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Hon. Anne M. Nardacci
(filed via ecf)

Guaman Loja v. Venturella, et al., 9:26-cv-1584 (AMN)

Dear Judge Nardacci:

Please accept this letter in reply to the Government's 8/21/26 response, which essentially concedes to a bond hearing. (However, the Government's 8/20/26 letter requesting adjournment of the appearance on 8/24/26, conceded that *this Court was likely to release Petitioner*.)

Petitioner requests immediate release based on the violation of his right to due process, and because the arrest was unlawful in that the Notice To Appear (NTA) was clearly issued *after* the arrest. (The NTA, attached as Exhibit C to the Response, *was signed in Batavia,* while Petitioner was arrested in Albany many hours earlier, at 6:32am, according to Page 1 of the 8/18/26 I-213 attached as Respondents' Exhibit D.)

Violation of Due Process Due to Lack of Individualized Determination in Record

While the 8/18/26 I-213 mentions, on Page 3, that Petitioner has a pending DWI (first offense[1]), the Response stated, on Page 1, that *the Government was not aware of this when they arrested Petitioner.*

In terms of due process, this case is even stronger than *Olivares v. ICE Custodian,* 2026 US Dist. LEXIS 49858 (NDNY March 11, 2026), where this Court released the petitioner, who had a *pending DWI charge*. See also *Ordonez Luna v. Ball*, 9:260-cv-1227-ECC, Dct. No. 13 (NDNY August 6, 2026), where Judge Coombe ordered immediate release to a petitioner who had been *convicted* of Aggravated Unlicensed Operation (it is not clear if this was a felony or misdemeanor), Misapplication of Property (a misdemeanor) and Disorderly Conduct, after he had been released on parole by ICE.

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[1] Undersigned counsel is attempting to find out more about this charge (it is not clear what court it is/was in) via a legal call with Petitioner. It may well have already been resolved as a Violation, and in any event, it should not affect the analysis regarding the unlawful arrest herein.

In *Olivares,* supra, the respondents *were aware* of the pending charge at the time of the arrest, yet failed to allege dangerousness or risk of flight. *In the instant case, they were not even aware of it, and likewise failed to allege dangerousness or risk of flight*. As in *Olivares,* this Court should grant immediate release.

Warrantless Arrest

While there may have been an I-200 Warrant[2] at the time of Petitioner's arrest, it was improper because *there was no current removal case* at the time of the arrest. (A prior removal case had been terminated in 2025, as noted on Page 1 of the Response, and, as noted above, the new NTA was issued *after the arrest.*)

Two recent EDNY decisions emphasized that arrests made by ICE prior to the initiation of removal proceedings are a big problem, which must be remedied. In *Alfaro v Mullin,* 2026 US Dist. LEXIS 109724 (EDNY 2026) the court described as "*...plainly illegal* the practice of issuing warrants post-arrest *or prior to the commencement of removal proceedings*. ..." *Alfaro,* supra, at 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 warrants. The court stated:

> "...Respondents used arrest warrants to arrest Petitioners. But it appears their use of such warrants was illegal. If ICE is going to use an arrest warrant, then there must be removal proceedings initiated before or at the time of the arrest. Such proceedings are begun through the issuance of a Notice to Appear ('NTA'). There is no 'leeway.' *If ICE wants to use a warrant, it must have a valid NTA in place.*
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> ***
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> 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)] *Cruz v. Mullin,* supra, at 4-6

Because it is quite clear that 1) the arrest violated due process as described above, and 2) there was no valid warrant at the time of the arrest, the cases cited above support immediate release.

Thank you.

Respectfully,

s/Kathy Manley
Counsel for Petitioner

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[2] The 8/9/26 I-200 Warrant cited as *its only basis* "the execution of a charging document" (no other boxes were checked on that document) yet it is clear that there was *no charging document* in effect at that time, or at the time of the arrest.