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Hon. Mae A. D'Agostino
(filed via ecf)

De La Cruz Vaca v. Venturella, et al., 9:26-cv-02073 (MAD)

Dear Judge D'Agostino:

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

Petitioner requests immediate release based on the violation of his right to due process, and because the arrest was unlawful because the warrant - and Notice to Appear upon which the Warrant was predicated - were clearly issued *after* the arrest. Petitioner has no criminal history and was living with his wife and two daughters ([redacted] and [redacted], a US citizen) in Albany, New York at the time of his unlawful arrest.

Warrantless Arrest

While Petitioner may have briefly tried to run away when his van was stopped, the arrest herein was unlawful because there was no valid warrant at the time Respondents stopped him. Respondents concede (on Page 1 of the Response) that *Petitioner was not targeted*, and that *he had never been encountered* by Respondents before they followed the van he was driving in order to detain him and others.

It is clear that 8 C.F.R. § 236.1(b) permits an alien to be arrested and taken into custody under the authority of Form I–200, Warrant of Arrest" but only "[*a*]*t the time of issuance of the notice to appear, or at any time thereafter* and up to the time removal proceedings are completed." Thus, for the NTA to be filed later (or for the warrant to be issued after the arrest) *does not suffice under the law, and the arrest was clearly unlawful.* See *Vergel Gonzalez et.al. v. Rhoney,* 2026 US Dist. LEXIS 180497 (NDNY 2026) (this Court granted release where warrants were issued *after* the warrantless arrests at an ICE Check-in); and *Khan v. Venturella,* 2026 US Dist. LEXIS 226390 (NDNY 10/2/26) (this Court similarly granted release based on a due process violation and noted that the warrant was improperly issued *after* the arrest.)

While Respondents claim no warrant was needed because Petitioner briefly ran when ICE stopped the van, *the exception to the warrant requirement does not apply in these circumstances*

because Petitioner was not targeted, and Respondents did not have any information suggesting Petitioner was likely to flee *before* initiating the warrantless arrest. As discussed below, case law, including *Almonte v. Genalo,* 2026 US. Dist. LEXIS 228201 (EDNY 10/6/26); *Quille v Blanche,* 2026 US Dist. LEXIS 114149 (EDNY 2026) and *Perez v. Chestnut,* 2026 US Dist. LEXIS 163756 (EDCA 2026), supports this. See also *Dorante Henriquez v. Venturella,* Dct. No. 9:26-cv-1709 (NDNY 10/9/26.)

Respondents state that ICE agents were engaged in a "targeted operation" – searching for *someone else* – when they came upon Petitioner and claim that he resembled the target. (Respondents' Exhibit A - I-213, at 2) (It is impossible to know that, as the target is not named or even described.) However, as is clear from the fact that Petitioner had never been encountered before, Respondents knew nothing about him, and thus had no facts showing that he was likely to escape *before* they decided to stop the van.

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. Nor does the I-213 allege that they had any indication that Petitioner was likely to flee before they attempted to arrest him.* Nor could they have as, again, they had no idea who he was ahead of time.

In *Dorante Henriquez v. Venturella,* Dct. No. 9:26-cv-1709 (NDNY 10/9/26) Judge Brindisi recently granted release (based on a due process violation, not reaching the warrantless arrest issue) *where the petitioner had also been alleged to have run* when ICE tried to detain him. Judge Brindisi stated:

> "…According to the petition, petitioner was arrested without a warrant and without an individualized determination by an immigration judge or any other authority that he posed a danger or flight risk. *Respondents represent that petitioner fled when the officers activated their emergency lights. …*
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> ***
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> Respondents… point to petitioner's conduct during the September 10 enforcement operation, including his alleged flight from officers. That conduct, however, occurred only *after* (emphasis in original) ICE officers had already undertaken a targeted operation to apprehend petitioner. *This conduct, therefore, could not have informed the antecedent decision to re-detain him. …*" *Dorante Henriquez*, at 2, 8, some emphasis supplied.

As in *Dorante Henriquez,* supra, Petitioner's alleged flight occurred *after* Respondents had already decided to detain him without a warrant. Thus it "could not have informed the antecedent decision to …detain him." i.e., there were no findings that he was likely to escape *before* he allegedly ran, and that is what is required under the relevant statute.

In *Almonte v. Genalo,* supra, the court very recently also granted release under the exact same circumstances - where the petitioner had run when approached by ICE. After a hearing, the court granted immediate release. Subsequently, the court issued a decision holding that *the arrest was clearly unlawful in that there was no warrant or Notice to Appear at the time ICE sought to detain the petitioner*, and expressing great concern about post-hoc falsification of documents by ICE. The court stated:

> "D.O. Yassin testified that… he approached the petitioner, saying 'Hello, sir. We'd like to ask you a couple of questions.' At that point, D.O. Yassin advised, 'petitioner then… started running down the street.' …
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> A brief foot chase followed. The end of that pursuit is captured on two videos, which depict …ICE agents in tactical gear 'taking down' the petitioner on the sidewalk, handcuffing him… and hustling him into a vehicle. …
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> ***
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> …[An ICE agent] contacted a supervisor, noting the circumstances but indicating that the petitioner 'did self-admit to being in the United States illegally.' The supervisor advised …that he would 'issue the I-200 for his arrest,' *even though no NTA had been issued…*
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> After arresting petitioner without a warrant, ICE issued a post-hoc sworn administrative warrant. The arrest warrant purportedly established petitioner's lack of immigration status through 'a record check of federal databases' and 'biometric confirmation of the subject's identity'…
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> ***
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> …[P]etitioner was first arrested when he was tackled to the ground…
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> ***
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> Any authority for the agents to effect an arrest prior to the issuance of an administrative warrant would derive from 8 USC 1357… …[However] the ICE officers *did not contemporaneously rely on that authority when detaining petitioner. The government 'cannot create* a *post hoc rationalization for [a petitioner's] detention… Pastrana-Beltran v. Mullin*, …2026 US Dist. LEXIS 111053…(EDNY May 19, 2026)…
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> …As to petitioner, the ICE officers had not established petitioner's unlawful presence in the United States, nor even a reasonable suspicion of that fact, prior to taking petitioner into custody. Indeed, the only such evidence that came into their possession were his statements made during the ensuing custodial interrogation subsequent to the unlawful apprehension.
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> Importantly, construing the agents' attempts to speak with or detain the petitioner as an investigatory stop rather than an arrest would not permit the agents to detain petitioner under either 1226(a) or 1357.
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> Federal law permits immigration officers to 'interrogate and temporarily detain an alien upon circumstances creating a reasonable suspicion… *Chi Yuan Chen v. Gonzalez,* 224 F. Appx 116, 118 (2nd Cir. 2007)… That standard, while less onerous than probable