

Julia Braker
CLEAR Clinic
P.O. Box 11288
Portland, OR 97214
(971) 258-1372
julia.braker@clear-clinic.org

Counsel for petitioner.

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

C-G-S-,	)	File No.
	)	
Petitioners,	)	Agency No: A 
	)	
vs.	)	PETITION FOR HABEAS
	)	CORPUS
LAURA HERMOSILLO, Seattle Field Office	)	
Director, U.S. Immigration and Customs	)	ORAL ARGUMENT
Enforcement and Removal Operation, KRISTI	)	REQUESTED
NOEM, Secretary of Homeland Security,	)	
PAMELA BONDI, Attorney General, TODD	)	Expedited hearing requested
LYONS, Acting Director of Immigration and	)	
Customs Enforcement,	)	
Respondents.	)	
	)	
	)	
	)	
	)	
	)	

Petitioner seeks a writ of habeas corpus as follows.

JURISDICTION AND VENUE

1. This action arises under the Constitution of the United States and the Immigration
PETITION FOR HABEAS CORPUS
Page 1 of 12

and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.

2. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.

3. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

4. In addition "a federal court always has jurisdiction to determine its own jurisdiction," including its own subject-matter jurisdiction. *Brownback v. King*, 592 U.S. 209, 218-19 (2021) (quoting *United States v. Ruiz*, 536 U.S. 622, 628 (2002)).

5. Unless the assertion of jurisdiction is frivolous, the court has the power to preserve existing conditions while it determines its own authority to grant injunctive relief. See *United States v. United Mine Workers of America*, 330 U.S. 258, 293 (1947).

6. Such an order is valid unless and until overturned, even when the issuing court lacks subject-matter jurisdiction to determine the underlying action's merits. *Id.* at 293-94.

7. This court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

8. Venue is proper because petitioners are in Respondents' constructive custody in Portland, Oregon and because a substantial part of the events giving rise to their claims occurred in this district. 28 U.S.C. § 1391(e).

THE PETITIONER

9. Petitioner is a resident of the state of Oregon, and present in the state of Oregon as of the time of filing this petition.

CUSTODY

10. Under 28 U.S.C. § 2241(c), only persons “in custody” may apply for a writ of habeas corpus. “Custody includes either physical custody or constructive custody, where the person is under a restraint on liberty not shared by the public generally.”¹ For example, this includes persons subject to a final order of deportation. *Nakaranurack v. United States*, 68 F.3d 290, 293 (9th Cir. 1995).

11. Petitioner is “in custody” of the respondents because she is currently detained at the Portland office of Immigrations Custom & Enforcement.

MOTION TO PROCEED ANONYMOUSLY

12. Parties may proceed anonymously when special circumstances justify secrecy. *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1067 (9th Cir. 2000). In the Ninth Circuit, parties may use pseudonyms “in the unusual case when nondisclosure of the party's identity is necessary to protect a person from harassment, injury, ridicule or personal embarrassment.” *Id.* at 1067-68 (citation, ellipsis and internal quotes omitted). A party may preserve anonymity in “in special circumstances

¹*Jones v. Cunningham*, 371 U.S. 236, 240, 83 S. Ct. 373, 9 L. Ed. 2D 285 (1963) (“[B]esides physical imprisonment, there are other restraints on a man's liberty, restraints not shared by the public generally, which have been thought sufficient in the English-speaking world to support the issuance of habeas corpus.”).

when the party's need for anonymity outweighs prejudice to the opposing party and the public's interest in knowing the party's identity.” *Id.* at 1068.

13. The following special circumstances justify the petitioner in proceeding anonymously: sensitivity of the petitioner’s immigration case.

THE RESPONDENTS

14. Respondent LAURA HERMOSILLO is the Field Office Director for the Seattle Field Office, Immigration and Customs Enforcement and Removal Operations (“ICE”). The Seattle Field Office is responsible for local custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of noncitizens. LAURA HERMOSILLO is sued in her official capacity.

15. The Seattle Field Office’s area of responsibility includes Alaska, Oregon, and Washington. Consequently, respondent LAURA HERMOSILLO is the immediate legal custodian of petitioners.

16. Respondent KRISTI NOEM is the Secretary of Homeland Security. As such she is responsible for the actions of that department, its subagencies, and its officers and personnel. KRISTI NOEM is sued in her official capacity.

17. Respondent PAMELA BONDI is the Attorney General of the United States, and as such has responsibility for the conduct and operations of the Department of Justice and all of its officers and personnel, including the Executive Office for Immigration Review. PAMELA BONDI is sued in her official capacity.

18. Respondent TODD LYONS is the Acting Director of ICE, and as such is responsible for the means by which the immigration laws of the United States are enforced. TODD LYONS is sued in his official capacity.

HABEAS CORPUS REQUIREMENTS UNDER 28 U.S.C. § 2243

19. Pursuant to 28 U.S.C. § 2243, a court entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

20. The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

21. The person to whom the writ or order is directed shall make a return certifying the true cause of the detention. When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

22. Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained. The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

23. The return and all suggestions made against it may be amended, by leave of court, before or after being filed. The court shall summarily hear and determine the

facts, and dispose of the matter as law and justice require.

24. The person to whom the writ or order is directed shall make a return certifying the true cause of the detention. When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

25. Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

26. The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

27. The return and all suggestions made against it may be amended, by leave of court, before or after being filed. The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

LEGAL REQUIREMENTS FOR STOPS AND ARRESTS

28. The Fourth Amendment protects “[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures.” U.S. Const. amend. IV.

29. Immigration detention is a form of civil confinement that “constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 425 (1979).

30. “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).

31. 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).

32. Immigration officers may arrest an individual without a warrant in limited circumstances. See *Arizona v. United States*, 567 U.S. 387, 407–08 (2012) (noting strong Congressional preference, as expressed in INA, for immigration arrests to be based on warrants).

33. The INA permits warrantless arrest if an immigration officer has reason to believe that a noncitizen (1) is in the United States in violation of the immigration laws and (2) “is likely to escape before a warrant can be obtained for his arrest”. 8 U.S.C. § 1357(a)(2); accord 8 C.F.R. § 287.8(c)(2)(i)-(ii). An officer “has reason to believe” when they have the equivalent of “the constitutional requirement of probable cause.” *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980).

34. The Fifth Amendment right to remain silent may be properly invoked

during a civil immigration arrest. See *Kastigar v. United States*, 406 U.S. 441, 444-45 (1972) (The privilege against self-incrimination “can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory . . . This Court has been zealous to safeguard the values which underlie the privilege.”).

35. An immigration officer may not establish probable cause on the basis of a noncitizen’s silence pursuant to his Fifth Amendment rights. See *Hurd v. Terhune*, 619 F.3d 1080, 1088 (9th Cir. 2010) (affirming “the fundamental principle that a suspect’s silence in the face of questioning cannot be used as evidence against him at trial”).

36. 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).

37. The noncitizen must then “be taken without unnecessary delay for examination before an officer of the 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).

38. 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). These procedures are essential to protect the arrested person’s Fourth and Fifth Amendment rights.

FACTUAL BACKGROUND

39. Petitioner entered the United States in 2014 without inspection.

40. Petitioner was traveling in a vehicle with five other people when their car was pulled over by DHS agents. Petitioner's vehicle was cut off and blocked from moving by the DHS agents' vehicle. The DHS agents did not articulate a reason for pulling over their vehicle.

41. Per instructions by DHS agents, Petitioner exited her vehicle. DHS agents asked her country of origin, to which she answered that she was from Guatemala.

42. DHS agents handcuffed petitioner and the other members of the vehicle and transported them to the Immigration Customs Enforcement–Enforcement and Removal Operations office.

FIRST CLAIM FOR RELIEF

Seizure with no probable cause

43. Except at the border and its functional equivalents, the Fourth Amendment prohibits respondents from stopping a person without reasonable suspicion to question as to whether he or she is unlawfully in the United States. The Fourth Amendment bars respondents from making an arrest without probable cause to believe that a person is a noncitizen unlawfully in the United States.

44. "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). “‘Reasonable suspicion’ is no different.” *Id.*

45. Respondents’ stop of Petitioner without reasonable suspicion, and arrest of without probable cause, violates the Fourth Amendment to the U.S. Constitution.

SECOND CLAIM FOR RELIEF

Seizure based solely on race

46. 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.

47. Respondents had no basis to detain Petitioner and inquire about her immigration status other than her race and apparent ethnicity. Likewise, Respondents had no basis to arrest Petitioner other than her race and apparent ethnicity. This was violation of the Fourth Amendment.

THIRD CLAIM FOR RELIEF

Violation of Fifth Amendment Right to Due Process

48. 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, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or

permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

49. 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)).

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

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

52. Wherefore petitioner prays for relief as follows in that this court:

- a) Assume jurisdiction in this matter;
- b) Issue an immediate order barring the respondents from removing petitioner from the state of Oregon, or, if petitioner is in the state of Washington, from the state of Washington, without notice to the court and approval by the court;
- c) Issue an order to show cause why this petition should not be granted within three (3) days.

- d) Declare that petitioner's stop and arrest without reasonable suspicion, and petitioner's continued detention, violates applicable regulations, the APA, the INA, and the Fourth and Fifth Amendments to the Constitution of the United States.
- e) Issue a writ of habeas corpus ordering respondents to release petitioner from custody
- f) Award petitioner reasonable attorneys fees and costs under the Equal Access to Justice Act and any other statute applicable to this matter.
- g) Grant any further relief as the court may deem just and proper.

Dated this 15th day of January, 2026

/s/ Julia M. Braker

CLEAR Clinic

OSB # 136371

Attorney for Petitioner