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Hon. Brenda K. Sannes
(filed via ecf)

Sauca Zapata v. Lyons, et al., 9:26-cv-1525 (BKS)

Dear Judge Sannes:

Please accept this letter in reply to the Government's response, which noted, on Page 1, that Petitioner had never been encountered by ICE before his arrest, but happened to be encountered while the agents were searching for a "known fugitive".

Petitioner requests immediate release because the arrest was unlawful in that the Notice to Appear (Respondents' Exhibit D) was dated August 11, 2026 *the day after the arrest,* and it is clear that the I-200 (Exhibit B) must have been issued *after* the arrest.

Petitioner entered the United States in 2021, and was never encountered by ICE until his warrantless arrest on August 10, 2026.

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.

Given that ICE was seeking someone else and happened to encounter Petitioner on the morning of August 10, it seems quite clear that there was *no warrant for Petitioner prior to his arrest.* Moreover, there was no Notice to Appear until the *day after the arrest, so any warrant prior to that would be inherently invalid.*

In *Rea v. Ball*, 2026 US Dist. LEXIS 150026 (NDNY 7/2/26) and *Vergel Gonzalez v. Rhoney*, No. 9:26-cv-1436-MAD (NDNY 8/12/26) Dct. No. 9, Courts in this District recently held that ICE's arrest without the required warrant and escape finding violated due process, and ordered the petitioners released.

In *Vergel Gonzalez*, the Court 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)…

…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*.

Respondents argue they had authority to arrest Petitioners under 1225(b)(2)(A), which does not carry the same warrant requirement. …

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…Under the circumstances presented, Petitioners' interests in remaining free weighs heavily on the Court's decision to order immediate release." *Vergel Gonzalez,* at 18-19, some emphasis supplied.

Because there was *no warrant at the time of the arrest herein*, *Rea v. Ball* and the other cases cited above support immediate release.

Thank you.

Respectfully,

s/Kathy Manley
Counsel for Petitioner