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Non-detained

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IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

J.L.L.,

Case No.: 3:25-cv-02325-AN
Agency File Number: xxx-xxx-689

Petitioner,

vs.

**PETITIONER'S TRAVERSE IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS
AND RESPONSE TO RETURN**

LAURA HERMOSILLA et. Al.
Respondents.

Noted for consideration: January 16, 2025

PETITIONER'S TRAVERSE AND RESPONSE TO RETURN

I. INTRODUCTION

The court must grant Petitioner's writ of habeas corpus unless the Respondents show cause why it should not. 28 U.S.C. § 2243. Respondents' return must certify the "true cause" of their deprivation of Petitioner's liberty. *Id.*, see Federal Respondents' Return (hereinafter "Return"), ECF 10. Respondents claim that their arrest of Petitioner was legal and followed due Process because a warrant was issued prior to detaining Petitioner. However, Respondents fail to present evidence of that warrant, and fail to state on what authority they had to issue the warrant.

PETITIONER'S TRAVERSE IN
SUPPORT OF PETITION FOR WRIT OF
HABEAS CORPUS
(CASE NO. 3:25-cv-02325-AN)

Page 1

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1 Additionally they have presented no evidence that Respondent had been placed in removal
2 proceedings prior to issuing a warrant as is required by, 8 C.F.R. § 1236.1. Petitioners have also
3 failed to provide evidence that an individualized custody determination was made prior to or
4 simultaneous to the arrest as required by Section 1226(a) and 8 C.F.R. 1236.1(c)(8).
5

6 After detaining Petitioner and then processing him for his release upon the order of the
7 court, Petitioner was issued a notice to appear and given a court date for the Portland Oregon
8 Immigration Court for December 15, 2026. Petitioner filed his application for Asylum, and
9 Withholding of Removal and Convention against torture on January 8, 2026 with the Portland
10 Immigration Court and is awaiting his opportunity for a final hearing. *See*, Dec. of Petitioner
11 (herein after "DP") Exh. C.
12

13 Petitioner has complied with all check-ins with ICE, has no criminal record, maintains a
14 steady job, and continues to seek medical attention for a cyst causing a hole to grow in the bone
15 of his skull above his upper lip. *See* DP Exh B. The government has presented no evidence to
16 suggest Petitioner would be a flight risk or a danger to the community, as is required by their
17 own procedures, and the basic tenants of due process.
18

19 Although Respondents have presented evidence that they had a right to place Petitioner in
20 Removal Proceedings, they have presented no evidence as to why they had a right to detain him.
21 They violated due process in arresting Respondent without providing him notice and an
22 opportunity to be heard at a reasonable place and time. They violated their own statutory
23 requirements when they issued a warrant and arrested Petitioner prior to placing him in removal
24 proceedings, then failed to make an Individual Custody Determination. For these reasons the
25 habeas corpus should be granted.
26

27 Page 2

28 PETITIONER'S TRAVERSE IN
SUPPORT OF PETITION FOR WRIT OF
HABEAS CORPUS
(CASE NO. 3:25-cv-02325-AN)

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II. ARGUMENT

A. This Court Has Jurisdiction Over Petitioner's Constitutional Claims

Respondents' argument that this Court lacks jurisdiction under provisions of the INA at 8 U.S.C. § 1252 fails for multiple reasons: First, the Suspension Clause of the Constitution preserves habeas jurisdiction for constitutional claims. Second, the INA does not bar jurisdiction as claimed. Lastly, a petition for review is an inadequate remedy for current constitutional violations.

1. The Suspension Clause Preserves Habeas Jurisdiction for Constitutional Challenges to Custody

Even if the INA would ordinarily limit this Court's jurisdiction, the Court 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. 2.¹

2. The INA does not bar jurisdiction over Petitioners' claims

Respondents argue that Petitioner's constitutional claims are properly brought in a petition for review according to the INA. However, Petitioner does not challenge his order of removal as alleged by Respondents—he challenges Respondents' unlawful custody over his person. His detention-related claims are properly before this court.

¹ The Supreme Court has construed the INA narrowly to avoid serious constitutional questions. *See INS v. St. Cyr*, 533 U.S. 289, 300, 305 (2001). The Ninth Circuit has recognized that the Suspension Clause is triggered when, as here, a petitioner requests release from custody. *Rauda v. Jennings*, 55 F.4th 773, 780 (9th Cir. 2022) (internal citations omitted).

a. This Court's jurisdiction is not barred by 8 U.S.C. § 1252(g).

Section 1252(g) bars review when DHS exercises its discretion to "commence proceedings, adjudicate cases, or execute removal orders." *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"—not to the "many other decisions or actions that may be part of the deportation process." *Id.* at 482. None of these actions are at issue here.²

b. As Petitioner does not challenge his removal proceedings, 8 U.S.C. § 1252(b)(9) does not limit the Court's jurisdiction.

Section 1252(b)(9) 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." *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 detainees); 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).

a. A petition for review is an inadequate remedy.

² *See Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) (finding that § 1252(g) did not bar judicial review of challenges to unlawful detention). "§ 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).

Petitioner challenges his detention as unlawful. A petition for review in the Ninth Circuit cannot provide timely relief for unconstitutional custody occurring now. In *Jennings v. Rodriguez*, the Supreme Court confirmed that district courts have habeas jurisdiction over constitutional challenges to immigration detention, even where those challenges relate to removal proceedings. 583 U.S. 281, 293-94 (2018). The Court distinguished between statutory interpretation questions (which must proceed through petition for review) and constitutional challenges (which are properly heard in habeas). Petitioner's Fourth and Fifth Amendment claims fall squarely in the latter category. *Id.*³

This court has jurisdiction to reach the merits of Petitioner's case.

B. This Court should grant the relief requested because Respondents have violated Petitioner's Fourth Amendment rights from illegal arrest.

Respondents allege that there is no 4th amendment violation as a warrant was issued minutes before arresting Respondent. However, the warrant presented by Respondents states that it was read to Petitioner. The government's evidence makes it clear that it was not read to the Petitioner when the Petitioner asked to see the warrant. *See* DP ¶ 7. If the warrant existed prior to the arrest of Respondent, it would have been very easy to read that warrant to Petitioner. The

³ The cases Respondents cite are inapposite. *Gamez-Reyes v. Bondi*, No. 22-2681, 2025 WL 501400 (9th Cir. 2025), *Ramirez Santiago v. Garland*, No. 22-619, 2023 WL 6875282 (9th Cir. 2023), and *B.R. v. Garland*, 26 F.4th 827 (9th Cir. 2022) all involved petitions for review of final removal orders. Here, Petitioner challenges the constitutional authority underlying his initial seizure and ongoing detention. Such threshold custody challenges are properly brought in habeas, as recognized in *Jennings*. *Marvan v. Slaughter*, No. 25-cv-49, 2025 WL 1940043 (D. Mont. July 15, 2025), cited by Respondents, is distinguishable. In *Marvan*, the court found it lacked jurisdiction because the government had recently served a Notice to Appear, commencing fresh removal proceedings in which the petitioner could raise his claims before an Immigration Judge. *Id.* at *3-4.

warrant presented by Respondent states it was served at the Portland field office, as indicated by the signature on the bottom. *See* ECF 11-1. There is no time stamp on the warrant, and the reasons for the issuance of the warrant all indicate that the warrant was issued after confirmation of the subjects identity, and after the subject made voluntary statements to an immigration officer. Neither of those two boxes could have been checked prior to the arrest of Petitioner.

If in fact a warrant had been issued prior to the arrest of Petitioner, there would not have been a box respondent could have checked that would have legitimated his arrest. Respondent could not have legally issued a warrant based solely on information that Petitioner had overstayed a visa, as the only authority Respondents have, on learning that information would be to place Respondent into removal proceedings.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), 110 Stat. 3009–546, requires the government to serve ‘a notice to appear’ on individuals it wishes to remove from this country.” 8 C.F.R. § 1236.1 provides, in relevant part, “[a]t the time of issuance of the notice to appear, or at any time thereafter . . . the respondent may be arrested and taken into custody under the authority of Form I-200, Warrant of Arrest.” 8 C.F.R. § 1236.1.

The Notice to Appear presented by Respondent show by its time stamp that it was not created until 5:09pm, eight hours after his arrest, which directly corresponds to when he was released from custody, indicating that not only did they not create it before his arrest, but they most likely would not have initiated removal proceedings against him if he was not released. *See* ECF 11-1.

C. The Court should grant the Writ For lack of Due Process as Respondent’s violated due process in arresting Respondent without providing him notice and an opportunity to be heard at a reasonable place and time.

Page 6

PETITIONER’S TRAVERSE IN
SUPPORT OF PETITION FOR WRIT OF
HABEAS CORPUS
(CASE NO. 3:25-cv-02325-AN)

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1 It is well-established that the Due Process Clause of the Fifth Amendment to the U.S.
 2 Constitution applies to “all ‘persons’ within the United States,” irrespective of their immigration
 3 status. *J. G. G. v. Trump*, 145 S. Ct. 1003, 1005 (2025) (citing *Reno v. Flores*, 507 U.S. 292306
 4 (1993)); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Due process also requires notice and “the
 5 opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v.*
 6 *Eldridge*, 424 U.S. 319, 333 (1976) (internal citations omitted). Due process notice requirements
 7 apply to immigrants in removal proceedings. *See United States v. Rivera-Valdes*, 2025 WL
 8 2672555, at *12 (9th Cir. 2025) (en banc).

9 Respondent’s state that Under 8 U.S.C. § 1226(a), DHS may, in its discretion, detain a
 10 noncitizen during removal proceedings, release them on bond, or release them on conditional
 11 parole. *See* ECF 10 at 5, ¶ 1. However, Respondents failed to present any evidence that
 12 Petitioner was in Removal proceedings when he was arrested.

13 Respondents State that the proper method for Petitioner to dispute his arrest would be to
 14 wait for a redetermination hearing with an Immigration Court. *See* ECF 10 at 5, ¶ 2.
 15 Respondents have failed to explain how a judge could make a *redetermination* when no
 16 *determination* has been made prior.

17 Respondents fail to acknowledge their own governing statutes which require that an
 18 Individual Custody Determination be made prior to or simultaneous to an arrest, which arrest can
 19 only take place after the issuance of a Notice to Appear, Section 1226(a) and 8 C.F.R.
 20 1236.1(c)(8) “require ICE officials to make an individualized custody determination.” Lopez
 21 Benitez, 2025 WL 2371588, at *10 (emphasis added).

1 This requirement has been reinforced by numerous other cases; E.g., *Velesaca v. Decker*,
 2 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020); *Huamani*, 2025 WL 3079014, at *6–*8; *Kelly v.*
 3 *Almodovar*, No. 25-CV-6448, 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025); *J.U. v.*
 4 *Maldonado*, No. 25-CV-04836, 2025 WL 2772765, at *10 (E.D.N.Y. Sep. 29, 2025); *Artiga v.*
 5 *Genalo*, No. 25-CV-5208, 2025 WL 2829434, at *9 (E.D.N.Y. Oct. 5, 2025); *Salcedo Aceros v.*
 6 *Kaiser*, No. 25-CV-06924, 2025 WL 2637503, at *1 (N.D. Cal. Sep. 12, 2025) (“When a person
 7 is apprehended under § 1226(a), an ICE officer makes the initial custody determination.”). “ICE
 8 must allow the noncitizen to demonstrate to the satisfaction of the officer that [] release would
 9 not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any
 10 future proceeding.” *Kelly*, 2025 WL 2381591, at *3 (quotations omitted). And “[a]n individual
 11 detained pursuant to Section 1226(a) who identifies some defect in the process governing her
 12 detention can raise that defect in a habeas action seeking release.” *Salgado*, 2025 WL 2806757,
 13 at *8.

14 In conducting Petitioner’s arrest, the record shows that Respondents’ agents had no
 15 evidence weighing toward flight risk. Petitioner’s arrest without consideration of the factors
 16 required by the Nava Broadcast Policy is violation of the Accardi doctrine and the APA. See
 17 *Accardi*, 347 U.S. at 266-268; 5 U.S.C. § 706(2)(A).⁴

21
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 24
 25 ⁴ Notably, the remedy for those arrested in violation of this agreement within the jurisdiction of the Chicago Field
 26 Office is prompt release from custody. *Castañon Nava v. Dep’t of Homeland Sec.*, 2025 WL 2842146, at *5 (“Class
 27 members who are arrested contrary to the terms of the Agreement and are in ICE custody shall be released from
 28 custody on their own recognizance without posting bond as soon as practicable” unless subject to mandatory
 detention under the INA).

Respondent's have failed to present any evidence that an Individual Custody Determination was made prior to or even at any point in the hours after they arrested Respondent. Additionally, since the Initiation of Removal Proceeding, Respondents have not made an Individual Custody Determination. If they had, they would undoubtedly come up short for any justification for his detention, as Petitioner has cooperated with all requests since his release, he shows no indication of being a flight risk, and presents no danger to the community.

D. The Court should grant the Writ as Respondents arrest and detainment of Petitioner violate basic due Process Requirements.

By failing to make an Individual Custody determination, Respondents failed to follow the pre-deprivation process required prior to the arrest of Petitioner. The Courts balance three factors to determine what process is due: (1) the private interest that will be affected by the official action; (2) 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 (3) 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. Here, all three factors strongly favor Petitioner.

a. Petitioner has a strong private interest in his freedom from detention.

The first factor strongly favors Petitioner. "Freedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. 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). 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)).

Respondents claim that Petitioner should be detained and can seek a redetermination hearing from the Judge to receive bond, giving no deference for following their own procedures. In *Kelly v. Almodovar*, 25 Civ. 6448 (AT), 2025 WL 2381591 (S.D.N.Y. Aug. 15, 2025), the court rejected any “suggestion that government agents may sweep up any person they wish and hold that person [] without consideration of dangerousness or flight risk so long as the person will, at some unknown [future] point in time, be allowed to ask some other official for his or her release[,]” as this course of action “offends the ordered system of liberty that is the pillar of the Fifth Amendment.”

b. The risk of detaining Petitioner without procedure place guards is very high.

III. Petitioner requests only the statutorily required procedural protections

The second and third Mathews factors also heavily favor Petitioners because Petitioner requests only the procedural safeguards that are already enshrined in statute and regulations. For Petitioner arrest and detention prior to Removal Proceedings being initiated, and without given an individual custody determination, carries a high risk of erroneous deprivation of liberty, and Respondents could hardly argue that compliance with existing laws would be overly

burdensome.” See *Jimenez*, 2025 WL 2430381 at *7. The procedural safeguards Petitioner seeks are (1) A removal proceeding initiated prior to a warrant being issued, and (2) an individual Custody determination justifying the need to detain him. See *id.* (finding *Mathews* factors favor Petitioner who “only asks for Respondents to follow the . . . safeguards already in place.”) For Petitioner, these authorities require that prior to an arrest an individual be placed in removal proceedings by the issuance of a Notice to Appear, only after being placed in removal proceedings can a warrant be issued. Before or during the arrest, if a Notice to Appear has been issued, then an Individual Custody Determination has to be made to take into consideration if the person subject to removal should be considered a risk to the community, or a flight risk, Section 1226(a) and 8 C.F.R. 1236.1(c)(8). “Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992); see also *Zadvydas*, 533 U.S. at 696, 121 S.Ct. 2491 (finding that a non-citizen has a liberty interest “strong enough” to challenge “indefinite and potentially permanent” immigration detention). (“While the temporary detention of non-citizens may sometimes be justified by concerns about public safety or flight risk, the government’s discretion to incarcerate non-citizens is always constrained by the requirements of due process[.]”); *E.A. T-B.*, 795 F. Supp. 3d at 1320–21.

The fiscal and administrative burden of following the statutory procedures is less taxing on the government and on taxpayer dollars than the pre-deprivation detaining of Petitioner. Respondent suggests that the detainment of Petitioner should be the outcome of this case. If Petitioner were to be detained, he would be locked up for an undetermined period of time, most likely, minimum of two weeks. During his detention the government is paying around \$152 per

1 day for his detainment.⁵ Not including the time of the courts and judges to process his various
 2 court dates while in detention, the processing of Petitioner into detention, the transportation to
 3 the facility.. Respondents have failed to show how the detention of Petitioner would be in the
 4 best interest of the government.

5
 6 Respondents have no interest in detaining Petitioner in violation of his procedural rights.
 7 An arrest based on an illegally issued warrant, and lacking an Individual Custody Determination,
 8 should not justify holding Petitioner now only for Petitioner to wait in detention for an
 9 undetermined time until a judge is available to hold a hearing for redetermination when no initial
 10 determination was ever made.

12 **E. CONCLUSION**

13 Because Respondents have not presented evidence that they did indeed have a valid
 14 warrant before arresting Petitioner, habeas corpus should be granted on their violation of the
 15 fourth amendment. Additionally as Respondents have failed to establish that they followed due
 16 process in their arrest and detainment of Petitioner, this Court should “dispose of the matter as
 17 law and justice require” by granting the writ. 28 U.S.C. § 2243.

21 Dated: January 16, 2026

21 /s/ Alicia Vial Beesley
 22 Alicia Vial Beesley
 23 Attorney for Petitioner

26 ⁵ See Article by FORUM Immigration Detention Costs in a Time of Mass Deportation (November 15, 2025) Found
 27 at: <https://forumtogether.org/article/immigration-detention-costs-in-a-time-of-mass-deportation/>