

**United States Court of Appeals  
For the First Circuit**

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June 27, 2001

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In February 1998, appellant was deported to the Dominican Republic following his conviction on a federal drug charge. Ten months later, on December 20, he flew into Carolina, Puerto Rico,

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<sup>2</sup> In an affidavit, INS Inspector Morales stated that he did not receive the A File until "about January 5, 1999." It thus appears that appellant was brought before the magistrate judge on the same day, or shortly after, Morales obtained the documentary proof of his prior deportation.

guilty and was sentenced. In a related proceeding, the district court revoked the supervised release term that appellant had received in the drug case that had triggered his deportation. He was sentenced to a six-month term in lieu of supervised released, to be served consecutively to the fifty-one month sentence imposed for the illegal reentry.

On appeal, appellant renews his challenge under Rule 5(a), claiming

his detention within 48 hours of his arrest is therefore inapplicable. Instead, his detention was civil in nature and governed by 8 U.S.C. § 1357(a)(2), see Encarnacion, 239 F.3d at 398-400, which empowers INS officials to effect a warrantless arrest of

any alien who in [their] presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or

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<sup>3</sup> Another subsection of § 1357 allows INS officers to make arrests for immigration-related felonies and requires that the alien be taken promptly before "the nearest available officer empowered to commit persons charged with offenses against the laws of the United States . . . ." 8 U.S.C. § 1357(a)(4). Courts have read subsection (a)(2) to apply to arrests of aliens for status offenses and subsection (a)(4) to apply to arrests of aliens for other crimes. Encarnacion, 239 F.3d at 398. In turn, Rule 5(a) is considered applicable to subsection (a)(4) detainees, but not to those detained under subsection (a)(2). Id. at 398-99.

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<sup>5</sup> We note that appellant did not raise a claim under the Speedy Trial





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<sup>7</sup> We note that this court has not yet decided "whether Rule 5(a) can ever be