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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Portland Division

M-E-G-G-, an adult, Petitioner, v. LAURA HERMOSILLO, Acting Seattle Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"); TODD LYONS, Acting Director of Immigration Customs Enforcement ("ICE"); U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM, Secretary of the Department of Homeland Security ("DHS"); U.S. DEPARTMENT OF HOMELAND SECURITY; and PAMELA BONDI, Attorney General of the United States, Respondents.	Case No. 3:25-cv-2160-AB Agency No. xxx-xxx-503 **PETITIONER'S RESPONSE-TRAVERSE ISO PETITION FOR WRIT OF HABEAS CORPUS** ORAL ARGUMENT REQUESTED Expedited Hearing Requested

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PETITIONER'S TRAVERSE ISO PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

Like thousands of Oregonians everywhere, on Friday morning, November 21, 2025, Petitioner M-E-G-G- was simply heading into work, when multiple vehicles swarmed her, forced her to pull over, and trapped her on the side of the road. This action was part of an ongoing and indiscriminate dragnet meant to achieve a quota of arrests, regardless of what the law requires the U.S. Department of Homeland Security ("DHS") to do when taking away someone's liberty.[1] DHS had no basis to stop M-E-G-G-, had no warrant or probable cause to arrest her, and made no individualized custody determination before transferring her to an out-of-state detention center away from her community and legal representation. Even now, several days into her illegal executive detention, DHS has yet to propound any lawful basis for her detention.

Respondents' position, as expressed in their papers filed in this case, is that DHS has limitless power to arrest and detain anyone—citizen and immigrant alike—merely because DHS wants to. Using massive, intrusive—and, as it turns out—faulty surveillance and so-called "intelligence" units, they use tools such as automated license plate readers and facial recognition to pluck innocent people from neighborhoods and drop them into the vast and cruel immigration detention system. They brazenly describe using *blank, pre-signed* arrest warrants as if they were permission slips allowing them to be excused from the U.S. Constitution.

But the U.S. Constitution could not speak more clearly: "No person shall be . . . deprived of life, liberty, or property, without due process of law". U.S. Const. amend. V. Petitioner M-E-G-G-'s detention has been unlawful at every moment. Respondent DHS unlawfully stopped and detained her, without reasonable suspicion; unlawfully arrested her without a warrant and without probable cause or reason to believe she had committed an immigration violation, and that she would flee before a warrant

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[1] *See Oregon v. Trump*, No. 3:25-cv-01756-IM, ECF 146 at 52 (D. Or. Nov. 7, 2025) ("Director Wamsley testified that she set a field office-wide 'goal of 30 arrests a day' and that there are days when the office 'meet[s] or exceed[s] that goal'.")

could be obtained; and denied her a meaningful opportunity to be heard in violation of her constitutional right to due process and Respondents' own regulations.

Respondents' Response does not offer *any* explanation or authority for the "true cause" of her detention, as required by 28 U.S.C. § 2243. *See* Respondents' Response to Habeas Petition (hereinafter, "Response"), ECF 6. Instead, they submit a declaration from an agent in the Miami Field Office who was not personally present at Petitioner's arrest, whose attempt to justify Petitioner's stop and arrest relies almost exclusively on inadmissible hearsay. Declaration of Jeffrey Di Primo ("Di Primo Decl."), ECF 7. Respondents then raise inapposite, malformed legal arguments that Petitioner may not challenge her unlawful detention in habeas proceedings. ECF 6 at 2. Respondents are incorrect. Because Respondents can provide no lawful authority for Petitioner's detention at any moment – nor do they even attempt to justify her continuing custody – this Court should "dispose of the matter as law and justice require" by granting the writ with appropriate remedies. 28 U.S.C. § 2243.

FACTUAL BACKGROUND

On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including "Protecting the American People Against Invasion," an executive order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The "Protecting the American People Against Invasion" EO instructs the DHS Secretary "to take all appropriate action to enable" ICE, U.S. Customs and Border Protection ("CBP"), and U.S. Citizenship and Immigration Services ("USCIS") to prioritize civil immigration enforcement procedures, including through mass detention. At the same time, President Trump has indicated that noncitizens like M-E-G-G- are not entitled to due process, the Fifth Amendment notwithstanding.[2]

In late May, Respondent Secretary Noem and White House Deputy Chief of Staff Stephen Miller met with ICE leadership, setting a new arrest quota of 3,000 arrests per day and reportedly threatening job consequences if officials failed to meet arrest quotas.[3] On May 28, Miller confirmed that "[u]nder President Trump's leadership, we are looking to set a goal of a minimum of 3,000 arrests for ICE every day, and President Trump is going to keep pushing to get that number up higher each and every single day."[4] Following the directive from Noem and Miller, ICE agents were instructed in an e-mail to "turn the creativity knob up to 11" and aggressively "push the envelope" in arrests, including by pursuing "collaterals"—individuals for whom the agency by definition would not have arrest warrants.[5] As another e-mail put it: "If it involves handcuffs on wrists, it's probably worth pursuing."[6] Respondent and former-ICE Seattle Field Office Director Cammilla Wamsley recently testified that her office had set a goal to detain at least fifty immigrants a day in Oregon. *See Oregon v. Trump*, No. 3:25-cv-01756-IM, ECF 146 at 52 (Nov. 7, 2025).

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[2] *See, e.g.,* NBC News, Meet the Press interview of President Donald Trump (May 4, 2025), https://www.nbcnews.com/politics/trump-administration/read-full-transcript-president-donald-trump-interviewed-meet-press-mod-rcna203514, https://perma.cc/9HHY-35JC (last visited Sept. 18, 2025) (in response to a question about whether noncitizens deserve due process under the Fifth Amendment, President Trump replied "I don't know. It seems—it might say that, but if you're talking about that, then we'd have to have a million or 2 million or 3 million trials.").

[3] Elizabeth Findell, et al., *The White House Marching Orders That Sparked the L.A. Migrant Crackdown*, The Wall Street Journal (June 9, 2025), https://www.wsj.com/us-news/protests-los-angeles-immigrants-trump-f5089877; Julia Ainsley, et al., *A sweeping new ICE operation shows how Trump's focus on immigration is reshaping federal law enforcement*, NBC News (June 4, 2025), https://www.nbcnews.com/politics/justicedepartment/ice-operation-trump-focus-immigration-reshape-federal-lawenforcement-rcna193494; Brittany Gibson & Stef W. Kight, Scoop: *Stephen Miller, Noem tell ICE to supercharge immigration arrests*, Axios (May 28, 2025), https://www.axios.com/2025/05/28/immigration-ice-deportations-stephen-miller.

[4] Hannity, Stephen Miller says the admin wants to create the strongest immigration system in US History, FOX NEWS (May 28, 2025), https://www.foxnews.com/video/6373591405112.

[5] José Olivares, *US immigration officers ordered to arrest more people even without warrants*, The Guardian (June 4, 2025), https://www.theguardian.com/us- news/2025/jun/04/immigration-officials-increased-detentions-collateral-arrests, https://perma.cc/54HH-SNSN.

[6] *Id.*

On November 14, 2025, Respondents' head of the U.S. Border Patrol boasted that "Operation Oregon Support: PORTLAND SWEEP" was "cracking down hard" and that "[w]e're not done yet!". Chief Michael W. Banks (@USBPChief), X, https://perma.cc/9XPB-DVXV (last visited Nov. 23, 2025). So-called U.S. "Border Czar" Tom Homan has singled out Portland for DHS's lawless tactics explaining that agents will "flood the zone". *U.S. Border Czar threatens to 'flood' Portland, other cities with ICE agents*, FOX News 12, https://perma.cc/N8KX-DS5J , (last visited Nov. 23, 2025).

The overriding message, communicated by and to Respondents, is that agents and officers carrying out immigration operations on the ground must prioritize arrest numbers, regardless of an individual's circumstances and that detention is more important than the law.

I. Petitioner's Unlawful Detention

Petitioner M-E-G-G- is a long time Oregonian; a mother to four U.S- citizen children, including a 12-year-old daughter; a grandmother to a five-month-old baby, who she is helping her young son raise and for whom she is the main caretaker; and the primary caregiver for her elderly mother, who is a Lawful Permanent Resident with memory issues.[7] Declaration of M-E-G-G- ("Pet. Decl.") ¶ 2. Early in the morning of November 21, 2025, a team of ICE officers was surveilling her home, searching for someone else, and followed her as she left her home and drove to work cleaning houses. *Id* ¶¶ 3-4.; Di Primo Decl., ECF 7 at ¶ 4. About a block away from her home, a truck drove towards her from the front, flashing its headlights; Petitioner thought it would crash into her. Pet. Decl. ¶¶ 4-5. When Petitioner slammed on the brakes to avoid a crash, two other cars quickly blocked her in, one behind and one on the side, perfectly surrounding her and caging her in. *Id.* ¶ 5.

"[U]pon approaching the vehicle," the ICE agents "observed that the driver of the vehicle, Petitioner, ***was not their target***." Di Primo Decl. ¶ 5 (emphasis added). Nevertheless, masked officers proceeded to detain and interrogate M-E-G-G-, who was clearly unable to leave the encounter, as her

[7] Petitioner's complaint, based on information and belief at the time, erroneously identified Petitioner's mother as a U.S. citizen. *See* ECF 1 ¶ 40. Upon review of her documentation, Petitioner's counsel have confirmed that she is a Lawful Permanent Resident.

car was blocked in. Pet. Decl. ¶¶ 5-7. Petitioner was fully compliant with officers' instructions as she understood them during the encounter. *Id.* ¶¶ 8-9. M-E-G-G- did not attempt to flee after ICE stopped the car; indeed, Respondents' declarant states that she "immediately complied" when instructed to roll down her window, provided her state driver's license, and later when told to step out of her car. Di Primo Decl. ¶¶ 5-6, 9. Pet. Decl. ¶¶ 8-9.

During this encounter, Petitioner "felt terrified and very intimidated" and "did not feel that [she] was free to leave". *Id.* ¶¶ 6-7. None of the agents identified themselves or showed Petitioner any documents. *Id.* ¶ 10. Petitioner asserted her right to remain silent, but the agents continued to pressure her to answer their questions. *Id.* ¶ 8. They also took pictures of her, apparently to run through their facial recognition software, which their declarant states returned no results. *Id.* ¶¶ 8, 13; Di Primo Decl. ¶*Id.* ¶¶ 8, 13; Di Primo Decl. ¶ 7.[8] DHS agents did not have a warrant for M-E-G-G-'s arrest before stopping and detaining her; instead, they (purportedly) received approval from a remote DHS supervisor to add her information to a *blank, pre-signed* form I-200 agency administrative warrant after the arrest had already occurred. *Id.* ¶ 8.

After transporting Petitioner to the Portland ICE Field Office, Respondents took Petitioner's fingerprints. Pet. Decl. ¶ 13. At one point, while M-E-G-G- was being processed, an agent told her that they would have let her go if she had given them information on their alleged target.[9] *Id.* ¶ 14.

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[8] Jay Stanley, *Face Recognition and the 'Trump Terror': A Marriage Made in Hell*, ACLU News & Commentary, Nov. 13, 2025, https://www.aclu.org/news/privacy-technology/ice-face-recognition.

[9] This appears to be a common deceptive, and undoubtedly cruel, tactic of the agency. *See* Benjamin Weiser & Luis Ferré-Sadurní, *ICE Frees Blind Man Who Was Detained for Days in Isolation*, NY Times, Nov. 18, 2025 ("The federal immigration agents were seeking to arrest Mr. Chalco Chango's 20-year-old son, and they approached the older man to show him a picture of their 'intended target' on a cellphone, according to government filings. Mr. Chalco Chango told them that he was blind and could not see the image, according to his lawyers, who said the agents pushed him against a wall, handcuffed him and put him inside a car. An agent told him in Spanish to call his son and tell him to turn himself in, his lawyers said. Then, the agent said, Mr. Chalco Chango would be free to go. But when Mr. Chalco Chango's son showed up, the agents arrested him, too.").

Respondents subsequently transported Petitioner to the detention center in Tacoma, Washington, where she remains detained. *Id.* ¶¶ 15-22.

II. Respondents' Response and Accompanying Declaration

On November 22, 2025, Respondents filed papers captioned "Response to Habeas Petition," ECF 6, and an accompanying evidentiary declaration from Jeffrey Di Primo, ECF 7. In the Response, Respondents assert broadly that "the facts are undisputed that their [sic] detention and arrest were [sic] lawful." Response, ECF 6 at 2. Respondents argue that the petition should be denied because violations of the Fourth Amendment cannot be raised to challenge detention and that Fourth Amendment challenges can only be brought in administrative immigration court proceedings as a defense against removal (but not detention) or via a damages action and thus, these claims, should be dismissed for lack of jurisdiction. ECF 6 at 4-8. Respondents argue that the Fourth Amendment claim was insufficiently pled and that the evidence presented in the Di Primo Declaration is undisputed, therefore the Fourth Amendment claim should be dismissed on the merits. ECF 6 at 8-15. Respondents assert that unlawful stops and seizure claims can only be raised through the Fourth Amendment and therefore any Administrative Procedure Act claims are barred in habeas proceedings. ECF 6 at 16-17. Respondents assert that the Fifth Amendment claim can only be heard by an administrative immigration court in removal proceedings and therefore is jurisdictionally barred. ECF 6 at 17-18. Finally, Respondents assert that the only proper respondent is Laura Hermosillo and that Petitioner has to pay an additional $405 in filing fees to assert her APA, Fourth Amendment, and Fifth Amendment claims. ECF 6 at 18-19.

As explained below, the Respondents' arguments lack merit. The Respondents' arguments are based on non-existent facts, inadmissible facts or a flawed factual understanding, and their legal arguments are both incoherent and wrong. The Court may grant this petition and order the Petitioner's release on at least three independent, related grounds: (a) the Respondents have no admissible evidence to support the detention; (b) the Respondents have not identified a single statutory basis authorizing the Petitioner's detention; *or* (c) the Petitioner's executive detention violates her constitutional and statutory rights. Each of these grounds independently provide a basis for ordering M-E-G-G's immediate release.

ARGUMENT

I. The Petition Should Be Granted Because There Is No Statutory Authorization For Detention.

The Court may grant the petition and order M-E-G-G's immediate release because the Respondents have failed to identify any statutory basis that could authorize her detention. Accordingly, the Court may grant the petition on *all* of the claims.

By statute, Respondents' must file a return (styled here by Respondents as a "response") that sets forth the "true cause" of detention. 28 U.S.C. § 2243. For habeas purposes, the statute provides that "[t]he person to whom the writ or order is directed shall make a return certifying the true cause of the detention." 28 U.S.C. § 2243. Nowhere in 19 pages of argument do they mention *any* statute that could possibly purport to authorize M-E-G-G's detention. Likewise, in the twelve paragraphs of their supporting declaration, not once do the Respondents state the legal basis for the detention.

By court order, the Respondents were to set forth the statutory basis for the detention. ECF 4 at 3. The Court set forth a filing deadline if the "sole basis for detention is under 8 U.S.C. § 1225(b)(2)(A)" as November 22, 2025 by 12:30 PM. Otherwise, the Respondents' papers were due November 24. While the Respondents filed by the first deadline, again, nowhere do they say that the sole basis of detention is under § 1225(b)(2)(A). In fact, they do not mention *any* detention authority *anywhere* in their papers. The purpose of the true certification requirement of 8 U.S.C. § 2243 is so that the Court may have a record on which to assess the lawfulness of the executive detention. The purpose of the Court's order was to refine or narrow the issues for litigation. The failure to comply with both the statutory directive to identify the "true cause" and the Court's order to identify the basis for detention means that there is no statutory basis for the Petitioner's detention. The agency must always have a statutory grant of authority to act, and this principle is all the more salient when agency action takes the form of physical restraint. *See, e.g., Ryan, LLC v. Fed. Trade Comm'n*, 746 F.Supp.3d 369, 387

(N.D.Tex. 2024) ("Agencies … have only the powers that Congress grants through a textual commitment of authority.") (cleaned up).

Therefore, the Court may grant the petition based on any or all of the claims because there is no identified statutory basis for the detention.

II. The Petition Should be Granted Because There is No Evidence that Authorizes Detention.

Even assuming a cognizable grant of statutory authorization for detention, the Court may grant the Petition and order the Petitioner's release on any or all of the claims because there is no admissible evidence that gives rise to any lawful reason under the INA's detention provisions. 28 U.S.C. § 2243; 8 U.S.C. § 1226(a); 8 U.S.C. § 1357(a). The Court should strike the inadmissible statements in the Declaration of Jeffery Di Primo, ECF 7. In their Response, Respondents rely exclusively on the declaration of Special Response Team Operator Jeffrey Di Primo from the Miami Field Office of U.S. Customs and Border Protection as evidentiary support for the agency action. Respondents offer no other evidence of any kind. Their sole witness and declarant asserts facts that are outside his personal knowledge and are, therefore, inadmissible hearsay. In other places, their witness attests to facts about documents that were not offered into the record and thus his statements violate the best evidence rule. The Court should strike the inadmissible portions of the Di Primo Declaration. Accordingly, there is no evidence to suggest any authorization that M-E-G-G- may be detained under the immigration laws, and the Court should order the Petitioner's release.

A. The Federal Rules of Evidence apply in proceedings under 28 U.S.C. § 2241

The Federal Rules of Evidence generally apply in proceedings under 28 U.S.C. § 2241. Federal Rule of Evidence 1101 states that the Rules govern "civil cases and proceedings," and then lists several exceptions, none of which includes habeas proceedings. Fed. R. Evid. 1101(b), (d). Subsection (e) then clarifies that another statute or set of rules "may provide for admitting or excluding evidence independently from these rules." Fed. R. Evid. 1101(e). That exception also does not apply, as federal habeas rules do not displace the Rules of Evidence. Significantly, the comment to Rule 1101 clarifies that "[t]he rule does not exempt habeas corpus proceedings." Fed. R. Evid. 1101 advisory committee's note to subdivision (d). Consistent with this reading, the Supreme Court has applied the Federal Rules of Evidence to determine admissibility in a habeas proceeding. *See, e.g.*, *Amadeo v. Zant*, 486 U.S. 214, 227 n.5 (1988). By their plain text, the Federal Rules of Evidence make clear that they apply in full force in the present case.

B. The Di Primo Declaration is inadmissible hearsay and violates the best evidence rule.

The Di Primo Declaration is inadmissible in this proceeding because it is almost entirely hearsay and violates the best evidence rule. Hearsay is defined as an out-of-court statement submitted for the truth of the matter asserted in that statement. *See* Fed. R. of Evid. 801(c); *see also United States v. Lucas-Hernandez*, 102 F.4th 1039, 1043 (9th Cir. 2024). While an opposing party's out of court statements are generally not hearsay, *see* Fed. R. Evid. 801(d)(2), the witness testifying to those out of court statements must have personal knowledge of them. *See* Fed. R. Evid. 602; *cf. Lucas-Hernandez,* 102 F.4th at 1043–44 (considering whether Border Patrol Agent's testimony was admissible when he relied on interpreter to testify to opposing party's statements); *Rivas v. Napolitano*, 714 F.3d 1108, 1116 (9th Cir. 2013) (Bea, J., concurring in part and dissenting in part) (explaining that a witness must have personal knowledge of opposing party's statements when testifying). The comment to Rule 602 explicitly explains,

> This rule does not govern the situation of a witness who testifies to a hearsay statement as such, if he has personal knowledge of the making of the statement. Rules 801 and 805 would be applicable. This rule would, however, prevent him from testifying to the subject matter of the hearsay statement, as he has no personal knowledge of it.

Fed. R. Evid. 602 advisory committee's note. When a statement contains "double hearsay" (two out-of-court statements that each qualify as hearsay), each statement must qualify under some exception to the hearsay rule. *See* Fed. R. Evid. 805; *see also, e.g., United States v. Arteaga*, 117 F.3d 388, 396 n.12 (9th Cir. 1997).

The best evidence rule provides that "[a]n original writing, recording, or photograph is required in order to prove its content unless these rules or a federal statute provides otherwise." Fed. R. Evid. 1002. "The rule is the familiar one *requiring* production of the original of a document to prove its contents[.]" Fed. R. Evid. 1002 advisory committee's note (italics added). In other words, a declarant cannot simply assert what a document contains where that document itself can "prove its content." *Id.; accord, e.g., United States v. Valdovinos-Mendez*, 641 F.3d 1031, 1035 (9th Cir. 2011) (finding the best evidence rule does not apply when an immigration official testifies as to the lack of records, and noting that this differs from testimony where the "[a]gent . . . testif[ies] to the contents of the records sought to be proved," in which case the rule applies); *Gonzalez v. City of McFarland*, No. 1:13-CV-00086-JLT, 2014 WL 3940295, at *3 (E.D. Cal. Aug. 12, 2014) (concluding that city violated the best evidence rule in submitting a declaration summarizing the contents of an auditor's report instead of the report itself); *Medina v. Multaler, Inc.*, 547 F.Supp.2d 1099, 1112 n.55 (C.D. Cal. 2007) (concluding that an employee's declaration was inadmissible under the best evidence rule where the employee stated that her supervisor sent emails that disparaged her because the employee did not produce the emails and instead testified as to their contents).

C. The Court should strike the inadmissible portions of the Di Primo Declaration.

The Petitioner asks the Court to strike the following paragraphs from the Di Primo Declaration because the application of the hearsay and best evidence rules to the declaration demonstrate that they are inadmissible as evidence:

Paragraph 3 of the Di Primo Declaration. Mr. Di Primo disclaims personal knowledge of the statements he claims were made by the Petitioner for the truth of those statements and attests to the contents of original records for the truth of the matter without presenting those records. He attests that: "I have reviewed DHS's records and databases regarding M-E-G-G-, AXXX-XXX-503, who is detained in ICE custody at the Northwest ICE Processing Center in Tacoma, Washington. The following is information I learned from reviewing DHS's records and databases, my professional knowledge and experience, and from other individuals employed by ICE." Di Primo Decl. ¶ 3. Because he disavows personal knowledge and only asserts knowledge based on his review of "DHS's records and databases" which the Respondents do not proffer and he attests to information he learned "from other individuals employed by ICE", everything that follows paragraph 3 is inadmissible hearsay or violates the best evidence rule.

Paragraph 4 of the Di Primo Declaration. Mr. Di Primo's declaration contains an oddity that bears remark and scrutiny by the Court as it seems to be written in a fashion that could mislead the Court about Mr. Di Primo's personal knowledge and serves to call into question his truthfulness. While Mr. Di Primo disavows personal knowledge in paragraph 3 of all the matters contained in paragraphs 4 through 12, paragraph 4 begins stating that "I and a team of DHS officers were conducting surveillance in Cornelius, Oregon…" but then shifts to the first person plural ("We had confirmed…We were located outside…we observed the white Toyota…we were unable to see…"). It appears that Di Primo is offering for the truth of the matter observations made by others which he attempts to elide as personal knowledge, which draws into question the veracity of all of Mr. Di Primo's assertions in his declaration.[10]

Paragraph 5 of the Di Primo Declaration. Paragraph 5 should be stricken in its entirety because it violates the hearsay rule and best evidence rule. Mr. Di Primo attests to the out of court observations of "DHS officers" and the out of court statements made by "[t]wo officers" who "asked the driver in English to roll down the vehicle's window…" Mr. Di Primo does not attest that he heard or observed these interactions and, therefore, cannot assert them based on his personal knowledge.[11]

Paragraph 6 of the Di Primo Declaration. Paragraph 6 should be stricken in its entirety because it violates the hearsay rule and is inadmissible. Mr. Di Primo attests to triple hearsay statements made by Petitioner—statements that are beyond his personal knowledge by at least three levels of

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[10] If the Court does not strike the Di Primo declaration, Petitioner requests an opportunity to issue interrogatories and conduct a deposition of Mr. Di Primo and the "DHS officers" referred to in the declaration. 28 U.S.C. § 2246; *E-M- v. Bostock*, 3:25-cv-1083-SI, ECF 28 (D.Or. 2025) (order granting discovery in habeas case).

[11] There are other reasons to suspect that Mr. Di Primo is not being truthful or, at a minimum, is obfuscating. According to M-E-G-G-, masked DHS agents swarmed her in multiple cars and aggressively blocked her in, even making think that the vehicle approaching from the front was going to crash into her and forcing her to slam on her breaks. Pet. Decl. ¶¶ 5-6. Mr. Di Primo does not disclose that the Petitioner asserted her right to remain silent, after which agents continued to pressure her to answer questions. *Id.* ¶ 8. Mr. Primo does not disclose that an officer told her she had been arrested for not answering questions about the agency's original target. *Id.* ¶ 13. None of these facts make it into Mr. Di Primo's declaration and their omission undermine the credibility of his declaration and his oath to tell the truth.

hearsay. Di Primo attests that unnamed and unidentified "DHS officers" –one who, he asserts without personal knowledge, is fluent in Spanish, and one who, he asserts without personal knowledge, spoke only English, "began speaking to [the Petitioner] in English" and then the "Spanish-speaking officer then began speaking to Petitioner, and he relayed to the English-speaking officer that Petitioner had told him that [the Petitioner] was from Mexico and had no legal right to be in the United States." Di Primo Decl. ¶ 6. This is triple hearsay. Respondents submit the Di Primo declaration for the truth of the content of the out-of-court statement of Petitioner made to the unnamed, unidentified Spanish-speaking officer who then made an out-of-court statement to the unnamed, unidentified English-speaking officer who then communicated that statement to Di Primo. *Id.* ¶ 6. Mr. Di Primo does not—anywhere—assert that he heard or observed any of these facts. None of the hearsay exceptions apply. Accordingly, paragraph 6 of the Di Primo Declaration should be stricken in its entirety.

Paragraph 7 of the Di Primo Declaration. Paragraph 7 should be stricken in its entirety because it violates the hearsay rule and best evidence rule and, thus, is inadmissible. Mr. Di Primo attests to out of court observations and impressions of "officers[,]" describes at least two original writings and a photograph not in evidence, and the out of court "confirmation" of an "intelligence unit with DHS[.]". Mr. Di Primo did not offer the original writings or photograph and does not assert that he heard or observed any of these facts. None of the hearsay exceptions apply. Accordingly, paragraph 7 should be stricken entirely.

Paragraph 8 of the Di Primo Declaration. Paragraph 8 should be stricken in its entirety because it is hearsay and violates the best evidence rule and thus is inadmissible.[12] Mr. Di Primo attests to out of court statements made by "DHS officers" to an "ICE supervisor at a remote location" who he further attests "is authorized to sign an arrest warrant." He attests that "the officers" made out of court

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[12] Shockingly, Mr. Di Primo describes a scheme by DHS to openly violate the U.S. Constitution and the Immigration and Nationality Act by signing *blank* warrants of arrest that are then used *after* an arrest and filled in *after* the arrest. That, of course, subverts the entire design of the Fourth and Fifth Amendments of the U.S. Constitution, not to mention the relevant statute and regulations. *See also infra* n. 15.

statements to the ICE supervisor who then made an out of court statement to the officers, who then filled in a signed, blank warrant of arrest signed by, apparently, a different ICE supervisor (one different than the "ICE supervisor at a remote location"). The out of court statements are offered by Respondents for the truth of the matter asserted therein to demonstrate the validity of an original record which is not in evidence. Mr. Di Primo does not assert that he heard or observed any of these facts. None of the hearsay exceptions apply. Moreover, the summary Mr. Di Primo offers of a document that Respondents rely on—the warrant of arrest—violates the best evidence rule because the document can speak for itself as to its contents. Accordingly, Paragraph 8 should be stricken in its entirety.

Paragraph 9 of the Di Primo Declaration. Paragraph 9's first sentence should be stricken because it is hearsay. Mr. Di Primo does not attest to personal knowledge and there are no applicable exceptions to the hearsay rule. The second sentence is hearsay or violates the best evidence rule but the sentence is irrelevant. As explained below, M-E-G-G- was arrested when she was swarmed by DHS agents. Mr. Di Primo's statement that "DHS officers then placed Petitioner under arrest" is an unsupported legal conclusion.

Paragraphs 10, 11, and 12 of the Di Primo Declaration. For paragraph 10, Mr. Di Primo asserts no personal knowledge as to the time M-E-G-G- was transported out of the district. For paragraphs 11 and 12, Mr. Di Primo does not offer the original writings which he purports to describe. These paragraphs violate the hearsay rule and the best evidence rule.

Paragraphs 1 and 2 of the Di Primo Declaration. Without any admissible statements to accompany paragraphs 1 and 2, the paragraphs alone violate the relevancy rule because Mr. Primo's employment and experience, if paragraphs 4 through 12 are stricken, are not germane to any issue at hand.

The Court should strike and disregard the Di Primo Declaration because it is inadmissible. All of the legal arguments asserted by Respondents in their Response rely *solely and exclusively* on the contents of the Di Primo Declaration. However, those paragraphs are inadmissible and Respondents did not offer any admissible evidence. Accordingly, there is no underlying support for their arguments. The assertions of counsel are not evidence. *See United States v. Combs*, 379 F.3d 564, 575 (9th Cir.

2004) (referencing the "standard jury instructions" that "statements and arguments of counsel [are] not evidence"). The Respondents provide *no* admissible evidence to support the executive detention of Petitioner. Accordingly, the court can grant the writ.

III. The Petition Should be Granted Because Petitioner's Executive Detention is Unlawful.

Respondents' Response offers no justification for any moment of Petitioner's custody that began on November 21, 2025. The uncontroverted facts of record establish that Respondents' agents stopped the vehicle in which Petitioner was traveling and seized her without any reasonable suspicion; conducted a warrantless arrest without any probable cause; and continued her detention without affording her the opportunity to be heard before an individualized determination of her custody was made, including by denying her the opportunity to meet with counsel before making such a determination. The Court should grant the writ and issue appropriate remedial relief on all Counts.

A. Respondents deprived Petitioner of her liberty in violation of her due process rights.

The Court should grant the writ on Count Six, because Respondents deprived M-E-G-G- of notice and a meaningful opportunity to be heard prior to her detention under the Due Process Clause of the U.S. Constitution.

Respondents' only legal authority to deprive an individual of liberty is delegated by Congress through the Immigration and Nationality Act ("INA"). This statutory custody authority must be read against the backdrop of the U.S. Constitution. *United States v. Witkovich,* 353 U.S. 194, 202 (1957) (affirming "cardinal principle" that statutes must be read in accordance with Constitution); *United States v. Butler*, 297 U.S. 1, 62 (1936) ("The Constitution is the supreme law of the land . . . All legislation must confirm to the principles it lays down."); *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001) (limiting statutory custody authority for post-removal order detention because it must be "read in light of the Constitution's demands"). "No person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const. amend V. It is well-established that the Due Process Clause of the Fifth Amendment applies to "all 'persons' within the United States," irrespective of their immigration status. *J. G. G.*, 145 S. Ct. 1003, 1005 (2025) (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993));

Zadvydas, 533 U.S. at 693. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). Due process also requires notice and "the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)); *Jimenez v. Bostock*, 2025 WL 2430381, at *6 (D.Or. Aug. 22, 2025).

Following her warrantless arrest, Respondents continued to detain Petitioner without giving her a meaningful opportunity to be heard before making an individualized custody determination. After a warrantless arrest, 8 U.S.C. § 1357(a)(2) requires that the individual arrested "be taken without unnecessary delay" for further consideration of "their right to enter or remain in the United States." Under 8 U.S.C. § 1226(a), immigration officers may choose to either extend detention or to release an individual from custody; this decision is based on an individualized determination of their danger and flight risk. *See* 8 U.S.C. § 1226(a); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). Unless there is an emergency—here, there was none—the regulations require an individualized opportunity to be heard on whether detention is warranted. The regulation at 8 C.F.R. § 287.3(d) requires that, within 48 hours of a warrantless immigration arrest, an immigration officer make an individualized custody determination as to whether the noncitizen should remain in custody or be released. Likewise, the regulation at 8 C.F.R. § 236.1(c)(8) requires an opportunity for the noncitizen to be heard on flight risk and dangerousness.

Respondents offer no statutory basis for Petitioner's current custody. *See generally* Response. The record thus demonstrates that Respondents have detained Petitioner in violation of her due process rights because they have made no individualized custody determination that justifies Petitioner's current detention – let alone provided her with notice and an opportunity to be heard. Respondents' arguments that conflate removability with detention do not hold otherwise. Nor may Respondents lawfully justify Petitioner's custody as "mandatory" based on a misreading of their custody authority under 8 U.S.C. § 1225(b)(2)(A).

Where the government seeks to deprive an individual of a protected interest, the Supreme Court has directed that courts balance three factors to determine what process is due:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. at 335. In applying this balancing test, it is clear that Respondents provided inadequate process when they deprived Petitioner of her right to be heard before receiving an individualized custody determination. The three-factor test established in *Mathews* is the controlling framework for determining what process M-E-G-G- is due. *See Jimenez*, 2025 WL 2430381, at *6-7 (applying *Mathews* factors to uphold immigration petitioner's right to an individualized custody determination).; *see also E.A. T.-B. v. Wamsley*, 2025 WL 2402130, at *3-6 (W.D. Wa. Aug. 19, 2025) (applying *Mathews* factors to assess right to pre-deprivation hearing). Here, all three factors strongly favor Petitioner.

First, M-E-G-G- has an exceptionally strong interest in freedom from physical confinement and in an opportunity to be heard prior to any restraint of her liberty. "Freedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690; *see also Jimenez*, 2025 WL 243038 *6-7. Thus, "[d]etention, including that of a non-citizen, violates due process if there are not 'adequate procedural protections' or 'special justification[s]' sufficient to outweigh one's 'constitutionally protected interest in avoiding physical restraint.'" *Perera v. Jennings*, 598 F. Supp. 3d 736, 742 (N.D. Cal. 2022) (second alteration in original) (quoting *Zadvydas*, 533 U.S. at 690). Similarly, the Ninth Circuit has held that "[i]n the context of immigration detention, it is well-settled that 'due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)). The Supreme Court has long underscored this point. *See, e.g., Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." (citation omitted)). Petitioner's liberty interest is particularly weighty given the civil context of immigration detention. *See*

Ortega v. Bonnar, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (explaining that "[g]iven the civil context, [a noncitizen's] liberty interest is arguably greater" that the interest of parolees in the criminal context). M-E-G-G- has a further heightened interest in her liberty given her care for her dependent minor daughter and five-month-old grandson (both U.S. citizens) and her role as the primary caretaker for her elderly, ailing mother, a Lawful Permanent Resident. Pet. Decl. ¶ 2.

Second, "the risk of erroneous deprivation of [Petitioner's] liberty interest in the absence of a pre-detention hearing is high." *E.A. T.-B.*, 2025 WL 2402130, at *4. The procedural safeguards that Petitioner seeks are notice and the opportunity to be heard in the custody determination process that Respondents are legally required to engage in pursuant to statute and regulation, as well as her Due Process rights. *See Jimenez*, 2025 WL 2430381 at *7 (finding *Mathews* factors favor Petitioner where "Petitioner only asks for Respondents to follow the procedural safeguards already in place in applicable statutes and regulations."). These authorities require that Petitioner be given notice and an opportunity to be heard before Respondents conduct an individualized assessment to determine whether her individual facts and circumstances make her a flight risk or a danger to the community. *See* 8 U.S.C. §§ 1226(a); 1357(a)(2); 8 C.F.R. §§ 236.1(c)(8), 287.3(d); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. at 38.

Here, instead, Petitioner received neither notice or an opportunity to be heard before she was deprived of her liberty. *See generally* Pet. Decl. (describing her arrest and detention). The failure to provide notice in such circumstances violates the Due Process clause because it "deprive[d] [Petitioner] of any way to meaningfully contest the basis for [her] detention." *See Martinez v. McAleenan*, 385 F. Supp. 3d 349, 359-60 (S.D.N.Y. 2019) (granting a habeas writ where the Petitioner was denied the proper notice in the context of reinstatement of removal). Indeed, the right to be heard "has little reality or worth unless one is informed that the matter is pending" and can then choose how to respond. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *accord United States v. Rivera-Valdes,* No. 21-30177, 2025 WL 2672555, at *12 (9th Cir. Sept. 18, 2025) (en banc) (applying, to the immigration context, *Mullane*'s requirement that notice must be "reasonably calculated" to provide a meaningful opportunity to appear and contest the charges). Had Respondents conducted such an assessment, they would have been compelled to conclude that M-E-G-G-'s facts and circumstances did not present any lawful basis for detention. *See Zadvydas*, 533 U.S. at 690 (explaining that "government detention violates [the Due Process] Clause" in civil proceedings, including immigration proceedings, unless there is "a special justification, such as harm-threatening mental illness, [that] outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'") (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)); *see also Jackson v. Indiana*, 406 U.S. 715, 738 (1972) ("[D]ue process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.").

Finally, Respondents have no interest in depriving Petitioner of her procedural rights. As it stands, the record shows that Respondents never conducted an individualized custody determination purporting to justify Petitioner's continued custody, as explicitly required by 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.3(d) – nor, necessarily, did they give Petitioner the opportunity to heard before such a decision was made. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risk of flight and to prevent danger to the community. *Hernandez*, 872 F.3d at 981 (noting that "the temporary detention of noncitizens may sometimes by justified by concerns about public safety or flight risk"); *Zadvydas*, 533 U.S. at 689 (the two goals of the INA's custody authority are "ensuring the appearance of [noncitizens] at future immigration proceedings" and "[p]reventing danger to the community"); *see also* 8 C.F.R. § 236.1(c)(8) (requiring consideration of flight risk and dangerousness in custody determination under 8 U.S.C. § 1226(a)). Here, neither purpose of detention was satisfied. Based on the facts of record, Petitioner is not a flight risk. She has resided in Washington County for over twenty years, has four U.S.-citizen children, cares for her elderly Lawful Permanent Resident mother and five-month-old U.S.-citizen grandson, and was on her way to work in the early morning when Respondents' agents aggressively detained and arrested her without cause. Pet. Decl. ¶¶ 2, 4-5. Based on the facts of record, Petitioner is also not a danger to the community. She has no criminal record and, while asserting her right to remain silent, complied with ICE's requests at every step of the way. *Id.* ¶¶ 8, 9, 12; Di Primo Decl. ¶ 5-6, 9 (noting three times that Petitioner "immediately complied" with requests to roll down her window, provide identification, and to get out of her vehicle).

B. Respondents' custody of Petitioner has been unlawful from the moment of her stop and arrest.

Respondents' argument that "any claims of unlawful arrest are not cognizable under habeas" misses the entire basis of Petitioner's habeas petition: that from the moment of her initial stop, every moment of Petitioner's subsequent custody was unlawful. The questions the Court must resolve in Petitioner's habeas corpus proceedings are (1) whether Respondents' exercise of executive detention was unlawful and (2) if it was, what remedy is Petitioner due. To frame it another way, if M-E-G-G-'s arrest and subsequent detention as a result of that arrest was unlawful, does habeas provide a remedy for her unlawful executive detention? The answer is yes, because the unlawful stop and arrest are the only basis by which Respondents asserted their custody authority over M-E-G-G-. When Respondents arrested and detained Petitioner, they were required to have a lawful basis to do so. This Court squarely has equitable authority to determine whether such a lawful basis existed and, if not, to grant appropriate remedies. *See Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the *habeas* statute is "shaped to guarantee the most fundamental of all rights, [in order] to provide an effective and speedy instrument by which judicial inquiry may be had into the legality of the detention of a person").

1. Respondents conducted a stop and seizure of Petitioner without reasonable suspicion.

Under the Fourth Amendment and their own regulations, Respondents may not conduct a detentive stop of Petitioner without reasonable suspicion. Because Petitioner was stopped by Respondents without a qualifying reasonable suspicion, based on specific articulable facts, the Court should grant the Petition on Counts One, Two, and Five.

Pursuant to 8 U.S.C. §§ 1357(a)(1) and (3), immigration officers are authorized to conduct vehicle stops and question an individual "believed to be [a noncitizen] as to his right to be or to remain in the United States." However, the Fourth Amendment requires that such immigration stops, except those "at the border and its functional equivalents," must be based on reasonable suspicion. *United*

States v. Brignoni-Ponce, 422 U.S. 873, 884 (1975); *see also Benitez-Mendez v. I.N.S.*, 752 F.2d 1309, 1311 (9th Cir. 1983), *amended*, 760 F.2d 907 (9th Cir. 1983). Under federal regulations, before even briefly detaining an individual for questioning, an immigration officer must have "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 [a noncitizen] illegally in the United States." 8 C.F.R. § 287.8(b)(2). Race or apparent ethnicity, standing alone, cannot form the basis for reasonable suspicion. *Brignoni-Ponce*, 422 U.S. at 886-87. Similarly, reasonable suspicion may not be based solely on "[a] person's mere propinquity to others independently suspected of [unlawful] activity." *Perez Cruz v. Barr*, 926 F.3d 1128, 1138 (9th Cir. 2019).

Respondents' detentive stop of Petitioner's vehicle further violates their binding nationwide policy on vehicle stops. In deciding to stop a vehicle for civil immigration enforcement purposes, Respondent ICE must comply with the settlement agreement in *Castañon Nava et al. v. Dep't of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.) (hereafter, "*Nava* Broadcast Policy"). Pursuant to a October 7, 2025, order, ICE reissued the *Nava* Broadcast Policy to all ICE officers nationwide on October 22, 2025, with the instruction that it remain in effect through February 2, 2026. *See id.* at Dkt. 224, 224-1 at ¶ 5. Under this policy, ICE officers "may stop a vehicle to enforce civil immigration laws only if they are aware of specific, articulable facts that reasonably warrant suspicion that the vehicle contains [a noncitizen] who may be illegally in the country." *See* Settlement Agreement, *id.*, *available at* https://perma.cc/54EX-YGM7 (last visited Nov. 1, 2025).[13] Petitioner's stop without compliance with the *Nava* Broadcast Policy is a violation of the *Accardi* doctrine, which requires the agency to follow its own policies, and the APA. *See Accardi v. Shaughnessy*, 347 U.S. 260, 266-268 (1954); 5 U.S.C. § 706(2)(A).

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[13] Notably, the remedy for those arrested in violation of this agreement within the jurisdiction of the Chicago Field Office is prompt release from custody. *Castañon Nava v. Dep't of Homeland Sec.*, 2025 WL 2842146, at *5 ("Class members who are arrested contrary to the terms of the Agreement and are in ICE custody shall be released from custody on their own recognizance without posting bond as soon as practicable" unless subject to mandatory detention under the INA).

Respondents' Response offers no justification for Respondents' stop and seizure of Petitioner herself, let alone any "specific, articulable facts" sufficient to meet the lawful standard for reasonable suspicion. Respondents stopped the vehicle in which Petitioner was traveling to work based on surveillance on another target; by their own admission, immediately "upon approaching the vehicle, [DHS officers] observed that the driver of the vehicle, Petitioner, was not their target". Di Primo Decl. ¶ 5. Nevertheless, Respondents proceeded with the vehicle stop, during which Petitioner reasonably understood herself to be in the officers' custody. Pet. Decl. ¶¶ 5-7. Respondents blocked M-E-G-G-'s car into the side of the street with at least three vehicles and masked agents surrounded her car. *Id.* ¶¶ 5-6. Petitioner "did not feel that [she] was free to leave"; indeed, when she asserted her right to remain silent, agents continued to pressure her to answer questions. *Id.* ¶¶ 7-8. The record thus shows that Respondents conducted a detentive stop and seizure of Petitioner despite having *no* reasonable suspicion that she was unlawfully in the United States. The Court should grant the writ on Counts One, Two, and Five.

2. Respondents arrested Petitioner without probable cause.

Petitioner has a constitutional, statutory, and regulatory right to be free from immigration arrest without probable cause. Because Respondents arrested Petitioner without the requisite probable cause, the Court should grant the Petition on Counts One, Three, Four, and Five.

Respondents' warrantless arrest of Petitioner without probable cause of an immigration violation is in violation of their statutory and regulatory authority.[14] Under the INA, an immigration

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[14] The record demonstrates that Petitioner was subject to a warrantless arrest. Respondents have submitted no warrant of arrest into the record. To the extent that Respondents claim to have "obtained verbal approval from [an ICE supervisor at a remote location] to fill out a blank I-200 warrant of arrest that had been pre-signed by an ICE supervisor", *see* Di Primo Decl. ¶ 8, this evidence is inadmissible hearsay. *See supra* § II.B. Even if this paragraph were admissible, ICE may not issue an I-200 warrant of arrest in the field to an individual, such as M-E-G-G-, who is subject to a collateral arrest. *Castañon Nava*, No. 18-cv-3757, Dkt. 114 at 23-35 (N.D. Ill. Oct. 7, 2025) (concluding that "ICE lacked statutory and regulatory authority to engage in its policy of issuing I-200 warrants to collaterals in the field

officer may conduct a warrantless arrest only if that officer has "reason to believe" that an individual is in the United States in violation of the immigration laws and is "likely to escape before a warrant can be obtained for [their] arrest." 8 U.S.C. § 1357(a)(2). A "reason to believe" is equivalent to "the constitutional requirement of probable cause." *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980). 8 C.F.R. § 287.8(c)(2)(i) specifies that before making a warrantless arrest, an immigration officer must have probable cause "to believe that the person to be arrested has committed an offense against the United States or is [a noncitizen] illegally in the United States."

Here, Respondents had no justification for Petitioner's warrantless arrest – nor any probable cause of an immigration violation that could have justified their issuance of an administrative warrant after the fact. The record thus shows that Respondents conducted a warrantless arrest of Petitioner despite having *no* reasonable suspicion – let alone probable cause – that she was unlawfully in the United States. A warrantless immigration arrest "must be based on consent or probable cause" that the person is in fact a noncitizen. *Brignoni-Ponce*, 422 U.S. at 881–82; *id.* at 884 (explaining that the "broad congressional power over immigration ... cannot diminish the Fourth Amendment rights of citizens who may be mistaken for [noncitizens]"). Respondents arrested Petitioner following a vehicle stop in which she clearly asserted her constitutional right to silence. Pet. Decl. ¶¶ 5-8. Respondents' assertion that M-E-G-G- told officers she had "no legal right to be in the United States" is inadmissible triple hearsay. *See supra* § II.B.; Di Primo Decl. ¶¶ 1, 6 (describing what Petitioner supposedly told "Spanish-speaking

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without the concurrent or prior issuance of an NTA"); *see also Maldonado v. Bostock*, 2023 WL 5804021, at *3 (W.D. Wash. Aug. 8, 2023) (holding that the fact that "Section 236.1(b) states that certain immigration officers have authority to issue and serve a Form I-200 arrest warrant '[a]t the time of issuance of the notice to appear, or at any time thereafter and up to the time the removal proceedings are completed,' . . . does *not* mean that DHS may trigger Section 1226(a) *any time and in any circumstance . . . by issuing an arrest warrant*") (*quoting* 8 C.F.R. §236.1(b), emphasis added). Moreover, the issuance of a pre-signed warrant, apparently approved by a "supervisor at a remote location", cannot retroactively "cure" Petitioner's unlawful warrantless arrest which, at that point, had already occurred. *See Martinez v. McAleenan*, 385 F. Supp. 3d at, 359-60 (granting a writ of habeas corpus finding that Petitioners detention was unconstitutional at the time he was taken into custody and such detention cannot be 'fixed' *post hoc*).

officer" who "relayed [that] to the English-speaking officer", which at some later point became "information [the declarant] learned"). Moreover, even if Respondents' declaration were admissible and credible, it further states that when Respondents ran her biometric data through their systems without her consent, they found no information suggesting that she was unlawfully present in the United States. *See id.* ¶ 7. Indeed, any U.S. citizen would presumably have the same result of "no previous immigration encounters or status in the United States" that Petitioner's information returned. *Id.*

Based on the facts in the record, after Respondents had identified Petitioner as not their surveillance target, the only conclusion is thus that her warrantless arrest, which was part of Respondents' widespread sweeps aiming to meet quotas, was unlawfully based solely on her apparent race and ethnicity. It is clear that an immigration officer may not establish probable cause on the basis of race alone. *Brignoni-Ponce*, 422 U.S. at 886-87. Nor may an immigration officer establish probable cause on the basis of a noncitizen's silence pursuant to her Fifth Amendment rights. *See Hurd v. Terhune,* 619 F.3d 1080, 1088 (9th Cir. 2010) (affirming "the fundamental principle that a suspect's silence in the face of questioning cannot be used as evidence against him"). Because Respondents arrested Petitioner without probable cause to believe that she was unlawfully in the United States, the Court should grant the writ on Counts One and Three.

Petitioner's warrantless arrest was independently illegal because Respondents had no probable cause that she was a flight risk, such that Respondents had no time to reasonably obtain a warrant. The regulation at 8 C.F.R. § 287.8(c)(2)(ii) requires that before making a warrantless arrest, an immigration officer must make an individualized determination that an individual is "likely to escape before a warrant can be obtained." *See also Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995) (requiring officers to have "grounds for a reasonable belief that they were particularly likely to escape"). Respondents arrested Petitioner while she was on her way to work and boxed her in with multiple vehicles. Pet. Decl. ¶¶ 4-6. Petitioner asserted her right to remain silent and did not attempt to flee. *Id.* ¶¶ 8-9. If Respondents' declaration were admissible and credible evidence, it further describes how Petitioner "immediately complied" with Respondents' requests to roll down her window, provide identification, and step out of the vehicle. Di Primo Decl. ¶ 5, 6, 9. Because Respondents had no evidence *at all* to support a probable cause finding that Petitioner was a flight risk, the Court should grant the writ on Petitioner's Counts One and Four.

The Court should additionally grant the writ under Count Five, based on Respondents' violation of the *Nava* Broadcast Policy's provisions on warrantless arrests. Pursuant to this policy, ICE is required to consider a delineated set of factors before effectuating a warrantless arrest. In particular, before concluding whether or not the person is at risk of fleeing before a warrant is obtained, ICE must consider "the totality of circumstances," including "the ICE Officer's ability to determine the individual's identity, knowledge of that individual's prior escapes or evasions of immigration authorities, attempted flight from an ICE Officer, ties to the community (such as a family, home, or employment) or lack thereof, or other specific circumstances that weigh in favor or against a reasonable belief that the subject is likely to abscond." *See* Settlement Agreement, *Castañon Nava et al. v. Dep't of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.).[15] In conducting Petitioner's arrest, the record shows that Respondents' agents had *no* evidence weighing toward flight risk. To the contrary, the circumstances heavily weighed against a risk of flight: Petitioner was on her way to work and did not attempt to flee when stopped by immigration agents. Pet. Decl. ¶¶ 4-5, 8-9; Di Primo Decl. ¶ 5, 6, 9. Petitioner's warrantless arrest without consideration of the factors required by the *Nava* Broadcast Policy is again a violation of the *Accardi* doctrine and the APA. *See Accardi*, 347 U.S. at 266-268; 5 U.S.C. § 706(2)(A).

3. Respondents have continued to detain Petitioner based solely on information derived from her unlawful stop and arrest.

Respondents' declaration is not admissible, *see supra* § II, and Petitioner's custody under 8 U.S.C. § 1226(a) is not lawful, *see supra* § III.A. Even if they were, however, the Court should still

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[15] Notably, the remedy for those arrested in violation of this agreement within the jurisdiction of the Chicago Field Office is prompt release from custody. *Castañon Nava v. Dep't of Homeland Sec.*, 2025 WL 2842146, at *5 ("Class members who are arrested contrary to the terms of the Agreement and are in ICE custody shall be released from custody on their own recognizance without posting bond as soon as practicable" unless subject to mandatory detention under the INA).

grant the writ because by Respondents' own account, Respondents' assertion of Petitioner's immigration status is based solely on information derived from evidence that was the fruit of her unlawful stop and arrest.

Respondents relied on information that was solely the fruit of Petitioner's unlawful arrest to obtain her immigration records and to seek to justify her continued custody. Because Petitioner's "arrest and detention were blatantly unlawful from the start, the only commensurate and appropriate equitable remedy to even partially restore [her] is to immediate[ly] release [her] and enjoy the Government from similar transgressions." *See Martinez*, 385 F.Supp.3d at 373.

"Under [the exclusionary] rule, evidence obtained in violation of the Fourth Amendment cannot be used in a criminal proceeding against the victim of the illegal search and seizure", nor may "the fruits of the illegally seized evidence" be considered. *United States v. Calandra*, 414 U.S. 338, 347 (1974). The exclusionary rule is intended "to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures", *id.*, as well as to serve "the vital function of preserving judicial integrity", *Adamson v. Comm'r*, 745 F.2d 541, 546 (9th Cir. 1984). The Ninth Circuit has explicitly applied the exclusionary rule in civil proceedings where, as here, "evidence is obtained by deliberate violations of the fourth amendment, or by conduct a reasonable officer should know is in violation of the Constitution", *Adamson*, 745 F.2d at 545, including where an "egregious" violation of the Fourth Amendment occurs in an immigration arrest based on the subject's race, *Gonzalez-Rivera v. I.N.S.*, 22 F.3d 1441, 1452 (9th Cir. 1994) (concluding that "the officers' conduct in this case constituted a bad faith, egregious constitutional violation that warrants the application of the exclusionary rule"). *See also I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1050 (1984) (clarifying that its decision did not deal "with egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness"). Because Respondents' stop and arrest of Petitioner was an egregious violation of her Fourth Amendment rights, the exclusionary rule prevents Respondents from using any evidence obtained solely from that arrest any subsequent custody determination.

In the present case, Respondents seek to justify *a posteriori* an unlawful stop, warrantless arrest and seizure by utilizing information and evidence supposedly obtained from their egregious arrest of Petitioner without reasonable suspicion or probable cause. Even if it were admissible and credible, Respondents' declaration makes clear that they obtained Petitioners' immigration records *solely* based on biometric information taken as a result of Petitioners' egregious unlawful arrests. *See* Di Primo Decl. ¶ 7 (describing use of facial recognition software in course of unlawful stop and arrest). In such circumstances, Petitioner's biometric information and any subsequent records are properly suppressible under the exclusionary rule. *See United States v. Martinez-Rodriguez,* No. 1:25-CR-00200 (AMN), 2025 WL 2355630, at *10 (N.D.N.Y. July 23, 2025) (suppressing fingerprints derived from unlawful ICE traffic stop); *United States v. Cabrera*, No. 24-CR-02180-JAH, 2025 WL 1564872, at *4–5 (S.D. Cal. Mar. 28, 2025) ("Defendant's fingerprint which lead to the A-File are suppressible as fruit of the poisonous tree."); *see also Taylor v. Alabama*, 457 U.S. 687, 692–93 (1982) (concluding confession was fruit of unlawful arrest when it followed "initial fingerprints, which were themselves the fruit of petitioner's illegal arrest").

Respondents contend that it does not matter how Petitioner was detained and how they obtained the information about her immigration status, as "identity . . . is never itself suppressible." Response at 7. But the cases they cite are inapposite; Petitioner challenges here not the initiation of removal proceedings but the deprivation of her liberty, which occurred as a direct result of evidence obtained through her unlawful arrest. *See* Response at 6.[16] And even in the specific context of immigration

[16] The cases Respondents cite are also factually distinguishable from the case at hand in material ways. *Lopez-Mendoza* addresses the effect of an unlawful arrest on removability (determined in an immigration proceeding), *not* on the lawfulness of detention (determined in a habeas petition). *See* 468 U.S. at 1040. *Streeter v. Craven* involves a habeas challenge to the validity of a state criminal conviction. 418 F.2d 273, 274-75 (9th Cir. 1969). The quote from *L-J-P-L- v. Wamsley* is dicta, as the district court decided in that case that the mandatory detention statute for reinstatement of removal gave the Court "no choice but to conclude that, under existing laws, Petitioner's detention is lawful." 2025 WL 2430268, at *1 (D.Or. Aug. 22, 2025); *but see M-S-L- v. Bostock*, No. 6:25-cv-01204-AA, 2025

removal proceedings, although the person and identity of the respondent are not themselves suppressible, other evidence to prove unlawful stay or non-citizenship is inadmissible if it is the fruit of the unlawful arrest. *Lopez-Mendoza*, 468 U.S. at 1043. Importantly, where the only evidence leading to an individual's immigration record is obtained through unlawful arrest, courts have found that information derived from the unlawful arrest is suppressible as "fruit of impermissible government action". *See Cabrera*, No. 24-CR-02180-JAH, 2025 WL 1564872, at *4–5 (suppressing immigration records because they were "derived from information gathered pursuant to Defendant's unlawful seizure and detail statements made by the Defendant after his stop"); *Martinez*, 385 F. Supp. 3d at 367 (S.D.N.Y. 2019) (suppressing reinstatement order because "Defendants only produced and served that order by violating a host of Petitioner's Constitutional rights"). In other words, Respondents may not use information gained through their unlawful seizure of Petitioner as the basis for their subsequent custody determination and call it lawful. *See Martinez*, 385 F. Supp. 3d at 359-60; *Lopez-Mendoza*, 468 U.S. at 1043; *Cabrera*, No. 24-CR-02180-JAH, 2025 WL 1564872, at *5.[17]

Nor can the government cure the illegality of an arrest by producing retroactive documents. *Martinez*, 385 F. Supp. 3d at 359-60 (granting a writ of habeas corpus finding that Petitioners detention was unconstitutional at the time he was taken into custody and such detention cannot be 'fixed' *post*

WL 2430267, at *15 (D.Or. Aug. 21, 2025) (deciding a petitioner subject to the same reinstatement authority had been unlawfully detained and granting the habeas petition). The petitioner in *H.N. v. Warden, Stewart Detention Center*, was also held in "post-final-order-of removal detention as authorized by 8 U.S.C. § 1231(a)"; the court correctly noted that the validity of his *removal* order must be challenged through a petition for review to the Circuit court and could not be challenged via habeas. No. 7:21-cv-59-HL-MSH, 2021 WL 4203232, at *5 (M.D. Ga. Sept. 15, 2021). And the language from *Rodrigues De Oliveira v. Joyce* is arguably dicta since the court found jurisdiction and granted the habeas petition on different grounds. No. 2:25-cv-00291-LEW, 2025 WL 1826118 (D. Maine July 2, 2025).

[17] Respondents also incorrectly claim that the Supreme Court has overruled the Equal Protection Clause of the U.S. Constitution. Respondents misleading quote *Noem v. Vasquez Perdomo*, *see* Response at 14, but they cite not a holding but a *concurrence* by a single member of that Court. 2025 WL 2585637, at *3 (S. Ct. Sept. 8, 2025) (Kavanaugh, J., concurring); *see also Public Watchdogs v. Southern California Edison Co.*, 984 F.3d 744, 757 n.7 (9th Cir. 2020) (Supreme Court "concurring opinions have no binding precedential value").

hoc); Di Primo Decl. ¶ 8 (purporting to retroactively justify Petitioner's arrest with pre-signed warrant approved by remote supervisor). The Supreme Court has a longstanding line of precedents finding that when a deprivation of liberty is achieved by methods that offend Due Process and conduct that shocks the conscience, that detention is unlawful. *Rochin v. California*, 342 U.S. 165, 172-174 (1952) (reversing a judgment where a conviction was obtained by methods that offend the Due Process Clause and "conduct that shocks the conscience"). This is exactly the situation for Petitioner, particularly as any information gained by Respondents subsequent to Petitioner's unlawful stop and arrest was further in violation of Petitioner's clearly asserted invocation of her right to remain silent. *See* Pet. Decl. ¶ 8.

Respondents' purported justification for Petitioner's custody rests solely on information that was supposedly obtained in the course of and as the fruit of Petitioner's unlawful stop and arrest. Because Respondents purportedly confirmed that Petitioner had no prior immigration records or admission solely through their forced use of her facial biometrics and fingerprinting following her unlawful stop and arrest, *see* Di Primo Decl. ¶ 7; Pet Decl. ¶¶ 8, 13, 14, this information must be suppressed from their custody determination. *See United States v. Martinez-Rodriguez*, No. 1:25-CR-00200 (AMN), 2025 WL 2355630, at *10 (N.D.N.Y. July 23, 2025) (underlining that the government had not explained how any identity evidence was obtained independently from an unlawful seizure, and as such all evidence from the illegal stop – including agents observations, statements, fingerprints, photographs – would be excluded). The Court should thus suppress information obtained through Petitioner's unlawful stop and arrest, including any statements made or information obtained from facial recognition software and her fingerprints, as the fruit of their unlawful arrest, and further grant the writ on Count One.

C. Respondents may not lawfully detain Petitioner under 8 U.S.C. § 1225(b)(2)(A).

Although Respondents have not identified any statutory basis of custody authority, the timing of their Response – submitted before 12:30pm PT on Saturday, November 22 – may suggest that their sole basis for Petitioner's custody is 8 U.S.C. § 1225(b)(2)(A). *See* Order, ECF 4 (directing that

"Respondents shall, **by 12:30 PM on Saturday, November 22, 2025,** answer or respond to the Petition if Respondents sole basis for detention is under 8 U.S.C. § 1225(b)(2)(A).") (emphasis in original).

Respondents have no lawful basis to apply this custody authority to Petitioner. Respondents have adopted a new blanket policy to classify any noncitizens who previously arrived in the United States without documentation as subject to mandatory detention under 8 U.S.C. § 1225(b)(2). ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission, AILA Doc. No. 25071607, July 8, 2025, available at https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission. Dozens of federal courts have rejected this policy as unlawful, finding that 8 U.S.C. § 1225(b)(2) does not apply to individuals such as M-E-G-G- who are already residing in the United States and may not be detained without an individualized custody determination pursuant to 8 U.S.C. § 1226. *See, e.g.*, *J.Y.L.C. v. Bostock,* No. 3:25-cv-02083-AB (D.Or. Nov. 12, 2025) (citing over 30 habeas corpus cases across the United States rejected 8 U.S.C. § 1225(b)(2) as an unlawful custody application); *see also* Kyle Cheney, "More than 100 judges have ruled against the Trump admin's mandatory detention policy," POLITICO, Oct. 31, 2025 04:29 PM, https://www.politico.com/news/2025/10/31/trump-administration-mandatory-detentiondeportation-00632086. Moreover, courts have similarly found that sections 1226(a) and 1225(b)(2) are mutually exclusive, and the government may not contend that a person who has resided in the United States for months or even years is now an "applicant for admission" under §1225(b)(2). *Martinez v. Hyde*, 792 F. Supp. 3d 211, 223 (D. Mass. 2025) (concluding § 1225(b)(2) "simply had no application" in case of noncitizen detained who had entered the U.S. more than a year before); *Patel v. Crowley*, 2025 WL 2996787, at *5-9 (N.D. Ill. Oct. 24, 2025) (granting a habeas corpus petition after finding the BIA holding on *Yajure Hurtado* unpersuasive and stating that "virtually all courts that have considered this issue have rejected the reasoning" that a person "seeking admission" is synonymous with an "applicant for admission"); *see also Jennings v. Rodriguez*, 583 U.S. 281, 289, 138 S. Ct. 830, 838 (2018) (distinguishing § 1225, which applies to noncitizens "seeking admission into the country", from § 1226, authorizing detention for certain noncitizens "already in the country").

Respondents may not simply decide that §1225(b)(2) applies without at least some factual basis to assert that the Petitioner is an "applicant for admission." *See Patel*, 2025 WL 2996787, at *6. Instead, the only basis they could have—but for which they have no facts to support—would be 8 U.S.C. § 1226(a), for which they must conduct an individualized custody determination. *See supra* § III.A.

IV. Respondents' Additional Counter-Arguments Are Meritless.

Respondents make several arguments relating to jurisdiction and others about the merits. However, all of their arguments are meritless.

A. Respondents' jurisdictional arguments are meritless.

Respondents' arguments against Petitioner's due process claim, *see* Response at 4-6, 17-18, impermissibly conflate their authority to seek Petitioner's removal from the United States with their authority to lawfully detain her.

Whether Petitioner is removable from the United States is not the legal question at issue in this case. *See Carafas v. LaVallee*, 391 US 234, 238 (1968) (clarifying that the *habeas* statute entails "judicial inquiry . . . into the legality of the detention of a person"); *cf. Jennings v. Rodriguez*, 583 U.S. 281, 294, (2018) (finding habeas jurisdiction when a petitioner is "not even challenging any part of the process by which their removability will be determined"). Respondents allege that Petitioner is removable and have purported to initiate removal proceedings against her in immigration court. *See* Response at 4-6, 17; Di Primo Decl. ¶ 12. In those proceedings, Petitioner may raise defenses to removability and/or apply for relief from removal.

However, the existence of such removal proceedings does not limit this Court's jurisdiction to hear Petitioner's claims of unlawful detention brought in *habeas*. *See Zadvydas*, 533 U.S. at 688 (clarifying that INA's jurisdictional bars do "not deprive [a non-citizen] of the right to rely on 28 U.S.C. § 2241 to challenge detention that is without statutory authority"). Indeed, federal courts routinely grant release to noncitizens who are actively in removal proceedings pursuant to 8 U.S.C. § 1229a. *See, e.g.*, *Martinez v. Clark*, 124 F.4th 775, 779 (9th Cir. 2024) (on remand from the Supreme Court, acknowledging the district court's habeas jurisdiction to review an immigration judge's "dangerousness" finding in bond proceedings while removal proceedings are pending); *Jimenez,* 2025 WL 2430381, at *6 (granting the writ for asylum-seeking petitioner in removal proceedings); *O-J-M- v. Bostock*, No. 3:25-cv-00944-AB at 1 (D.Or. July 14, 2025) (granting release to asylum seeker whose removal proceedings were dismissed but not administratively final), *Y-Z-L-H- v. Bostock*, 792 F. Supp. 3d 1123, 1147 (D.Or. 2025) (same). Habeas relief is properly available even for noncitizens who have received an administratively final removal order. *See, e.g., Zadvydas*, 533 U.S. at 688 (holding that the government cannot detain a person indefinitely after an order of deportation); *M-S-L v. Bostock*, No. 6:25-cv-01204 at 34-35 (D. Or. Aug. 21, 2025) (granting release on pre-existing conditions of supervision for petitioner subject to administratively final reinstated order of removal); *Ceesay v. Kurzdorfer*, 2025 WL 1284720, at *15 (W.D.N.Y. May 2, 2025) (affirming that "[n]oncitizens subject to a removal order may be released pursuant to 8 C.F.R. § 241.4 or 8 C.F.R. § 241.13").

Additionally, neither jurisdictional bar that Respondents cite applies here. *See* Response at 4-6, 8, 17. No provision of the Immigration and Nationality Act strips this Court of jurisdiction over Petitioners' claims, which are brought in the core of habeas.

This Court's jurisdiction is not barred by 8 U.S.C. § 1252(g). This case challenges actions that are not among the actions enumerated in § 1252(g), which bars review when DHS exercise its *discretion* to "commence proceedings, adjudicate cases, or execute removal orders".[18] *See Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482-83 (1999). The provision is "narrow" and applies "only to [these] three discrete actions"- and *not* to the "many other decisions or actions that may be part of the deportation process." *Id.* at 482. Detention decisions decidedly do not

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[18] Moreover, even if this action could be construed as challenging one of these three discrete actions, a "district court may consider a purely legal question that does not challenge the Attorney General's discretionary authority, even if the answer to that legal question—a description of the relevant law—forms the backdrop against which the Attorney General later will exercise discretionary authority." *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004); *see also Madu v. U.S. Attorney Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006) ("While [section 1252(g)] bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions.").

fall among the three discretionary acts rendered unreviewable.[19] *See 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). Moreover, "§ 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Ibarra-Perez v. United States*, 154 F.4th 989, 997 (9th Cir. 2025). Neither does it bar constitutional claims or challenges to the government's authority to act in the first place. *See, e.g., Walters v. Reno*, 145 F.3d 1032 (9th Cir. 1998) (permitting due process claims against a legacy INS practice of obtaining removal orders) *and Arce v. United States*, 899 F.3d 796 (9th Cir. 2018) (permitting claim based on Attorney General's lack of authority to execute a removal order in violation of a court order). This is precisely the type of challenge brought here, as ICE altogether lacks the authority to arrest and detain Petitioner in violation of the U.S. Constitution, the INA, and their own agency policy.

Nor does 8 U.S.C. § 1252(b)(9) limit the Court's jurisdiction here, as this jurisdiction-stripping provision does not prevent federal courts from hearing cases "that do not directly challenge a final order of removal." *See Trinidad y Garcia v. Thomas*, 683 F.3d 952, 958 (9th Cir. 2012) (Thomas, J., concurring) (citing *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075 (9th Cir. 2006)). The statute is a "'targeted' and 'narrow' provision that is certainly not a bar where, as here, the parties are not

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[19] Respondents cite *Alvarez v. U.S. Immigration and Customs Enforcement*, 818 F.3d 1194 (11th Cir. 2016) for the opposite proposition, *see* Response at 5, but they are incorrect. *Alvarez*, which is not a habeas case, held that "the district court **erroneously concluded** that it had no jurisdiction to entertain the merits" of the Plaintiff's detention-related claim but that no *Bivens* remedy was available to him. *Id.* at 1212 (emphasis added). Though there is some discussion of § 1252(g) barring review of Alvarez's pre-removal order claims, *id.* at 1204, that is arguably dicta considering the case's holding. Regardless, the Petition here sounds squarely in habeas. *Burien v. Warden, et. al.*, is also not convincing, as the petitioner there had been issued a final order removal, that he did not appeal, and did not argue that "his warrantless arrest makes his custody unlawful", as Petitioner argues here. No. 25-cv-60459, 2025 WL 2763202, at *2-*3 (S.D. Fla. Sept. 26, 2025). And *S.Q.D.C. v. Bondi* is both on appeal, *see* No. 25-2823 (8th Cir. Sept. 16, 2025), and in tension with at least dozens, if not hundreds, of district court decisions to the country from around the country finding jurisdiction over similar facts. *See, e.g Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 at *7 (E.D. Mich. Sept. 9, 2025) (citing a dozen federal court decisions finding jurisdiction over habeas challenges to Respondents' novel and incorrect interpretation of their § 1226(b)(2)(A) detention authority).

challenging any removal proceedings.'" *Gonzalez v. U.S. Immigration and Customs Enforcement*, 975 F.3d 788, 810 (9th Cir. 2020) (quoting *Dep't of Homeland Sec. v. Regents v. Univ. of Cal.*, 140 S. Ct. 1891, 1907 (2020)). "[C]laims challenging the legality of detention" fall outside of (b)(9)'s reach. *Id.* (in the context of immigration detainers); *accord Ozturk v. Hyde*, 136 F.4th 382, 401 (2d Cir. 2025) (holding that (b)(9) did not foreclose review of an immigration habeas petition raising constitutional claims). Despite Respondents' insinuation otherwise, Response at 17, Petitioner here does not challenge any removal order,[20] review of which would be channeled to the federal courts only through a Petition for Review of the same; she challenges her unlawful detention via habeas. Thus, the Court is not barred by either of these provisions from hearing this case.

Moreover, even if a provision of the INA would ordinarily operate to limit the Court's jurisdiction, the Court still retains jurisdiction over Petitioner's core habeas claims pursuant to the Suspension Clause of the U.S. Constitution, which 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." U.S. Const. Art. I § 9, cl. 2. If this Court lacks jurisdiction to hear Petitioner's claims, there is *no* other adequate forum that would allow her, an Oregon resident with significant familial and community ties to the United States, to challenge her unlawful detention. Such a "miscarriage[] of justice" would undoubtedly run afoul of the Suspension Clause, the "fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." *Harris v. Nelson*, 394 U.S. 286, 290–91 (1969). Further, the Ninth Circuit has recognized that the Suspension Clause can be triggered when a petitioner is requesting release from custody. *Rauda v. Jennings*, 55 F.4th 773, 780 (9th Cir. 2022) (citing *Hamama v. Adducci*, 912 F.3d 869, 880 (6th Cir. 2018)). The Suspension Clause squarely applies here, where Petitioner seeks relief from unlawful executive detention.

B. Respondents' FTCA argument is meritless.

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[20] Indeed, no removal order appears to have been issued in Petitioner's case. *See* Di Primo Decl. ¶ 7.

The Respondents argument that the Petitioner may only bring an unlawful arrest claim in an FTCA proceeding is meritless. The statute plainly provides that a person who is in custody in violation of the Constitution or laws of the United States may sue in habeas. 28 U.S.C. § 2241(c)(3). Habeas—the Great Writ—is "the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action" and is sufficiently flexible to "reach all manner of illegal detention,...cut through barriers of form and procedural mazes," and "insure that miscarriages of justice...are surfaced and corrected." *Harris v. Nelson*, 394 U.S. 286, 290-91 (1969). The FTCA does not provide an injunctive remedy to resolve her *present, ongoing* detention in violation. True, Petitioner has a damages claim for the unlawful arrest and custody; but that is in addition to, not in lieu of her rights to invoke the Great Writ.

C. Respondents' "only proper respondent" and filing fee arguments are meritless.

The Respondents' argument that only the Seattle Field Office Director may be named as a respondent is meritless. While challenges to detention—the "core" of habeas—must be brought against the immediate custodian, *Rumsfeld v. Padilla*, 542 U.S. 426, 434-435 (2004), the Petitioner may name additional respondents when a remedy beyond just release is necessary, *Doe v. Garland*, 109 F.4th 1188, 1194-97 (9th Cir. 2024). There is no dispute that the immediate custodian, Hermosillo, is named in the petition. The additional respondents are necessary in order to provide an appropriate remedy for M-E-G-G-. But the Court need not reach this issue at all, because even if the Respondents had some basis to complain about the addition of respondents beyond the immediate custodian, it is immaterial to the primary remedy of release. *See Rasul v. Bush*, 542 U.S. 466, 478–79 (2004) ("[A] district court acts 'within [its] respective jurisdiction' within the meaning of § 2241 as long as 'the custodian can be reached by service of process.'"); *Dunn v. U.S. Parole Commission*, 818 F.2d 742, 744 (10th Cir. 1987) ("So long as the petitioner names as respondent a person or entity with power to release him, there is no reason to avoid reaching the merits of his petition.")

Their argument about the filing fee is meritless. The habeas statute provides that the writ extends to all persons who are "in custody in violation of the Constitution or laws or treaties of the United States[.]" 28 U.S.C. § 2241(c)(3). The Fourth Amendment and Fifth Amendment are part of the "Constitution…of the United States." The APA, the INA, and the associated regulations are part of the "laws…of the United States." The Accardi Doctrine arises under the "laws…of the United States."

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the writ of habeas corpus and issue the remedy that "law and justice require" in order to protect Petitioner from future unlawful deprivations of her liberty and her fundamental rights. *See* 8 U.S.C. § 2243.

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Respectfully submitted,

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