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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, 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.

Case No.: 26-cv-04717-DMS-AHG

**Petitioner's Traverse
to Respondents' Return
to Amended Petition**

INTRODUCTION

In her amended habeas petition, Ms. Guadalupe Pimentel argued that ICE lacked the authority to stop and arrest her without a warrant while she was walking down the street with her boyfriend in Westmorland, California. ECF No. 9. She explained that Congress created two routes authorizing an immigration arrest in the interior of the United States. First, § 1226(a) permits arrest “[o]n a warrant issued by the Attorney General.” 8 U.S.C. § 1226(a). Without a warrant, § 1357(a)(2) permits arrest only when an 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 government’s Return chooses the first route. Respondents acknowledge that Ms. Guadalupe Pimentel is “subject to detention under 8 U.S.C. § 1226(a)” and do not attempt to justify her arrest under § 1357(a)(2). ECF No. 11 at 2. Instead, they rely entirely on an I-200 warrant dated January 27, 2026—the day of her arrest. ECF No. 11 at 2; ECF No. 11-1. The question is therefore whether that warrant existed *before* ICE arrested Ms. Guadalupe Pimentel or whether ICE issued it *after* she was already in custody.

Respondents do not answer that question. Instead, they simply assert that Ms. Guadalupe Pimentel was “detained under the authority of a warrant issued the same day.” ECF No. 11 at 2. They thus argue that this case is “simply unlike the cases where allegedly warrantless arrests justify release.” *Id.* But Respondents submit no evidence showing that the warrant was issued *before*—rather than *after*—her arrest.

The plain language of 28 U.S.C. § 2243 places the burden on Respondents to certify the “true cause” for the arrest, which they have not done. What’s more, all the evidence in this case indicates the opposite—that no warrant existed at the time of arrest. Thus, the Court should order her immediate release.

1 **ARGUMENT**

2 **I. Respondents' own exhibits do not meet their burden to establish that a**
3 **§ 1226(a) warrant authorized the arrest.**

4 **A. Section 2243 requires Respondents to certify the true cause of**
5 **detention.**

6 Although Respondents captioned their filing a "Response to Petition," ECF
7 No. 11, it is the return required by 28 U.S.C. § 2243, which directs that "[t]he
8 person to whom the writ or order is directed shall make a return certifying the true
9 cause of the detention." Section 2243 then requires the Court to "summarily hear
10 and determine the facts" and dispose of the matter "as law and justice require." *Id.*
11 The return must therefore identify the factual and legal authority that produced
12 Ms. Guadalupe Pimentel's custody. It cannot leave the dispositive chronology
13 unknown.

14 It is true that Ms. Guadalupe Pimentel bears the ultimate burden of showing
15 that her custody is unlawful. *See Walker v. Johnston*, 312 U.S. 275, 286 (1941).
16 But that merits burden does not eliminate Respondents' separate duty to certify
17 the cause of detention in the first instance, as § 2243 requires. *Walker* explains
18 that a return and supporting affidavits frame factual issues rather than resolve
19 them by allegation. *Id.* at 285–87. Section 2243 does not permit a custodian to
20 satisfy their affirmative duty to show the "true cause" of detention with an
21 ambiguous document that does not meet this burden.

22 The Return does exactly that. It supplies no declaration from the officer
23 who issued or executed the I-200, the agents who took Ms. Guadalupe Pimentel
24 into custody, or any other immigration official. It gives no time when the warrant
25 was created or signed. It says only that Ms. Guadalupe Pimentel was "detained
26 under the authority of a warrant issued the same day." ECF No. 11 at 2. But the
27 mere fact that the warrant issued "the same day" as Ms. Guadalupe Pimentel's
28 arrest does not mean it issued *before* her arrest. In fact, it is more likely that ICE

1 randomly encountered Ms. Guadalupe Pimentel, arrested her, and then issued the
2 warrant while she was being processed into detention.

3 Section 2248 confirms how Respondents' failure to carry their burden is
4 treated: return allegations are accepted as true only "if not traversed." 28 U.S.C.
5 § 2248. Here, Ms. Guadalupe Pimentel expressly traverses Respondents'
6 allegation that a valid warrant issued before her immigration detention. Thus, this
7 allegation may not be deemed true under § 2248.

8 The existing sworn record is consistent with that traverse. In her
9 declaration, Ms. Guadalupe Pimentel states that she was "walking down the street
10 with my boyfriend in Westmorland, California" when "[s]everal agents pulled up
11 in a car in front of us such that we were forced to stop." ECF No. 9, Exh. A at ¶ 2.
12 The agents "started asking us our names, where we were born, and how many last
13 names we had." *Id.* The agents then arrested her, and she was "never shown a
14 warrant or any other paperwork for my arrest." *Id.* at ¶ 3. Because nothing shows
15 that the agents were specifically searching for her or targeting her for arrest
16 pursuant to a previously-issued warrant, Respondents have not met their burden to
17 show the "true cause" for her arrest under § 2243.

18 **B. The I-200 does not show that a valid warrant existed when ICE**
19 **took Ms. Guadalupe Pimentel into custody.**

20 Section 1226(a) permits arrest "[o]n a warrant issued by the Attorney
21 General." 8 U.S.C. § 1226(a). The Supreme Court has described the statute as
22 authorizing detention only when the warrant "lead[s] to the alien's arrest."
23 *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018). The implementing regulation
24 likewise permits an I-200 arrest only "[a]t the time of issuance of the notice to
25 appear, or at any time thereafter." 8 C.F.R. § 236.1(b)(1). The warrant must lead
26 to the arrest, and the NTA must have issued by then.

27 Respondents' have not shown there was a warrant that "led to
28 [Ms. Guadalupe Pimentel's] arrest." The warrant bears the date January 27,

1 2026—the same date ICE took custody—but no issuance time. ECF No. 11-1 at 2.
2 No officer says when the I-200 became an operative warrant, and no metadata or
3 event log supplies the answer. On this record, the I-200 shows only that it was
4 dated January 27, 2026—not that it led to the arrest, as § 1226(a) requires.

5 Nor do the warrant’s own probable-cause boxes show that a warrant existed
6 at the time of arrest. To justify Ms. Guadalupe Pimentel’s arrest, the I-200
7 invokes both the “biometric confirmation of the subject’s identity and a records
8 check of federal databases” that indicate a lack of immigration status and
9 “statements made voluntarily by the subject to an immigration officer and/or other
10 reliable evidence.” ECF No. 11-1 at 2. But any “biometric confirmation” of
11 Ms. Guadalupe Pimentel’s identity (such as fingerprints) almost certainly
12 occurred *after* her arrest while she was being processed into custody.

13 That leaves the question of whether “statements made voluntarily by the
14 subject to an immigration officer and/or other reliable evidence” provided
15 probable cause for arrest. But importantly, Respondents *only* argue that there was
16 authority to arrest Ms. Guadalupe under the first route—“[o]n a warrant issued by
17 the Attorney General.” 8 U.S.C. § 1226(a). If Respondents cannot show make the
18 necessary showing under this first route, the second route under § 1357(a)(2)
19 permits arrest only when an officer has probable cause *both* that the person is
20 unlawfully present *and* that the person “is likely to escape before a warrant can be
21 obtained.” 8 U.S.C. § 1357(a)(2).

22 But Ms. Guadalupe Pimentel’s statements alone cannot show probable
23 cause of unlawful presence. The Ninth Circuit has held that while “the lack of
24 documentation or other admission of illegal presence may be some indication of
25 illegal entry, it does not, without more, provide probable cause” of unlawful
26 presence. *Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995).
27 And even if it did, Respondents have not shown independent probable cause that
28 Ms. Guadalupe Pimentel was “likely to escape before a warrant can be obtained.”

1 8 U.S.C. § 1357(a)(2). In her amended petition, Ms. Guadalupe discussed
2 multiple cases rejecting the notion that evidence of unlawful status supplies the
3 independently required probable cause of escape. *See* ECF No. 9 at 3–7
4 (discussing *Ixchop-Perez v. Barr*, 821 F. App’x 690, 694 (9th Cir. 2020) (holding
5 that the law “requires not only that the arrestee be in the country without
6 authorization, but also a separate determination of flight risk” and “[n]othing in
7 the record establish[ed] that Ixchop . . . was a flight risk”); *Mountain High*, 51
8 F.3d at 218 (holding that the plain language of 8 U.S.C. § 1357(a)(2) . . .
9 forecloses the possibility of a permissible civil arrest under these circumstances”
10 because “the INS did not allege nor do appellants concede the existence of
11 grounds for a reasonable belief that they were particularly likely to escape”);
12 *Escobar Molina v. U.S. Department of Homeland Security*, 811 F. Supp. 3d 1, 31–
13 32 (D.D.C. 2025) (quoting *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d
14 863, 889–90 (S.D. Ohio 2016), which held that ICE officers lacked “‘reason to
15 believe’ [the individual] posed a risk of escape” when the person admitted that he
16 “was born in Mexico and did not have any documentation that would allow him to
17 reside in the United States”); *Orellana v. Nobles County*, 230 F. Supp. 3d 934,
18 945 (D. Minn. 2017) (same). Thus, Respondents have not attempted to justify
19 Ms. Guadalupe Pimentel’s arrest under § 1357(a)(2) and could not do so even if
20 they had.¹

21 In sum, Respondents have elected to show that Ms. Guadalupe Pimentel
22 was arrested “[o]n a warrant issued by the Attorney General” under 8 U.S.C.
23 § 1226(a). But they have submitted no evidence to meet their burden under 28
24 U.S.C. § 2243 that they issued Ms. Guadalupe Pimentel’s warrant *before* her
25 arrest, rather than *after*. In fact, her declaration and all the evidence in the record
26 suggest it was issued after. And even though Respondents have not elected to

27
28 ¹ Nor can 8 C.F.R. § 287.3 create a third route into § 1226 custody since it applies
only to a person already “arrested without a warrant . . . under” § 1357(a)(2).

1 justify a warrantless arrest under § 1357(a)(2), they could not do so because there
2 is no probable cause of unlawful presence or a likelihood of escape. Thus,
3 Ms. Guadalupe's warrantless arrest was unlawful.

4 **II. Immediate release is the proper remedy.**

5 Respondents also state that they “do not oppose an order from this Court
6 directing a bond hearing be held pursuant to 8 U.S.C. § 1226(a) if the Court
7 determines to award such relief.” ECF No. 11 at 3. But a bond hearing asks only
8 whether custody should continue based on danger and flight risk. It assumes that
9 ICE lawfully acquired custody. Under the procedure Respondents request, it
10 would also place on Ms. Guadalupe Pimentel the burden to prove by a
11 preponderance that she is not dangerous or a flight risk. ECF No. 11 at 3 n.3. That
12 later, prospective inquiry cannot answer whether a warrant authorized the January
13 27, 2026, arrest.

14 As one district court succinctly explained, a bond hearing “assumes a valid
15 arrest was made in the first instance.” *Okeke v. Maldonado*, No. 26-cv-2714
16 (PKC), 2026 WL 2056904, at *6 (E.D.N.Y. July 16, 2026). Once the court
17 concluded that the I-200/NTA sequence made the arrest unlawful, later custody
18 procedures were irrelevant and immediate release followed. *Id.* at *6–7. *Felix*
19 *Alberto J.M. v. Blanche* likewise ordered release without conditions after rejecting
20 the Government's assertion that a warrant was concurrent with the arrest. No. 26-
21 cv-2944 (LMP/DLM), slip op. at 11–12 (D. Minn. July 2, 2026). These remedies
22 match the violation because the defect lies in the authority for custody at
23 inception.

24 That is the traditional office of habeas. “Habeas is at its core a remedy for
25 unlawful executive detention,” *Munaf v. Geren*, 553 U.S. 674, 693 (2008), and
26 “the traditional function of the writ is to secure release from illegal custody,”
27 *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Respondents chose § 1226(a) as
28 the source of detention but did not establish the warrant sequence it requires.

Continuing custody while Ms. Guadalupe Pimentel seeks to prove a negative at a bond hearing would preserve the very detention the writ exists to remedy.

Immediate release would not decide whether Ms. Guadalupe Pimentel is removable, terminate her removal proceedings, or grant her immigration status. Nor would it prevent DHS from making a later arrest under new and lawful authority. *See Dep't of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 117–25 (2020). It would simply restore the condition that should have existed when ICE lacked demonstrated authority to take custody. The Court should therefore grant Ms. Guadalupe Pimentel's claim and order immediate release.

CONCLUSION

Respondents selected § 1226(a) as the asserted cause of detention. But § 2243 required them to certify that cause, and their documents do not show that an executable warrant existed when ICE took Ms. Guadalupe Pimentel into custody. The Court should thus grant the writ and order Ms. Guadalupe Pimentel released immediately.

Respectfully submitted,

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s/ Kara Hartzler

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