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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

M-E-G-G-,

Petitioner,

v.

LAURA HERMOSILLO; TODD LYONS; KRISTI NOEM; PAMELA BONDI; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; U.S. DEPARTMENT OF HOMELAND SECURITY,

Respondents.

Case No.: 6:25-cv-02160-AR

RESPONSE TO HABEAS PETITION

INTRODUCTION

Petitioner filed a Petition for Writ of Habeas Corpus on November 21, 2025, claiming "on information and belief," without providing any actual evidence and while citing inaccurate facts, that she was unlawfully stopped and arrested by ICE officers. ECF 1. To obtain habeas relief, Petitioner must prove that she is in custody and have a continuing detention that violates the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241. But here, the facts are undisputed that their detention and arrest were lawful.

Petitioner's claims fail for all of the following reasons:

1. Petitioner's Fourth Amendment claim lacks subject matter jurisdiction because any claims of unlawful arrest are not cognizable under habeas and do not give rise to habeas relief, but rather must be addressed by the immigration court in its removal proceedings, in the court of appeals after a final decision by the Board of Immigration Appeals, or in an FTCA lawsuit for unlawful arrest;

2. Petitioner fails to state a claim under the Fourth Amendment because she fails to address the accurate legal standards for reasonable suspicion and probable cause, and fails to state sufficient facts supporting the notion that ICE Officers lacked the authority to conduct the stop and effectuate the arrests of Petitioner;

3. Petitioner's APA claims fail for lack of subject matter jurisdiction and for failure to state a claim because under recent Supreme Court precedent, the APA does not provide a separate cause of action for challenges that are exclusively cognizable in habeas;

4. Petitioner fails to state a claim under the Fifth Amendment because she fails to state any facts demonstrating she has been denied due process in any forum, and Respondent's undisputed facts herein show Petitioner has been served with Notices to Appear in Immigration Court where any due process arguments should be raised;

5. All Respondents except for Laura Hermosillo (the Acting Field Office Director of ICE) must be dismissed from the case as the only properly named Respondent in a habeas action is the immediate custodian of Petitioner's detention; and

6. Petitioner's non-habeas claims should be dismissed for failure to pay the required civil action filing fees.

FACTUAL BACKGROUND

Petitioner is a Mexican citizen illegally present without lawful status in the United. The undisputed facts demonstrate ICE Officers had reasonable suspicion to stop Petitioner and probable cause to arrest her under the INA.

A. FACTS OF PETITIONER'S DETENTION AND ARREST

On or about November 21, 2025, DHS officers were conducting surveillance in Cornelius, Oregon on a target who is the registered owner of a 2016 [redacted] with Oregon license plate number [redacted] They were outside the residence associated with the vehicle registration when they observed the vehicle leaving the residence. At that time, officers were unable to determine who was driving the vehicle. (Di Primo Decl., ¶ 4).

DHS officers conducted a vehicle stop and, upon approaching the vehicle, noted that the driver was not their target. (*Id.* at ¶ 5). Officers questioned the driver about her citizenship and her relationship to their target. Petitioner admitted to being a native and citizen of Mexico with no legal authorization to enter or remain in the United States. When the officer inquired about the registered owner of the vehicle, she stated that she did not want to answer questions about him. (*Id.* at ¶ 6).

DHS officers obtained authorization from an off-scene ICE supervisor to fill out a pre-signed administrative warrant, which they did. DHS officers then took Petitioner into custody and transported her to the ICE facility in Portland, Oregon. (*Id.* at ¶ 9). Petitioner was then transported to the Northwest ICE Processing Center ("NWIPC") in Tacoma, Washington, crossing into the State of Washington at 11:14 a.m. on November 21, 2025. (*Id.* at ¶ 10).

B. PETITIONER M.E.G.G. HAS NO LAWFUL STATUS IN THE U.S.

Petitioner M.E.G.G. is a native and citizen of Mexico. (*Id.* at ¶ 6). She admitted that she did not have any lawful status or permission to be in the United States. DHS confirmed that Petitioner has no lawful entry into the United States in their databases. (*Id.* at ¶ 6-7).

According to DHS database, Petitioner M.E.G.G. was transported to the Northwest ICE Processing Center in Tacoma, Washington ("NWIPC") on November 21, 2025, where she was booked into the facility at approximately 2:30 p.m. (*Id.* at ¶ 11).

At the time of her detainment and arrest on November 21, 2025, and as of the current date, Petitioner M.E.G.G. has no current legal status to be in (or remain in) the United States and has not filed any applications with DHS that would provide legal immigration status within the United States. (*Id.* at ¶ 12).

ARGUMENT

A. PETITIONER'S FOURTH AMENDMENT CLAIMS SHOULD BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION

Petitioner bears the burden of establishing this Court has subject matter jurisdiction over her claims. *See Ass'n of Am. Med. Colls. v. United States*, 217 F.3d 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). Petitioner will be unable to meet their burden because this Court lacks subject matter jurisdiction over Petitioner's claims and therefore this claim should be dismissed under Rule 12(b)(1).

1. Jurisdiction Lies with the Immigration Court and Court of Appeals

As confirmed by the Ninth Circuit, 8 U.S.C. § 1252(b)(9), the so-called "zipper clause" of the INA, "consolidates or zips judicial review of immigration proceedings into one action in the court of appeals." *Singh v. Gonzales*, 499 F.3d 969, 976 (9th Cir. 2007) (citation modified). That statute provides:

> 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. ***Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory),*** to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9) (emphasis added); *see also* 8 U.S.C. § 1252(a)(5) ("a petition for review…shall be the sole and exclusive means for judicial review of an order of removal"). "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); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483, 485 (1999) (explaining that § 1252(b)(9) channels judicial review of all decisions and actions leading up to or consequent upon final orders of deportation, including non-final orders, into proceedings before a court of appeals).

Furthermore, 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. Immigration & Customs Enf't, 818* F.3d 1194, 1203 (11th Cir. 2016). *See also Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007) (holding § 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"); *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); *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").

2. Any Collateral Claims are Inextricably Intertwined to Removal

While claims "collateral to, or independent of" the removal process are still subject to habeas review, "[w]hen a claim by an alien, however it is framed, challenges the procedure and substance of an agency determination that is 'inextricably linked' to the order of removal, it is prohibited by section 1252(a)(5)." *J.E.F.M.*, 837 F.3d at 1031; *Martinez v. Napolitano*, 704 F.3d 620, 623 (9th Cir. 2012).

Here, all claims by M.E.G.G. are inextricably linked to "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." 8 U.S.C. § 1252(b)(9).

Petitioner cannot circumvent the entire statutory scheme requiring any claims involving her removal be raised through the immigration court and the court of appeals by simply jumping to district court alleging constitutional violations. Even if a district court judge were to opine that her arrest was unlawful under the Fourth Amendment, that finding would not entitle Petitioner to release or any other relief in a habeas petition because how she came into custody is no defense to immigration proceedings. *See United States v. Alvarez-Machain*, 504 U.S. 655, 662-70 (1992) (fact that the defendant was kidnapped to bring him before the court was not a defense to prosecution); *Frisbie v. Collins*, 342 U.S. 519, 522 (1952) (same); *Ker v. Illinois*, 119 U.S. 436, 444 (1886) (same).

3. Suppression of Arrest Evidence is Inapplicable

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." *Lopez-Mendoza., 46*8 U.S. at 1043. 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; *see also Streeter v. Craven*, 418 F.2d 273, 274 (9th Cir. 1969) ("defects in an arrest are not cognizable in habeas corpus"); *L-J-P-L- v. Wamsley*, No. 3:25-cv-01390-IM, 2025 WL 2430268, at *6 n.3 (D. Or. Aug. 22, 2025) (claims of unlawful immigration arrest "are not appropriately raised in a habeas petition"); *H.N. v. 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); *De Oliveira v. Joyce*, No. 2:25-cv-00291-LEW, 2025 WL 1826118, at *5 (D. Me. July 2, 2025) ("argument that an illegal arrest automatically results in an illegal detention is misguided").

Additionally, immigration authorities are authorized to continue to use any identifying information to confirm Petitioner's identity and unlawful status in this country, and the fact that Petitioner has already admitted her unlawful status (and database records unquestionably confirm this fact) which gives the government continued authority to prosecute her removal proceedings regardless of what occurred during their initial arrest. *See United States v. Ortiz-Hernandez*, 427 F.3d 567, 577 (9th Cir. 2005). Therefore, there is no habeas relief to be gained in this action since any finding by a district court judge that Petitioner's arrest was somehow unlawful will not circumvent her continued removal proceedings or the fact she has admitted to being unlawfully present in the United States.

4. Petitioner's Remedy for Unlawful Arrest Lies in the FTCA

The Federal Tort Claims Act provides a remedy for torts committed by federal employees including unlawful detention, wrongful arrest, and false imprisonment. Petitioner has the right to sue the government for these claims in an FTCA case, and raising this claim in a habeas petition is yet another improper attempt to circumvent the FTCA's statutory scheme.

In short, because 8 U.S.C. § 1252(b)(9) applies, this Court lacks jurisdiction to grant habeas relief based on Petitioner's Fourth Amendment claims of unlawful detention or arrest and judicial review of those claims must be channeled to the Court of Appeals. Indeed, claims relating to an immigrant's detention and arrest are routinely raised in petitions for review to the court of appeals. *See, e.g., Gamez-Reyes v. Bondi, 22-1449,* No. 23-2681, 2025 WL 501400, at *1 (9th Cir. Feb. 14, 2025); *Santiago v. Garland*, No. 22-619, 2023 WL 6875282, at *1 (9th Cir. Oct. 18, 2023); *B.R. v. Garland*, 26 F.4th 827, 840 (9th Cir. 2022); *Marvan v. Slaughter*, No. CV 25-49-H-DLC, 2025 U.S. Dist. LEXIS 134643 (D. Mont. July 15, 2025) (holding that jurisdiction was lacking to review a similar Fourth Amendment claim brought in a habeas petition). Furthermore, in addition to raising any claims of unlawful detainment or arrest in immigration court or at the court of appeals, Petitioner has the alternative remedy of bringing an unlawful arrest claim under the FTCA should she wish to do so.

B. PETITIONER'S FOURTH AMENDMENT CLAIM SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM

This Court need not reach the merits of Petitioner's Fourth Amendment claims based on the authority cited above establishing that the Court lacks subject matter jurisdiction of such claims in a habeas petition. However, in the event the Court is inclined to reach these issues, Petitioner fails to state a claim under the Fourth Amendment and therefore this claim should be dismissed under the alternative ground of Rule 12(b)(6).

For her Fourth Amendment claim, Petitioner makes conclusory statements that Respondents had no basis to detain or arrest Petitioner and inquire about her immigration status other than her race and apparent ethnicity. But Petitioner fails to address the accurate legal standards for reasonable suspicion and probable cause and fails to state a claim with sufficient facts to support the notion that ICE Officers lacked the authority to conduct the stop and effectuate the arrest of Petitioner.

1. ICE Officers' Authority to Make Warrantless Arrests

The U.S. Supreme Court has identified three types of reasonable, and thus permissible, warrantless encounters between law enforcement and citizens: (1) consensual encounters in which contact is initiated by an officer without any articulable reason whatsoever and the citizen is briefly asked questions; (2) a temporary involuntary detention (or Terry stop) which must be predicated upon reasonable suspicion; and (3) arrests which must be based upon probable cause. The second of these exceptions was first spelled out by the Supreme Court in *Terry v. Ohio*, 392 U.S. 1 (1968), where it held that "an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable articulable suspicion that criminal activity is afoot." *Id.* at 30; *see also United States v. Manzo-Jurado*, 457 F.3d 928, 934–35 (9th Cir. 2006) (explaining reasonable suspicion standard for believing a person is in the country illegally).

To determine whether a particular stop is permissible under the Fourth Amendment, a court "must look at the 'totality of the circumstances' of [the] case to see whether the detaining officer has a 'particularized and objective' basis for suspecting legal wrongdoing." *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (citation omitted). "This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" *Id.* Reasonable suspicion is defined as "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States v. Cotterman*, 709 F.3d 952, 968 (9th Cir. 2013) (citations omitted). This assessment is to be made in light of the totality of the circumstances. *Id.* Even when factors considered in isolation from each other are susceptible to an innocent explanation, they may collectively amount to a reasonable suspicion. *Id.* at 956.

2. ICE Officers' Authority to Question, Stop and Arrest Under the INA

Pursuant to federal statute, immigration officers have the specific authority to interrogate and make arrests without a warrant if they have reason to believe an individual is in the United States illegally or has committed a crime. 8 U.S.C. § 1357 (a)(1) and (2). Like all law enforcement officers, ICE officers are also permitted to conduct a temporary involuntary detention (or Terry stop), if predicated upon reasonable suspicion. 8 C.F.R. § 287. In addition to their authority to arrest individuals for immigration violations, ICE officers also have the authority to make arrests for *any* offense committed in their presence against the United States. 8 U.S.C. § 1357(a)(5).

Subsection (b) of 8 C.F.R. § 287.8 defines an interrogation or detention and provides as follows:

> (1) Interrogation is questioning designed to elicit specific information. An immigration officer, like any other person, has the right to ask questions of anyone as long as the immigration officer does not restrain the freedom of an individual, not under arrest, to walk away.
>
> (2) If the immigration officer has a reasonable suspicion, based on specific articulable facts, that the person being questioned is, or is attempting to be, engaged in an offense against the United States or is an alien illegally in the United States, the immigration officer may briefly detain the person for questioning.
>
> (3) Information obtained from this questioning may provide the basis for a

> subsequent arrest, which must be effected only by a designated immigration officer, as listed in 8 CFR 287.5(c). The conduct of arrests is specified in paragraph (c) of this section.

Pursuant to subsection (c)(2):

> (i) An arrest shall be made only when the designated immigration officer has reason to believe that the person to be arrested has committed an offense against the United States or is an alien illegally in the United States.
>
> (ii) A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained.

And pursuant to subsection (f)(4):

> (4) Nothing in this section prohibits an immigration officer from entering into any area of a business or other activity to which the general public has access or onto open fields that are not farms or other outdoor agricultural operations without a warrant, consent, or any particularized suspicion in order to question any person whom the officer believes to be an alien concerning his or her right to be or remain in the United States.

8 C.F.R. § 287.8.

In addition to this clear statutory and regulatory authority, in *United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975), the Supreme Court elaborated on an immigration officer's authority to conduct a Terry stop when questioning an individual's citizenship and immigration status:

> [W]e hold that when an officer's observations lead him reasonably to suspect that a particular vehicle may contain aliens who are illegally in the country, he may stop the car briefly and investigate the circumstances that provoke suspicion. As in Terry, the stop and inquiry must be "reasonably related in scope to the justification for their initiation." (Citation omitted). **The officer may question the driver <u>and passengers</u> about their citizenship and immigration status,** and he may ask them to explain suspicious circumstances, but any further detention or search must be based on consent or probable cause.

Id. at 881-82 (emphasis added).

Here, the officers who conducted the vehicle stop were justified in drawing the reasonable inference that the driver of the vehicle was their target, the registered owner of the vehicle. *Kansas v. Glover*, 589 U.S. 376, 381 (2020) (holding that officers are allowed to draw a "commonsense inference that [the registered owner] [is] likely the driver of the vehicle"). Upon learning that the driver was not their target, DHS officers reasonably inquired about the identification of the driver and her relationship to their target. During this lawful, consensual conversation, Petitioner admitted that she was in the United States without permission, and the officers developed probable cause that Petitioner was removable. The officers then followed the law and obtained a warrant to arrest Petitioner, which they did. The stop and the arrest were lawful.

Ninth Circuit law is clear that "[l]aw enforcement officers do not implicate much less 'violate the Fourth Amendment by merely approaching an individual on the street. . .[or] by asking him if he is willing to answer some questions.'" *United States v. Kim*, 25 F.3d 1426, 1430 (9th Cir. 1994) (citation omitted). In *Kim*, a suspect was questioned while sitting in his parked vehicle by a plainclothes federal agent who "parked his unmarked car so as to block partially the egress of Kim's vehicle," with backup officers waiting nearby. *Id.* at 1428. After receiving a tip regarding possible drugs, the agent asked Kim to retrieve a suitcase from the trunk of the car and give permission for the agent to see the contents, and Kim agreed. After finding the contents of the suitcase empty, the officer asked Kim if he could remove and open a vial/container visible in Kim's pocket, and Kim agreed. That vial contained several grams of crystal meth. Kim was later arrested by federal agents in a separate related incident and successfully prosecuted for possession of drugs and firearms. On appeal, the Ninth Circuit held the initial encounter with the agent near the car was a consensual encounter as Kim voluntarily consented to the initial search. *Id.* Similarly here, Petitioner was asked for her name and country of citizenship and she agreed to provide that information to the ICE Officers, when she could have refused to answer. Petitioner was not handcuffed or arrested when she was asked those identity questions. Officers believed that portion of the encounter to be consensual.

The subsequent admissions by M.E.G.G. that she was unlawfully in the country, as well as the Officers' subsequent database checks, further confirmed that the Officers had the legal authority to arrest Petitioner under the INA. Under the circumstances, the immigration officers met the legal standards for (a) a consensual encounter, (b) reasonable suspicion to stop, briefly detain and question, and (c) probable cause to arrest. Since Petitioner has failed to state any actual facts or put forth any evidence suggesting the officers unlawfully questioned or arrested her, and this Response contains undisputed evidence that the officers acted lawfully, Petitioner cannot state a constitutional claim for a Fourth Amendment unlawful arrest in this habeas action.

3. The ICE Officers' Motivations for the Stop and Arrest are Irrelevant

Petitioner claims that "Respondents only detained Petitioner because of their race." (ECF 1, ¶ 56). However, in addition to the factual evidence presented in this Response demonstrating otherwise, both the Supreme Court and the Ninth Circuit have held that as long as objectively justifiable behavior for the officers' questions exists, the officers' motivations are irrelevant. According to the Supreme Court, "[n]ot only have we never held, outside the context of inventory search or administrative inspection…that an officer's motive invalidates objectively justifiable behavior under the Fourth Amendment; but we have repeatedly held and asserted the contrary." *Whren v. United States*, 517 U.S. 806, 812-13 (1996) (rejecting the argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved). *See also Kim*, 25 F.3d at 1431 (holding "[w]here contact between the citizenry and law enforcement officials does not rise to the threshold of a Fourth Amendment event….the agent's motivation for approaching [a person is] therefore irrelevant").

Additionally, Petitioner's allegations of racial profiling cannot state a claim under the Fourth Amendment as recently construed by the Supreme Court in *Noem v. Perdomo*, 222 L. Ed. 2d 1213, 2025 U.S. LEXIS 2779 (Sept. 8, 2025). In *Noem*, the Supreme Court considered whether immigration officers violated the Fourth Amendment by conducting stops based on apparent race or ethnicity, among other factors. The Court held that while "apparent ethnicity alone cannot furnish reasonable suspicion; under this Court's case law regarding immigration stops, however, it can be a 'relevant factor' when considered along with other salient factors." *Id.* at 1216. *See also Marvan*, 2025 U.S. Dist. LEXIS 134643 (holding "while the Court takes allegations of racial profiling and constitutional violations seriously, Petitioner cannot bypass the immigration courts and proceed directly to district court….Instead, he must exhaust the administrative process before he can access the federal courts"). *Id.* at *11 (citing *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1029 (9th Cir. 2016)) (internal quotations omitted).

Here, the ICE Officers had proof that the vehicle Petitioner was driving was owned by an unlawful immigrant, and therefore, they clearly did not base their reasonable suspicion solely on Petitioner's apparent race or ethnicity. Petitioner's claims of racial profiling therefore fail as a matter of law under the Supreme Court's recent decision in *Noem* and the Ninth Circuit's decision in *J.E.F.M.*

4. Petitioner's Claims Respondents Violated the Ultra Vires Doctrine, Accardi Doctrine, and Nava Broadcast Policy All Fail to State a Claim

Petitioner fails to articulate any violation of the ultra vires doctrine or provide any facts showing ICE Officers exceeded their authority. ICE Officers are statutorily authorized to stop, detain, question and arrest noncitizens unlawfully present in the United States, as clearly established by the authority cited above including 8 C.F.R. § 287.8. Based on the undisputed evidence presented herein, ICE Officers did not exceed their authority, nor has Petitioner stated any facts sufficiently demonstrating that they did.

Petitioner has likewise failed to articulate any violation of the Accardi Doctrine or the Nava Broadcast Policy or state any facts whatsoever showing ICE Officers violated any internal DHS policies or regulations. Those policies merely reiterate the statutory authorizations and requirements applicable to immigration officers, and do not create any additional or higher legal standard upon ICE Officers when pursuing their statutory duties to detain and arrest illegal immigrants unlawfully present in this country.

The undisputed facts in this brief demonstrate the facts considered by the ICE Officers when they pulled over the vehicle registered to an unlawful immigrant and Petitioner's voluntary admission of her unlawful presence in this country were considered *before* a warrant for arrest was issued on the scene. The information considered by the ICE Officers prior to the arrest more than satisfies the probable cause standard applicable to ICE Officers under either the relevant INA statutes or the language delineated under the Nava Broadcast Settlement Agreement from Illinois.

Petitioner's attempt to avoid their removal proceedings by arguing in a district court habeas petition that DHS somehow did not comply with its own internal policies has no basis in reality under the circumstances of this case, is not supported by the facts alleged in the Petition, and does not comport with the clear statutory authority and Supreme Court and Ninth Circuit law authorizing immigration officers to arrest the two unlawful immigrants who have filed this petition.

C. PETITIONER'S ADMINISTRATIVE PROCEDURE ACT CLAIMS SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM AND FOR LACK OF SUBJECT MATTER JURISDICTION

In Counts Two through Five, Petitioner attempts to assert violations of the Administrative Procedure Act under 5 U.S.C. § 706(2)(A). Section 706(2)(A) provides that courts shall "hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law". But in each of her claims, Petitioner merely regurgitates her (also invalid and jurisdictionally barred) Fourth Amendment unlawful stop and arrest claims and simply relabel them as "APA" claims. Claims of stops and warrantless arrests without reasonable suspicion or probable cause are Fourth Amendment violations that must be analyzed under constitutional standards, not APA claims analyzed under arbitrary and capricious review standards. Furthermore, the arbitrary and capricious standard under § 706(2)(A) reviews agency policymaking, rulemaking, and programmatic decisions, not individual enforcement actions like arrests. Therefore, Petitioner fails to state a claim under 5 U.S.C. § 706(2)(A) because her stated challenges are constitutional, not administrative.

To the extent Petitioner appears to loosely reference other sections of the APA in the body of her Petition (i.e. 5 U.S.C. § 706(2)(B) and (C)), she does so without articulating any facts explaining which provision was violated and under what circumstances and therefore fails to state a claim. Even if she had, the Supreme Court recently opined that claims that fall within the "core" of the writ of habeas corpus, like those asserted by Petitioner here (i.e. her claim challenging the legality of her custody), must be brought in habeas and not under the Administrative Procedure Act. *Trump v. J.G.G.*, 604 U.S. 670, 672, 145 S. Ct. 1003, 2025 U.S. LEXIS 1450 (2025) (Kavanaugh, J., concurring). "Given that 5 U.S.C. § 704, which states that claims under the APA are not available when there is another 'adequate remedy in a court,'… habeas corpus, not the

APA, is the proper vehicle here." *Id.* at 674.[1] The APA does not provide a separate cause of action for challenges that are exclusively cognizable in habeas. Moreover, district court review under the APA requires final agency action under 5 U.S.C. § 704, and there is no allegation in the Petition that any final agency action has occurred and Petitioner has no order of removal as she has yet to appear in immigration court. For these reasons, Petitioner's attempt to repackage her Fourth Amendment constitutional claims as APA claims must be rejected for both failure to state a claim and for lack of subject matter jurisdiction.

D. PETITIONER FAILS TO STATE A CLAIM FOR VIOLATION OF DUE PROCESS UNDER THE FIFTH AMENDMENT

Petitioner's Fifth Amendment due process claim is also barred by the jurisdictional framework set forth in 8 U.S.C. §§ 1252(g) and 1252(b)(9). While the Fifth Amendment protects all persons within the United States, including unlawfully present aliens, due process claims arising from removal proceedings should be raised in the immigration forum. Due process protections for aliens in removal proceedings are extensive and are properly reviewed through the immigration court and petition for review process. These include the right to a hearing, the right to counsel, the right to present evidence, and the right to cross-examine witnesses. Petitioner has not been denied these protections, but rather, she has been served with Notices to Appear and will have a full hearing before an immigration judge where they may raise any Fifth Amendment due process claims relevant to their proceedings. Petitioner has failed to state any facts in this Petition demonstrating she has been denied due process in any forum, and therefore their Fifth Amendment claim should be dismissed for failure to state a claim.

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[1] Although the main claim asserted in J.G.G. involved the Aliens Enemy Act, the same legal principle applies.

To the extent Petitioner argues that her stop and arrest violated due process because officers lacked reasonable suspicion or probable cause, such claims "are inextricably linked" to their removal proceedings and thus must be brought through the petition for review process, not district court habeas. *J.E.F.M.*, 837 F.3d at 1032-33 (quoting *Martinez v. Napolitano*, 704 F.3d 620, 623 (9th Cir. 2012)). Additionally, any such claims are simply an attempt to relabel their Fourth Amendment unlawful seizure allegations which, as established above, cannot be argued in the present habeas petition under the facts of this case.

E. THE ONLY PROPERLY NAMED RESPONDENT IN THIS HABEAS PETITION IS THE ACTING FIELD OFFICE DIRECTOR OF ICE

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 U.S. Immigration and Customs Enforcement ("ICE"), and the Secretary of the Department of Homeland Security ("DHS") are not proper respondents to this habeas petition because none of those officials has 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.").

Here, Laura Hermosillo, the Seattle Acting Field Office Director of ICE/ERO, is the only person with proper custody under the INA and is the only properly named Respondent in this habeas action. All other Respondents lack the requisite custody or immediate control over Petitioner's detention and should be immediately dismissed from this action.

F. PETITIONER HAS NOT PAID HER REQUIRED FILING FEES

Petitioner has failed to pay the required filing fee for her Petition. While habeas petitions carry a $5 filing fee set by 28 U.S.C. § 1914(a), claims under the APA, Fourth Amendment and Fifth Amendment require a Petitioner to pay the standard civil action fee which is currently $405. As such, the Court should decline to entertain Petitioner's civil action claims unless and until they pay the required filing fee.

CONCLUSION

For the foregoing reasons, the Court should deny the Petition.

Respectfully submitted this 22nd day of November 2025.

SCOTT E. BRADFORD
United States Attorney
District of Oregon

/s/ Susanne Luse
SUSANNE LUSE
Assistant United States Attorney
Attorneys for Respondents