or his transfer outside of this district while the action was pending, to "preserve the status quo." *See* ECF 2 ¶ 15. On January 29, 2026, the Court ordered "Petitioner shall not be transferred except to a facility within this District, the Southern District of New York, or the District of New Jersey absent further order of this court in light of Petitioner's interests in participating in further proceedings before this Court and maintaining adequate access to legal counsel." *See* Order dated Jan. 29, 2026. The Court also ordered Respondents to show cause why the TRO should be denied.[1]

Petitioner's first relief sought in the TRO – to remain locally detained – has already been provided, as he is housed at the Metropolitan Detention Center, located in Brooklyn, New York. The January 29 Order further required that Petitioner stay within this district, the Southern District of New York, or the District of New Jersey. This Court will maintain jurisdiction regardless of whether Petitioner remains at MDC or is transferred (if ever) to a facility in one of the two neighboring Districts the Court's prior order would permit. *See Chen v. Almodovar*, 2026 WL 100761 ("[W]hen the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release.") (citing *Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004)). And on the interest Petitioner claims in maintaining access to counsel, he has not shown why permissible places of detention need be narrowed to facilities in this District for him to have access to counsel.

As to the second request – enjoining removal from the United States – Petitioner cannot

[1] Respondents' deadline was originally, February 3, but because Petitioner did not timely file an affidavit of service of the Petition and TRO on this Office, the Court extended Respondents' deadline to file a response to the TRO until February 6, 2026.

be removed because he is not yet the subject of a removal order, let alone one that is administratively final. If Petitioner is ordered removed, such order will not become final until 30 days elapses without Petitioner appealing. 8 C.F.R. § 1241.1(c). If Petitioner wants to appeal a hypothetical removal order, he may timely do so within such 30-day window to the Board of Immigration Appeals, and appeal further to the U.S. Court of Appeals for the Second Circuit. *See* 8 U.S.C. § 1252(b); 8 C.F.R. § 1003.1(b)(3) 8 C.F.R. § 1240.15. In sum, ICE would not be removing Petitioner now or during the short horizon of this habeas action.[2]

Thus, Respondents respectfully submit that the TRO has been overtaken by events, and the Petitioner already has the relief he sought.

However, Petitioner this afternoon advised undersigned counsel that he intends to file a new TRO that addresses the merits of his habeas petition: the basis for detention and which statutory authority applies. Sight unseen, Respondents are not sure what the new emergency application will request, but Respondents respectfully request that, if Petitioner files a new TRO seeking his release from detention, Respondents be given at least several business days to respond.

Respondents thank the Court for its consideration of this submission.

Respectfully submitted,

JOSEPH NOCELLA, JR.
United States Attorney

By: */s/ Justin S. Kirschner*
Justin S. Kirschner
Assistant U.S. Attorney
(718) 254-6884
Justin.Kirschner@usdoj.gov

Cc (via ECF): All counsel of record.

[2] Finally, with respect to Petitioner's request for the Court to "waive any bond requirement," there is no bond for the Court to waive on a preliminary basis because Petitioner does not seek release on a preliminary basis.