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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

FERNANDO PICHARDO MEDINA

Petitioner,

vs.

LAURA HERMOSILLA, Seattle Field Office
Director, U.S. Immigration and Customs
Enforcement and Removal Operation, et al.

Respondents.

) File No. 3:25-cv-02233-MC
)
)
) **BRIEF IN SUPPORT OF**
) **PETITION FOR HABEAS**
) **CORPUS**
)
) **ORAL ARGUMENT**
) **REQUESTED**
)
) Expedited hearing requested
)

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Petitioner submits the following brief in support of a writ of habeas corpus.

I. FACTS OF THIS CASE.

From March 25, 2014, to now petitioner has resided at [REDACTED]

[REDACTED] is located in a multi-unit building which is part of the Tyee Apartments. The petitioner's spouse and their fifteen-year-old son also reside there. No one else lives in [REDACTED]

On the morning of December 3, 2025, agents of respondents came to the area of the Tyee Apartments. They were looking for someone who appears to have had the initials J.F.V.V. Dkt 11-2, at 2 (partially redacted).

They could not find J.F.V.V. Instead, they arrested petitioner. The two reasons stated for his arrest were that he'd exited apartment IB, which they believed to be the residence of J.F.V.V, and that the petitioner "resembled" a photo of J.F.V.V. that was taken in 2006. Further facts will be set out below.

II. THIS COURT HAS JURISDICTION BY STATUTE.¹

Under 28 U.S.C. § 2431(c)(3) federal courts have jurisdiction over petitions for habeas corpus filed by persons "in custody in violation of the Constitution or laws or treaties of the United States." "Claims for relief [that] necessarily imply the invalidity

¹ Citing *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004), respondents assert, at Dkt 10, at 1, n.1, that only respondent Hermosillo, as the immediate custodian of petitioner, is the only proper respondent here. *Rumsfeld*, 542 U.S. at 443-44. *Rumsfeld* held only that for persons in "present physical confinement" the actual physical custodian must be named as the respondent. *Rumsfeld* did not hold that other persons, such as those authorizing the confinement, could not also be named. *Rumsfeld* only dealt with actual confinement for the purpose of deterring forum shopping. See *Rumsfeld*, 542 U.S. at 447. Constructive custody, such as release on conditions impacting liberty, is still custody for habeas purposes. Because the other respondents have the power to keep petitioner in constructive custody, they are also properly named.

of . . . confinement and removal . . . fall within the ‘core’ of the writ of habeas corpus and thus must be brought in habeas.” *Trump v. J. G. G.*, 145 S. Ct. 1003, 1005 (2025).

A. Jurisdiction is not barred by 8 U.S.C. § 1252(g).

In *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) Justice Alito, writing for a three justice plurality, cautioned that courts should not interpret Section 1252(g) "to sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General," but rather should "read the language to refer to just those three specific actions themselves." *Jennings*, 138 S. Ct. at 841.

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

While their suit was pending, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 110 Stat. 3009-546 (IIRIRA), enacted as 8 U.S.C. § 1252(g). The question was whether section 1252(g) deprived the courts of jurisdiction over the plaintiff’s suit. *Reno*, 525 U.S. at 473. The Supreme Court adopted a narrow interpretation of section 1252(g):

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

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

Petitioner challenges respondent's illegal and random arrest, which was in violation not only of the Fifth Amendment Due Process clause², but also of the Fourth Amendment³ right to not be subject to unreasonable search and seizure. See *United States v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007) (explaining that Due Process requires that government action be rational and non-arbitrary).

Detention decisions are not among the three discretionary acts rendered unreviewable by section 1252(g) See also *Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023)(finding that section 1252(g) did not bar judicial review of challenges to unlawful detention).

B. Jurisdiction is not barred by 8 U.S.C. § 1252(b)(9).

Respondents argue at Dkt 10, page 8, that 8 U.S.C §1252(b)(9)⁴ deprives this court of jurisdiction. In support, respondents cite *J.E.F.M. v. Lynch*, 837 F.3d 1026 (9th Cir. 2016). Dkt 10, at 8-9. *J.E.F.M.* But *J.E.F.M.* was decided before *Jennings v. Rodriguez*, 583 U.S. 281, 292-293 (2017).

² U.S. Const. amend. V.

³ U.S. Const. amend. IV.

⁴ "Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section." (emphasis added).

In *Jennings*, a person subject to mandatory detention under 8 U.S.C. § 1226 petitioned for habeas corpus, alleging that because he had not been allowed a bond hearing, he was being unlawfully detained.

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

It may be argued that this is so in the sense that if those actions had never been taken, the aliens would not be in custody at all. But this expansive interpretation of §1252(b)(9) would lead to staggering results. Suppose, for example, that a detained alien wishes to assert a claim * * * based on allegedly inhumane conditions of confinement. Or suppose that a detained alien brings a state-law claim for assault against a guard or fellow detainee. Or suppose that an alien is injured when a truck hits the bus transporting aliens to a detention facility, and the alien sues the driver or owner of the truck. The “questions of law and fact” in all those cases could be said to “aris[e] from” actions taken to remove the aliens in the sense that the aliens’ injuries would never have occurred if they had not been placed in detention. But cramming judicial review of those questions into the review of final removal orders would be absurd.

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

The sweeping language of *J.E.F.M.*⁵ cannot be squared with the Alito plurality opinion in *Jennings*.⁶ After *Jennings*, the Ninth Circuit has retreated from *J.E.F.M.*’s

⁵ For example, in *J.E.F.M.*, the Ninth Circuit expressly characterized Section 1252(b)(9) as “‘breath-taking’ in scope and ‘vise-like’ in grip,” which “swallows up virtually all claims that are tied to removal proceedings.” *J.E.F.M.*, 837 F.3d at 1031 (quotes and citation omitted).

⁶ Respondents cite *Marvan v. Slaughter*, No. 6:25-cv-00049-DLC, at *10–11 (D. Mont. July 15, 2025) to support their argument, but *Marvan* relied on *J.E.F.M.* without even mentioning *Jennings* or attempting to explain how *J.E.F.M.*’s broad interpretation survived of section 1252(b)(9) survived *Jennings*.

extreme holding. “[Section] 1252(b)(9) has built-in limits,’ specifically, ‘claims that are independent of or collateral to the removal process do not fall within the scope of § 1252(b)(9).” *Gonzalez v. U.S. Immigr. & Customs Enft*, 975 F.3d 788, 810 (9th Cir. 2020) (citing *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016)). “[C]laims challenging the legality of detention pursuant to an immigration detainer are independent of the removal process.” *Id.*

Petitioner alleges he was arrested illegally without probable cause. This is the type of claim that Judge Alito had in mind when he wrote the plurality in *Jennings*.

Petitioner is not challenging the authority of respondents to institute removal proceedings against him. This court can resolve the question of the unlawful arrest without touching the validity of any I-862 notice to appear issued against petitioner.

The respondents’ same arguments in a recent case in this court were rejected. See *B.D.A.A. v. Bostock*, No. 6:25-cv-02062-AA (Opinion and Order, Dkt 25, at 6) (“The jurisdiction-stripping provisions of the INA do not apply here. Petitioner is not challenging the removal proceedings; she is challenging the legality of her detention.”).

C. This is not a challenge to removal.

The Supreme Court has said that “the 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.” *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1040 (1984) citing inter alia *United States ex rel. Bilokumsky v. Tod*, 263 U.S. 149, 158 (1923) (internal quotes omitted.).

Respondents are trying to mischaracterize this case as one seeking exclusion of evidence from an unlawful arrest or as a challenge to the authority of the government to bring removal proceedings against the petitioner. Dkt 10, at 7 to 13.

Citing *L-J-P-L- v. Wamsley*, No. 3:25-cv-01390-IM, 2025 WL 2430268, at *6, n.3 (D. Or Aug 22, 2025), respondents claim “[i]t follows that claims of unlawful immigration arrest ‘are not appropriately raised in a habeas petition.’” Dkt 10, at 11. But *L-J-P-L-* involved reinstatement of two prior removal orders under 8 U.S.C. § 1231(a)(2) and mandatory detention under 8 U.S.C. § 1231(a)(5), facts not present here.

Respondents quote United States ex rel *Bilokumsky v. Tod*, 263 U.S. 149, 158 (1923) out of context, as that case involved an argument that an illegal arrest voided removal proceedings, an argument petitioner does not make. *Streeter v. Craven*, 418 F.2d 273 274 (9th Cir. 1969), also quoted out of context by respondents, involved an escape from state prison, and the court was clearly speaking only to the facts of the case.

Rodrigues De Oliveira v. Joyce, No. 2:25-cv-00291-LEW, 2025 WL 1826118 (D. Me. July 2, 2025), also cited by respondents, also involved a petitioner seeking to suppress the entire removal proceeding as the fruit of an alleged unlawful arrest, again, not the relief petitioner seeks here.

III. THE SUSPENSION CLAUSE GRANTS THIS COURT JURISDICTION.

Even if a statute deprives this court of jurisdiction, there is still jurisdiction under U.S. Const. Art. I § 9, cl. 2, the Suspension Clause, which provides that “[t]he Privilege of

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the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.”

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

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

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

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

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

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

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

For the first factor, although petitioner is not a citizen, he has a much stronger status than the petitioners in *Boumediene* and *Thuraissigiam*. Petitioner has extensive ties to the community. He has resided in the United States since 2004. He has a son born in the United States who is now 15 years old. He is active in his church, and he has lived in the same residence since 2014. He has paid taxes since at least 2006.

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

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

IV. RESPONDENTS HAVE ONLY LIMITED ARREST AUTHORITY.

“As a general rule, it is not a crime for a removable alien to remain present in the United States.” *Arizona v. United States*, 567 U.S. 387, 407 (2012) (citing *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984)). An immigration status violation is a civil violation. See *N.S. v. Dixon*, 141 F.4th 279, 281-82, 286-87 (D.C. Cir. June 27, 2025) (indicating that immigration arrests are a civil sanction, not a criminal penalty).

Generally, officers making civil immigration arrests must have an administrative warrant. See *Arizona*, 567 U.S. at 408. “If no federal warrant has been issued, those officers have more limited authority.” *Id.*

An immigration officer may only conduct a warrantless civil arrest when law an officer may conduct a warrantless immigration arrest only if the officer “has reason to believe that [1] the alien so arrested is in the United States in violation of any . . . law or regulation **and** [2] is likely to escape before a warrant can be obtained for his arrest.” 8 U.S.C. § 1357(a)(2) (emphasis added).

The applicable regulations track the statute. See 8 C.F.R. § 287.8(c)(2)(i)-(ii) (providing that “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,” and “that the person is likely

to escape before a warrant can be obtained”). See also 8 C.F.R. 287.8(c)(2)(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.”).

Though 8 U.S.C. § 1357(a)(2) uses the phrase “reason to believe” as the standard for executing warrantless civil immigration arrests, “aliens in this country are sheltered by the Fourth Amendment in common with citizens,” and therefore, to avoid running afoul of the Fourth Amendment, this statutory phrase is “considered the equivalent of probable cause.” *Au Yi Lau v. U.S. Immigr. & Naturalization Serv.*, 445 F.2d 217, 222-23 (D.C. Cir. 1971).⁷

Whether a person is likely to escape before an administrative warrant can be obtained requires an individualized determination based on knowledge of facts “particularized with respect to that person.” *Barham v. Ramsey*, 434 F.3d 565 (D.C. Cir. 2006) (quoting *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979)).

The facts informing this assessment may vary. Some courts have found the likelihood of escape to be higher when, for example, the noncitizen presented “conflicting documents,” *Yam v. Immigr. & Naturalization Serv.*, 411 F.2d 683, 687 (D.C. Cir. 1969); “had been ‘picked up before,’” *Aguirre v. Immigr. & Naturalization Serv.*, 553 F.2d 501, 502 (5th Cir. 1977); admitted that he had previously been removed,

⁷ See also *Tejeda-Mata v. Immigr. & Naturalization Serv.*, 626 F.2d 721, 725 (9th Cir. 1980) (“The phrase ‘has reason to believe’ [in § 1357] has been equated with the constitutional requirement of probable cause.”); *United States v. Cantu*, 519 F.2d 494, 496 (7th Cir. 1975) (“The words [in § 1357] of the statute ‘reason to believe’ are properly taken to signify probable cause.”).

United States v. Puebla-Zamora, 996 F.3d 535, 538 (8th Cir. 2021); or appeared “extremely nervous” as if “looking for an opportunity to run,” *United States v. Meza-Campos*, 500 F.2d 33, 34 (9th Cir. 1974).

Courts have also found that the likelihood of escape is lower when the individual has resided in the country for a lengthy period of time and has strong community ties.⁸

Simply being in the country unlawfully does not provide probable cause sufficient to make a lawful civil arrest. *Orellana v. Nobles Cnty.*, 230 F. Supp. 3d 934, 937, 946 (D. Minn. 2017) (holding, despite defendant’s admission that “he was in the country illegally,” that “having reason to believe [that the defendant] is an alien subject to removal from the United States does not, without more, provide the probable cause needed to make a lawful [warrantless] arrest” (internal quotation marks omitted)).⁹

Respondents may argue report that petitioner’s detention is lawful under 8 U.S.C. § 1225(b)(2). This issue has been presented previously to the U.S. district court of Oregon and it has been rejected on the grounds that a person already present in

⁸ See e.g., *La Franca v. Immigr. & Naturalization Serv.*, 413 F.2d 686, 689 (2d Cir. 1969) (noting that being “the owner and operator of a bakery in Jersey City” lowered petitioner’s likelihood of escape before a warrant could be obtained); *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863, 890 (S.D. Ohio 2016) (same, where defendant had a stable job, lived with his fiancé, and helped pay her rent and raise her two children); *United States v. Khan*, 324 F. Supp. 2d 1177, 1187 (D. Colo. 2004) (same, where defendant worked two jobs, owned a vehicle, paid rent, and never experienced legal trouble before his immigration arrest).

⁹ See also *Pacheco-Alvarez*, 227 F. Supp. 3d at 872, 889-90 (holding that “ICE officers lacked ‘reason to believe’ [the defendant] posed a risk of escape,” even though the defendant admitted he “was born in Mexico and did not have any documentation that would allow him to reside in the United States”); *Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1007 (N.D. Ill. 2016) (“Nor can it be the case that, simply by being potentially removable, an alien must be deemed to be likely to evade detention by ICE.”).

the United States cannot lawfully be detained under section 1225(b)(2). See *S.Z.D. v. Wamsley et al.*, 3:25-cv-01931-AB (USDC Oregon 2025) (ECF 12); *J.Y.L.C. v. Bostock*, 3:25-cv-02083-AB (USDC Oregon 2025) (ECF 15 at 5) (“This Court previously rejected this dubious assertion by Respondents * * * a conclusion consistent with the holdings of dozens of district courts across the country[.]”).

V. THIS ARREST VIOLATED THE FOURTH AMENDMENT.

“Except at the border and its functional equivalents,” immigration agents may stop individuals in public only after identifying “specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion” of a violation of immigration law. *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975).

Reasonable suspicion for an immigration stop cannot be based “on broad profiles which cast suspicion on entire categories of people without any individualized suspicion of the particular person to be stopped.” *United States v. Rodriguez Sanchez*, 23 F.3d 1488, 1492 (9th Cir. 1994). Rather, reasonable suspicion must be “particularized and objective,” *United States v. Arvizu*, 534 U.S. 266, 273 (2002), meaning the officer has reasonable suspicion as to “the particular person being stopped.” *United States v. Montero-Camargo*, 208 F.3d 1122, 1129 (9th Cir. 2000) (en banc).

“A person’s mere propinquity to others independently suspected of [unlawful] activity does not, without more, give rise to probable cause to search [or seize] that person.” *Perez Cruz v. Barr*, 926 F.3d 1128, 1138 (9th Cir. 2019) (quotation omitted).

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Respondents attempt to rely on the concurrence of Justice Kavanaugh in *Noem v. Vasquez-Perdomo*, No. 25A169, 2025 WL 2585637 (U.S. Sept 8, 2025) (Kavanaugh, J. concurring in grant of application for stay). But *Vasquez-Perdomo* arose from a preliminary injunction granted by a district court against the government’s alleged use of roving patrols arresting people without probable cause.

The government asked the Supreme Court to stay the preliminary injunction, which the court granted without an opinion. Justice Kavanaugh’s concurrence should not be taken as any indication of the reasoning behind the Supreme Court’s opinion. It is not binding law and in fact has been subjected to significant criticism.¹⁰

Respondents stress the declaration of Michael J. DeSantos, the arrest team leader. Dkt 12. There are reasons to believe this declaration does not put forth a fair or complete description of what occurred. They were looking for a man, whom petitioner will call J.F.V.V. from the unredacted initials in the I-213. They had a “Fortify the Border target package” from the Customs and Border Patrol’s National Targeting Center.

No part of that targeting package has been presented to the court. What we do know though is that it apparently contained a photograph of J.F.V.V. taken in 2006, and some information to the effect that J.F.V.V.’s residence was located at 

 Dkt 12, at 4-5, ¶¶ 10 and 12.

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¹⁰ See César Cuauhtémoc García Hernández, Justice Brett Kavanaugh and racial proxies, SCOTUSblog (Sep. 23, 2025, 10:00 AM), <https://www.scotusblog.com/2025/09/justice-brett-kavanaugh-and-racial-proxies/>

 happens to be the residence of the petitioner, who has lived there since March 2014. Nowhere does DeSantos state what efforts if any were made by respondents to verify that they had current information related to J.F.V.V.

The officers arrived at the apartments at about 5:00 a.m. where they waited until about 7:45 a.m. before anything happened. They would have had ample time to study the 2006 photograph of J.F.V.V. and realize their need to acquire fresh information about the present occupants of .

In paragraph 12 of his declaration, DeSantos states that around 7:45 a.m. two officers in another vehicle saw someone, whom they describe as “the target” come out of “the target’s apartment.” Dkt 12, at 4, ¶ 12. These observing officers stated over the CBP radio that the person “appeared to resemble the target, but they were not sure because the photo of the target was from 2006, and it looked like the target might have gained some weight.” Dkt 12, at 4-5, ¶ 12.

DeSantos then states that “[i]t was dark outside in the early morning hours, it was raining, and the SRT CBPOs officers observing the target were about 20-40 yards away from him.” Dkt 12, at 5, ¶ 12. This statement needs to be put into context.

According to Almanac.com, sunrise in Beaverton Oregon on December 3, 2025, was at 7:33 a.m.¹¹ There is a period of time before every sunrise called “civil twilight”

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¹¹ <https://www.almanac.com/astronomy/sun-rise-and-set/OR/Beaverton/2025-12-03>

which, according to the National Weather Service, begins when the center of the sun's disk is 6 degrees below the eastern horizon and ends at sunrise.¹²

During civil twilight absent fog or other restrictions, the brightest stars and planets can be seen, the horizon and terrestrial objects can be discerned, and in many cases, artificial lighting is not needed.” *Id.* Going back to Almanac.com, civil twilight in Beaverton on December 3, 2025, began at 7:00 a.m.¹³

According to detailed weather data published at Time and Date.com, no rain fell in Beaverton, Oregon on all of December 3, 2025.¹⁴ And fog was not present to impair visibility during the civil twilight before sunrise.

DeSantos appears to be attempting to justify the arrest of the petitioner instead of J.F.V.V. The claim that it was raining was especially telling. It didn't rain in Beaverton on December 3, and it hadn't rained there since 7:47 p.m. the evening before.¹⁵ This should cast doubt on the reliability of the rest of the declaration by DeSantos.

The facts seem to be little more a shoddy investigation into one person, J.F.V.V. that resulted in a chance apprehension of someone completely different. This appears to be part of a pattern and practice that respondents have engaged in the state of Oregon, as

¹² <https://www.weather.gov/lmk/twilight-types>

¹³ <https://www.almanac.com/astronomy/sun-rise-and-set/OR/Beaverton/2025-12-03>

¹⁴ <https://www.timeanddate.com/weather/@7172996/historic>

¹⁵ <https://www.timeanddate.com/weather/@7172996/historic>

shown in cases presented to this court,¹⁶ and in media sources.¹⁷ It's obvious that apparent ethnicity was at work here. The officers had only a 2006 photo of J.F.V.V. They found an Hispanic male in his 40s and that was good enough for them. But race or apparent ethnicity, standing alone, cannot form the basis for reasonable suspicion. *United States v. Brignoni-Ponce*, 422 U.S. 873, 886-87 (1975).

Because probable cause is a higher standard than reasonable suspicion, race or apparent ethnicity, standing alone, is also necessarily insufficient to form the basis for probable cause. Nor did the supposed intelligence as to Apartment 1B being J.F.V.V.'s residence provide any corroborating factor. Respondents haven't shown the court what that intelligence was, and it plainly was bad because it was over ten years out of date.

VI. VIOLATIONS OF THE FIFTH AMENDMENT.

A. Random arrest.

The Due Process Clause of the Fifth Amendment prohibits the government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States,

¹⁶ See *B.D.A.A. v. Bostock*, 6:25-cv-02062-AA (USDC Oregon Dec. 5, 2025 Dkt 25) (unlawful arrest after random traffic stop; habeas corpus granted); *J.Y.L.C. v. Bostock*, 3:25-cv-02083-AB (USDC Oregon Nov 12, 2025 Dkt 15) (unlawful arrest after random traffic stop; habeas corpus granted in part).

¹⁷ See OPB, "Detain first and ask questions later': Oregon ICE arrests shot up in October" (Nov 14, 2025) <https://www.opb.org/article/2025/11/14/oregon-ice-arrests-shot-up-in-october-portland-detain-first-ask-questions-later/> (last accessed 12/7/25); KATU, "Oregon coalition says ICE detained four US citizens in Oregon this week (Nov. 22, 2025) <https://katu.com/news/local/oregon-coalition-says-ice-detained-four-us-citizens-in-oregon-this-week> (last accessed 12/7/25); Salem Reporter, "ICE officers reveal arrest quotas, facial recognition use in Oregon dragnet" (Dec. 5, 2025) <https://www.salemreporter.com/2025/12/05/ice-officers-reveal-arrest-quotas-facial-recognition-use-in-oregon-dragnet/> (last accessed 12/7/25).

including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

Due process requires that government action be rational and non-arbitrary. See *United States 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)).

Here, petitioner has been stopped, arrested, and detained in an arbitrary manner, without any notice of the basis for his arrest and continued detention, and not based on a rational and individualized determination of whether he should be detained based on individual facts and circumstances pertaining to whether he was a flight risk or danger to the community.

Respondents’ stop, arrest, and continued detention of petitioner are violations of his due process rights under the Fifth Amendment to the U.S. Constitution.

B. Post-arrest procedures not followed.

If an immigration officer makes a warrantless arrest, at the time of an arrest and “as soon as it is practical and safe to do so,” immigration officers must identify themselves as immigration officers authorized to make arrests, inform the person arrested that they are under arrest, and state the reason for the arrest. 8 C.F.R. § 287.8(c)(2)(iii). The noncitizen must then “be taken without unnecessary delay for examination before an officer of the

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Service having authority to examine [noncitizens] as to their right to enter or remain in the United States.” 8 U.S.C. § 1357(a)(2)

Within 48 hours of an immigration arrest (or within a reasonable time in the case of emergency or extraordinary circumstances), an immigration official must make an initial custody determination to decide whether the noncitizen should remain in custody or be released. 8 U.S.C. § 1226(a); 8 C.F.R. § 287.3(d).

Here respondents have made no showing that they took petitioner before any immigration official within 48 hours for an initial custody determination as to whether he should be in custody or released.

As of June 2024, ICE had a formal system for assessing flight risk of persons whom they have apprehended.¹⁸ According to the DHS office of the inspector general, “noncitizens who are not subject to mandatory detention or removal within 5 days are subject to the RCA process, and the ICE officer submits the noncitizen’s information through the RCA module. The module assesses risks to public safety and risk of flight, then produces a risk rating of high, medium, or low for each person. Using these risk ratings, the RCA process then generates one of three standardized recommendations for each noncitizen.” OIG Report 24-31.

A similar situation was addressed recently in *B.D.A.A. v. Bostock*, No. 6:25-cv-02062-AA (Dkt 25, Order and Opinion, Dec 4, 2025), where in granting the petition for

¹⁸ U.S. Dept of Homeland Security, Office of the Inspector General, Final Report, ICE’s Risk Classification Assessment Process Was Not Consistently Used to Prevent the Release of High-Risk Individuals (OIG Report OIG-24-31) (June 12, 2024). <https://www.oig.dhs.gov/sites/default/files/assets/2024-06/OIG-24-31-Jun24.pdf>

habeas corpus, the court stated: "The statutory requirement that an immigration officer must have probable cause of flight risk, is not mere verbiage. Before effecting a warrantless arrest, ICE officers must make a "particularized inquiry" that the subject is likely to abscond." *B.D.A.A.*, Dkt 25, at 19-20 (internal quotes and citations omitted.).

There's no evidence here that this process, or anything like it, was conducted in petitioner's case. The most that does appear is the statement on the I-213 that petitioner's minor son Bryan was a U.S. citizen.

Under the *Accardi* doctrine, a federal agency must follow its own binding regulations and procedures. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). "Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required." *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). The doctrine applies broadly to an agency's procedures, regardless of how they are labeled. See *Church of Scientology of Cal. v. United States*, 920 F.2d 1481, 1487 (9th Cir. 1990); *Romeiro de Silva v. Smith*, 773 F.2d 1021, 1025 (9th Cir. 1985).

Further inquiry would have disclosed that petitioner had been a long-term resident, that he had been active in his church, and that he had been paying taxes for many years. He has no record of previous deportation or removal proceedings being taken against him. He has no record substance abuse and no record of failure to appear in any court.

ICE was readily able to determine petitioner has no criminal record, but this fact never seems to have been taken into account. By contrast, according to the OIG report

(attached as an exhibit), “ICE bases a noncitizen's threat to public safety on an assessment of the noncitizen's criminal history, driving-under-the-influence record, pattern of violence, outstanding active warrants, supervision history, and association to any security-threat group(s).” OIG Report, at 1. None of these are present here.

By failing to follow their own procedure to evaluate flight risk and danger to the community, respondents violated their own agency procedures, which is a violation of petitioner's Fifth Amendment right to due process of law.

VII. CONCLUSION.

For the above reasons, this petition for habeas corpus should be granted.

Dated this 14th day of December 2025

/s/ Michael T. Purcell

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Attorney for petitioner