

Chief District Judge David G. Estudillo

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARIN ARIEL GARCIA GABRIEL,

Petitioner,

v.

LAURA HERMOSILLO, *et al.*,

Respondents.

Case No. 2:25-cv-02594-DGE

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for consideration on:
January 7, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement (“ICE”) detains Petitioner Marin Ariel Garcia Gabriel pursuant to 8 U.S.C. § 1225(b). Petitioner asserts that his arrest violates claims arise from claims that his arrest in November violated the Fourth Amendment, the Administrative Procedure Act, the Immigration and Nationality Act (“INA”), and regulations. Pet., ¶¶ 71-101. However, his claims are not a basis for habeas claims of unlawful detention. Petitioner should raise claims concerning his arrest in his ongoing immigration proceedings. Furthermore, Petitioner asserts that his “re-detention” violates procedural due process. This is factually incorrect. As described below,

¹ Respondent Bruce Scott is not a federal official and is not represented by undersigned counsel.

Petitioner's initial removal proceedings had been terminated at his request in 2024. His current detention stems from new removal proceedings based on a recently issued notice to appear. Thus, this detention is not a continuation of his prior release.

Accordingly, this Court should deny the Petition.

II. BACKGROUND

A. Detention Authority

Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the Executive could "expedite removal of aliens lacking a legal basis to remain in the United States." *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 106 (2020) ("[Congress] crafted a system for weeding out patently meritless claims and expeditiously removing the aliens making such claims from the country."). Section 1225 applies to "applicants for admission" to the United States, who are defined as "alien[s] present in the United States who [have] not been admitted" or noncitizens "who arrive[] in the United States," whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)," both of which are subject to mandatory detention. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Relevant here, Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under Section 1225(b)(2), a noncitizen "who is an applicant for admission" is subject to mandatory detention pending full removal proceedings "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (requiring that such noncitizens "be detained for a proceeding under section 1229a of this title"); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (explaining

1 that proceedings under section 1229a are “full removal proceedings under section 240 of the
2 INA”); *see also id.* (“[F]or aliens arriving in and seeking admission into the United States who are
3 placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. §
4 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (citing
5 *Jennings*, 583 U.S. at 299).

6 Federal Respondents acknowledge that courts in this District have considered whether
7 noncitizens similar to Petitioner are detained pursuant to Section 1225(b) or Section 1226(a) and
8 ruled against the Government’s position that Section 1225(b) applies. *See, e.g., Rodriguez*
9 *Vazquez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025)
10 (the Government is appealing this decision). Respectfully, Federal Respondents disagree with
11 these decisions.

12 **B. Petitioner Marin Ariel Garcia Gabriel**

13 Petitioner is a citizen of Guatemala who entered the United States without inspection or
14 parole on or about May 25, 2016, and was apprehended by U.S. Department of Homeland Security
15 (“DHS”) shortly thereafter. Benjamin Decl., ¶ 3. Because Petitioner was 17 years old, he was
16 designated as an Unaccompanied Alien Child (“UAC”). *Id.* DHS issued Petitioner a notice to
17 appear charging inadmissibility pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). *Id.*, ¶ 4; Lambert Decl.,
18 Ex. A, Notice to Appear. As a UAC, Petitioner was released to U.S. Department of Health and
19 Human Services’ Office of Refugee Resettlement and was subsequently released to a family
20 member in Oregon. Benjamin Decl., ¶ 5.

21 In 2017, Petitioner filed an asylum application with U.S. Citizenship and Immigration Services
22 (“USCIS”), which remains pending. Benjamin Decl., ¶ 6.

1 In December 2024, an immigration judge granted Petitioner's motion to terminate his
2 removal proceedings in accordance with the immigration enforcement priorities of the prior
3 administration. *Id.*, ¶ 7. Thus, he was no longer subject to removal proceedings.

4 On November 4, 2025, DHS arrested Petitioner and issued a new notice to appear charging
5 inadmissibility. *Id.*, ¶ 8; Lambert Decl., Ex. B, Warrants for Arrest; Ex. C, Form I-213; Ex. D,
6 Notice to Appear. On December 8, 2025, an immigration judge denied Petitioner's request for a
7 bond hearing due to a lack of jurisdiction and, in the alternative, because Petitioner was deemed
8 to be a flight risk. Benjamin Decl., ¶ 9; Lambert Decl., Ex. E, Order of the Immigration Judge.
9 Petitioner's next hearing in immigration court is scheduled for January 15, 2026. Benjamin Decl.,
10 ¶ 10.

11 Petitioner is currently detained at the Northwest ICE Processing Center. *Id.*, ¶ 11.

12 III. LEGAL STANDARD

13 It is axiomatic that "[t]he district courts of the United States . . . are courts of limited
14 jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil*
15 *Corp. v. Allopeth Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he
16 scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present
17 day." *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020). Title 28
18 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions.

19 To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her custody
20 is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3);
21 *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

22 IV. ARGUMENT

23 Petitioner's claims concerning his arrest by immigration officers are not cognizable in this
24 habeas action. *Marroquin Salazar v. Noem*, No. 5:25-cv-02367, 2025 WL 3535050, at *1 (C.D.

1 Cal. Dec. 8, 2025) (adopting and quoting the Report & Recommendation, attached hereto as
2 Exhibit E (the “*Marroquin-Salazar R&R*”)). Petitioner asserts that his arrest violated the Fourth
3 Amendment, the Administrative Procedure Act, the INA, and regulations. Pet., ¶¶ 71-101. But
4 even if he could establish any of his claims – which Federal Respondents do not concede, these
5 claims should not be brought via habeas and release would not be an appropriate form of relief.

6 Since removal proceedings are underway, Petitioner’s current custody flows not from his
7 arrest and initial post-arrest detention, but from the authority of the INA. *See, e.g.*, 8 U.S.C. §
8 1225(b)(2). The legality of Petitioner’s arrest is not presently relevant and thus cannot be the basis
9 for habeas relief. The habeas statute allows a petitioner who is “in custody” to challenge that
10 custody on various grounds, 28 U.S.C. § 2241(c), including that “[h]e is in custody in violation of
11 the Constitution or laws or treaties of the United States.” 28 U.S.C. §2241(c)(3). The statute is
12 written in the present tense, making clear that Section 2241 only allows a petitioner to challenge
13 his current custody, not his past custody. *See Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (“the
14 essence of habeas corpus is an attack by a person *in custody* upon the legality of *that custody*”
15 (emphasis added)).

16 While Petitioner is free to challenge his current custody based on that statutory authority,
17 any habeas claim basis on his arrest is now moot, since the arrest is not the source of his present
18 custody. *See Barker v. Estelle*, 913 F.2d 1433, 1440 (9th Cir. 1990) (habeas petition challenging
19 pretrial detention was moot once petitioner was incarcerated pursuant to a judgment of conviction);
20 *James v. Reese*, 546 F.2d 325, 328 (9th Cir. 1976) (same).

21 The INA, 8 U.S.C. § 1101 *et seq.*, entrusts the Executive branch to remove inadmissible
22 and deportable noncitizens and to ensure that noncitizens who are removable are in fact removed
23 from the United States. “[D]etention necessarily serves the purpose of preventing deportable []
24 aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that if

1 ordered removed, the aliens will be successfully removed.” *Demore v. Kim*, 538 U.S. 510, 528
 2 (2003). The Supreme Court has long held that deportation proceedings “would be in vain if those
 3 accused could not be held in custody pending the inquiry” of their immigration status. *Wong Wing*
 4 *v. United States*, 163 U.S. 228, 235 (1896). Congress intended for all applicants for admission to
 5 be detained during the course of their removal proceedings. *See Jennings v. Rodriguez*, 583 U.S.
 6 281, 299 (2018) (interpreting the “plain meaning” of sections 1225(b)(1) and (2) to mean that
 7 applicants for admission be mandatorily detained for the duration of their immigration
 8 proceedings).

9 Furthermore, this Court does not have jurisdiction to hear Petitioner’s claims that should
 10 be raised in his immigration proceedings. In 8 U.S.C. §1252(b), Congress “consolidated judicial
 11 review of immigration proceedings into one action in the court of appeals.” *Guerrero-Lasprilla v.*
 12 *Barr*, 589 U.S. 221, 233 (2020) (quotation marks and citation omitted). This provision is known
 13 as the “zipper clause” because it “consolidates or ‘zips’ ‘judicial review’ of immigration
 14 proceedings into one action in the court of appeals.” *Singh v. Gonzales*, 499 F.3d 969, 976 (9th
 15 Cir. 2007) (citation omitted). This statute provides:

16 Judicial review of all questions of law and fact, including interpretation and
 17 application of constitutional and statutory provisions, arising from any action taken
 18 or proceeding brought to remove an alien from the United States under this
 19 subchapter shall be available only in judicial review of a final order under this
 20 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.*

21 8 U.S.C. § 1252(b)(9) (emphasis added); *see also* 8 U.S.C. § 1252(a)(5) (“a petition for review . . .
 22 shall be the sole and exclusive means for judicial review of an order of removal”). “Taken
 23 together, § 1252(a)(5) and § 1252(b)(9) mean that any issue – whether legal or factual – arising
 24

1 from any removal-related activity can be reviewed only through the [petition for review] process.”

2 *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016).

3 While claims “collateral to, or independent of” the removal process are still subject to
4 habeas review, “[w]hen a claim by an alien, however it is framed, challenges the procedure and
5 substance of an agency determination that is ‘inextricably linked’ to the order of removal, it is
6 prohibited by section 1252(a)(5).” *Id.* Here, Petitioner’s claims are inextricably linked to
7 “questions of law and fact, including interpretation and application of constitutional and statutory
8 provisions, arising from any action taken or proceeding brought to remove an alien.” 8 U.S.C. §
9 1252(b)(9).

10 Finally, the remedy for an unlawful arrest is the suppression of evidence obtained
11 therefrom, not release from custody. *See INS v. Lopez-Mendoza*, 468 U.S. 1032, 1040-41 (1984);
12 *United States v. Garcia-Beltran*, 443 F.3d 1126, 1131-32 (9th Cir.), cert. denied, 549 U.S. 935
13 (2006); *see also Martinez-Medina v. Holder*, 673 F.3d 1029, 1033-34 (9th Cir. 2011) (exclusionary
14 rule applies in civil removal proceedings only when the Fourth Amendment violation is egregious).
15 “The ‘body’ or identity of a defendant or respondent in a criminal or civil proceeding is never itself
16 suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search,
17 or interrogation occurred.” *Lopez-Mendoza*, 468 U.S. at 1039; *see also Stone v. Powell*, 428 U.S.
18 465, 485 (1976) (noting that “judicial proceedings need not abate when the defendant’s person is
19 unconstitutionally seized” (citing *Gerstein v. Pugh*, 420 U.S. 103, 119 (1975); *Frisbie v. Collins*,
20 342 U.S. 519 (1952))); *Garcia-Beltran*, 443 F.3d at 1132 (“[T]here is no sanction to be applied
21 when an illegal arrest only leads to discovery of the man’s identity.” (quotation omitted)).

22 Accordingly, because Petitioner seeks his release from custody based on an allegedly
23 unlawful arrest, there is no basis for the Court to grant such relief. *See, e.g., Rodrigues De Oliveira*
24 *v. Joyce*, 2025 WL 1826118, at *5 (D. Me. July 2, 2025) (“Petitioner’s argument that an illegal

1 arrest automatically results in an illegal detention is misguided. . . . [E]ven if Petitioner's initial
2 arrest was unlawful, her detention pending removal may stand."); *Alonso-Portillo v. Bondi*, 2025
3 WL 2483393, at *11 (S.D. Ohio Aug. 28, 2025) ("Traditional application of the exclusionary rule
4 results in the suppression of evidence, as 'fruits of the poisonous tree,' obtained in violation of the
5 Fourth Amendment. But the rule does not, as Alonso-Portillo asserts here, dictate his immediate
6 release from detention."); *Marvan v. Slaughter*, 2025 WL 1940043, at *3-4 (D. Mont. July 15,
7 2025) (petitioner could not obtain habeas relief on Fourth Amendment violation where
8 administrative removal proceedings had commenced); *H.N. v. Warden*, Stewart Det. Ctr., 2021
9 WL 4203232, at *5 (M.D. Ga. Sept. 15, 2021) ("even if the Court accepted Petitioner's argument
10 that his initial detention was somehow unlawful, he is still not entitled to habeas relief."); *Medina*
11 *v. U.S. Dep't of Homeland Sec.*, 2017 WL 1101370, at *1-2 (W.D. Wash. Mar. 24, 2017)
12 (immigration detainee was not entitled to habeas relief because "the remedy for an unlawful arrest
13 in violation of the Fourth Amendment is suppression of evidence," so if he "desire[d] release from
14 his current detention, his avenue for seeking such release should occur in the context of his removal
15 proceedings" (citations omitted)); *Amezcu-Gonzalez v. Lobato*, 2016 WL 6892934, at *2 (W.D.
16 Wash. Oct. 6, 2016) (dismissing petition challenging immigration detainee's arrest on Fourth
17 Amendment grounds where detainee did not dispute that he was subject to final order of removal,
18 and his "only assertion [was] that he should be released because his arrest violated the Fourth
19 Amendment"; "even if petitioner's arrest amounts to an egregious Fourth Amendment violation,
20 he is not entitled to habeas relief"), report and recommendation adopted, 2016 WL 6892547 (W.D.
21 Wash. Nov. 22, 2016); *Nyuwa v. Gurule*, 2014 WL 12984435, at *1 (D. Ariz. June 13, 2014) ("It
22 is doubtful that Petitioner's arrest was unlawful. But even if it was, his allegedly unlawful arrest
23 does not invalidate his current immigration detention because 'the "body" or identity of a
24 defendant in a criminal or civil proceeding is never itself suppressible as the fruit of an unlawful

1 arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred.” (quoting
2 *Lopez-Mendoza*, 468 U.S. at 1039)).

3 V. CONCLUSION

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

5 DATED this 31st day of December, 2025.

6 Respectfully submitted,

7 CHARLES NEIL FLOYD
United States Attorney

8 s/ Michelle R. Lambert
9 MICHELLE R. LAMBERT, NYS #4666657
Assistant United States Attorney
10 United States Attorney’s Office
Western District of Washington
11 1201 Pacific Ave., Ste. 700
Tacoma, WA 98402
12 Phone: (253) 428-3824
Fax: (253) 428-3826
13 Email: michelle.lambert@usdoj.gov

14 *Attorneys for Federal Respondents*

15 *I certify that this memorandum contains 2,427*
16 *words, in compliance with the Local Civil Rules.*