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Hon. Anthony J. Brindisi
(filed via ecf)

Rodriguez Lazarte v. Venturella, et al., 9:26-cv-1534 (AJB)

Dear Judge Brindisi:

Please accept this letter in reply to the Government's response.

Violation of Due Process Due to Lack of Individualized Determination

The Response noted, on Page 3, that there was no change in material circumstances before Petitioner was re-detained on August 10, 2026, but claimed that this situation differs from that in *Marquez Ampuero v. Venturella*, 2026 WL 1983211, at *7-8, in that Mr. Rodriguez Lazarte was released on parole, which Respondents claim was not a custody determination under Section 1226(a).

However, in *Arce v. Blanche,* 2026 US Dist. LEXIS 112541 (NDNY May 21, 2026), Judge Coombe granted immediate release based on a due process violation *where the person had been released on parole, as in the instant case*, stating:

> "…Respondents have not provided any evidence that Petitioner had an opportunity to post bond or argue for release on conditions. In addition, there is nothing in the record indicating that (1) Petitioner is a risk of flight or a danger to the community, or (2) anyone considered whether, given his specific situation, Petitioner was a risk of flight or a danger to the community. …Respondents acknowledged that no one made an individualized assessment of Petitioner's situation, including whether he was a risk of flight or a danger to the community before his arrest, and that *the only changed circumstances was the change in his parole status.* As a result, there is a high risk of an erroneous deprivation of Petitioner's liberty. …" *Arce,* supra, at 13, emphasis supplied.

Therefore, as discussed more below, Petitioner requests immediate release based on the violation of his right to due process.

Petitioner entered the United States in June, 2024, and was released on parole, which was valid until April, 2026. (See Respondents' Exhibit C) He timely filed for asylum on April 29, 2025. (See Exhibit A to this Reply, EOIR blkg Extension site, checked August 27, 2026) He also affirmatively filed for Permanent Residence through the Cuban Adjustment Act[1], and he had a biometrics appointment with regard to this Application on August 7, 2025. (See Exhibit B to this Reply.) (Upon information and belief, he also has a valid work authorization.) He always appeared when directed by ICE, USCIS or immigration court.

It is submitted that Petitioner's right to due process was violated, and as a result the Court should order release, Judges Coombe, D'Agostino, and Nardacci in this District did in *Arce v. Blanche*, 2026 US Dist. LEXIS 112541 (NDNY May 21, 2026); *Mendez v. Field Office,* 2026 US Dist. LEXIS 53260 (NDNY March 16, 2026); *Marquez Ampuero,* supra; *Aldaz v. ICE Field Office Sir.,* 2026 US Dist. LEXIS 75580 (April 7, 2026); and *Vergel Gonzalez v. Rhoney,* 2026 US Dist. LEXIS 180497 (NDNY August 12, 2026)

The same reasoning applies completely herein – there were no changed circumstances between when Petitioner was released into the United States and when he was arrested; and there is no evidence that he poses any risk of flight or danger to the community. And there is absolutely no indication that anyone made any claim of flight risk or dangerousness.

Therefore, Petitioner should be released, as occurred in *Mendez*, *Arce* and the other cases cited above.

The submitted I-200 does not establish a valid pre-arrest warrant.

Respondents attached a one-page I-200 dated August 10, 2026. The certificate at the bottom states only that another officer served the form in Albany on August 10; it supplies no time of service and says nothing about the time or place of issuance. A same-day date therefore does not establish that a warrant existed before Petitioner was stopped, restrained, and taken into ICE custody. The exhibit does not state the time at which it was created or signed. While the Response states that Petitioner was targeted for arrest, despite Your Honor's Order to Show Cause directing Respondents to file "the relevant records," *Respondents did not provide any recent I-213, Declaration, or anything else showing the Warrant was issued prior to the arrest.*

On this record, the Court cannot determine whether the I-200 was actually issued prior to the arrest.

Section 1226(a) authorizes arrest and detention "[o]n a warrant issued by the Attorney General." The limited warrantless-arrest authority in 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2) requires an individualized reason to believe both that the person is present in violation of immigration law and that the person is likely to escape before a warrant can be obtained. Respondents offer no declaration that the arresting officer made the second finding.

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[1] His wife is a Cuban citizen, and Petitioner lived in Cuba for 10 years, worked as a doctor there, and he received residence status or citizenship there. He is represented by attorney Raul Muniz of the Albany based Legal Project on this application.

In *Vergel Gonzalez*, supra, Judge D'Agostino very recently stated:

> " 'ICE must obtain a warrant before arresting a noncitizen unless the officer "has reason to believe that the [noncitizen] is in the United States in violation of any such law or regulation *and* is likely to escape before a warrant can be obtained for his arrest."' *Rea v. Ball*...at *2...(quoting *Curumilma Quille v. Blanche*, ... 2026 WL 1453889, *5 (EDNY 2026)...
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> ...Section 1226(a) expressly states that 'an alien' may be arrested on a warrant issued by the Attorney General...' 8 USC 1226(a)... Here, no Petitioner appears to have been arrested on a warrant because *the warrants were created and served after the arrests*." *Vergel Gonzalez*,supra, at 23-24, emphasis supplied.

If necessary, the Court should direct further briefing or a hearing to determine if there was a valid I-200 warrant herein.

However, as discussed above, aside from the question of the validity of the warrant, Petitioner should be ordered released based on a due process violation. Again, there were no changed circumstances between when Petitioner was released into the United States and when he was arrested; no evidence that he poses any risk of flight or danger to the community, and no indication that anyone made any claim of flight risk or dangerousness.

Thank you.

Respectfully,

s/Kathy Manley
Counsel for Petitioner