

MICHAEL T. PURCELL
Attorney at Law
P.O. Box 14209
Portland, OR 97293
(503) 241-8203
mpurcell@gmail.com

Counsel for petitioner.

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF OREGON

EUGENE DIVISION

B.D.A.A.,

Petitioner,

vs.

DREW BOSTOCK, Seattle Field Office
Director, U.S. Immigration and Customs
Enforcement and Removal Operation, et a.

Respondents.

) File No. 6:25-cv-02062-AA
)
) Agency No. 
)
) **REPLY IN SUPPORT OF**
) **HOLDING AN**
) **EVIDENTIARY HEARING**
)
) ORAL ARGUMENT
) REQUESTED
)
) Expedited hearing requested

Petitioner enters the following reply in support of holding an evidentiary hearing
on this petition for habeas corpus.

TABLE OF CONTENTS

Table of contents	i
Table of authorities	ii
I. FACTS OF THE CASE	2
A. Expected testimony of petitioner	2
B. Expected testimony of petitioner's daughters	8
C. Tracking, telephone, and text messagescreenshots	11
D. Declaration from petitioner's immigration court counsel	14
E. Declaration from petitioner's habeas counsel	15
II. ARGUMENT	16
A. Statutes do not bar jurisdiction here	16
B. Jurisdiction still exists under the Suspension Clause	20
C. Petitioner was unlawfully arrested	22
D. Violation of right to counsel	24
E. Seizure and retention of petitioner's work permit was unlawful	25
III. CONCLUSION	27

TABLE OF AUTHORITIES

Cases

<i>Bivens v. Six Unknown Named Agents of Federal Bureau of Investigation</i> , 403 U.S. 388 (1971)	19
<i>Boumediene v. Bush</i> , 553 U.S. 723, 766 (2008)	20, 21, 22
<i>CLEAR Clinic v. Noem et al</i> , USDC Oregon 6:25-cv-01905-AA	24
<i>Department of Homeland Security v. Thuraissigiam</i> , 591 U.S. 103 (2020)	21, 22
<i>Jennings v. Rodriguez</i> , 138 S. Ct. 830 (2018)	16, 17, 18, 19
<i>Kong v. United States</i> , 62 F.4th 608, 617 (1st Cir. 2023)	18
<i>Reno v. American-Arab Anti-Discrimination Committee</i> , 525 U.S. 471 (1999)	17
<i>Sissoko v. Rocha</i> , 509 F.3d 947, 949 (9 th Cir. 2007).	19, 20
<i>Trump v. J. G. G.</i> , 145 S. Ct. 1003, 1005 (2025).	16
<i>U.S. v. Trimble</i> , 487 F.3d 752, 757 (9 th Cir. 2007)	18

Constitutional provisions

U.S. Const. Art. I § 9, cl. 2 (suspension clause)	20, 21, 22
Fourth Amendment	18, 22
Fifth Amendment	18, 24

Statutes

Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 110 Stat. 3009-546 (IIRIRA)	17
8 U.S.C. § 1226	18
8 U.S.C. § 1252(b)(9)	18
8 U.S.C. § 1252(e)(2)	20
8 U.S.C. § 1252(g)	16
28 U.S.C. § 2431(c)(3)	16

Regulations

8 CFR 274a.14(b)(2).	25
----------------------------	----

I. FACTS OF THE CASE.

A. Expected testimony of petitioner.

On November 5, 2025, at about 10:30 a.m., petitioner was coming home from grocery shopping. Dkt 21 at 1, ¶ 2. She was violating no traffic laws. Dkt 21, at 2, ¶ 2. A car was following behind her and turned on its siren. Dkt 21 at 1-2, ¶ 2. Petitioner pulled her car over. Dkt 21, at 2, ¶ 2. Fearing that it might be Immigration and Customs Enforcement (“ICE”), she called her daughter Jennifer. Dkt 21, at 2, ¶ 3. Using her Bluetooth earbud, she was able to talk with her daughter. Dkt 21, at 2, ¶ 4.

An officer came up to the driver’s side window, and told her, in English, to roll down the window. Dkt 21, at 2, ¶ 5. When she didn’t roll it down far enough the officer became angry and told her “Roll down your window all the way or I will break it.” Dkt 21, at 2, ¶ 5.

Another officer, a female, who was standing on the other side of the car, came around to the driver’s side and told the first officer “okay, relax.” Dkt 21, at 2, ¶ 6. The female officer then opened the driver’s door and asked the petitioner for identification. Dkt 21, at 2, ¶ 6 and ¶ 7. The petitioner gave the petitioner’s USCIS work authorization card to the female officer, who told her, in English, “this isn’t proof that you have legal status in the United States.” Dkt 21, at 2-3, ¶ 7. A third officer who was there, translated into Spanish what the second officer had said. Dkt 21, at 3, ¶ 7.

//

The Spanish speaking officer asked petitioner to give him her keys, and petitioner did so. Dkt 21, at 3, ¶ 8. Then the first officer, who had threatened to break the window, tried to take off petitioner's seat belt and pull her out of the car by her arms. Dkt 21, at 3, ¶ 7. Petitioner stated in Spanish "I'm not resisting, I will get out." Dkt 21, at 3, ¶ 7. The petitioner got out of her vehicle, and the female officer put handcuffs on her. Dkt 21, at 3, ¶ 8. Petitioner was then placed in a black car with tinted windows. Dkt 21, at 3, ¶ 9. An officer noticed her earbud and took it out of her ear. Dkt 21, at 3, ¶ 9. But petitioner's telephone was still on, and her daughter could hear some of the things that were going on. Dkt 21, at 3, ¶ 9.

Once inside the car, petitioner asked the officers if they had a warrant. Dkt 21, at 3, ¶ 10. They said, no, they did not. Dkt 21, at 3, ¶ 10. The petitioner asked them why they had stopped her. Dkt 21, at 3, ¶ 10. The officers said it was simply because they ran her license plate and that is how they knew her name. Dkt 21, at 3, ¶ 10. The Spanish speaking officer told her it was "por tu mala suerte" which means "for your bad luck" in English. Dkt 21, at 3, ¶ 10.

Inside the car, the female officer was looking at her work permit and noticed petitioner's address. Dkt 21, at 4, ¶ 11. That officer made a comment about how petitioner lived near the area where they had stopped her. Dkt 21, at 4, ¶ 11.

//

//

Petitioner's daughters had a tracking app for petitioner's telephone. Dkt 21, at 4, ¶ 12. In this way her daughters knew where the officers were taking her. Dkt 21, at 4, ¶ 12. Petitioner's telephone turned on was in her jacket next to her. Dkt 21, at 4, ¶ 12.

The officers drove off with the petitioner in the back to the apartments where she lived. Dkt 21, at 4, ¶ 13. About four other cars joined them, and forming a line, they then drove around the apartments where the petitioner lived. Dkt 21, at 4, ¶ 13. Then they went to another place where they parked. Dkt 21, at 4, ¶ 13. Petitioner was scared and nervous because it was just her being arrested and there were the other cars with officers in them. Dkt 21, at 4, ¶ 14.

Once parked, the officers started asking petitioner questions about when she had arrived in the United States. Dkt 21, at 4, ¶ 15. Petitioner told them that she had arrived in 1992. Dkt 21 at 4, ¶ 15. The officers asked her why she had not done it in the legal way, and petitioner told them that she had not been given the opportunity. Dkt 21, at 4, ¶ 15.

The officers asked more questions of petitioner, starting with "were your parents born in the United States?" Dkt 21, at 4, ¶ 16. Petitioner told them she did not want to say anything, and she wanted to speak with her attorney. Dkt 21, at 4, ¶ 16. The officers said "But you can tell us the names of your parents" and petitioner told them their names. Dkt 21, at 4 ¶ 16.

Despite having said she wished to remain silent and requested an attorney, the officers continued to ask her questions in an aggressive way. Dkt 21, at 5, ¶ 17. The

asked her “do you have any children?” Dkt 21, at 5 ¶ 17. Petitioner said “yes.” Dkt 21, at 5, ¶ 17. They asked “are the children minors?” Petitioner said “no.” Dkt 21, at 5, ¶ 17. They asked “are the children born in the United States?” Dkt 21, at ¶ 17. Petitioner said “yes.” Dkt 21, at 5, ¶ 17.

While the officers were asking her questions, they started using her work permit and pulling up information about her on their computer. Dkt 21, at 5, ¶ 18. After they had been parked for a while, an officer had her get out of the car, and switched her handcuffs from the back to being handcuffed in front. Dkt 21, at 5, ¶ 18. Petitioner was then placed back in the vehicle. Dkt 21, at 5, ¶ 19.

After petitioner had been placed back in the car, the car door was still open and she could hear the officers talking among themselves. Dkt 21, at 5, ¶ 20. The first officer, who had threatened to break her window, then, for unknown reasons, took a photograph of petitioner while sitting in the car. Dkt 21, at 5, ¶ 20.

After a while longer, they proceeded towards Portland. Dkt 21, at 5, ¶ 21. When they arrived at the detention center, they put petitioner in a cell. Dkt 21, at 5, ¶ 21. She was the only person in the cell. Dkt 21, at 5, ¶ 21. All the other detainees were men, and they were in another cell. Dkt 21, at 5, ¶ 22.

There was a window into the men’s cell, and petitioner could see, hear, and understand, when in Spanish what was said. Dkt 21, at 5, ¶ 22. The officers asked the men if they wanted voluntary departure, to fight their case, or to sign papers. Dkt 21, at 6, ¶ 23.

By the time that they were taking her fingerprints, petitioner's attorney, Esmeralda Santos had arrived. Dkt 21., at 6, ¶ 24. Lawyer Santos was only able to speak with petitioner for a few minutes before petitioner was told that she would have to go with the officers. Dkt 21, at 6, ¶ 24. When the officers took her, petitioner told them that her lawyer was still waiting for her so they could continue their talk. Dkt 21, at 6, ¶ 24.

One of the officers said "okay, give me a minute" and they sat petitioner down, with petitioner having the expectation that she would continue to be able to talk with her lawyer Santos. Dkt 21, at 6, ¶ 25. But the officer came back and told his partner to take her, and she was handcuffed again. Dkt 21, at 6, ¶ 26. Petitioner told them her lawyer was waiting for her, but they ignored petitioner and put her in the car. Dkt 21, at 6, ¶ 26. As a result, petitioner was no longer able to speak with her lawyer. Dkt 21, at 6, ¶ 27.

Once inside the car, they proceeded to drive towards Washington. Dkt 21, at 6, ¶ 27. On the way there, they stopped at a rest area. Dkt 21, at 6, ¶ 27. Petitioner could not see much because the windows were tinted. Dkt 21, at 6, ¶ 27.

When they stopped at the rest area, petitioner was nervous and scared because they were there for a long time. Dkt 21, at 6, ¶ 28. She was alone with two officers in the car. Dkt 21, at 6, ¶ 28. The officers proceeded to turn on the air to full cold, making the petitioner feel cold, and they laughed when they did so. Dkt 21, at 6, ¶ 28.

To let the officers know that she was watching them, petitioner told them that she was not feeling good, so the driver got out and gave her a soda. Dkt 21, at 7, ¶ 29.

Petitioner asked the officer why they had stopped, and the officer stated it was because they were waiting for a bus to take them to the detention center. Dkt 21, at 7, ¶ 30.

The officer then got back in the car, and after he did so, he received a telephone call. Dkt 21, at 7, ¶ 30. Petitioner could not hear what was being said on the telephone call because the officers, having noticed that she spoke some English, had turned up the volume on the radio. Dkt 21, at 7, ¶ 31. After the call ended, the officers turned down the volume on the radio and they just laughed. Dkt 21, at 7, ¶ 31.

After a while the officer in the front passenger seat got up to use the restroom, and petitioner said that she also would like to use the restroom, but they told her to wait because the bus was going to arrive soon. Dkt 21, at 7, ¶ 32. The officer came back from the restroom and a few minutes later, the bus arrived. Dkt 21, at 7, ¶ 32. The officers took petitioner out of the car and put her on the bus. Dkt 21, at 7, ¶ 32.

When petitioner got on the bus, she realized that the detainees on the bus were the same people who had been with her in the Portland detention center. Dkt 21, at 7, ¶ 33. One of the detainees on the bus asked petitioner why she had not been on the bus and why she had been separated. Dkt 21, at 7, ¶ 33. Petitioner was also curious why she had been the only one separated from the rest of the group who travelled into Washington together. Dkt 21, at 7-8, ¶ 33.

The bus was separated by gender, but petitioner was the only female on board, and there was clearly room on the bus for her to have travelled with the other detainees. Dkt

21, at 8, ¶ 34. Once they arrived at the Tacoma detention center, after changing into a uniform, petitioner was shown her belongings and her work permit card was not among them. Dkt 21, at 8, ¶ 35.

B. Anticipated testimony of petitioner's daughters.

Petitioner has two daughters, Jennifer Arellano de la Garza and Emily Arellano de la Garza. At about 10:56 Jennifer received a telephone call from petitioner. Dkt 22, exhibit 22-1, at 1, ¶ 1. She started to cry and panic, and so she handed Emily the telephone. *Id.* Emily asked petitioner what had happened, and petitioner said she had been arrested by immigration. *Id.*

Emily then proceeded to listen to the call. *Id.* She heard a male officer say: "Are you [B.D.A.A.]¹?" *Id.* Emily did not recall what petitioner said, as the call sounded hectic with many voices at once. *Id.* Emily kept telling petitioner not to answer. *Id.*

Emily then heard a male officer ask petitioner if she had any identification. *Id.* There was a pause, and Emily does not recall what happened. *Id.* Then the officer told petitioner to get out of the car. *Id.* Petitioner told Emily this would be the end of the call because she had to get out of the car. *Id.* Emily told petitioner not to hang up unless the officers told her to do so. *Id.* Petitioner told Emily to call Esmeralda². *Id.*

//

¹ Emily stated in her declaration that the officer used petitioner's full name. That full name is abbreviated as B.D.A.A. to preserve petitioner's privacy. See *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000).

² This apparently refers to Esmeralda Santos, petitioner's lawyer.

Emily heard the car door open. Dkt 21, exhibit 22-1, at 1, ¶ 2. Emily told petitioner to say aloud what was happening because Emily could still hear petitioner. *Id.* Petitioner then stated that they were handcuffing her, and then said that she had left her purse and keys in the car. *Id.* Jennifer then called Esmeralda Santos's office, and her assistant Delfino answered. *Id.* Apparently Emily then spoke with Delfino, she explained what was happening, and Delfino said he would inform Esmeralda Santos. *Id.*

Jennifer and Emily got in Jennifer's car and started following petitioner's telephone location so they could locate her, as petitioner's telephone location showed that she was still in Albany. Dkt 22-1, at 1, ¶ 3. Petitioner's telephone was still connected, and Emily heard the male Spanish-speaking officer ask petitioner if she was from Mexico, and petitioner said "yes". *Id.*

Emily heard the officer ask petitioner where her parents and children were from. *Id.* Emily told petitioner not to answer, and then Emily said "she has a lawyer" hoping that the officer would hear her, but he kept talking anyway. *Id.* Emily heard petitioner say that she didn't want to talk anymore until she spoke with her lawyer. *Id.* Emily then heard the officer say "okay, that's fine" but he still continued to ask petitioner questions about whether her children were minors. *Id.* Petitioner did not answer. *Id.*

Emily heard the officer ask petitioner why she had not done it in the legal way, and heard petitioner answer that she was not given the opportunity. *Id.* Emily heard her

//

mother say that she did not want to talk anymore until she spoke with her lawyer. *Id.*

The call was then filled with the noise of the car being driven. *Id.*

After a while, Emily heard the male officer asking petitioner if petitioner why they had stopped her, and he then said “por tu mala suerte”³ and then she heard a male officer chuckle. Dkt 22-1, ¶ 4.

That was all that Emily heard because the voice became muffled. *Id.* The call was then filled with the noise of the car driving. *Id.*

After a while, Emily heard petitioner ask where they were taking her, with the officer replying “Portland.” *Id.* Emily then heard petitioner ask the officer if she could call her daughter, or if the officers could call her daughter so that her daughter could go pick up her car and purse. *Id.* Emily heard the officer tell petitioner to wait until they got to Portland. *Id.*

Emily heard petitioner ask again, and the officer said “fine.” *Id.* Emily then heard petitioner give the officer Emily’s name and Emily’s telephone number. *Id.* A few minutes later, at 11:37 a.m., Emily received a text message from an immigration officer, which read: “Is this Emily?” to which Emily replied “yes.” *Id.* The officer then replied: “I am an immigration officer. Your mother was arrested. She is fine and will contact you shortly. Dkt 22-1, at 1 and 2, ¶ 4.

//

³ Meaning “for your bad luck” in English.

Emily then asked the officer where petitioner was and where were they taking her. Dkt 22-1, at 2, ¶ 4. The officer replied by saying that her vehicle needed to be picked up. *Id.* The officer replied by saying that they were taking petitioner to Portland, gave her the address where the car was, and stated that the door was open and the car keys were in the center console. *Id.* Emily and Jennifer went back home to get their things and then headed to Portland. *Id.*

During the ride to Portland, the voices on the call were muffled, and Emily could not hear much. Dkt 22-1, at 2, ¶ 5. When petitioner's telephone location showed that she had arrived in Portland, the telephone call ended. *Id.*

C. Tracking, telephone, and text screenshots.

Petitioner's daughter Emily prepared a number of screen shots showing the tracking locations of her mother's telephone, text messages, and telephone call times. These are submitted to the court as Dkt 22-2. This evidence shows:

At 10:13 a.m. petitioner left 3130 Killdeer Ave. SE, Albany, OR 97232. Dkt 22-2 at 1. This address is a Costco warehouse.⁴ Petitioner arrived at 3143 Killdeer Ave. at 10:21 a.m. *Id.* The maximum speed of petitioner's travel between these two points was 19 miles per hour. *Id.*

At 11:02 a.m., presumably after petitioner had been arrested and was in a government vehicle, her telephone started moving again, and continued to do so until

⁴ <https://www.costco.com/w/-/or/albany/682>

11:08 a.m. *Id.*, at 2. The starting point was [REDACTED] *Id.*

This address is for a single-family residence⁵ with no prior relationship to the petitioner.

This appears to be the location where the officers pulled over petitioner's car.

Petitioner will prove at any hearing on this matter that she resides at [REDACTED]

[REDACTED]

The screenshots of the telephone tracking app show that the respondents' officers drove south on Highway 99E from [REDACTED] to Belmont Ave, where they turned right, drove west past the [REDACTED] until they reached Ellingson Road.

Dkt 22-2, at 2. They then turned left on Ellingson Road, and then headed south and then east along Ellingson Road until they reached Highway 99E, where they turned left and headed northbound until they reached [REDACTED] SW. *Id.*

Per Google maps, [REDACTED] appears to be a commercial building immediately to the north of the Albany Police Department. *Id.*, at 3. The top speed of the government vehicle from 11:02 to 11:06 a.m. was 49 miles per hour. *Id.*

At 11:18 a.m., the government vehicle departed 2464 Pacific Blvd in Albany, and proceeded north on I-5 until reaching the ICE detention facility at 4710 S. Macadam Blvd. at 12:28 p.m. *Id.* This was a 69-mile trip. *Id.* The top speed of the vehicle on the trip between Albany and Portland was 84 miles per hour. *Id.*

//

⁵ https://www.zillow.com/homedetails/4842-Pacific-Blvd-SW-Albany-OR-97321/48480009_zpid/

A telephone screenshot shows that Emily placed a telephone call at 1:29 p.m. to Esmeralda Santos to let her know that they were almost to Portland. *Id.* at 5. Emily states in her caption on page 5 of exhibit 21-2 that “We then headed to the ‘All Your Heart Coffee’ at 1:37 pm, where Esmeralda messaged the ICE officer at 1:40 pm and asked, ‘Is she still there? I’m on my way’. After this, we headed over to the US Immigration and Customs Enforcement building.” *Id.* At 1:46 p.m., a telephone screenshot shows that an ICE officer informed either Esmeralda Santos or Emily that the petitioner would be at the ICE building “until 5.” *Id.*

At 2:55 p.m., petitioner and her telephone had left the ICE building, as the telephone location is shown to have been on I-5 at that time. *Id.* The telephone, and presumably the petitioner, went 32 miles north, at a top speed of 79 miles per hour, on I-5 into the state of Washington, arriving at a location near Battle Ground at 3:27 p.m. *Id.*

The location near Battle Ground was the Gee Creek Rest Area. *Id.*, at 9. The telephone remained there without moving until 4:43 p.m., representing a period of one and one-quarter hour. *Id.*

The telephone began moving again at 4:43 p.m. and was traceable until 7:07 p.m. when it reached the ICE Tacoma Detention Facility located at 1871 E J St, Washington. *Id.* at 10. The distance was 125 miles and the vehicle’s top speed was 67 miles an hour. *Id.* No further tracking data is available after arrival at the detention center.

//

D. Declaration from petitioner's immigration court counsel.

Petitioner's immigration court counsel, Esmeralda Santos, has submitted a declaration (Dkt 23), which states as follows, with paragraph breaks added for readability:

On Wednesday, November 5, 2025, I was informed that my client BDAA was detained at the ICE Facility 4310 S Macadam Ave, Portland, OR 97239. I arrived at the facility at approximately 2:00 PM. My co-counsel, Michael Purcell, had filed a petition for Habeas Corpus for BDAA but ICE was not allowing him to see our client.

We waited outside several minutes. Mr. Purcell had a copy of the Habeas Corpus petition as well as a forma pauperis for her petition that he needed to fill out with her and have her signature.

I called my client's daughter at 2:09 PM to let her know we were waiting outside the facility while ICE talked to their supervisor about allowing co-counsel Michael Purcell to enter the facility. After a few minutes, I was allowed to see my client in a consultation room without my co-counsel Michael Purcell.

The officer allowed me to give him an in forma pauperis for her petition for Habeas Corpus, then he went to my client's side of the consultation room to give her the document. This interrupted my meeting with her. Then he had her

sign and returned to the room to hand the document to me.

I opened my laptop to take notes on my client's case at 2:21 PM but our meeting was cut short, at 2:25 PM when an ICE officer escorted her out of the room.

I did not have time to complete the in forma pauperis for her petition for Habeas Corpus as I had no warning as then my client was escorted out of the room. I waited a few minutes as I was left alone and an ICE agent then came into the room and told me he "needed to clear the room."

I asked to see my client again, but the officer said he would ask his supervisor.

I was escorted outside the facility. I told him I did not mind waiting outside to speak to my client again, then he returned and told me she was no longer in the facility. Dkt 23.

E. Declaration from petitioner's habeas counsel.

Petitioner's habeas counsel, Michael T. Purcell has submitted a declaration which states in summary

At 1:05 p.m. the petition for habeas corpus was filed *Id.* At 1:45 p.m. (approximate), counsel for petitioner, furnished an ICE officer with an official copy of the petition for habeas corpus. *Id.*

At 3:00 p.m. the amended petition for habeas corpus was filed (Dkt 2). At 3:15 p.m. Petitioner was transferred out of the state of Oregon according to Dkt 6. *Id.* At

3:25 p.m. the petitioner's motion for temporary restraining order filed with supporting declaration. (Dkt 3 and Dkt 4). *Id.*

At 3:39 p.m. Petitioner's counsel sent inquiry to Judge Aiken's courtroom deputy as to a hearing on the motion for temporary restraining order. At 4:02 p.m. Judge Aiken's order (Dkt 5) was entered barring them from removing the petitioner from the state, or if she was already out of the state, an explanation of the circumstances of the transport.

II. ARGUMENT.

A. Statutes do not bar jurisdiction here.

Under 28 U.S.C. § 2431(c)(3), federal courts have jurisdiction over petitions for writs of habeas corpus filed by persons "in custody in violation of the Constitution or laws or treaties of the United States." The Supreme Court has said that "claims for relief [that] necessarily imply the invalidity of . . . confinement and removal . . . fall within the 'core' of the writ of habeas corpus and thus must be brought in habeas." *Trump v. J. G. G.*, 145 S. Ct. 1003, 1005 (2025).

Respondents argue that 8 U.S.C. § 1252(g) bars jurisdiction here, arguing that petitioner "challenge[s] aspects of ICE's decision to arrest them in order to commence removal proceedings against them." (Dkt Mot 14.) This is legally unsound.

In *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018). Justice Alito, writing for a three justice plurality, cautioned that courts should not interpret Section 1252(g) "to sweep in any claim that can technically be said to 'arise from' the three listed actions of the

Attorney General," but rather should "read the language to refer to just those three specific actions themselves." *Jennings*, 138 S. Ct. at 841.

In *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471 (1999), the plaintiffs sued the government for allegedly targeting them for deportation because of their affiliation with a politically unpopular group. *Reno*, 525 U.S. at 472.

While their suit was pending, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 110 Stat. 3009-546 (IIRIRA), which enacted what became 8 U.S.C. § 1252(g). The question before the court was whether section 1252(g) deprived the courts of jurisdiction over the plaintiff's suit. *Reno*, 525 U.S. at 473.

The Supreme Court adopt a narrow interpretation of section 1252(g):

[8 U.S.C § 1252(g)] applies only to three discrete actions that the Attorney General may take: her "decision or action" to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders." (Emphasis in the original) There are of course many other decisions or actions that may be part of the deportation process -- such as the decisions to open an investigation, to surveil the suspected violator, to reschedule the deportation hearing, to include various provisions in the final order that is the product of the adjudication, and to refuse reconsideration of that order." *Reno*, 525 U.S. at 482-83.

"It is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings". *Reno*, 525 U.S. at 483.

Petitioner challenges respondent's illegal and random arrest. The evidence shows that she was arrested "for her bad luck" rather than on any probable cause, in violation

not only of the Fifth Amendment Due Process clause, but also of the Fourth Amendment right to not be subject to unreasonable search and seizure. See *U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007) (explaining that Due Process requires that government action be rational and non-arbitrary). Detention decisions are not among the three discretionary acts rendered unreviewable by section 1252(g). See also *Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) (finding that section 1252(g) did not bar judicial review of challenges to unlawful detention).

Respondents further claim that 8 U.S.C §1252(b)(9)⁶ deprives this court of jurisdiction. This is legally unsound.

In *Jennings v. Rodriguez*, 583 U.S. 281, 292-293 (2017), a person subject to mandatory detention under 8 U.S.C § 1226 petitioned for habeas corpus, alleging that because he had not been allowed a bond hearing, he was being unlawfully detained.

With Justice Alito writing for a three-judge plurality, the Supreme Court stated that the words “arising from” in 8 U.S.C. §1252(b)(9) were not to be construed too literally. *Jennings*, 583 U.S. at 292:

It may be argued that this is so in the sense that if those actions had never been taken, the aliens would not be in custody at all. But this expansive interpretation of §1252(b)(9) would lead to staggering results. Suppose, for example, that a detained alien wishes to assert a claim * * * based on allegedly inhumane conditions of confinement. Or suppose that a detained alien brings a state-law claim for assault against a guard or fellow detainee.

⁶ “Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, **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.” (emphasis added).

Or suppose that an alien is injured when a truck hits the bus transporting aliens to a detention facility, and the alien sues the driver or owner of the truck. The “questions of law and fact” in all those cases could be said to “aris[e] from” actions taken to remove the aliens in the sense that the aliens’ injuries would never have occurred if they had not been placed in detention. But cramming judicial review of those questions into the review of final removal orders would be absurd.

Interpreting “arising from” in this extreme way would also make claims of prolonged detention effectively unreviewable. By the time a final order of removal was eventually entered, the allegedly excessive detention would have already taken place. And of course, it is possible that no such order would ever be entered in a particular case, depriving that detainee of any meaningful chance for judicial review. *Jennings*, 583 U.S. at 292-93 (citations omitted).

Petitioner alleges she was arrested illegally without probable cause. This is the type of claim that Judge Alito had in mind when he wrote the plurality in *Jennings*. The legality of this arrest cannot be contested in immigration court proceedings. And petitioner is not challenging the authority of respondents to institute removal proceedings against her. This court can resolve the question of the unlawful arrest without touching the validity of the I-862 notice to appear issued against petitioner.

Nor is petitioner challenging the admission of any evidence under the exclusionary rule, contrary to what respondents assert. See Dkt. 10, at 8. The sole question here is the lawfulness of her arrest.

Respondents cite *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007). Dkt 10, at 6. But critical to *Sissoko* was that it was an action for damages⁷ with the court specifically

⁷ Under the authority of *Bivens v. Six Unknown Named Agents of Federal Bureau of Investigation*, 403 U.S. 388 (1971).

noting that an alternative remedy, habeas corpus, existed under 8 U.S.C § 1252(e)(2).

Sissoko, 509 F.3d at 949. This is not an action for damages, and *Sissoko* does not apply.

B. Jurisdiction still exists under the Suspension Clause.

Even if a statute deprives this court of jurisdiction, there is still jurisdiction under the Suspension Clause of the Constitution of the United States.⁸ This clause provides that “[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.”

The Supreme Court in *Boumediene v. Bush*, 553 U.S. 723, 766 (2008) provided three factors for district courts to consider when “determining the reach of the Suspension Clause.” Those factors are: “(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner’s entitlement to the writ.”

For the first factor, courts compare the process that a detainee has actually been afforded with the “procedures and adversarial mechanisms that would eliminate the need for habeas corpus review.” *Id.* at 767. At the second factor, that the apprehension and detention took place within the United States weighs in favor of finding rights under the Suspension Clause. *Id.* at 768.

//

⁸ U.S. Const. Art. I § 9, cl. 2.

As to the third factor, if government objectives—such as military missions or international relationships—will be compromised if habeas corpus courts had jurisdiction to hear the detainees’ claims, that may weigh against application of the Suspension Clause. *Boumediene*, 553 U.S. at 769-71.

In *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020) the Supreme Court provided an analysis of the Suspension Clause in the immigration context. Thuraissigiam, a noncitizen, was apprehended within 25 yards of the border and detained for expedited removal. *Id.* at 114.

Thuraissigiam claimed a fear of returning to his home country, Sri Lanka, because he had once been abducted and severely beaten by a group of men, but he did not know who the men were or why they had assaulted him. *Id.* He also affirmed that he did not fear persecution based on a protected characteristic. *Id.*

While the Supreme Court held that the Suspension Clause did not apply under those circumstances, because Thuraissigiam wanted relief from the deportation order, and this “falls outside the scope of the writ [of habeas] as it was understood when the Constitution was adopted.” *Id.* at 119, the court still noted that “aliens who have established connections in this country have due process rights in deportation proceedings” as contrasted to “an alien at the threshold of initial entry.” *Id.* at 107.

//

//

Under the *Boumediene* factors and considering the majority's distinguishing a migrant who is "at the threshold of initial entry" from one who is more established in this country, the Suspension Clause applies to Petitioner.

For the first factor, although petitioner is not a citizen, she has a much stronger status than the petitioners in *Boumediene* and *Thuraissigiam*. Unlike them, she has been accorded deferred action and is on the threshold of obtaining lawful status through her application for a U-visa. Her ties to the United States are substantial. She has been in this country since 1992, and has two U.S. citizen adult daughters here. She has received at least one work authorization card from USCIS that was apparently valid at the time of her arrest.

Considering the second factor, if this court were to have no jurisdiction, then petitioner would have no forum to challenge her unlawful arrest and detention.

Respondents present no argument that any practical obstacles prevent petitioner from entitlement to the writ of habeas corpus. There is no evidence that petitioner is dangerous or a flight risk.

C. Petitioner was unlawfully arrested.

The Fourth Amendment to the United States Constitution protects all persons in the United States from unreasonable search and seizure. Here respondents arrested petitioner purely as a matter of chance, without a warrant and without probable cause.

//

The detailed declarations submitted with this reply show that the officers only knew petitioner's name from the car registration of her vehicle. The did not know anything about petitioner's legal status until they had pulled her over, interrogated her, seized her valid employment authorization card.

The facts as presented to the court are consistent with the officers surmising that based on the petitioner's name alone, she was not present lawfully in the United States. That is not sufficient to justify an arrest. In fact, the officers told petitioner that it was just because of her bad luck that she had been arrested.

The officers seemed also to be on some sort of mission to arrest people based on similar "bad luck." There appears to be no other explanation for their driving around the petitioner's apartments. Importantly this south of the point of the arrest whereas the route to Portland would have run north. They went out of their way and this is consistent with a mission to arrest people who might be associated with the petitioner. It may also explain why they asked petitioner where her children had been born, which appears to have no purpose other than to track down more people

Further, respondents, once they learned of the filing of a habeas petition by the petitioner, exercised extraordinary measures to transport petitioner out of the state, consistent with an endeavor to prevent this court from exercising jurisdiction. It would be consistent with the evidence to infer that the respondents were anxious to prevent review of their actions by this court, in apprehension of their conduct being held unlawful.

D. Violation of right to counsel.

Respondents also violated respondent's Fifth Amendment right to counsel by barring her lawyer, Esmerada Santos from speaking with her. It would have been easy for them to have allowed Ms. Santos to speak with petitioner, and still be on the bus going to the Tacoma Detention Center. Had they done so, which would have been the routine way, the officers would not have had to wait at the rest area in Washington for over an hour to allow the bus to catch up with them.

This is part of a pattern and practice that respondents have engaged in to deprive persons held in custody at their Portland ICE office to deprive people of their right to counsel under the Fifth Amendment. This pattern and practice of respondents is now the subject of pending litigation before this court in *CLEAR Clinic v. Noem*, et al., 6:25-cv-01906-AA (filed Oct. 16, 2025).

The declarations of fifteen immigration lawyers were submitted attesting to the respondent's misconduct in this regard. *Id.*, Dkts 41-55). One of those declarations, that of Katrina Kilgren, (CLEAR Clinic Dkt 41) is attached as an exhibit to this reply. While the respondents have violated people's right to counsel in various ways, Ms. Kilgren's declaration may be taken as an example of their practices.

To make things an officer of respondent's that day had informed petitioner's daughter that petitioner would be at the ICE facility until 5:00 p.m., creating the false impression that counsel Esmeralda Santos would have a chance to speak with petitioner.

The irregular means of transporting petitioner out of the state is consistent with a desire to frustrate petitioner's right to counsel.

If respondents had conducted themselves consistently with constitutional standards they would have no reason to fear the intervention of this court and this hasty evacuation of her from the state of Oregon would have been unnecessary.

E. Seizure and retention of petitioner's work permit was unlawful.

Respondents have seized petitioner's validly issued USCIS employment authorization card. Possession of the card is necessary to secure legal employment in the United States. There is no showing that the officers had any legal authority to strip petitioner of her employment authorization card, the lack of which effectively prevents her from working in the United States.

Only USCIS can revoke an employment authorization card, and with certain exceptions, revocation requires 15 days prior notice to the permit holder during which the holder has an opportunity to respond. 8 CFR 274a.14(b)(2). Nothing like that was done here, and under these circumstances, and her detention under these circumstances, with unlawful stripping of her right to work, itself is a violation of the Fourth Amendment guarantee against unreasonable seizures and the Fifth Amendment's guarantee of due process of law.

Unlike the first-hand knowledge declarations produced by the petitioner, the sole DHS declarations provided by respondents is not based on firsthand knowledge. They

invite the court to infer that this encounter with the petitioner was a matter of standard process. See Dkt 11, at 2, par. 5 (“As is standard process, the plates were run through a database which indicated that the vehicle was registered to Petitioner.”)

There is no explanation of the presumably highly un-standard procedure of pulling petitioner over “for her bad luck,” sharply cutting off her lawyer’s attempt to interview her, then whisking her out of the state only to wait over an hour for the regular transport bus to catch up. All this is consistent with an unlawful arrest and justifies a full hearing on the merits of this petition.

The officers tried to prevent petitioner from knowing what was going on by turning up the radio when they talked on the telephone at the rest stop in Washington. That may have been a call to their headquarters or to the transport bus. But the evidence that petitioner has presented, show that some level of planning, together with an effort to hide things, was going on here. If that is to be found by the court following a hearing, it would tend to show the respondent’s knowledge of their own misconduct.

This apparent effort of concealment on the part of respondents might well have succeeded but for petitioner’s telephone being on from the time of the arrest and the tracking apps on her and her daughter’s telephones. To ascertain just what occurred here is properly the subject of a full evidentiary hearing.

//

//

III. CONCLUSION.

For the above stated reasons, this court should conduct a full evidentiary hearing on the merits of this petition.

Dated this 26th day of November 2025

/s/ Michael T. Purcell

MICHAEL T. PURCELL
OSB #853094
Attorney for petitioner