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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

J.L.L.,

Petitioner,

v.

PAMELA BONDI[1]; KRISTI NOEM; LAURA HERMOSILLA; TODD LYONS; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; U.S. DEPARTMENT OF JUSTICE,

Respondents.

Case No. 3:25-cv-02325-AN

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

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[1] For "core" habeas challenges brought under 28 U.S.C. § 2241, that is, challenges to present physical custody, the only proper respondent is the immediate custodian of the habeas petitioner, "not the Attorney General or some other remote supervisory official." *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). The United States Attorney General, the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"), the Secretary of the Department of Homeland Security ("DHS"), and the U.S. Department of Justice are not proper respondents to this core habeas petition because none of those officials has any immediate responsibility for Petitioner's detention. *See id.* at 440 n.13 ("[T]he proper respondent is the person responsible for maintaining—

Respondents provide the following response to Petitioner's Petition for Writ of Habeas Corpus ("petition"), ECF No. 2. This response is supported by the Declaration of Deportation Officer Ryan Chaix ("Chaix Decl."). For the following reasons, the Court should deny Petitioner's habeas petition.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Mexico who was last admitted to the United States on a B2 visa as a temporary visitor for pleasure on August 15, 2019, with authorization to remain in the United States until February 6, 2020. Petitioner did not depart the United States by February 6, 2020, as required under the B2 visa he was issued. Chaix Decl. at ¶¶ 4-5.

On December 15, 2025, officers employed by the United States Department of Homeland Security ("DHS"), United States Immigration and Customs Enforcement ("ICE"), Office of Enforcement and Removal Operations ("ERO") were conducting a field operation targeting multiple aliens at an apartment complex located at 12070 SW Fischer Rd, Portland, Oregon 97224. Petitioner was not initially one of the targets of this operation. For one of the targets, ERO was in possession of a partial address but did not have an apartment number. In order to identify the apartment number for this target, ERO performed database searches of the clearly visible license plates of vehicles parked within the apartment complex parking lot. One of these license plates resulted in identification of Petitioner, who ERO was able to verify was a B2

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not authorizing—the custody of the prisoner."). Additionally, the current ERO Seattle Acting Field Office Director is Laura Hermosilla.

overstay via DHS databases. Chair Decl. at ¶¶ 6-7.

Having identified Petitioner as being a visa overstay whose last known address was the apartment complex address, an I-200 administrative warrant for Petitioner's arrest was issued. Chaix Decl. ¶¶ 8-9.

At approximately 9:10 a.m., and with the I-200 warrant, ERO officers conducted a knock and talk at Petitioner's known address. An adult male matching Petitioner's description answered the door. ERO officers in full tactical gear, which included tactical vests bearing POLICE with ICE badges and insignia, introduced themselves as officers with United States Immigration and Customs Enforcement. Officers asked the male if his name was [Petitioner's first name] and he replied "yes." Officers asked if his name was [Petitioner's full name] and the male replied, "that's me." Having received confirmation of Petitioner's identity from Petitioner, and having previously verified the address as Petitioner's address, officers had no need to request additional documentary identification. Officers asked Petitioner to step outside. Petitioner asked officers if they had "a paper with [his] name on it." Officers stated there was a warrant for his arrest due to him being a B2 overstay. Petitioner stated he would come outside but needed to change clothes and grab his wallet and phone. Officers allowed Petitioner to do so. A few minutes later, Petitioner opened the door and exited the residence. At that time, Petitioner was placed under arrest without incident for immigration violations. Chaix Decl. ¶¶ 10-13.

On December 15, 2025, Petitioner was placed in removal proceedings and served with a Notice to Appear ("NTA"), charging Petitioner as removable under section 237(a)(1)(B) of the Immigration and Nationality Act ("INA") because Petitioner overstayed his visa. See Notice to Appear, Chaix Decl. ¶ 17.

LEGAL BACKGROUND

I. The Constitution and federal statutes confer broad powers on the Executive Branch to administer the immigration system.

"Control over immigration is a sovereign prerogative." *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, 959 F.2d 742, 750 (9th Cir. 1991). The primary immigration statute, the Immigration and Nationality Act ("INA"), provides the Executive Branch with a comprehensive scheme to administer the immigration system. *See generally* 8 U.S.C. Ch. 12. Among those powers, the President, through the Department of State and the Department of Homeland Security ("DHS"), decides which noncitizens may enter and remain in the country. *See* 8 U.S.C. §§ 1103, 1104. Under the INA, if an applicant for admission seeks admission to the United States without a valid entry document, DHS may charge the noncitizen as inadmissible and initiate removal proceedings against the noncitizen. 8 U.S.C. § 1229a(a)(2). Removal proceedings begin when an immigration officer files the notice to appear with an Immigration Court, which is part of the Executive Office of Immigration Review at the U.S. Department of Justice. 8 C.F.R. §§ 239.1 (listing which DHS authorities may issue a notice to appear), 1003.14 (establishing that proceedings commence when a notice to appear is filed in Immigration Court).

II. Noncitizens are subject to detention during removal proceedings.

An alien admitted to the United States shall be removed if they are present in violation of law, specifically if they are in violation of their nonimmigrant visa. 8

U.S.C. § 1227(a)(1)(B).

Under 8 U.S.C. § 1226(a), DHS may, in its discretion, detain a noncitizen during removal proceedings, release them on bond, or release them on conditional parole. By regulation, immigration officers can release a noncitizen if they demonstrate that they "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8).

When DHS takes a noncitizen into custody, the person can request a custody redetermination (*i.e.,* a bond hearing) by an immigration judge at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19. At a custody redetermination, the immigration judge, as an initial matter, determines whether the noncitizen is detained pursuant to 8 U.S.C. § 1226(a) and therefore eligible for custody redetermination. If the immigration judge makes such a finding, the immigration judge may continue detention or release the noncitizen on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1).

ARGUMENT

I. The Court should deny Petitioner's habeas petition.

To obtain habeas relief, Petitioner must prove that his custody violates the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241. Petitioner alleges that Respondents violated his due process rights under the Fourth and Fifth Amendment to the United States Constitution when they "stopped, arrested, and detained [Petitioner] 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…." ECF 1 at p. 13. However, the facts here indicate that EROs issued a proper warrant for Petitioner's arrest based on Petitioner's violation of 8 U.S.C. 1227(a)(1)(B). If Petitioner believes this was an error, he may request a custody redetermination hearing with the Immigration Court.

A. Petitioner's claim under the Fourth Amendment should be dismissed for lack of subject matter jurisdiction.

Petitioner bears the burden of establishing this Court has subject matter jurisdiction over his claims. *See Ass'n of Am. Med. Colls. v. United States*, 217 F.3d 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). Petitioner cannot meet his burden because this Court lacks subject matter jurisdiction over Petitioner's claims and therefore this claim should be dismissed under Rule 12(b)(1), Federal Rules of Civil Procedure.

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

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

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. ***Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory),*** to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9) (emphasis added); *see also* 8 U.S.C. § 1252(a)(5) ("a petition for

review...shall be the sole and exclusive means for judicial review of an order of removal"). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that any issue – whether legal or factual – arising from any removal-related activity can be reviewed only through the [petition for review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483, 485 (1999) (explaining that § 1252(b)(9) channels judicial review of all decisions and actions leading up to or consequent upon final orders of deportation, including non-final orders, into proceedings before a court of appeals).

Furthermore, Congress has specified that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g). "By its plain terms," § 1252(g) bars the Court "from questioning ICE's discretionary decisions to commence removal" and "detain [Petitioner] during his removal proceedings." *Alvarez v. U.S. Immigration & Customs Enf't, 818* F.3d 1194, 1203 (11th Cir. 2016). *See also Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007) (holding § 1252(g) precludes judicial review of unlawful detention or false arrest claims arising from decisions regarding the commencement of proceedings, adjudication of cases, or execution of removal orders"); *S.Q.D.C. v. Bondi*, No. 25-cv-3348 (PAM/DLM), 2025 WL 2617973, at *2 (D. Minn. Sept. 9, 2025) (finding § 1252(g) jurisdictionally bars review of petition challenging ongoing detention during removal proceedings); *Buriev v. Warden, GEO, Broward Transitional Ctr.*, No. 25-cv-60459, 2025 WL 2763202, at *3 (S.D. Fla. Sept. 26, 2025) (denying habeas petition for claim that immigration officials unlawfully arrested petitioner "without issuing a warrant").

2. *Any Collateral Claims are Inextricably Intertwined to Removal*

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

Here, all claims by Petitioner are inextricably linked to "questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien." 8 U.S.C. § 1252(b)(9).

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

3. *Suppression of Arrest Evidence is Inapplicable*

As the Supreme Court has made clear, "regardless of how the [immigration] arrest is effected, deportation will still be possible when evidence not derived directly from the arrest is sufficient to support deportation." *Lopez-Mendoza.,* 468 U.S. at 1043. This is because "[t]he 'body' or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred." *Id.* at 1039. As such, "[t]he mere fact of an illegal arrest has no bearing on a subsequent deportation proceeding." *Id.* at 1040; *see also Streeter v. Craven*, 418 F.2d 273, 274 (9th Cir. 1969) ("defects in an arrest are not cognizable in habeas corpus"); *L-J-P-L- v. Wamsley*, No. 3:25-cv-01390-IM, 2025 WL 2430268, at *6 n.3 (D. Or. Aug. 22, 2025) (claims of unlawful immigration arrest "are not appropriately raised in a habeas petition"); *H.N. v. Stewart Det. Ctr.*, No. 7:21-CV-59-HL-MSH, 2021 WL 4203232, at *5 (M.D. Ga. Sept. 15, 2021) (finding that Petitioner was not entitled to habeas relief even if his immigration stop was unlawful because identity is never suppressible in immigration proceedings); *De Oliveira v. Joyce*, No. 2:25-cv-00291-LEW, 2025 WL 1826118, at *5 (D. Me. July 2, 2025) ("argument that an illegal arrest automatically results in an illegal detention is misguided").

Therefore, there is no habeas relief to be gained in this action since any finding by a district court judge that Petitioner's arrest was somehow unlawful will not circumvent his continued removal proceedings based upon violation of 8 U.S.C. § 1227(a)(1)(B).

B. Petitioner's claim under the Fourth Amendment should be dismissed for failure to state a claim.

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

The Fourth Amendment prohibits Respondents from stopping a person without reasonable suspicion and from arresting individuals without probable cause. Neither of these actions took place in this case.

"On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a)(1). Respondents located Petitioner, determined he had overstayed his visa, appropriately issued an administrative warrant, served Petitioner with the warrant, and detained Petitioner for violation of 8 U.S.C. § 1227(a)(1)(B). Therefore, detention of Petitioner was appropriate under the law. *Id.*

The Petition indicates counsel had interactions with ERO officers who detained Petitioner, however, the supporting Declaration makes it clear that the declarant was not present when Petitioner was arrested. ECF 1-3 at ¶2. The Petitioner fails to demonstrate how his detention, based on a lawfully executed warrant and issued on the basis of Petitioner's violation of 8 U.S.C. § 1227(a)(1)(B) violated his due process rights under the Constitution and therefore, this Court should deny the Petition.

C. Petitioner's claim under the Fifth Amendment fails under the facts of this case.

Petitioner cannot meet his burden of demonstrating that his due process rights were violated by his detention. An individual determination was made, and a warrant was properly issued to detain Petitioner because he had violated 8 U.S.C. § 1227(a)(1)(B).

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

Further, Petitioner's assertion that Respondents acted "arbitrary and capriciously" when they detained Petitioner is without merit. As set forth above, Petitioner was detained, with a validly issued administrative warrant, because he had overstayed his visa in violation of 8 U.S.C. § 1227 (a)(1)(B).

CONCLUSION

Respondents respectfully request that Petitioner's habeas petition be denied.

DATED this 12th day of January 2026.

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/s/ Susanne Luse
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