KATHY MANLEY, ATTORNEY AT LAW

26 Dinmore Road
Selkirk, New York 12158
(518) 635-4005 (phone & fax)
mkathy1296@gmail.com
KathyManleyLawOffice.com

Kathy Manley
Stephen F. Downs (of counsel)

June 29, 2026

Hon. Brenda K. Sannes
(via ecf)

Aguilar v. Venturella, et.al., 9:26-cv-01268

Dear Judge Sannes:

Please accept this letter in Reply with regard to the instant Petition. Respondents note that Petitioner was granted a bond hearing which is scheduled for July 1, 2026. Yet Respondents continue to state that 8 USC 1225 applies here, despite the *Barbosa Da Cunha* Second Circuit decision. First, this position appears contradictory because the bond hearing they decided to give him, apparently independently of anything related to this Petition, would be under 8 USC 1226(a), *not* 1225, which mandates detention. So, which section do Respondents really believe controls here?

Fourth Amendment/Warrantless Arrest

The Petition argued that Mr. Pineda Aguilar *should be released immediately* because his concededly warrantless arrest violated the Fourth Amendment. There are several recent cases where courts granted release based on warrantless arrests and/or related Fourth and Fifth Amendment violations. *Quille v. Blanche,* 2026 US Dist. LEXIS 114149 (EDNY 2026); *Valdovinos v Noem*, 2026 US Dist. LEXIS 79034 (DNM 2026); *Escalante v. Venturella*, 2026 US Dist. LEXIS 135245 (DCO 2026); *Robles v. Valdez,* 2026 US Dist. LEXIS 118299 (DCO 2026); *Singh v. Bondi,* 2026 US Dist. LEXIS 35765 (WDOK 2026)(warrantless arrest required immediate release); *Rosado v. Figueroa,* 2025 US Dist. LEXIS 156344 (DAZ 2025)(release granted based on Fourth Amendment violation.) In *Valdovinos,* supra, the court stated:

> "Petitioner challenges the legality of his arrest and continued detention, asserting that DHS lacked the authority to arrest him without a warrant under 8 USC 1357(a)(2) and that his continued detention without a prompt judicial probable-cause determination violates the Fourth Amendment. …
>
> …[T]he undersigned recommends that the Petition be GRANTED IN PART to the extent Petitioner seeks release based on the Fourth Amendment violation..

***

On January 10, 2026… ICE agents encountered Petitioner while he was driving. Petitioner pulled over… Agents then arrested Petitioner…

***

…DHS records reflect that Petitioner has no prior immigration history and no pending applications with …USCIS. On January 29, 2026, DHS served Petitioner with a Notice to Appear charging him as removable…

***

Petitioner's warrantless arrest and continued detention violate the Fourth Amendment and 8 USC 1357(a)(2).

***

The INA authorizes warrantless immigration arrests only in narrow circumstances Under 8 USC 1357(a)(2), an immigration officer may arrest a noncitizen without a warrant only if the officer has 'reason to believe' the person is violating the immigration laws *and* the person 'is likely to escape before a warrant can be obtained.' …

Courts have recognized that these warrantless-arrest authorities are strictly limited, particularly in the interior-arrest context.

***

…DHS's own records confirm that no warrant was issued or served at the time of Petitioner's arrest. …

Nothing in the record suggests that either statutory condition – reasonable belief of a violation or likelihood of escape – was met. …

***

DHS lacked statutory authority to arrest Petitioner without a warrant… and DHS never obtained a prompt judicial probable cause determination. For both reasons, Petitioner's arrest and continued detention are unreasonable under the Fourth Amendment. … *Accordingly, Petitioner's continued detention is unconstitutional and he must be released.*

This conclusion is reinforced by a growing body of decisions holding that when DHS detains a noncitizen under 1226(a) without a warrant and without satisfying 1357(a)(2), *the detention is unlawful from the outset and immediate release is required.*" *Valdovinos,* supra, at 1-4, 11-13, 15-17, emphasis supplied.

In *Escalante,* supra, the petitioner was granted a bond hearing, but was denied bond. He then returned to federal court, asking the court to reach his claim that his warrantless arrest required immediate release The court granted release, stating:

"Given that petitioner was denied release on bond, petitioner asks that the Court address the remaining claims in his habeas petition …The Court will therefore turn to Count II, wherein petitioner claims that respondents' 'warrantless arrest…without a particularized determination of flight risk is arbitrary and capricious, in violation of 8 USC 1357(a)(2)…

***

Respondents have failed to provide any argument… indicating that petitioner's warrantless arrest was proper under 1357… Accordingly, the Court finds that respondents lacked statutory authority to arrest petitioner. …

> Where respondents have failed to obtain a warrant for a noncitizen detained under 1226(a) and lacked statutory authority for a warrantless arrest, courts have found *the appropriate remedy is to order the non-citizen's release.* ... Accordingly, the Court will grant the habeas petition on the basis of Count II and order petitioner's release." *Escalante,* supra, at 3, 5-7, emphasis supplied.

As in both *Valdovinos* and *Escalante,* Petitioner was subjected to a warrantless arrest when he was a passenger in a vehicle stopped by ICE. (Respondents' Exhibit "C" states, at 2, that "Albany ICE ERO officers conducted a warrantless arrest..." on June 19, 2026. And Exhibit "B" is a Notice to Appear dated *four days later* on June 23, 2026. Because Respondents failed to show that they had reason to believe that he was violating immigration laws *or* that he was likely to escape before a warrant could be obtained, the arrest violated 8 USC 1357(a)(2) and the Fourth Amendment. As in *Valdovinos, Escalante* and the other cases cited above, this Court should grant his immediate release.

In addition, in *Quille v. Blanche,* supra, *the Eastern District of New York recently granted immediate release due to the warrantless arrest* in violation of 1357(a)(2), which it also characterized as a due process violation, stating:

> "Section 1357(a)(2) provides ICE with limited authority to conduct warrantless arrests. Specifically, ICE must obtain a warrant before arresting a noncitizen unless the officer 'has reason to believe that the alien so arrested is in the United States in violation of any law or regulation *and* is likely to escape before a warrant can be obtained for his arrest" ...
>
> Central to the government's exigency argument is its assertion that when officers arrested Petitioner, he 'had just attempted to flee...' ...There are two problems with this argument.
>
> First, the record is deficient. ... [T]here is a dearth of personal knowledge as to Petitioner's specific actions...
>
> Second, the government's evidence is...internally inconsistent. ... [T]here is no mention of this alleged flight attempt on the initial custody form
>
> Taken together, the government does not overcome the deficiencies in its exigency argument. Consequently, the government fails to demonstrate that it satisfied the requirements of Section 1357(a)(2). Because Section 1357(a)(2) requires a warrant for arrest unless both requirements are satisfied, the government's warrantless arrest of Petition violated due process.
>
> ***
>
> ...The 'typical remedy' for 'unlawful executive detention' is 'of course, release.' *Munaf v Green,* 553 US 674, 693... (2008)...
>
> ***
>
> The government is directed to immediately release Petitioner from custody..." *Quille v. Blanche,* supra, at 14-18, emphasis in original.

Two other recent EDNY decisions also emphasized that warrantless arrests by ICE are a big problem, which must be remedied. In *Alfaro v Mullin,* 2026 US Dist. LEXIS 109724 (EDNY 2026) the court, after two prior decisions in that case, and considerable briefing, elicited an

agreement that ICE *will not make warrantless arrests within the Eastern District* without reason to believe the person is likely to escape before a warrant can be obtained. The court stated:

> "In addressing the Court's holdings concerning 'Unauthorized Warrantless Arrest/Post Arrest Issuance,' respondents set forth that it is ICE's position that:
>
> **a warrant of arrest shall be obtained** except when an immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained…
>
> …Respondents also identify a class action challenging 'warrantless arrests' by ICE, further highlighting that such a policy/guarantee is appropriate. …(citing *Benitez et. al. v. US DHS et al,* No. 2:26-cv-2082 (SJB)(JMW).
>
> The Court presumes that this representation by respondents refers to a valid warrant *obtained in advance of an arrest, as this Court (and many others) have already repeatedly proscribed as plainly illegal the practice of issuing warrants post-arrest or prior to the commencement of removal proceedings. …" Alfaro,* supra, at 3-5, emphasis supplied.

In *Cruz v. Mullin,* 2026 US Dist. LEXIS 84067 (EDNY 2026), the court, *having already ordered release in a prior decision*, went on to discuss the constitutional issues in the case, specifically the use of improper, post-hoc warrants, and ordered an upcoming evidentiary hearing. The court stated:

> "Using an after-the-fact warrant to justify a prior arrest is constitutionally problematic. It is also statutorily prohibited under the INA. …
>
> The NTA begins the removal process, and at that time or after its issuance, the Government can then effectuate [the] arrest…
>
> At bottom, 'ICE does not have a free-ranging ability to arrest and detain people, and figure out the reasons later, like they apparently did here.' [*Gopie v Lyons,* 2025 US Dist. LEXIS 223512, at *3 (EDNY 2025)]
>
> ***
>
> Police and law enforcement cannot operate as roving bands, detaining individuals, figuring out the reasons later, and papering over the failures afterwards. This sadly is the practice in many other parts of the world But in the United States, the law prohibits such conduct.
>
> ***
>
> Letters like the ones filed in these cases – telling the Court essentially it no longer has any jurisdiction and should look no further – suggest that *the USAO has done nothing to tell ICE to stop the identified practices. …*
>
> ***
>
> '[C]ases do not become moot 'merely because the [defendant's] conduct immediately complained of has terminated, if there is a possibility of recurrence…' … In other words, reuse of invalid documents and warrants – as defective as they are – remain more than just in the ether… …[V]oluntary cessation [in these circumstances] merely hides misconduct from judicial review. And that is the exact opposite of a moot case.
>
> ***

The Court will hold an evidentiary hearing on April 30, 2026[1]..." *Cruz v. Mullin,* supra, at 5-6, 9-11, 17-18, 21

As in all of the above cases, Petitioner's warrantless arrest herein was improper and unconstitutional. ICE had no Notice to Appear and no warrant at the time he was arrested. ICE did not even have good reason to suspect he was in violation of the immigration laws, and there was no certainly evidence that he was likely to escape before a warrant could be obtained.

Petitioner's arrest was plainly illegal, and the Court should order immediate release as occurred in the aforementioned cases.

Thank you.

Respectfully,

Kathy Manley
Kathy Manley

Cc: Luis Pineda Aguilar

[1] The hearing was adjourned until May 27, and then held, and a decision is pending, and will await further proceedings in the class action case *Benitez v. U.S. Department of Homeland Security,* No. 2:26-cv-2082 (EDNY)