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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARIA LUCIA GUADALUPE
PIMENTEL,

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of
the Department of Homeland Security,
TODD BLANCHE, Acting Attorney
General, TODD M. LYONS, Acting
Director, Immigration and Customs
Enforcement, JESUS ROCHA, Acting
Field Office Director, San Diego Field
Office, JEREMY CASEY, Warden at
Imperial Regional Detention Facility,

Respondents.

Civil Case No.: 26-cv-4725-RBM-DDL

**Amended Petition
for a
Writ of Habeas Corpus**

INTRODUCTION

Ms. Guadalupe Pimental was arrested without a warrant when ICE agents accosted her and her boyfriend on the street and asked them their names, where they were born, and “how many last names [they] had.” Declaration of Maria Lucia Guadalupe Pimentel, Exhibit A at ¶ 2. This case asks whether Respondents had the legal authority to arrest her. They did not.

Congress created two routes for an interior immigration arrest. Section 1226(a) permits arrest “[o]n a warrant issued by the Attorney General.” 8 U.S.C. § 1226(a). Section 1357(a)(2) permits a warrantless arrest only when the officer has probable cause both that the person is unlawfully present *and* that the person “is likely to escape before a warrant can be obtained.” 8 U.S.C. § 1357(a)(2).

The regulation at 8 C.F.R. § 287.3 does not add a third route. It governs the disposition of a person “arrested without a warrant of arrest under the authority contained in section 287(a)(2) of the Act”—i.e., § 1357(a)(2). 8 C.F.R. § 287.3(a). The regulation, therefore, applies only when an immigration agent has 1) probable cause that a person is unlawfully present *and* 2) probable cause they are likely to escape. It does not create forty-eight hours of arrest authority whenever an officer simply suspects unlawful presence. And a later-issued warrant cannot retroactively supply the probable cause of unlawful presence and escape that § 1357(a)(2) requires at the time of arrest.

This petition requires the Court to decide the threshold question of whether Ms. Guadalupe Pimentel’s arrest was lawful. Respondents have produced no warrant issued before the arrest authorizing it under § 1226(a). Nor have they shown that the arresting officer had probable cause under § 1357(a)(2) to believe that Ms. Guadalupe Pimentel was unlawfully present and likely to escape. Because neither statutory route authorized Ms. Guadalupe Pimentel’s arrest, and a bond hearing does not cure an unlawful arrest, this Court should grant the writ and order her immediate release.

1 **STATEMENT OF FACTS**

2 Ms. Guadalupe Pimentel was born in Mexico 
3 Declaration of Maria Lucia Guadalupe Pimentel, Exhibit A at ¶ 1. As a child, she
4 was adopted by two U.S. citizens when she was six or seven years old. *Id.* at ¶ 1.
5 She has lived here ever since and has never been deported. *Id.* at ¶ 1.

6 On January 27, 2026, Ms. Guadalupe Pimentel was walking down the street
7 with her boyfriend in Westmorland, California, where they live. *Id.* at ¶ 2.
8 Several agents pulled up in a car in front of them such that they were forced to
9 stop. *Id.* at ¶ 2. At least one of them seemed to be an ICE agent. *Id.* at ¶ 2. The
10 agents started asking them their names, where they were born, and how many last
11 names they had. *Id.* at ¶ 2. When Ms. Guadalupe Pimentel told them she was born
12 in Mexicali, the agents said they'd have to take her in. *Id.* at ¶ 2.

13 The agents transferred Ms. Guadalupe Pimentel to the Imperial Regional
14 Detention Center, where she is still detained. *Id.* at ¶ 3. She was never shown a
15 warrant or any other paperwork for her arrest. *Id.* at ¶ 3. She has never received
16 any paperwork from ICE explaining why she was detained. *Id.* at ¶ 3.

17 After Ms. Guadalupe Pimentel was arrested, she was placed in removal
18 proceedings. *Id.* at ¶ 4. Her next master hearing calendar date is September 10,
19 2026. *Id.* at ¶ 4.

20 **CLAIMS FOR RELIEF**

21 **I. Because Ms. Guadalupe Pimentel's warrantless arrest was not**
22 **statutorily authorized, this Court should order her immediate release.**

23 **A. Respondents must identify the lawful authority that existed to**
24 **justify Ms. Guadalupe Pimentel's arrest.**

25 "The federal statutory structure instructs when it is appropriate to arrest an
26 alien during the removal process." *Arizona v. United States*, 567 U.S. 387, 407
27 (2012). First, the agency "can exercise discretion to issue a warrant for an alien's
28 arrest and detention" under 8 U.S.C. § 1226(a). *Id.* This authority permits arrest
"[o]n a warrant issued by the Attorney General"—i.e., a warrant in existence at

1 the time of the arrest. *See Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018)
2 (explaining that § 1226(a) “authorizes detention only ‘[o]n a warrant issued’ by
3 the Attorney General *leading to the alien’s arrest*”) (emphasis added); *Rodriguez*
4 *Vazquez v. Bostock*, __ F.4th __, No. 25-6842, 2026 WL 2196424, at *10 (9th Cir.
5 July 30, 2026) (noting that the noncitizen was “apprehended pursuant to a
6 warrant” under § 1226(a)). Such warrants must be “executed by federal officers
7 who have received training in the enforcement of immigration law.” *Arizona*, 567
8 U.S. at 408.

9 But “[i]f no federal warrant has been issued, those officers have more
10 limited authority.” *Id.* Section 1357(a)(2) permits a warrantless arrest *only* when
11 the officer has probable cause both that the person 1) is unlawfully present and
12 2) is “likely to escape before a warrant can be obtained.” 8 U.S.C. § 1357(a)(2).

13 Here, there is no indication that a warrant existed before Ms. Guadalupe
14 Pimentel’s arrest that would have authorized it under § 1226(a). *See* Exh. A at ¶ 3
15 (declaring that “I was never shown a warrant or any other paperwork for my
16 arrest”). Without a valid warrant, Respondents had “more limited authority” to
17 make an arrest. *Arizona*, 567 U.S. at 408. Specifically, the officers had to have
18 “reason to believe” both that Ms. Guadalupe Pimentel was present unlawfully *and*
19 was “likely to escape before a warrant can be obtained for [her] arrest.” 8 U.S.C.
20 § 1357(a)(2). Respondents cannot make this showing on the facts here.

21 The Ninth Circuit declared that the phrase “has reason to believe” in
22 § 1357(a)(2) has been “equated with the constitutional requirement of probable
23 cause.” *Tejeda-Mata v. Immigr. & Naturalization Serv.*, 626 F.2d 721, 725 (9th
24 Cir. 1980) (citing *United States v. Cantu*, 519 F.2d 494, 496 (7th Cir. 1975), and
25 *Au Yi Lau v. Immigration and Naturalization Service*, 445 F.2d 217, 222 (D.C.
26 Cir. 1971)). While “the lack of documentation or other admission of illegal
27 presence may be some indication of illegal entry, it does not, without more,

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1 provide probable cause” of unlawful presence. *Mountain High Knitting, Inc. v.*
2 *Reno*, 51 F.3d 216, 218 (9th Cir. 1995).

3 The factual circumstances in *Mountain High* also illustrate what the escape
4 requirement demands. “When questioned by INS agents at the factory, [the
5 workers] claimed lawful immigration status but stated that they were not then in
6 possession of their green cards.” *Mountain High*, 51 F.3d at 218. “All were taken
7 to an INS detention center while their status was checked.” *Id.* Despite the
8 workers’ inability to produce their immigration documents when questioned, the
9 Ninth Circuit concluded that “the plain language of 8 U.S.C. § 1357(a)(2) . . .
10 forecloses the possibility of a permissible civil arrest under these circumstances”
11 because “the INS did not allege nor do appellants concede the existence of
12 grounds for a reasonable belief that they were particularly likely to escape.” *Id.*

13 Other courts have likewise rejected the proposition that evidence of
14 unlawful status supplies the independently required probable cause of escape. In
15 *Escobar Molina v. U.S. Department of Homeland Security*, for instance, the
16 district court collected decisions rejecting the conflation of unlawful status and
17 likelihood of escape. 811 F. Supp. 3d 1, 31–32 (D.D.C. 2025). In one case, the
18 court concluded that ICE officers lacked “‘reason to believe’ [the individual]
19 posed a risk of escape” when the person admitted that he “was born in Mexico
20 and did not have any documentation that would allow him to reside in the United
21 States.” *Id.* at 31–32 (quoting *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d
22 863, 889–90 (S.D. Ohio 2016)). Another case concluded that an admission
23 regarding immigration status “provided probable cause for the first half of what
24 § 1357(a)(2) demands,” but “there is, however, no evidence that ICE or any other
25 immigration officer had probable cause to believe that [the person] was ‘likely to
26 escape before a warrant can be obtained for his arrest,’ the second half of what is
27 needed before a warrantless arrest under § 1357(a)(2) is lawful.” *Id.* at 49–50
28 (quoting *Orellana v. Nobles County*, 230 F. Supp. 3d 934, 945 (D. Minn. 2017)).

1 As these cases show, probable cause of unlawful presence does not
2 establish probable cause of likely escape. Rather, escape requires a more
3 immediate indication of flight. For example, in *Meza-Campos*, the Ninth Circuit
4 found the escape predicate satisfied based on objective circumstances known to
5 the officer at the time of arrest, such as the fact that the person was “extremely
6 nervous,” was “looking around to the left and right past me,” and appeared to be
7 “looking for an opportunity to run.” *United States v. Meza-Campos*, 500 F.2d 33,
8 34 (9th Cir. 1974). The Ninth Circuit concluded that those circumstances
9 supported the officer’s “reason to believe” that, “if not immediately arrested, the
10 appellant was likely to escape.” *Id.*

11 As *Meza-Campos* indicates, any escape determination must be
12 individualized and made at the time of the arrest. In *Ixchop-Perez v. Barr*,
13 “[n]othing in the record establish[ed] that Ixchop . . . was a flight risk,” nor did
14 the record “suggest that the arresting officers even considered whether Ixchop was
15 a flight risk or whether a warrant was required.” 821 F. App’x 690, 694 (9th Cir.
16 2020). The Ninth Circuit rejected reliance on immigration status because “the
17 regulation requires not only that the arrestee be in the country without
18 authorization, but also a separate determination of flight risk.” *Id.*

19 Here, there is no indication that ICE had a warrant when they encountered
20 Ms. Guadalupe Pimentel on the street. Exh. A at ¶ 3. Thus, § 1226(a) could not
21 authorize her arrest. Accordingly, Respondents must justify the arrest under
22 § 1357(a)(2) and show probable cause that she was 1) unlawfully present in the
23 U.S. and 2) likely to escape before they could obtain a warrant. But even
24 assuming something that Ms. Guadalupe Pimentel said provided probable cause
25 of unlawful presence, Respondents have not shown probable cause that she was
26 likely to escape.

27 Ms. Guadalupe Pimentel’s circumstances resemble the facts in *Mountain*
28 *High*, not *Meza-Campos*. The *Mountain High* workers were encountered at their

1 workplace, answered immigration officers' questions, and could not produce their
2 green cards. 51 F.3d at 218. Ms. Guadalupe Pimentel likewise was engaged in
3 ordinary movement through daily life. She was walking down the street with her
4 boyfriend in her hometown. Exh. A at ¶ 2. As in *Mountain High*, those
5 circumstances do not themselves provide "grounds for a reasonable belief that
6 [she was] particularly likely to escape." 51 F.3d at 218. Nothing alleged here
7 resembles an "extremely nervous" person "looking for an opportunity to run," as
8 in *Meza-Campos*. 500 F.2d at 34.

9 Nor does Ms. Guadalupe Pimentel's presence on the street establish the
10 missing escape predicate. Exh. A ¶ 5. A court recently rejected that precise theory
11 under § 1357(a)(2), explaining that "[t]he conclusion that an individual poses an
12 escape risk simply by being a passenger in a vehicle, because he could flee on
13 foot, without more, is unpersuasive." *Escobar Molina*, 811 F. Supp. 3d at 31 n.20.
14 The same opinion found significant that the people subjected to warrantless
15 arrests had not "display[ed] attempts to evade law enforcement, such as by
16 walking, running or driving away when stopped." *Id.* at 47–48.

17 More fundamentally, unlawful presence cannot itself mean that a person is
18 "likely to escape." *Escobar Molina* expressly rejected that equation: "Nor can it
19 be the case that, simply by being potentially removable, an alien must be deemed
20 to be likely to evade detention by ICE. Such a reading would render the
21 limitations on warrantless arrest created by . . . § 1357(a)(2) meaningless." 811 F.
22 Supp. 3d at 31–32 (quoting *Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1007
23 (N.D. Ill. 2016)). The court separately described individuals arrested while
24 traveling to work, shopping, or otherwise "going about unavoidable, lawful
25 activities of daily life." *Id.* at 34. Ordinary movement through daily life is
26 therefore not itself the particularized escape risk that § 1357(a)(2) requires.

27 Here, the statute required either a warrant at the time of Ms. Guadalupe
28 Pimentel's arrest under § 1226(a) or probable cause of unlawful presence and

1 escape under § 1357(a)(2). Respondents have shown neither. Accordingly, they
2 lacked the statutory authority to arrest Ms. Guadalupe Pimentel.

3 **B. The regulation at 8 C.F.R. § 287.3 governs processing after a**
4 **lawful § 1357(a)(2) arrest but cannot independently authorize an**
5 **arrest.**

6 Several regulations in 8 C.F.R. § 287 implement the narrow warrantless
7 arrest authority in § 1357(a)(2). One of these regulations states that officials must
8 decide “within 48 hours of the arrest” whether the person will remain in custody
9 or be released and whether a Notice to Appear and warrant of arrest “will be
10 issued.” 8 C.F.R. § 287.3(d). But some district court orders have misinterpreted
11 this regulation as providing freestanding authority for *any* warrantless arrest
12 without the probable cause § 1357(a)(2) requires. *See Garcia-Juarez v. Blanche*,
13 No. 3:26-cv-03007-LL-DEB, slip op. at 3 (S.D. Cal. June 30, 2026). This reading
14 is incorrect.

15 First, the regulatory text shows that § 287.3(d) is subject to § 1357(a)(2)’s
16 probable cause limitations. Section 287.3 is titled “Disposition of cases of aliens
17 arrested without warrant.” 8 C.F.R. § 287.3. Subsection (a) applies to a person
18 “arrested without a warrant of arrest *under the authority contained in section*
19 *287(a)(2) of the Act.*” *Id.* (emphasis added). Section 287(a)(2) of the Act is 8
20 U.S.C. § 1357(a)(2). The regulation therefore applies after an officer invokes the
21 statutory warrantless-arrest authority granted in § 1357(a)(2)—it does not itself
22 create that authority.

23 After a lawful warrantless arrest under § 1357(a)(2), § 287.3(d) requires
24 DHS, ordinarily within 48 hours, to determine whether to release the noncitizen or
25 continue custody and whether to issue a notice to appear and warrant of arrest. 8
26 C.F.R. § 287.3(d); *Makuiza v. Wesling*, 826 F. Supp. 3d 176, 180, 183 (D. Me.
27 2026) (explaining that, “in the case of continued custody,” a warrant issues post
28 hoc). *Matute Garcia* reads the regulation the same way: “§ 287.3(d) provides the
government with 48 hours to issue a warrant if it determines that the noncitizen

1 will remain in custody.” *Matute Garcia v. LaRose*, No. 26cv4075-GPC(SBC),
2 2026 BL 291370, at *2 (S.D. Cal. July 31, 2026). The warrant contemplated by
3 § 287.3(d), therefore, concerns *continued custody after* a warrantless arrest. It
4 does not *retroactively supply* the authority required to make that arrest in the first
5 place.

6 Some judges have misinterpreted the 48-hour rule in § 287.3(d) as
7 providing retroactive probable cause for a warrantless § 1357(a)(2) arrest. *See*
8 *Garcia-Juarez v. Blanche*, No. 3:26-cv-03007-LL-DEB, slip op. at 3 (S.D. Cal.
9 June 30, 2026) (“Not only does 8 U.S.C. § 1357(a)(2) authorize warrantless
10 arrests but 8 C.F.R. § 287.3(d) also provides the government 48 hours to issue a
11 warrant if it determines that the noncitizen will remain in custody.”). This
12 incorrectly allows a § 287.3(d) warrant issued to justify *prospective* detention to
13 function as a “cure” for the absence of pre-arrest probable cause under
14 § 1357(a)(2).

15 But courts have properly distinguished the § 1357(a)(2) probable cause
16 requirements from § 287.3(d)’s continued custody determination, concluding that
17 “a post hoc warrant does not permit detention that arose from an unlawful
18 warrantless arrest.” *Quezada-Estrada v. Lyons*, 2026 WL 1361880, at *5 (D.
19 Colo. May 15, 2026). In other words, “[a]n arrest cannot be justified after the
20 fact.” *M-J-M-A- v. Hermosillo*, 822 F. Supp. 3d 1147, 1158, 1172 (D. Or. 2026).
21 *Alves* confirms this distinction: even though a warrant “may issue after the fact of
22 arrest,” the absence of a pre-arrest warrant and an individualized escape
23 determination calls the legality of “the initial arrest” into question. *Alves v.*
24 *Stamper*, No. 2:26-cv-00318-SDN, 2026 WL 234172, at *4–5 (D. Me. June 23,
25 2026).

26 To the extent § 287.3 permits issuance of a post-arrest warrant, it governs
27 only what may occur after an independently authorized arrest; it cannot enlarge
28 the arrest authority Congress granted in § 1226(a) and § 1357(a)(2). As the

Supreme Court recently held, the role of reviewing courts is to “independently interpret the statute and effectuate the will of Congress subject to constitutional limits” *without* deference to the agency. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024). *See also Romero v. Immigr. & Naturalization Serv.*, 39 F.3d 977, 979–81 (9th Cir. 1994) (invalidating an INS regulation that exceeded the Attorney General’s statutory authority and conflicted with the statutory scheme). Thus, the regulations can only interpret the authority § 1226(a) and § 1357(a)(2) gave immigration officials—it cannot authorize them to arrest first and supply the missing warrant or escape predicate later.

C. Immediate release is the appropriate habeas remedy for Ms. Guadalupe Pimentel’s unauthorized arrest.

Ms. Guadalupe Pimentel’s petition challenges the legal authority for her present custody and seeks release. That request falls within the historic core of habeas, which “provided a means of contesting the lawfulness of restraint and securing release.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117, 123 (2020). By contrast, the noncitizen in *Thuraissigiam* sought “vacatur of his removal order” and a new opportunity to “to apply for asylum and other relief from removal.” *Id.* at 117–18. Because the noncitizen “did not ask to be released” or contest the lawfulness of his detention, his petition “did not call for traditional habeas relief.” *Id.* at 118.

Moreover, a bond hearing is not the appropriate remedy for a warrant violation because it cannot restore the process Ms. Guadalupe Pimentel was denied at her arrest. For instance, the district court in *Romero-Perez v. Blanche* rejected a post-hoc bond hearing where the Department produced an unsigned I-200 and no evidence of an initial custody determination. No. 2:26-cv-01708-RFB-BNW, 2026 WL 1724752, at *4-5 (D. Nev. June 15, 2026). The court explained that those procedures exist to prevent unjustified detention in the first instance. *Id.* at *4.

Okeke reached the same conclusion after finding the arrest unlawful. It held that downstream custody procedures were irrelevant because the defective arrest never triggered lawful detention authority under § 1226. *Okeke v. Maldonado*, No. 26-cv-2714 (PKC), 2026 WL 2056904, at *6 (E.D.N.Y. July 16, 2026). The court ordered immediate release. *Id.* at *6–7.

Courts within this Circuit have likewise ordered release when the Department lacked a valid warrant and could not establish § 1357 authority. *See Urias v. Semaia*, No. 5:26-cv-02753-DTB, 2026 WL 1710375, at *6–7 (C.D. Cal. June 10, 2026). They have also ordered release when later proceedings could not prevent the liberty deprivation that had already occurred. *See Gregorio v. LaRose*, No. 3:26-cv-03918-RBM-SBC, 2026 WL 2059095, at *2 (S.D. Cal. July 16, 2026); *see also Valle v. Mullin*, 26-cv-3450-LL-GC (S.D. Cal. July 17, 2026).

This case presents the same remedial defect. A bond hearing would decide whether Ms. Guadalupe Pimentel’s detention should continue. It would not remedy the lack of authority for the arrest that produced her detention. “Habeas is at its core a remedy for unlawful executive detention.” *Munaf v. Geren*, 553 U.S. 674, 693 (2008). And “the traditional function of the writ is to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

PRAYER FOR RELIEF

This Court should grant the petition and order Respondents to release Ms. Guadalupe Pimentel to the conditions that existed before the arrest.

Respectfully submitted,

Dated: August 26, 2026

s/ Kara Hartzler

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