

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

Raul Jefferson Pomaquiza Loja v. Thomas Brophy, et al.

Pomaquiza Loja v. Brophy · No. 26-cv-512-LJV · Decided June 2, 2026

SUMMARY

The United States District Court for the Western District of New York grants the government's motion to dismiss a 28 U.S.C. § 2241 habeas petition challenging the detention of a Visa Waiver Program participant. The court holds that the petitioner was detained under 8 U.S.C. § 1231 following issuance of a Final Administrative Removal Order and was not entitled to release, a bond hearing, or a Notice to Appear.

CASE DETAILS

COURT	United States District Court for the Western District of New York
WRITING FOR THE COURT	Lawrence J. Vilaro
JURISDICTION	United States District Court for the Western District of New York
DECIDED	June 2, 2026
DOCKET	26-cv-512-LJV
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner's 28 U.S.C. § 2241 habeas petition challenging immigration detention was dismissed on the government's Rule 12(b)(6) motion.
STANDARD OF REVIEW	The court applied the Rule 12(b)(6) standard to the habeas petition, accepting the petition's factual allegations as true and viewing the facts in the light most favorable to the petitioner. A claim survives if it contains sufficient factual matter to state a facially plausible claim for relief.
PRECEDENTIAL VALUE	unpublished district court decision
PARTIES	Raul Jefferson Pomaquiza Loja v. Thomas Brophy, et al.

TOPICS

- immigration detention
- removal proceedings
- motions to dismiss
- statutory interpretation
- immigration

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Pomaquiza Loja's detention was authorized under 8 U.S.C. § 1231 rather than 8 U.S.C. § 1226(a) or 8 U.S.C. § 1187(c)(2)(E).
2. Whether a Visa Waiver Program participant with a final administrative removal order is entitled to release or a bond hearing while the statutory removal period remains open.
3. Whether the absence of a Notice to Appear rendered Pomaquiza Loja's arrest and detention unlawful.
4. Whether the § 2241 petition stated a viable claim under Federal Rule of Civil Procedure 12(b)(6).

HOLDINGS

1. Because a Final Administrative Removal Order was issued on the same day Pomaquiza Loja was arrested, his detention was governed by 8 U.S.C. § 1231 rather than § 1226(a).
2. Pomaquiza Loja was not entitled to release or a bond hearing because the statutory removal period had not expired and § 1231(a)(2)(A) requires detention during that period.
3. A Visa Waiver Program participant who waived removal proceedings was not entitled to a Notice to Appear, and the government's failure to issue one did not invalidate the arrest or detention.
4. The Visa Waiver Program provision in 8 U.S.C. § 1187(c)(2)(E) does not itself provide the basis for detention, but the government's reliance on § 1231 supplied a valid basis for Pomaquiza Loja's detention.

KEY QUOTATIONS

“In sum, Pomaquiza Loja is detained under section 1231. He was never entitled to the issuance of a Notice to Appear—or any other process as part of a removal proceeding—because he waived those rights upon his entry to the United States under the Visa Waiver Program. Therefore, Pomaquiza Loja’s arrest and detention are legal.” (Discussion, II)

“In exchange for this simplified entry process, those admitted under the Visa Waiver Program waive certain rights, including the right to challenge their removal from the United States.” (Statutory Framework, I.A)

FACTUAL BACKGROUND

Pomaquiza Loja, a dual citizen of Spain and Ecuador, entered the United States in 2019 under the Visa Waiver Program and remained in New York beyond the permitted ninety-day period. ICE arrested him on March 12, 2026, and provided him with an arrest warrant, a Notice of Intent to Issue a Final Administrative Removal Order, a Visa Waiver Program Final Administrative Removal Order, and related departure-verification documents. He filed a § 2241 petition arguing that his detention was governed by 8 U.S.C. § 1226(a), that he was entitled to a bond hearing or release, and that the government could not detain him without a Notice to Appear.

PROCEDURAL HISTORY

Pomaquiza Loja filed a § 2241 petition seeking immediate release or a bond hearing after ICE detained him. The government moved to dismiss, arguing that he had waived the right to challenge his detention; after supplemental briefing and oral argument, the court granted the motion and dismissed the petition.

DISPOSITION

dismissed

CASES CITED

- Williams v. DHS/ICE/Immigr. Ct., 2023 WL 3585849, at *1 (W.D.N.Y. May 22, 2023)
- Wang v. Ashcroft, 320 F.3d 130, 140 (2d Cir. 2003)
- Dzhabrailov v. Decker, 2020 WL 2731966, at *3 (S.D.N.Y. May 26, 2020)
- Skaftouros v. United States, 667 F.3d 144, 158 (2d Cir. 2011)
- Pinkney v. Keane, 920 F.2d 1090, 1093 (2d Cir. 1990)
- Hines v. United States, 2023 WL 2346540, at *2 (D. Conn. Mar. 3, 2023)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556, 570 (2007)
- E.M.M. v. Almodovar, 2025 WL 3077995, at *2 (S.D.N.Y. Nov. 4, 2025)
- Hechavarria v. Sessions, 891 F.3d 49, 54-55 (2d Cir. 2018), as amended (May 22, 2018)
- Molina v. Soto, 2025 WL 3281820, at *3 (D.N.J. Nov. 25, 2025)
- Nicolas T. v. Noem, 2026 WL 1010750, at *1 (S.D. Tex. Mar. 30, 2026)
- Matter of A-W-, 25 I&N Dec. 45 (BIA 2009)
- Romance v. Warden York County Prison, 2020 WL 6054933, at *3 (M.D. Pa. July 28, 2020)
- Quispe v. Chestnut, 2026 WL 654577, at *2 (E.D. Cal. Mar. 9, 2026)
- Gjergj G. v. Edwards, 2019 WL 1254561, at *2 (D.N.J. Mar. 18, 2019)
- Cruz v. Mullin, 2026 WL 1027441, at *2 (E.D.N.Y. Apr. 16, 2026)
- Gopie v. Lyons, 2025 WL 3167130, at *1 (E.D.N.Y. Nov. 13, 2025)