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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

B.D.A.A.,

Petitioner,

v.

DREW BOSTOCK; TODD LYONS; KRISTI NOEM; PAMELA BONDI; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. DEPARTMENT OF JUSTICE,

Respondents.

Case No.: 6:25-cv-02062-AA

RESPONDENTS' RESPONSE TO PETITIONER'S AMENDED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

Pursuant to the Court's November 5, 2025 Order (ECF No. 5), Respondents[1] submit this response to the Amended Petition. *See* Am. Pet., ECF No. 2.

Petitioner claims that on November 5, 2025, U.S. Immigration and Customs Enforcement ("ICE"), Office of Enforcement and Removal Operations ("ERO") officers unlawfully stopped Petitioner while she was operating a motor vehicle and arrested her without probable cause. Am. Pet. ¶ 19. Specifically, Petitioner alleges a single unlawful arrest claim asserting that the officers "lacked probable cause to believe that the petitioner had violated any traffic laws, and were not sufficiently aware of her identity to have a reasonable belief that she was present in the United States without lawful status." *Id.* Consequently, Petitioner seeks, *inter alia*, immediate release from custody. Am. Pet. ¶ 21(d).

The Petition should be denied for three reasons. First, Congress has barred district courts from reviewing claims of unlawful arrest that arise out of removal proceedings. Second, even if the Court had jurisdiction over the Petition, a claim of unlawful arrest is not an appropriate ground for habeas relief, "which considers the lawfulness of a *continuing* detention." *L-J-P-L- v. Wamsley*, No. 3:25-cv-01390-IM,

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[1] For "core" habeas challenges brought under 28 U.S.C. § 2241, that is, challenges to present physical custody, the only proper respondent is the immediate custodian of the habeas petitioner, "not the Attorney General or some other remote supervisory official." *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Thus, the United States Attorney General, the Acting Director of ICE, and the Secretary of the Department of Homeland Security ("DHS") are not proper respondents to this core habeas petition, because none of those officials have any immediate responsibility for Petitioner's detention. *See id.* at 440 n.13 ("[T]he proper respondent is the person responsible for maintaining—not authorizing—the custody of the prisoner."). Drew Bostock is no longer the Field Office Director and is not Petitioner's custodian. The correct Respondent is Laura Hermosillo, Acting Field Office Director.

2025 WL 2430268, at *6 n.3 (D. Or. Aug. 22, 2025) (emphasis added). Third, because the ERO officers had probable cause to arrest Petitioner, her Fourth Amendment unlawful arrest claim fails.

BACKGROUND

Petitioner's Immigration History and Status

Petitioner B.D.A.A. is a native and citizen of Mexico. Declaration of Jordan Reddish ("Reddish Decl.") ¶ 4; Declaration of Susanne Luse ("Luse Decl.") Ex. 1 (Notice to Appear). At an unknown date, Petitioner entered the United States in El Paso, Texas, without being inspected or paroled by immigration officers. Reddish Decl. ¶ 4; Luse Decl. Ex. 2, at 3 (Form I-213). Petitioner is currently in the United States without a lawful status. Reddish Decl. ¶ 6; Luse Decl. Ex. 2, at 2.

Petitioner has a pending U visa application, Form I-918, and a pending application for advance permission to enter the United States as a nonimmigrant, Form I-192. Luse Decl. Ex. 3 (Bona Fide Determination Notice). A bona fide determination notice was issued by U.S. Citizenship and Immigration Services ("USCIS") for the U Visa on December 20, 2024, which means the U visa application cannot be approved at this time but is likely to be approved when a visa number becomes available. Luse Decl. Ex. 3. As part of the bona fide determination, USCIS granted deferred action which is merely "an act of administrative convenience to the government which gives some cases lower priority for removal" and gives Petitioner the ability to seek work authorization. Luse Decl. Ex. 3. "This does not confer legal status on any kind of petitioner. This notice does not constitute a valid U nonimmigrant status or employment authorization, and may not be used to demonstrate legal immigration or employment status." Luse Decl. Ex. 3.

Additionally, on March 28, 2024, Petitioner filed a Form I-765. Application for Employment Authorization. Luse Decl. Ex. 2, at 3. That temporary work authorization was granted on January 15, 2025, and expires on January 14, 2029. *Id.*

The November 5, 2025, Arrest and Removal Proceedings

On November 5, 2025, ERO officers encountered a [redacted] bearing an Oregon license plate. Reddish Decl. ¶ 5. As is standard process, the plates were run through a database which indicated that the vehicle was registered to Petitioner. *Id.* Criminal history and immigration checks were conducted. *Id.* Records indicated that petitioner was convicted of felony identity theft in 2006 and received a 5-year suspended sentence. *Id.*

Immigration checks indicated that petitioner had applied for immigration benefits, but no records were found to indicate Petitioner had legal immigration status in the United States. Reddish Decl. ¶ 6. Thus, ERO determined there was probable cause that Petitioner was unlawfully present in the United States. *Id.*

ERO officers initiated a traffic stop of the Chevy Blazer utilizing emergency lights and siren near 3810 S Pacific Blvd. SW, Albany, Oregon. Reddish Decl. ¶ 7. The area is rural with open fields on both sides. ERO officers, fully marked as such, approached the vehicle and identified themselves as immigration enforcement removal officers. *Id.* The driver showed identification and was positively identified as Petitioner. ERO arrested petitioner at that time. *Id.*

Upon inspection, ERO determined petitioner did not have valid documentation to enter or reside in the United States. Reddish Decl. ¶ 8. Thus, ERO issued a Notice to Appear ("NTA") charging inadmissibility under Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act ("INA"). Reddish Decl. ¶ 8; Luse Decl. Ex. 1; *see also* 8 U.S.C. § 1182(a)(7)(A)(i)(I). Petitioner is currently detained at the Northwest ICE Processing Center ("NWIPC") in Tacoma, Washington while immigration court proceedings are pending.

LEGAL STANDARD

"The district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute[.]" *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day[.]" *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). To warrant a grant of habeas corpus, a petitioner must demonstrate that his custody violates the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3).

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ARGUMENT

I. The Petition is Barred by 8 U.S.C. §§ 1252(g) and 1252(b)(9)

Petitioners bear the burden of establishing the Court has subject matter jurisdiction over their claims. *See Ass'n of Am. Med. Coll. v. United States*, 217 F.3d 770, 778–79 (9th Cir. 2000).

Congress has specified that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders[.]" 8 U.S.C. § 1252(g). "By its plain terms," § 1252(g) bars the Court "from questioning ICE's discretionary decisions to commence removal" and "detain [Petitioner] during his removal proceedings[.]" *Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1203 (11th Cir. 2016).

Removal proceedings commence by the filing of an NTA in immigration court. *See Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 600 (9th Cir. 2002). "The Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Herrera-Correra v. United States*, No. 08-cv-2941 DSF (JCX), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). And § 1252(g) "precludes judicial review of unlawful detention or false arrest claims arising from decisions regarding the commencement of proceedings, adjudication of cases, or execution of removal orders." *Id.* at *2 (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)).

Here, the Petition arises from Respondent's commencement of removal proceedings. Petitioner was served with a NTA initiating removal proceedings. Luse Decl. Ex. 1. Thus, 8 U.S.C. § 1252(g) bars this Court's review over Petitioner's habeas claim seeking her immediate release. *See Acxel S.Q.D.C. v. Bondi*, No. 25-cv-3348 (PAM/DLM), 2025 WL 2617973, at *2 (D. Minn. Sept. 9, 2025) (finding § 1252(g) jurisdictionally bars review of petition challenging ongoing detention during removal proceedings); *L-J-P-L-*, 2025 WL 2430268, at *9 ("When an individual has a prior order of removal, immigration laws permit the government to reinstate that order and require that the individual be detained.").

Moreover, under 8 U.S.C. § 1252(b)(9), "[j]udicial review of all questions of law and fact ... arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section." And under 8 U.S.C. § 1252(a)(5), judicial review of such a final order is available only through "a petition for review filed with an appropriate court of appeals[.]" "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed only through the [petition for review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphases in original); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483, 485 (1999) (explaining that § 1252(b)(9) is "the unmistakable 'zipper' clause," channeling "judicial review of all" "decisions and actions leading up to or consequent upon final orders of deportation," including "non-final order[s]," into proceedings before a court of appeals). Accordingly, these provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal proceedings.

Here Petitioner seeks immediate release claiming her stop and arrest violated the Fourth Amendment. Petitioner fails to address how her allegedly unlawful arrest sounds in habeas or dictates her immediate release. Presumably, Petitioners contend evidence obtained through their arrest should be excluded, and—absent that evidence—their immigration proceedings are improper, and they should thus be released.

The "exclusionary rule generally does not apply to removal proceedings." *Sanchez v. Sessions*, 904 F.3d 643, 649 (9th Cir. 2018). Regardless, the argument that Petitioners should be immediately released once evidence obtained through their arrests is excluded shows that they seek judicial review of the merits of their immigration proceedings, highlighting the "inextricably intertwined" nature of their habeas claims and those proceedings. *Marvan v. Slaughter*, No. 25-cv-49-H-DLC, 2025 WL 1940043, at *3 (D. Mont. July 15, 2025) (finding no jurisdiction to hear noncitizen's habeas claim raising Fourth Amendment violations). Petitioners cannot simply "bypass the immigration courts and proceed directly to district court. Instead, [they] must exhaust the administrative process before [they] can access the federal courts." *Marvan*, 2025 WL 1940043, at *4 (quoting *J.E.F.M.*, 837 F.3d at 1029).

Accordingly, because Petitioner challenges the government's action to detain them, their claim must be raised before an immigration court or court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9).

II. Even if the Court has Jurisdiction, Unlawful Arrest is Not Grounds for Habeas Release

Petitioner's claim for unlawful arrest does not sound in habeas. The writ of habeas corpus "simply provide[s] a means of contesting the lawfulness of restraint and securing release." *Thuraissigiam*, 591 U.S. at 117; see also *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) ("It is clear . . . from the common-law history of the writ . . . that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody."). "A writ of habeas corpus is not like an action to recover damages for an unlawful arrest or commitment, but its object is to ascertain whether the prisoner can lawfully be detained in custody; and if sufficient ground for his detention by the government is shown, he is not to be discharged for defects in the original arrest or commitment." *U.S. ex rel. Bilokumsky v. Tod*, 263 U.S. 149, 158 (1923).

The principle that defects in an arrest do not warrant habeas relief extend to immigration arrests. As the Supreme Court has made clear, "regardless of how the [immigration] arrest is effected, deportation will still be possible when evidence not derived directly from the arrest is sufficient to support deportation." *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1043 (1984). This is because "[t]he 'body' or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred." *Id.* at 1039. As such, "[t]he mere fact of an illegal arrest has no bearing on a subsequent deportation proceeding[.]" *Id.* at 1040.

It follows that claims of unlawful immigration arrest "are not appropriately raised in a habeas petition[.]" *L-J-P-L- v. Wamsley*, No. 3:25-cv-01390-IM, 2025 WL 2430268, at *6 n.3 (D. Or. Aug. 22, 2025); see also *Streeter v. Craven*, 418 F.2d 273, 274 (9th Cir. 1969) ("[D]efects in an arrest are not cognizable in habeas corpus . . . ."); *H.N. v. Warden, Stewart Det. Ctr.*, No. 7:21-CV-59-HL-MSH, 2021 WL 4203232, at *5 (M.D. Ga. Sept. 15, 2021) (finding that Petitioner was not entitled to habeas relief even if his immigration stop was unlawful because identity is never suppressible in immigration proceedings); *Rodrigues De Oliveira v. Joyce*, No. 2:25-cv-00291-LEW, 2025 WL 1826118, at *5 (D. Me. July 2, 2025) ("Petitioner's argument that an illegal arrest automatically results in an illegal detention is misguided.").

Yet, here, Petitioner seeks immediate release based on allegations that she was detained without reasonable suspicion and arrested without probable cause. *See* Am. Pet. ¶¶ 19–20. Such claims do not dictate immediate release and thus are not cognizable in a habeas action. *Buriev v. Warden, GEO, Broward Transitional Ctr.*, No. 25-cv-60459, 2025 WL 2763202, at *3 (S.D. Fla. Sept. 26, 2025) (denying habeas petition for claim that immigration officials unlawfully arrested petitioner "without issuing a warrant").

Rather, the appropriate remedy for an unlawful immigration arrest would be suppression of evidence in removal proceedings. *Lopez-Mendoza*, 468 U.S. at 1040–41; *United States v. Garcia-Beltran*, 443 F.3d 1126, 1131–32 (9th Cir. 2006) (contemplating suppression as the appropriate remedy for an unlawful arrest but ultimately holding that identity obtained after illegal police action is not suppressible); *see Sanchez v. Sessions*, 904 F.3d 643, 649 (9th Cir. 2018) (explaining the two exceptions to the well-established principle that the exclusionary rule generally does not apply to removal proceedings). Such a remedy—suppression—appropriately addresses the consequence of an unlawful immigration arrest—being found removable in removal proceedings.

In sum, the claim Petitioner seeks to be vindicated must be cognizable in habeas. Case law makes it abundantly clear that an unlawful immigration arrest is not remedied by release from detention through a habeas petition. Therefore, Petitioner's claim based on an unlawful stop and arrest is not cognizable under a writ of habeas corpus, and the Petition must be denied.

III. Even if the Court Reaches Petitioner's Claim, there is No Showing that the Arrest was Unlawful

The initial stop of Petitioner's vehicle was based on reasonable suspicion that the vehicle was registered to someone who did not have a lawful status to be present in the United States. *United States v. Lopez-Soto*, 205 F.3d 1101, 1105 (9th Cir. 2000) ("[T]he Fourth Amendment requires only reasonable suspicion in the context of investigative traffic stops."). The ERO Officers' motivations in stopping the vehicle does "not change the objective reasonableness of their actions." *United States v. Taylor*, 60 F.4th 1233, 1240 (9th Cir. 2023).

Petitioner claims that the ERO officers "were not sufficiently aware of her identity to have a reasonable belief that she was present in the United States without lawful status." Am. Pet. ¶ 19.[2] Not so.

The ERO officers ran Petitioner's vehicle's license plate through a database that indicated it was registered to her. Reddish Decl. ¶ 5. The officers ran criminal history and immigration checks indicating Petitioner had a criminal history of identity theft and that she had two pending immigration applications that had not been approved. Reddish Decl. ¶¶ 5–6. ERO immigration checks indicated Petitioner had no records indicating she had legal immigration status in the United States. Reddish Decl. ¶ 6. "[W]e hold that when an officer's observations lead him reasonably to suspect that a particular vehicle may contain noncitizens who are illegally in the country, he may stop the car briefly and investigate the circumstances that provoke suspicion." *United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975); *see also United States v. Bejar-Guizar*, 142 F.4th 1188, 1193 (9th Cir. 2025). Accordingly, the officers stopped Petitioner's vehicle. At the stop, Petitioner produced identification positively identifying her as Petitioner. Reddish Decl. ¶ 7. Because ERO determined Petitioner did not have valid documentation to enter or reside in the United States, she was arrested and a NTA was issued.

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[2] Petitioner also makes the vague and unsupported allegation that the arrest did not comply with a consent decree from another jurisdiction that is not binding here. Am. Pet. ¶ 20.

Reddish Decl. ¶¶ 7–8. Thus, the officers were sufficiently aware of Petitioner's identity to have reasonable suspicion of her unlawful immigration status and therefore lawfully arrested.

CONCLUSION

Based on the foregoing, Respondents respectfully request that the Court deny the Amended Petition.

Respectfully submitted this 10th day of November 2025.

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/s/ Susanne Luse
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