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By ECF

February 18, 2026

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

Re: Acevedo Terrero v. Genalo, No. 25-cv-869 (NCM)

Dear Judge DeArcy Hall:

Re: Petitioner's Response to Respondents' February 5, 2026 Letter (ECF 9)

Dear Judge DeArcy Hall:

In response to Respondents' February 5, 2026, Petitioner respectfully submits this letter[1], fully briefing this matter, and seeks to bring this case to a prompt hearing.

The Facts

Petitioner, Victor Caivinagua Sanchez entered the United States around January 2000 through the border without being apprehended by immigration authorities. He has no criminal record in either Ecuador or the United States. He works in the construction field, primarily performing carpentry work. Petitioner has filed and paid taxes consistently since his arrival in the United States.

On January 22, 2026, at approximately 5:00 p.m., while returning home from work, he was intercepted by ICE agents about one block from his residence at [redacted]. After

[1] Counsel sincerely apologizes to the Court for not submitting a response sooner and is grateful for the Court's sua sponte extension of time. The constant arrests by ICE of our client's families has required me to work 20-hour days by prosecuting habeas petitions in an attempt to remedy these daily traumatic events for many clients who were calmly pursuing their immigration applications without incident until this proliferation of illegal ICE arrests in NY and NJ.

refusing to provide information, he was restrained by force, taken to Federal Plaza, later transferred to a detention facility in Newark, New Jersey, and then to the MDC Brooklyn where he remains detained today. Four ICE agents, some of them masked, racially profiled him as ICE agents have done wholesale daily nationwide and approached him to ask questions. ICE agents stopped, detained, searched, and arrested him without a warrant, probable cause, or any evidence that he had committed a crime or any reason to believe that he was in violation of the immigration laws, save for the color of his skin and his physical appearance. He fears being transferred to another detention center to a faraway location like Louisiana, where he will be deported without due process.

The Procedural Posture of the Case

Immediately upon his detention in January 2, 2025, Petitioner filed this instant habeas seeking release and or, a bond determination. *See Petition ECF 1, p 2, 27 lines b and f; see also Respondents' Letter ECF pg 1. At this juncture, after evaluating the facts more fully, the Petitioner requests that the Court issue an order requiring that the Respondents immediately release him, because of the distinctly illegal manner in which ICE arrested him, consistent with established case law in this circuit, as cited below.*

First, Respondents speciously suggest that the Temporary Restraining Order has been "overtaken by events" because Petitioner is currently housed at MDC Brooklyn and is not the subject of a final order of removal. That framing sharply mischaracterizes the posture of this case. The TRO served its immediate purpose of preserving jurisdiction and preventing transfer outside this District and adjacent districts.

While Petitioner appreciates the Court's prompt action in safeguarding meaningful judicial review, the core controversy presented in the habeas petition and the TRO remains fully live and unresolved. The Court's January 29 Order preserved jurisdiction and access to counsel while this case proceeds. It did not adjudicate the legality of detention, did not grant the writ, and did not address Petitioner's continuing confinement, which is the live injury that habeas exists to remedy. Petitioner is presently detained under Respondents' determination that 8 U.S.C. § 1225(b)(2)(A) governs his custody and renders him categorically ineligible for bond. The Petition challenges that statutory classification and seeks release or, in the alternative, a prompt bond hearing under 8 U.S.C. § 1226(a). The government's assurance about a hypothetical future removal order does nothing to cure an unlawful seizure, an unlawful detention classification, or an ongoing deprivation of liberty without individualized process. Nor does it supply mootness. So long as Petitioner remains detained, this Court can grant effectual relief, and the case is live.

Legal Argument

Release is the traditional and principal remedy of habeas corpus. The Petition already primarily seeks a writ directing immediate release or, alternatively, a bond hearing within seven days. The Court need not treat such relief as a separate Rule 65 application; it is the core relief contemplated by § 2241. Habeas is an independent statutory mechanism under 28 U.S.C. §§ 2241 and 2243, designed to provide a swift merits determination where executive detention is challenged. Section 2243 directs courts to resolve habeas matters forthwith and to dispose of the matter as law and justice require. The Supreme Court has repeatedly emphasized that habeas is

the fundamental instrument for safeguarding liberty against unlawful executive custody. Where detention is unlawful, release is the ordinary remedy. *Munaf v. Geren*, 553 U.S. 674, 693 (2008). Nothing about the Court's jurisdiction-preserving order changes that.

Second Circuit law confirms that this Court has full habeas authority to review, and remedy, unlawful immigration detention. The Second Circuit has long recognized habeas review over the legality of executive immigration detention, including statutory and constitutional challenges. *Henderson v. INS*, 157 F.3d 106 (2d Cir. 1998); *Wang v. Ashcroft*, 320 F.3d 130 (2d Cir. 2003). The Circuit has reaffirmed the fundamental liberty interest at stake in civil immigration custody: "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected by the Due Process Clause." *Hechavarria v. Sessions*, 891 F.3d 49, 54 (2d Cir. 2018) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). When detention is imposed without the individualized process the Constitution requires, courts in this Circuit have granted the writ and ordered release.

In this district, most directly relevant to the warrantless street-stop context, Judge Choudhury's February 7, 2026, decision in *Aguinaga Castellon v. Noem*, No. 2:26-cv-00647 (NJC), slip op. at 7–10 (E.D.N.Y. Feb. 7, 2026), illustrates why mootness is untenable and why the merits must be reached. There, ICE officers conducted an early-morning traffic stop in Copiague, searched ICE databases during the stop, and performed a warrantless arrest only after learning information about alienage. The court found no pre-deprivation individualized determination of flight risk or danger and emphasized that the Form I-200 was served later at a holding room, underscoring that detention was being justified after the seizure rather than through lawful pre-arrest process. The court ordered immediate release and issued narrow injunctive protection against re-detention under § 1225(b) absent changed circumstances. That is the opposite of mootness; it is a live detention injury requiring a merits remedy.

Southern District cases confirm the same principle. In *Valdez v. Joyce*, No. 25 Civ. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025), the court granted habeas and ordered immediate release where the process provided prior to detention was "absolutely none." In *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025), the court ordered release where detention contravened basic due process. In *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 486 (S.D.N.Y. 2025), the court rejected post hoc justifications for detention. In *Barco Mercado v. Francis*, No. 25 Civ. 6582 (S.D.N.Y. 2025), the court found it dispositive that ICE did not conduct a custody redetermination until after arresting the petitioner. These are habeas merits rulings ordering release based on unlawful detention mechanisms.

This case did not begin with a careful civil immigration arrest supported by a warrant or exigency and anchored in an individualized custody determination. It began on a Bronx roadway, where masked ICE agents approached Petitioner, surrounded him, demanded identification, seized him through a show of authority, searched him, detained him, and arrested him without presenting a judicial warrant, without presenting a valid administrative arrest warrant at the scene, and without probable cause. The Fourth Amendment governs that seizure. A seizure occurs when officers restrain liberty by physical force or show of authority. *Torres v. Madrid*, 592 U.S. 306, 312–13 (2021). Warrantless arrests require probable cause, and the government bears the burden to justify the seizure. *Beck v. Ohio*, 379 U.S. 89, 91 (1964); *Dunaway v. New York*, 442 U.S. 200, 213–16 (1979). Immigration enforcement is not a Fourth

Amendment carveout. *INS v. Delgado, 466 U.S. 210, 215 (1984).*

Under 8 U.S.C. § 1357(a)(2), an immigration officer may arrest without a warrant only if the officer *has reason to believe the person is in the United States in violation of law and is likely to escape before a warrant can be obtained.* That statutory limitation reinforces constitutional constraints. The governing regulations likewise tie warrantless arrest authority to exigency and procedural safeguards. *See 8 C.F.R. § 287.8.*

On the alleged facts here—an ordinary street encounter near home, no flight, no prior individualized determination, and no demonstrated escape risk—§ 1357(a)(2) does not authorize a warrantless arrest. Nor does it authorize arrest first and process later. Independent of the initial seizure, due process requires individualized custody decision-making.

DHS Arrest Authority Is Strictly Regulated by Statute and Binding Regulations, and Petitioner's Arrest Was Unlawful, Meriting Release

Congress did not grant immigration officers unfettered arrest authority. To the contrary, the Immigration and Nationality Act establishes a clear statutory preference for warrants and sharply limits warrantless arrests. Under 8 U.S.C. § 1357(a)(2), an immigration officer may arrest a noncitizen without a warrant only if the officer has reason to believe that the individual is present in violation of law and "is likely to escape before a warrant can be obtained." The statute further requires that a person arrested without a warrant "shall be taken without unnecessary delay for examination before" an authorized immigration officer. Id. Thus, warrantless arrest is the exception, not the rule, and is permitted only upon a contemporaneous determination of likely flight before a warrant may be secured.

DHS's own binding regulations reinforce that statutory limitation. The governing enforcement regulation provides unequivocally: "A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained." 8 C.F.R. § 287.8(c)(2)(ii) (emphasis added). The regulation mirrors the statute's structure and confirms that advance warrant authorization is required in the ordinary course.

Where DHS proceeds by administrative warrant, the regulations strictly limit who may issue and serve such warrants. Arrest warrants on Form I-200 may be issued only by those immigration officers specifically listed in 8 C.F.R. § 287.5(e)(2), and may be served only by those officers listed in § 287.5(e)(3). 8 C.F.R. § 236.1(b)(1). The regulatory framework therefore contemplates advance authorization by a properly designated officer—not unilateral field action by any line officer. The issuance authority is confined to specific supervisory or otherwise delegated positions identified by regulation.

Moreover, where DHS conducts a warrantless arrest under the narrow escape exception of § 1357(a)(2), the regulations impose an immediate procedural safeguard. The arrested individual "will be examined by an officer other than the arresting officer," unless no other qualified officer is readily available and transfer would entail unnecessary delay. 8 C.F.R. § 287.3(a). This requirement codifies a structural separation between the arresting officer and the officer conducting the post-arrest examination, underscoring that even in exigent circumstances, the

arrest decision must promptly be subjected to independent review.

Taken together, 8 U.S.C. § 1357(a)(2), 8 C.F.R. § 287.8(c)(2)(ii), 8 C.F.R. § 236.1(b)(1), and 8 C.F.R. § 287.3(a) establish a layered arrest protocol. In the absence of exigency, *DHS must obtain an administrative warrant in advance. That warrant must be issued by an officer specifically authorized by regulation. If DHS dispenses with a warrant, it must be able to demonstrate that the statutory "likely to escape" condition existed at the time of arrest and must provide prompt examination by a different officer. The regulatory scheme does not permit post hoc justification or after-the-fact ratification of an arrest executed without contemporaneous statutory compliance.*

Where these mandatory prerequisites are not satisfied—where no properly issued I-200 exists, where no contemporaneous escape determination was made, or where the required independent examination did not occur—the arrest is inconsistent with DHS's own binding regulations and statutory authority. Under settled administrative law principles, agency action taken in violation of mandatory regulations is unlawful and cannot sustain continued executive detention. See *Accardi v. Shaughnessy*, 347 U.S. 260 (1954). Accordingly, continued custody predicated on a procedurally defective arrest is ultra vires and subject to habeas relief.

Petitioner Should Be Released Because ICE Also Did Not Conduct A Required Custody Determination At or Before His Arrest

Across the federal courts of New York, judges have made clear that immigration detention must rest on a lawful, individualized, and contemporaneous custody determination at the moment liberty is restrained. The principle is not procedural formalism; it is constitutional structure. The Executive may not arrest first and articulate a custody rationale later. In this district , *Gopie v. Lyons* (E.D.N.Y. 2025) (Bulsara, J.), the court addressed this problem precisely. Regarding custodial determination *Gopie* says:

> Respondents do not explain when, how, or by whom the decision to detain Petitioner was made. Nor do they assert that any individualized custody determination occurred prior to or contemporaneous with the arrest. The record instead reflects a categorical decision to treat Petitioner as subject to mandatory detention without any assessment of his individual circumstances." *Gopie v. Lyons*, No. 25-CV-5229 (SJB), slip op. at 6 (E.D.N.Y. Nov. 13, 2025).... "The Government cannot justify a warrantless arrest and ensuing detention by pointing to administrative processes that occurred only after Petitioner had already been seized and confined. Due process requires a lawful basis for custody at the time of arrest, not a post hoc rationalization."
> *Id.* at 7.

There, the Government attempted to defend detention by pointing to the statutory authority of 8 U.S.C. § 1226 and the availability of immigration court bond proceedings. Judge Bulsara rejected the notion that post-arrest administrative mechanisms could substitute for a valid custody determination at inception. Section 1226 authorizes detention "pending a decision on whether the alien is to be removed," but that authority presupposes that DHS has actually exercised detention discretion in a lawful and individualized manner. Where the Government could not identify a contemporaneous custody determination grounded in individualized facts,

detention exceeded statutory authority. The court made clear that habeas jurisdiction exists to test the legality of executive detention itself, not merely the outcome of later bond hearings, and that where custody is unlawful from the outset, release—not remand for further agency process—is the appropriate remedy.

Judge Bulsara's analysis underscores a structural point: a bond hearing before an Immigration Judge is a "re-determination" of custody. It presupposes that a lawful initial custody decision has already been made. If no such individualized determination occurred before or at the time of arrest, the constitutional defect lies at inception. The agency cannot retroactively supply statutory authority through later paperwork or hearing opportunities. Nor can the IJ or BIA cure an ultra vires seizure that was unsupported by lawful custody authority when it occurred. Southern District decisions in 2025 reinforce and elaborate this principle.

In *Lopez Benitez v. Francis* (S.D.N.Y. 2025), the court found it constitutionally significant that the Government did not explain that it had considered the petitioner's individual circumstances and did "not even say when, why, how, or by whom the decision to detain him was made." The absence of an identifiable, contemporaneous decisionmaker and reasoning rendered the detention defective at its core. The court rejected the suggestion that later administrative processes could supply the missing justification, observing that due process does not permit agents to seize an individual without articulating a lawful custody basis and rely on some later opportunity to seek release. In *Barco Mercado v. Francis* (S.D.N.Y. 2025), the court likewise found it dispositive that ICE "did not bother to conduct a custody redetermination until after arresting" the petitioner. A custody determination made only after arrest cannot retroactively legitimize the seizure. The statutory detention scheme requires that DHS identify and act pursuant to a valid detention authority at the time it deprives a person of liberty. Where the Government detains first and determines its statutory footing later, the detention is invalid from the outset. Similarly, in *Valdez v. Joyce* (S.D.N.Y. 2025), the court held that exhaustion is excused where the petitioner raises a constitutional challenge to the legality of detention itself—one that "could not be properly addressed" by the Immigration Judge or the Board of Immigration Appeals. An IJ cannot retroactively create the individualized custody determination that was absent at the time of arrest. Federal habeas review remains available precisely to address such structural defects in executive detention. In *Zhu v. Genalo* (S.D.N.Y. 2025), applying the *Mathews v. Eldridge* framework, the court concluded that "almost nonexistent procedural protections" markedly increase the risk of erroneous deprivation of liberty and that, at minimum, due process requires notice and an opportunity to be heard in connection with redetention. The decision underscores that procedural safeguards must accompany the detention decision itself; they cannot be deferred or supplied only after custody has already been imposed.

Taken together, *Gopie v. Lyons* and the 2025 Southern District cases establish a consistent rule across the Eastern and Southern Districts of New York: detention under the INA must be supported by a lawful, individualized, and contemporaneous custody determination at the moment of seizure. The Government may not arrest first and justify later. Where DHS fails to conduct such a determination—or cannot identify who made it, when it was made, and what individualized factors were considered—the detention exceeds statutory authority and violates due process. In those circumstances, federal habeas courts have ordered release, recognizing that executive detention without a lawful basis at inception cannot stand.

Petitioner Requests that the Court Order Respondent to Immediately Disclose All Relevant Immigration Detention Records

Petitioner respectfully requests that the Court order Respondents to produce, on an expedited basis, the DHS and ICE custody and administrative records forming the legal and factual basis for Petitioner's arrest and continued detention. These materials are necessary for meaningful habeas review under 28 U.S.C. § 2241 and for Petitioner to prosecute his claim for release from unlawful confinement. The relevant records are exclusively within the government's possession. Without them, Petitioner is forced to litigate without access to the factual and legal predicates for his confinement, frustrating due process and undermining the core function of habeas corpus.

Petitioner therefore seeks production of all records relating to his arrest and custody authority, including Forms *I-200, I-205, I-213, I-265, and I-203*; any expedited removal or reinstatement materials (including Forms *I-860, I-871, I-296*, and the underlying prior removal order with proof of service and execution); all custody determinations and redeterminations (including all versions of Form I-286), ICE/ERO custody worksheets, memoranda, notes, Risk Classification Assessments, and all records reflecting the statutory basis asserted for detention under 8 U.S.C. §§ 1225(b), 1226(a), 1226(c), or 1231. Courts in this District have recognized that where a petitioner challenges the legality of immigration detention itself, production of the custody record is essential to meaningful judicial review. See, e.g., *Barco Mercado v. Francis; Gopie v. Lyons; Gonzalez v. Joyce.* Petitioner respectfully requests that the Court order production within thirty to seventy-two hours, as the Court deems appropriate given the ongoing deprivation of liberty, and that failure to comply result in appropriate consequences, including adverse inferences and, where the government cannot substantiate a lawful basis for detention, immediate release.

For these reasons, Petitioner respectfully requests that the Court reject Respondents' mootness suggestion as inapposite to the habeas merits, treat the government's submission as, at most, an argument concerning whether transfer restraints remain necessary, and proceed promptly to adjudicate the Petition's merits and the writ of habeas corpus as § 2243 requires. If the Court wishes to address both TRO issues and the merits efficiently, Petitioner respectfully requests that the Court consider consolidating any upcoming hearing with the merits pursuant to Rule 65(a)(2), while recognizing that habeas relief, including release, is independently available under 28 U.S.C. §§ 2241 and 2243.

Respectfully submitted,

/s/ S. Michael Musa-Obregón

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