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REPLY TO WHITE PLAINS OFFICE

By ECF

March 10, 2026

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

Re: *Caivanagua Sanchez v. Genalo*, No. 26-cv-476 (LDH)

Re: Motion to strike DHS officer's Declaration and other relief, including an adverse inference or Petitioner's release, for failure to provide statutorily required Return on the Habeas and the DHS administrative custody record.

Dear Judge DeArcy Hall:

Petitioner respectfully moves for an order striking the declaration of Assistant Field Office Director John Guerra submitted by Respondents, or, in the alternative, for the entry of appropriate relief—including an adverse inference or release—based on Respondents' persistent failure to file the habeas return required by 28 U.S.C. § 2243 and to produce the administrative custody record underlying Petitioner's detention.

This habeas action was filed on January 28, 2026, more than forty days ago. We wrote:

> "Requirements of 28 U.S.C. § 224. The Court must grant the petition for a writ of habeas corpus or order Respondents to show cause 'forthwith,' unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return 'within three days unless for good cause additional time, not exceeding twenty days, is allowed.'" See ECF 1 ¶ 27.

Respondents instead filed a February 5, 2026 letter misnamed "Response to Order to Show Cause" ECF 9, addressing only the temporary restraining order; it was misnamed because it utterly failed to address the underlying causes for detention in our petition as required by 28 USC §2243. *That submission did not address the merits of the habeas petition, did not identify the statutory basis for detention, did not*

certify the cause of detention, and did not produce the administrative record or any custodial documents. To this day, Petitioner remains detained, and Respondents have not formally articulated the legal and factual grounds for confinement in this Court. Respondents were statutorily required to submit an immediate answer to the Petition for Writ of Habeas Corpus, which they only partially complied with on March 4, a month later, and this significant deficiency continues to unfairly harm the Petitioner.

On February 18, 2026, Petitioner again, in a letter, ECF 12, formally requested that Respondents file the certified return required by the federal habeas statute and produce the custodial documentation supporting Petitioner's detention.

> "Petitioner respectfully moves for an order directing Respondents to file a full return pursuant to 28 U.S.C. § 2243 certifying the true cause of Petitioner's detention and producing all custodial documentation supporting that detention.
>
> This habeas action was filed on January 28, 2026. The Petition challenges the legality of Petitioner's arrest and continued detention under the Fourth Amendment, 8 U.S.C. §§ 1225, 1226, and 1357, the Due Process Clause, and binding agency regulations. The central question presented is straightforward: under what lawful statutory authority is Petitioner currently detained, and was that authority validly invoked? To date, that question has not been answered." ECF 10 ¶ 1.

Once again, Respondents failed to produce the statutorily required detention documents. Although the Court did rule on the request to date Respondents do not need a court order to comply with the statutorily mandated requirement, which is now over thirty-seven days late. Nor have they alleged good cause. As such, this failure to comply is glaring and intentional, not an oversight.

Also in a separate letter brief of the same date, ECF 10, we again requested the documents. We wrote:

> "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." See ECF ¶ XXX.

Once again, Respondents failed to produce the documents.

Only on March 4, see ECF 13, did Respondents respond to the third request to provide the necessary documents, and they once again failed to provide a single dentention document. Instead of complying with the statutory framework governing habeas corpus, Respondents submitted a declaration from an ICE supervisory officer purporting to summarize unspecified DHS records. That declaration cannot

substitute for the return required by Congress. The governing statute is explicit. Section 2243 provides that once a habeas petition is presented, the court shall issue the writ or an order to show cause, and that the custodian "shall make a return certifying the true cause of the detention." 28 U.S.C. § 2243. The statute further provides that the return shall be made within three days unless additional time is allowed for good cause. Id.

The extraordinary delay in the filing of a *certified return* is incompatible with the historic function of habeas corpus. Congress expressly required that the custodian respond within three days unless additional time is granted for good cause. 28 U.S.C. § 2243. That requirement reflects the long-recognized principle that habeas proceedings must move with unusual speed because a person's liberty is at stake. As the Supreme Court has repeatedly emphasized, habeas corpus is intended to provide a "swift and imperative remedy" against unlawful executive detention. *Fay v. Noia*, 372 U.S. 391, 400 (1963). Courts have therefore treated prompt production of the detention record as central to the writ's function. See also *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (recognizing that freedom from physical restraint lies at the core of the liberty protected by the Constitution). Respondents' failure to file the statutory return for more than forty days while Petitioner remains incarcerated frustrates the very purpose of the habeas statute and warrants immediate judicial intervention.

The return required by § 2243 is not a narrative declaration summarizing agency records. It is the certified statement of the custodian identifying the legal authority for detention and producing the underlying record so that the Court may determine whether the detention is lawful. Courts have repeatedly recognized that meaningful habeas review requires the government to disclose the administrative record supporting custody. See *Henderson v. INS*, 157 F.3d 106, 122 (2d Cir. 1998); *Wang v. Ashcroft*, 320 F.3d 130, 142 (2d Cir. 2003); *Hechavarria v. Sessions*, 891 F.3d 49, 54 (2d Cir. 2018). Courts in this District have likewise required the government to disclose the custodial record where the legality of immigration detention is challenged. See, e.g., *Gopie v. Lyons*, No. 25-CV-5229 (E.D.N.Y. Nov. 13, 2025); *Aguinaga Castellon v. Noem*, No. 2:26-cv-00647 (E.D.N.Y. Feb. 7, 2026).

Respondents have never produced the records necessary for this Court to conduct that review. Petitioner requested production of the standard custodial record maintained by ICE, including the Form I-200 warrant, Form I-213, Form I-203, Form I-286 custody determination, and any documentation reflecting the statutory basis for detention. Those records are exclusively in the government's possession. They form the very basis of the detention the government seeks to defend. Yet Respondents have refused to produce them.

Instead, the government relies on the declaration of Assistant Field Office Director Guerra. That declaration states that the declarant reviewed DHS databases and records maintained in the ordinary course of business and then summarizes the government's version of events. Such a declaration cannot satisfy the statutory requirement that the custodian certify the true cause of detention. Nor can it substitute for the production of the administrative record itself. Without the underlying documents, Petitioner and the Court are left with nothing more than an officer's description of records that have not been produced and cannot be examined or tested.

The Supreme Court has long made clear that the government cannot defeat habeas review through unsupported assertions by executive officials. In *Walker v. Johnston*, 312 U.S. 275 (1941), the Court rejected the government's attempt to rely on conclusory allegations in response to a habeas petition and held that where the legality of detention is challenged, the court must examine the underlying facts rather than accept official representations at face value. Habeas corpus requires the custodian to produce the factual basis for the detention so that the court may determine its legality. *Id.* at 284–87. The principle articulated in *Walker* applies with full force here.

Petitioner's request for the custodial record is not a fishing expedition. The declaration submitted by Respondents repeatedly states that its assertions are based on DHS records and databases maintained in the ordinary course of business. Yet Respondents have declined to produce any of those records. The government therefore asks the Court to rely on a narrative description of documents that it refuses to disclose. In a habeas proceeding—where the custodian bears the burden of justifying detention—such a posture raises an obvious concern: if the underlying records supported the government's position, there would be no reason to withhold them. *The absence of the custody record therefore not only prevents meaningful review but also strongly suggests that the withheld documents may not support the detention authority now asserted in litigation. Habeas corpus does not permit detention to be sustained through summaries of undisclosed records; the custodian must produce the record that authorizes the confinement.*

Respondents' reliance on the Guerra declaration further underscores why production of the custodial record is indispensable. The declaration states that ICE officers encountered Petitioner during a surveillance operation targeting a different individual and that officers interviewed Petitioner, conducted a database search, and only thereafter informed him he would be arrested pursuant to a Form I-200 warrant. *The declaration does not state that officers possessed an administrative arrest warrant at the time of the seizure.* Nor does it assert that the statutory requirements governing warrantless arrest under 8 U.S.C. § 1357(a)(2)—including a contemporaneous determination that the individual was likely to escape before a warrant could be obtained—were satisfied. Instead, the declaration relies on unspecified DHS records and databases that Respondents have refused to produce.

Respondents' refusal to produce the Form I-200 administrative arrest warrant is particularly significant. The declaration states only that officers informed Petitioner he would be taken into custody "pursuant to a Form I-200 warrant", but it does not state that the officers possessed that warrant at the time of the street encounter or that it had been issued prior to the seizure. The timing of that document is critical. Under the statutory framework governing immigration arrests, DHS must either possess a properly issued administrative warrant in advance or satisfy the narrow requirements for warrantless arrest under 8 U.S.C. § 1357(a)(2). The Form I-200 itself would reveal when the warrant was issued and by whom. Yet Respondents have declined to produce it while relying on a declaration summarizing unspecified DHS records.

Respondents' refusal to produce the custodial record is particularly significant because the declaration asserts that Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2)(A), a provision governing applicants for admission. Yet the declaration's own factual narrative raises serious questions about that classification. The declaration acknowledges that Petitioner had been living in the United States and had previously filed an immigration benefit petition with USCIS, that removal proceedings had already been initiated through a Notice to Appear, and that ICE encountered him during an enforcement operation directed at another individual. These circumstances do not resemble the statutory framework governing arriving aliens under § 1225. Rather, they are consistent with the detention authority of 8 U.S.C. § 1226, which governs individuals arrested within the United States pending removal proceedings and which provides for individualized custody determinations. See *Hechavarria v. Sessions*, 891 F.3d 49, 54 (2d Cir. 2018).

Respondents' refusal to produce the custodial record also warrants an adverse inference. The documents establishing the legal basis for Petitioner's detention—such as the Form I-200 arrest warrant, Form I-286 custody determination, and related ICE records—are entirely within the government's possession and control. Yet Respondents have declined to produce them while simultaneously relying on a declaration that purports to summarize those same records. Federal courts have long recognized that where a party fails to produce evidence within its control that would naturally be expected to support its

position, the court may draw an adverse inference that the evidence would not support that party's claims. *Residential Funding Corp. v. DeGeorge Financial Corp.*, 306 F.3d 99, 108–09 (2d Cir. 2002).

Respondents' continued refusal to file the certified return required by 28 U.S.C. § 2243 or to produce the custodial record underlying Petitioner's detention undermines the very purpose of the writ of habeas corpus. Habeas corpus exists to compel the custodian to justify executive detention before a neutral court. Congress codified that principle in § 2243 by requiring the custodian to certify the true cause of detention promptly and to place before the Court the factual and legal basis for the confinement. More than forty days have now passed since the filing of the petition, and weeks have passed since Petitioner formally requested the statutory return. During that time Petitioner has remained incarcerated while the government has declined to disclose the very documents that purportedly justify his detention.

Respondents' refusal to produce the custodial record also prevents the Court from determining whether ICE complied with the regulatory safeguards governing warrantless immigration arrests. Under 8 C.F.R. § 287.3(a), when an individual is arrested without a warrant, the person must be examined promptly by an immigration officer other than the arresting officer to determine whether the arrest was proper and whether continued detention is warranted. This requirement ensures that the legality of detention is subject to independent review rather than being determined solely by the officers who conducted the arrest. The declaration submitted by Respondents does not identify who conducted this required examination, whether that officer was independent of the arresting officers, or when the examination occurred. Those facts would ordinarily appear in the agency's custody documentation, including the Form I-213 and Form I-286 custody determination. Respondents' refusal to produce those records therefore prevents the Court from determining whether DHS complied with its own binding regulations. Where an agency fails to follow mandatory procedures governing the exercise of its authority, the resulting detention cannot be sustained. See *Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

The sequence of post-arrest transfers further underscores the need for prompt production of the custodial record. The declaration states that after Petitioner's arrest he was transported to 26 Federal Plaza, transferred to Delaney Hall in Newark, and later transferred again to the Metropolitan Detention Center in Brooklyn. Such movements are not unusual in immigration detention, but they highlight the importance of preserving meaningful judicial review of custody through habeas corpus. See *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Henderson v. INS*, 157 F.3d 106 (2d Cir. 1998). *Where a detainee is moved between facilities while the government declines to produce the record authorizing detention, the Court cannot effectively determine whether the confinement is lawful.* The writ of habeas corpus exists precisely to prevent that situation by requiring the custodian to place before the Court the legal and factual basis for detention.

Permitting Respondents to rely instead on a declaration summarizing undisclosed records would invert the habeas process, allowing the Executive to maintain detention without ever producing the record that authorizes it. The Court should not permit the statutory framework governing habeas corpus to be circumvented in this manner.

Respondents' reliance on § 1225 detention is particularly difficult to reconcile with the government's own description of the procedural history. The declaration states that USCIS issued Petitioner a Notice to Appear in July 2025 initiating removal proceedings under § 240 of the Immigration and Nationality Act. Once removal proceedings are initiated through a Notice to Appear, detention is ordinarily governed by 8 U.S.C. § 1226, which applies to individuals arrested within the United States pending a decision on removal. See *Hechavarria v. Sessions*, 891 F.3d 49, 54 (2d Cir. 2018). Section 1225, by contrast, governs applicants for admission. Respondents' declaration does not explain how an individual already placed in § 240 removal proceedings months earlier could later be classified as an applicant for

admission subject to § 1225(b). The custodial record—including the Form I-286 custody determination and related ICE documentation—would reveal which statutory authority ICE actually invoked at the time of arrest. Respondents' refusal to produce those records therefore prevents the Court from determining whether the detention authority now asserted in litigation reflects the agency's contemporaneous custody decision or a post-hoc characterization.

At bottom, this case presents a straightforward habeas problem. Petitioner remains incarcerated while the government declines to produce the certified return and custody record that would establish the legal authority for his detention, instead relying on a declaration summarizing undisclosed DHS records. Habeas corpus does not permit executive detention to be sustained through such unsupported assertions; the custodian must produce the record authorizing confinement so that the Court may determine whether the detention is lawful. Continued detention while the government declines to produce the record establishing its authority to confine Petitioner risks transforming what must be a lawful exercise of immigration custody into detention unsupported by any demonstrable legal basis. Habeas corpus is designed to ensure that liberty is not lost while the government searches for a legal justification for detention.

Petitioner therefore respectfully requests that the Court strike the Guerra declaration or preclude Respondents from relying upon it unless and until they comply with § 2243 by filing the certified return and producing the custodial record. In the alternative, the Court should draw an adverse inference from Respondents' refusal to produce those records and grant appropriate relief, including ordering Petitioner's immediate release or such other relief as law and justice require.

In any case, the government has precluded the Petitioner from receiving a swift hearing as contemplated in habeas. Therefore, the Court should schedule an immediate hearing forthwith to finalize the cause of his arrest. The Respondents have had more than ample time to prepare for this hearing, while Mr. Caivanagua remains incarcerated, without knowing the true basis for his detention, which the government must and should easily explain.

Respectfully submitted,

/s/ S. Michael Musa-Obregón

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