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By ECF

June 19, 2026

Honorable Sanket J. Bulsara
United States District Judge
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

Re: *Yanez Matute v. Genalo, et al.*, No. 2:26-cv-03634-SJB *Petitioner's Response to Court's Order & Respondents' June 18 and June 19, 2026 Submissions*

Dear Judge Bulsara:

Pursuant to the Court's June 18, 2026 Text Order, Petitioner Denis Josue Yanez Matute respectfully submits this letter in response to Respondents' June 18 and June 19, 2026 submissions. See Dkt. Nos. 8, 9. Most respectfully, the writ should be granted, and Petitioner should be released immediately.

Respondents have not supplied the one document the Court required: a valid Notice to Appear issued before Petitioner's arrest. Instead, Respondents' own submissions confirm that Petitioner was arrested first and that DHS attempted to regularize the arrest later. That is precisely what this Court rejected in *Gopie v. Lyons*, No. 25-CV-5229, 2025 WL 3167130 (E.D.N.Y. Nov. 13, 2025), and *Parada Cruz v. Mullin*, No. 26-CV-1110, 2026 WL 1027441 (E.D.N.Y. Apr. 16, 2026).

The core point is simple: Respondents' June 19 letter does not identify any valid pre-arrest NTA. It instead asks the Court to accept a retroactive cure theory. But neither the INA, the governing regulations, *Campos-Chaves*, nor the Second Circuit jurisdiction cases permit DHS to arrest a person first and create the legal predicate later.

Respondents Cannot Cure an Invalid I-200 Arrest with a Post-Arrest NTA

The record is straightforward. Petitioner's prior immigration proceedings were dismissed without prejudice on April 5, 2024. Dkt. No. 8-1. Thus, no removal proceedings were pending when ICE issued the June 9, 2026 Form I-200 or when ICE arrested Petitioner on June 17, 2026.

The June 9 I-200 confirms that DHS was not relying on pending removal proceedings. It does not check the box for "the pendency of ongoing removal proceedings"; instead, it purports to rely on "the execution of a charging document to initiate removal proceedings." Dkt. No. 8-2. But the only purported pre-arrest charging document identified by Respondents is the defective June 9 NTA. Dkt. No. 8-3. Respondents admit that the June 17, 2026 NTA and the June 17, 2026 custody determination were issued "during processing after his arrest." Dkt. No. 8 at 2. That admission is dispositive. *A post-arrest NTA cannot retroactively supply authority for a preexisting arrest.* See *Gopie*, 2025 WL 3167130, at *1–3; *Parada Cruz*, 2026 WL 1027441, at *4–6; *Garcia Lanza v. Noem*, No. 26-CV-0029, 2026 WL 585130, at *5 & n.6 (E.D.N.Y. Mar. 3, 2026); *Sanchez Alfaro v. Mullin*, No. 26-CV-0766, 2026 WL 734348, at *4–5 (E.D.N.Y. Mar. 16, 2026).

The regulation is both temporal and mandatory. Under 8 C.F.R. § 1236.1(b)(1), "[a]t the time of issuance of the notice to appear, or at any time thereafter," a respondent may be arrested and taken into custody under Form I-200. That language creates a sequence: first the valid NTA, then the I-200 arrest authority. The regulation does not authorize DHS to issue a defective, time-and-place-less, future-dated paper, arrest the person, and then issue a new NTA during post-arrest processing to retroactively validate the seizure. As this Court held in *Parada Cruz*, if ICE uses an I-200 warrant, "there must be removal proceedings initiated before or at the time of the arrest," and "[t]here is no leeway." 2026 WL 1027441, at *4. **"If ICE wants to use a warrant, it must have a valid NTA in place."** Id. The same rule controls here. The Government chose to proceed by administrative warrant. Having chosen that path, it had to comply with the regulation governing that path.

Respondents' June 19 letter offers no new document and no declaration establishing that a valid NTA existed before Petitioner's arrest. Instead, Respondents ask the Court to treat the June 17 NTA as retroactively curing the June 9 NTA. That position would erase the regulation's timing requirement. ICE could issue an I-200 based on an invalid paper, arrest the person, generate a new NTA during processing, and then claim the later document cured the defect. That is exactly the "arrest first, figure out the reasons later" regime this Court has repeatedly held unlawful.

The June 9 "TBD/TBD" NTA Was Invalid Under *Pereira*, *Niz-Chavez*, and *Parada Cruz*

The June 9 NTA is invalid on its face. It orders Petitioner to appear on "TBD" at "TBD," bears a future date of June 23, 2026, contains no completed certificate of service, and is marked "Superseded." Dkt. No. 8-3. **A document that does not tell a noncitizen when to appear is not a valid statutory NTA.** See *Pereira v. Sessions*, 585 U.S. 198, 202 (2018) ("A notice that does not inform a noncitizen when and where to appear for removal proceedings is not a notice to appear under section 1229(a)[.]"); *Niz-Chavez v. Garland*, 593 U.S. 155, 170–71 (2021); *Campos-Chaves v. Garland*, 602 U.S. 447, 461 (2024) ("*Each alien's NTA provided only that the time of the hearing was 'TBD' or 'to be set,' which is the sort of language we found to be inadequate in Pereira.*").
That defect matters because the June 9 I-200 depended on the "execution of a charging document to initiate removal proceedings." Dkt. No. 8-2. If the June 9 NTA was not a valid charging document, then the June 9 I-200 lacked the regulatory predicate required by 8 C.F.R. § 1236.1(b)(1). Respondents cannot satisfy that requirement by pointing to a later NTA issued after the arrest.

This is not a technicality. It is the legal predicate for a seizure. The NTA begins the removal process. Only at that time, or thereafter, may the Government effectuate an arrest under Form I-200. *Gopie*, 2025 WL 3167130, at *1; *Parada Cruz*, 2026 WL 1027441, at *4. Here, there was no pending removal proceeding, no valid pre-arrest NTA, and no contemporaneous valid NTA. The only valid NTA Respondents identify is the June 17 NTA, and Respondents concede it was issued during processing

after the arrest.

Nor is the June 9 NTA saved by the Government's assertion that it was "issued" on June 9 but "erroneously" bore a future date of June 23, 2026. Even accepting that assertion for argument's sake, the document still lacked a date and time for the hearing, contained no completed certificate of service, and was later superseded. Respondents have not submitted a declaration from the issuing officer, have not established service before arrest, and have not shown that the document was ever a valid operative charging document.

Campos-Chaves Is an In Absentia Notice Case, Not an Arrest-Authority Case

Respondents' reliance on *Campos-Chaves* is misplaced. *Campos-Chaves* addressed rescission of in absentia removal orders under 8 U.S.C. § 1229a(b)(5)(C)(ii), where the noncitizens had received later notices of hearing under § 1229(a)(2) for the hearings they missed. The Supreme Court held only that, for that rescission statute, a noncitizen who actually received proper notice of the hearing he missed could not rescind an in absentia order solely because the initial NTA was defective. 602 U.S. at 457, 464–65.

This habeas case presents a different and antecedent question: **whether DHS had lawful authority to arrest Petitioner under a Form I-200 when it seized him.** *Campos-Chaves* did not address Form I-200 arrest authority, 8 C.F.R. § 1236.1(b)(1), habeas review of an unlawful civil arrest, or whether a post-arrest NTA may retroactively validate a completed seizure.

Indeed, *Campos-Chaves* confirms rather than undermines the Court's June 18 Order. The Supreme Court acknowledged that the NTAs at issue did not include compliant time-and-place information and specifically recognized that NTAs listing the hearing time as "TBD" or "to be set" contain the same defect identified in *Pereira*. 602 U.S. at 461. Thus, *Campos-Chaves* did not overrule *Pereira* or *Niz-Chavez*. It did not hold that a "TBD/TBD" document is a valid NTA. And it did not hold that a later notice can travel backward in time to authorize a prior arrest. Respondents' Second Circuit authorities are equally inapposite. *United States v. Suquilanda*, 116 F.4th 129 (2d Cir. 2024), was a criminal illegal-reentry case under 8 U.S.C. § 1326 involving a collateral attack on a prior removal order. The Second Circuit addressed whether defects in an earlier NTA deprived the immigration court of jurisdiction. *Banegas Gomez v. Barr*, 922 F.3d 101 (2d Cir. 2019), likewise addressed immigration-court jurisdiction after a later hearing notice. *Arias-Arevalo v. Bondi*, No. 23-7095, 2025 WL 3079228 (2d Cir. Nov. 4, 2025), is a nonprecedential summary order concerning whether an incomplete NTA stripped the immigration court of jurisdiction where a later hearing notice was sent.

None of those cases involved a habeas challenge to a civil immigration arrest under Form I-200. None interpreted 8 C.F.R. § 1236.1(b)(1). None held that DHS may arrest first and cure the legal predicate later. None authorizes what happened here. The distinction is dispositive. A defective NTA may raise one question when a respondent later challenges immigration-court jurisdiction or seeks rescission of an in absentia removal order. It raises a different question when DHS uses the NTA as the regulatory predicate for an arrest warrant. The issue here is not whether EOIR may eventually conduct removal proceedings after a later hearing notice. The issue is whether DHS had lawful authority to arrest Petitioner when it did. Respondents have not shown that it did.

Respondents' theory would convert cases about immigration-court adjudicatory authority into cases about field-arrest authority. That is not what *Campos-Chaves*, *Suquilanda*, *Banegas Gomez*, or *Arias-Arevalo* held. The Government's ability to continue or later conduct removal proceedings does not answer whether the initial seizure was lawful when it occurred.

The June 17 Superseding NTA Confirms the Defect; It Does Not Retroactively Authorize the Arrest

The June 17 NTA does not help Respondents. It hurts them. The June 17 NTA states that it "supersedes" the June 9 NTA. Dkt. No. 8-5. *A superseding NTA replaces the prior document; it does not retroactively make the earlier defective document valid at the time of arrest.* Nor does the word "supersedes" transform the June 9 NTA into a valid charging document. If anything, DHS's own supersession language confirms that the June 9 NTA was not the operative NTA. The operative NTA was the June 17 NTA, and Respondents concede it was issued "during processing after his arrest." Dkt. No. 8 at 2. A document issued during post-arrest processing cannot be the pre-arrest or contemporaneous NTA required by 8 C.F.R. § 1236.1(b)(1). Nor can it retroactively validate a seizure already completed. The Government's argument depends on the very post-hoc logic this Court has already rejected.

This Court has repeatedly condemned that practice. *In Gopie, the Court held that the NTA begins the removal process, and only "at that time or after its issuance" may the Government effectuate an arrest under Form I-200.* 2025 WL 3167130, at *1. In *Parada Cruz*, the Court reiterated that ICE has no "free-ranging ability to arrest and detain people, and figure out the reasons later." 2026 WL 1027441, at *5–6. In *Garcia Lanza*, Judge Brown condemned the same practice where ICE arrested first and then prepared an administrative warrant and NTA after the arrest. 2026 WL 585130, at *5. *In Sanchez Alfaro, the Court found that ICE's testimony confirmed this illegal post-arrest paperwork practice had become "standard procedure" in this District*. 2026 WL 734348, at *5. And in *Inestroza Carbajal v. Frazier*, this Court rejected Respondents' attempt to transform an unlawful detention into a lawful one by later identifying a different source of authority, holding that "due process does not tolerate the revisionist fiction Respondents have created." No. 26-CV-2778-SJB, slip op. at 2–4 (E.D.N.Y. May 12, 2026). That reasoning applies with full force here. Respondents cannot defend the arrest based on facts or documents created after the arrest. An executive agency must defend its action based on the reasons and authority it invoked when it acted, not a different theory assembled later. See *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 21, 24 (2020). A post-arrest NTA is no more capable of curing an unlawful arrest than a post-hoc change in statutory detention authority.

The Court should therefore reject Respondents' cure theory. If the June 9 NTA was invalid, and the June 17 NTA came after the arrest, then the I-200 was not lawfully supported when ICE seized Petitioner. That is the end of the matter under 8 C.F.R. § 1236.1(b)(1), *Gopie*, and *Parada Cruz*.

Respondents' reliance on jurisdiction and in absentia cases also fails because this petition challenges the legality of Petitioner's arrest and detention under the Constitution, statutes, and regulations. It does not ask this Court to terminate removal proceedings, adjudicate removability, or collaterally attack an immigration-court order. The question is whether Respondents had lawful authority to seize and detain Petitioner when they did, and whether the procedures they used satisfied due process. They did not.

Curimilma Quille Confirms That Post-Arrest Paperwork and a Conclusory Custody Determination Cannot Cure an Unlawful Seizure

Curimilma Quille v. Blanche, No. 26-CV-2818, slip op. (E.D.N.Y. May 22, 2026), is directly instructive. There, Judge Gonzalez recently granted habeas relief where ICE arrested the petitioner, detained him under § 1226(a), relied on an inadequate initial custody determination, and failed to satisfy the warrantless-arrest requirements of 8 U.S.C. § 1357(a)(2). The Court held that the petitioner's "interest in being free from imprisonment" was "the most significant liberty interest there is," and that the risk of erroneous deprivation was high where ICE's paperwork and procedures did not meaningfully support

detention. Id. at 5.

The same due-process failure exists here. Respondents' one-page I-286 does not state reasons, does not identify individualized facts showing danger or flight risk, and does not demonstrate a meaningful assessment of Petitioner's actual equities. See Dkt. No. 8-4. It merely checks "detained." That is not the individualized custody determination required by 8 U.S.C. § 1226(a), its implementing regulations, or the Due Process Clause.

Quille rejected precisely that type of conclusory custody process. The Court held that § 1226(a) requires "an initial custody determination before exercising discretionary detention" that assesses whether the noncitizen can show he is neither dangerous nor a flight risk. *Curimilma Quille*, slip op. at 6. The Court further held that district courts may review whether correct procedures were applied at all, even if they may not review the discretionary weight ICE assigned to particular custody factors. Id. at 7. Thus, Respondents cannot avoid habeas review by invoking § 1226(e) or by calling the custody decision discretionary. The Court may review whether Petitioner received the process required before or contemporaneously with the deprivation of liberty.

The timing defect here is even more serious. Respondents admit that the June 17 NTA and the June 17 custody determination were issued "during processing after his arrest." Dkt. No. 8 at 2. In *Quille*, Judge Gonzalez held that a custody determination that did not occur before or contemporaneously with arrest violated due process. *Curimilma Quille*, slip op. at 7. Here, Respondents' own chronology establishes that the operative NTA and custody paperwork were created after Petitioner had already been seized. That post-arrest paperwork cannot cure the antecedent illegality.

Nor can Respondents save the arrest by recasting it as warrantless. A warrantless immigration arrest requires reason to believe both that the person is removable and that he is "likely to escape before a warrant can be obtained." 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.8(c)(2)(ii). *Quille* enforced that requirement and granted relief where the Government failed to demonstrate the exigency necessary to justify a warrantless arrest. *Curimilma Quille*, slip op. at 11–13. The same result is required here. Respondents did not proceed on a warrantless-arrest theory. They issued and relied on a Form I-200. But if the defective I-200 is treated as no valid warrant at all, Respondents still have not supplied a declaration, contemporaneous finding, or individualized facts showing that Petitioner was likely to escape before a warrant could be obtained.

Quille also confirms that exhaustion does not bar relief where the process was deficient from the outset. Judge Gonzalez rejected the Government's exhaustion argument because a petitioner "is not required to exhaust a process that was deficient from the outset." Id. at 10 n.5. That principle applies with equal force here. Petitioner is not required to exhaust administrative bond procedures before challenging an arrest and detention that were unlawful at inception.

Finally, *Quille* supports the remedy Petitioner seeks. Judge Gonzalez ordered immediate release and further ordered that the petitioner could not be re-detained without notice and an opportunity to be heard at a pre-deprivation bond hearing before a neutral decisionmaker, where the Government would bear the burden of showing by clear and convincing evidence that detention was authorized under § 1226(a). Id. at 14. That remedy is appropriate here because Respondents' own documents show that Petitioner was arrested under an I-200 that depended on a defective June 9 NTA, and that the operative June 17 NTA and custody paperwork were created only after the arrest.

The Government's jurisdiction cases do not answer any of this. *Campos-Chaves*, *Suquilanda*, *Banegas Gomez*, and *Arias-Arevalo* concern in absentia rescission, immigration-court jurisdiction, or collateral

attacks on removal orders. They do not address the due-process requirements governing civil arrest and detention. They do not address 8 C.F.R. § 1236.1(b)(1). They do not address the individualized custody procedures required by § 1226(a). They do not authorize DHS to seize a person first and manufacture the legal predicate later.

The Government's Jurisdiction Cases Do Not Excuse a Fifth Amendment and Regulatory Violation

Respondents' reliance on jurisdiction and in absentia cases also fails because this petition challenges the legality of Petitioner's arrest and detention under the Constitution, statutes, and regulations. It does not ask this Court to terminate removal proceedings, adjudicate removability, or collaterally attack an immigration-court order. Due process requires lawful authority and meaningful procedures before the Government deprives a person of liberty. See *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950); *Jones v. Flowers*, 547 U.S. 220, 226–27 (2006). *Campos-Chaves* was a statutory rescission case. It did not decide Petitioner's Fifth Amendment challenge to an unlawful arrest and detention. Nor did it authorize DHS to manufacture the predicate for a seizure after the seizure occurred.

The same is true of the Government's Second Circuit cases. *Suquilanda*, *Banegas Gomez*, and *Arias-Arevalo* may address whether a defective NTA prevents an immigration court from later exercising jurisdiction after subsequent notice. They do not address whether ICE complied with the regulation that authorizes a Form I-200 arrest. They do not address whether a person may be seized first and charged later. They do not address whether a post-arrest NTA can retroactively validate a prior restraint on liberty. The Government's position would collapse these distinct questions. But the legality of removal proceedings and the legality of the arrest are not the same. EOIR may have authority to conduct proceedings after DHS issues a later NTA. That does not mean ICE had authority to arrest Petitioner before the operative NTA existed.

If Respondents' defective I-200 is treated as no warrant at all, the arrest still fails. **A warrantless civil immigration arrest requires a reason to believe that the person is likely to escape before a warrant can be obtained.** 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.8(c)(2)(ii). Respondents have made no such showing. They did not proceed on a warrantless-arrest theory, and they have supplied no declaration establishing flight risk, danger, or any exigency. See *Flores v. Mullin*, No. 26-CV-1855, 2026 WL 948298, at *4 (E.D.N.Y. Apr. 8, 2026); *Garcia Lanza*, 2026 WL 585130, at *5. Nor can Respondents avoid this problem by arguing that the I-200 was unnecessary. They used and relied on the I-200. Their June 18 letter says Petitioner was detained pursuant to the June 9 Form I-200 and the June 9 NTA. Dkt. No. 8 at 2. Having proceeded on that basis, Respondents cannot now rewrite the arrest as something else. See *Parada Cruz*, 2026 WL 1027441, at *4 ("Bad facts cannot be ignored to create fictional and alternative realities.").

Finally, Respondents' I-130 argument misses the point. Petitioner does not argue that an approved I-130, by itself, confers lawful permanent resident status or immunizes him from removal. **The approved I-130 matters because it underscores that Petitioner has a recognized family-based pathway to lawful status, substantial equities, and a concrete reason to appear for immigration proceedings. It therefore bears directly on the individualized custody analysis required under 8 U.S.C. § 1226(a) and the Due Process Clause.** Respondents' one-page I-286 does not state reasons, does not identify any individualized danger or flight-risk analysis, and was issued only after the unlawful arrest. See Dkt. No. 8-4. A post-arrest checkbox custody form cannot cure an unlawful seizure. See *Curimilma Quille v. Blanche*, No. 26-CV-2818, slip op. at 13–14 (E.D.N.Y. May 22, 2026); *Inestroza Carbajal*, No. 26-CV-2778-SJB, slip op. at 4–6.

The liberty interest at stake is profound. Petitioner was taken into custody based on an I-200 that depended on a defective NTA. The Government then issued the operative NTA and custody paperwork during processing after the arrest. The Constitution does not permit DHS to create the legal basis for a seizure after the seizure has already occurred.

Under *Quille*, *Parada Cruz*, *Gopie*, *Garcia Lanza*, *Sanchez Alfaro*, and *Inestroza Carbajal*, the petition should be granted and Petitioner should be released immediately. As in *Curimilma Quille*, the Court should order Petitioner's immediate release and further order that Petitioner shall not be re-detained without notice and an opportunity to be heard at a pre-deprivation bond hearing before a neutral decisionmaker, where the Government bears the burden of showing by clear and convincing evidence that detention is authorized under 8 U.S.C. § 1226(a).

Respectfully submitted,

/s/ S. Michael Musa-Obregon
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