

District Judge Thomas S. Zilly

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

EZEQUIEL LOPEZ CRUZ,

Petitioner,

v.

PAMELA BONDI, US Attorney General, and
BRUCE SCOTT, Warden,

Respondents.

Case No. 2:26-cv-00495-TSZ

FEDERAL RESPONDENT'S¹ RETURN

Noted For Consideration:
March 3, 2026

I. INTRODUCTION

U.S. Immigration and Customs Enforcement ("ICE") lawfully detains Petitioner Ezequiel Lopez-Cruz at the Northwest ICE Processing Center in Tacoma, Washington, pending the completion of his removal proceedings. On November 19, 2025, immigration officers arrested Petitioner and charged him as removable from the United States. This commenced Petitioner's removal proceedings in immigration court. Although an immigration judge ordered Petitioner to be removed in January 2026, Petitioner has appealed the order to the Board of Immigration

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

1 Appeals (“BIA”). Therefore, his removal order is not administratively final, and he remains
2 detained pursuant to 8 U.S.C. § 1225(b).

3 Petitioner challenges his detention as unconstitutional. Pet., ¶¶ 9-10. But the Supreme
4 Court has repeatedly recognized, detention is a constitutionally permissible aspect of the
5 Government’s enforcement of the immigration laws and fulfills the legitimate purpose of ensuring
6 that individuals appear for their removal proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281,
7 286 (2018); *Demore v. Kim*, 538 U.S. 510, 523 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 690-91
8 (2001). Consistent with the requirements of due process, Petitioner’s confinement is thus
9 “reasonably related” to a legitimate government interest and is constitutional while his removal
10 proceedings are pending. *Bell v. Wolfish*, 441 U.S. 535, 538-39 (1979).

11 Accordingly, this Court should deny the Petition.

12 II. BACKGROUND

13 A. Detention Under 8 U.S.C. § 1225(b)

14 Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the
15 Executive could “expedite removal of aliens lacking a legal basis to remain in the United States.”
16 *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep’t of Homeland Sec. v. Thuraissigiam*,
17 591 U.S. 103, 106 (2020) (“[Congress] crafted a system for weeding out patently meritless claims
18 and expeditiously removing the aliens making such claims from the country.”). Section 1225
19 applies to “applicants for admission” to the United States, who are defined as “alien[s] present in
20 the United States who [have] not been admitted” or noncitizens “who arrive[] in the United
21 States,” whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Applicants for
22 admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by
23 § 1225(b)(2),” both of which are subject to mandatory detention. *Jennings*, 583 U.S. at 287
24

1 (“[R]ead most naturally, §§ 1225(b)(1) and (b)(2) mandate detention for applicants for admission
2 until certain proceedings have concluded.”).

3 Relevant here, Section 1225(b)(2) is “broader” and “serves as a catchall provision.”
4 *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).”
5 *Id.* Under Section 1225(b)(2), a noncitizen “who is an applicant for admission” is subject to
6 mandatory detention pending full removal proceedings “if the examining immigration officer
7 determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be
8 admitted.” 8 U.S.C. § 1225(b)(2)(A); *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL
9 323330, at *1 (5th Cir. Feb. 6, 2026) (affirming the government’s position that aliens who have
10 not been admitted or are not entitled to be admitted to the United States are “applicants for
11 admission” who are subject to mandatory detention under Section 1225(b)(2)(A)); *but see*
12 *Rodriguez Vazquez v. Bostock*, 802 F. Supp. 3d 1297 (W.D. Wash. 2025) (finding that detention
13 pursuant to 8 U.S.C. § 1225(b)(2) of the Bond Denial Class is unlawful).

14 As the Fifth Circuit recently found, aliens who are present without admission in the United
15 States are “applicants for admission” as defined in Section 1225(a)(1). *Buenrostro-Mendez*, 2026
16 WL 323330, at *4. The court clarified that an “applicant for admission” is a person “seeking
17 admission” regardless of whether that person is actively engaged in admissions procedures when
18 detained. *Id.*, at 5-6.

19 The sole means of release from detention pursuant to Section 1225(b) is temporary parole
20 ‘for urgent humanitarian reasons or significant public benefit,’ § 1182(d)(5)(A).” *Jennings*, 583
21 U.S. at 283.

22 **B. Petitioner Ezequiel Lopez Cruz**

23 Petitioner is a native and citizen of Mexico who entered the United States at an unknown
24 location without admission or parole. Leyba Decl., ¶ 3. From 2013 through July 15, 2021,

1 Petitioner was the beneficiary of Deferred Action for Childhood Arrivals (“DACA”). Leyba Decl.,
2 ¶ 4. However, he failed to renew his DACA status with U.S. Citizenship and Immigration
3 Services, and it expired on July 15, 2021. Leyba Decl., ¶ 5.

4 Petitioner has had multiple criminal arrests and convictions while in the United States. In
5 2012, he was convicted of reckless driving by the Cowlitz County District Court and sentenced to
6 364 days incarceration. Leyba Decl., ¶ 6. On March 4, 2025, Petitioner was convicted by the
7 Cowlitz County District Court of driving under the influence and attempting to elude police,
8 resulting in a sentence of 5 days incarceration and 24 months of probation. Leyba Decl., ¶ 8. Most
9 recently, criminal charges have been filed against Petitioner and remain pending in Clark County
10 from a September 9, 2025 arrest for unlawful imprisonment, interfering with domestic violence
11 reporting, and assault in the second degree. Leyba Decl., ¶ 9.

12 On November 19, 2025, immigration officers served Petitioner with an administrative
13 warrant and arrested him for being present in violation of immigration law and his criminal history.
14 Leyba Decl., ¶ 10; Lambert Decl., Ex. A, Warrant for Arrest; Ex B, Form I-213. He was brought
15 to the Portland ICE office where ICE issued a notice to appear to him that charged him as
16 removable from the United States under 8 U.S.C. § 1182(a)(6)(A)(i). Leyba Decl., ¶ 10; Lambert
17 Decl., Ex. C, Notice to Appear. This commenced his removal proceedings. He was then
18 transported to the Northwest ICE Processing Facility that same day. Leyba Decl., ¶ 11.

19 The Tacoma Immigration Court is presiding over Petitioner’s removal proceedings. In
20 December 2025, Petitioner appeared with his counsel for his initial calendar hearing, where the
21 immigration judge granted Petitioner’s request for a continuance. Leyba Decl., ¶ 12. In January
22 2026, Petitioner filed two applications for relief from removal. Leyba Decl., ¶ 13. On January 14,
23 2026, the immigration judge denied Petitioner’s requests for relief and ordered him removed to
24

1 Mexico. Leyba Decl., ¶ 15; Lambert Decl., Ex. D, Order. Petitioner has appealed this decision to
 2 the BIA. Leyba Decl., ¶ 15.

3 On January 22, 2026, the immigration court held a bond hearing where Petitioner was
 4 represented by counsel. Leyba Decl., ¶ 16. The immigration judge heard testimony and arguments
 5 from both parties. Leyba Decl., ¶ 16. The immigration judge denied Petitioner's request for bond
 6 as he found that the court lacked jurisdiction because Petitioner is mandatorily detained pursuant
 7 to 8 U.S.C. § 1225(b). Leyba Decl., ¶ 16; Lambert Decl., Ex. E, Order. The immigration judge
 8 also issued an alternative order denying bond because Petitioner was deemed a flight risk. Leyba
 9 Decl., ¶ 16.

10 III. LEGAL STANDARD

11 “The district courts of the United States ... are courts of limited jurisdiction. They possess
 12 only that power authorized by Constitution and statute.” *Exxon Mobil Corp. v. Allopeth Servs.,*
 13 *Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he scope of habeas has been
 14 tightly regulated by statute, from the Judiciary Act of 1789 to the present day.” *Dep't of Homeland*
 15 *Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title 28 U.S.C. § 2241 provides district
 16 courts with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas corpus, the
 17 burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws,
 18 or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943,
 19 969 n.16 (9th Cir. 2004).

20 IV. ARGUMENT

21 A. ICE lawfully detains Petitioner pending his removal proceedings.

22 The government has carefully reviewed this petition and determined that the main legal
 23 issue presented concerns the statutory authority for ICE detention of Petitioner under 8 U.S.C. §§
 24 1225(b)(2) or 1226(a) and whether Petitioner is entitled to a bond hearing. It is the government's

1 position that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) because
2 he was present in the United States without being admitted or paroled. *Buenrostro-Mendez v.*
3 *Bondi*, No. 25-20496, 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026) (affirming the government's
4 position that aliens who have not been admitted or are not entitled to be admitted to the United
5 States are "applicants for admission" who are subject to mandatory detention under Section
6 1225(b)(2)(A)). However, Federal Respondents acknowledge that courts in this District, including
7 this Court, have reached the opposite conclusion in *Torres v. Wamsley*, No. 25-cv-5772-TSZ, 2025
8 WL 2855379, at *3-4 (W.D. Wash. Oct. 8, 2025); *see also Rodriguez Vasquez v. Bostock*, 802 F.
9 Supp. 3d 1297, 1336 (W.D. Wash. Sept. 30, 2025) (holding that the government's interpretation
10 of Section 1225(b)(2) violated the INA and that class members had been unlawfully subjected to
11 mandatory detention).

12 But even if this Court were to find that Section 1225(b) mandatory detention does not
13 govern here, Petitioner is still lawfully detained pursuant to 8 U.S.C. § 1226(a). On January 22,
14 2026, the immigration judge denied Petitioner's request for bond due to lack of jurisdiction after
15 determining that he is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b). Petitioner
16 was also issued an alternate bond order. Lambert Decl., Ex. E, Order. In the alternative, the
17 immigration judge denied bond because Petitioner had failed to establish that he is not a flight risk.
18 *Id.*

19 "[T]he essence of habeas corpus is an attack by a person in custody upon the legality of
20 that custody, and . . . the traditional function of the writ is to secure release from illegal custody."
21 *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Although Petitioner challenges the immigration
22 judge's finding of mandatory detention under Section 1225(b), the immigration judge alternatively
23 held a bond hearing for Petitioner and determined that Petitioner presents a flight risk. This is a
24 separate basis for the "legality of [his] custody." *Rivera Hernandez v. Hermosillo*, No. 2:26-cv-

1 00341-TMC, 2026 WL 295709, at *2 (W.D. Wash. Feb. 4, 2026). Accordingly, even under
2 Section 1226(a), Petitioner remains lawfully in detention under the immigration judge's alternate
3 finding.

4 To the extent that Petitioner disagrees with the immigration court's alternative order, the
5 discretionary decision is not reviewable by this Court. 8 U.S.C. § 1226(e) ("No court may set
6 aside any action or decision by the Attorney General under this section regarding the detention of
7 any alien or the revocation or denial of bond or parole."); *see also Valenzuela v. Semaia*, No. 5:25-
8 cv-02853, 2025 WL 4041920, at *2 (C.D. Cal. Dec. 10, 2025) ("Although Petitioner may disagree
9 with the outcome of the [immigration judge's] determination at the bond hearing, this Court does
10 not have jurisdiction to sit as an appellate body over this issue.").

11 Instead, this Court should require Petitioner to exhaust his administrative remedies by
12 appealing the immigration judge's bond determination to the BIA. Courts generally "require, as a
13 prudential matter, that habeas petitioners exhaust available judicial and administrative remedies
14 before seeking [such] relief." *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001)
15 (abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006)). The
16 exhaustion requirement is subject to waiver because it is not a "jurisdictional prerequisite." *Id.*

17 **B. Habeas relief is not available for Petitioner's claims concerning the circumstances of**
18 **his arrest.**

19 Petitioner's claims concerning his arrest by immigration officers (Pet., ¶ 10) are not
20 cognizable in this habeas action. *Labrador Abadin v. Noem*, No. 25-cv-2411, 2026 WL 217148
21 (W.D. Wash. Jan. 28, 2026) (stating that a habeas petitioner brought pursuant to 28 U.S.C. § 2241
22 "is not the appropriate mechanism to challenge the legality of [an] arrest"); *Marroquin Salazar v.*
23 *Noem*, No. 5:25-cv-02367, 2025 WL 3535050, at *1 (C.D. Cal. Dec. 8, 2025) (adopting and
24 quoting the Report & Recommendation, attached hereto as Exhibit F. But even if he could

1 establish his unlawful arrest claim – which Federal Respondent does not concede, this claim should
2 not be brought via habeas and release would not be an appropriate form of relief.

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

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

18 The INA, 8 U.S.C. § 1101 *et seq.*, entrusts the Executive branch to remove inadmissible
19 and deportable noncitizens and to ensure that noncitizens who are removable are in fact removed
20 from the United States. “[D]etention necessarily serves the purpose of preventing deportable []
21 aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that if
22 ordered removed, the aliens will be successfully removed.” *Demore v. Kim*, 538 U.S. 510, 528
23 (2003). The Supreme Court has long held that deportation proceedings “would be in vain if those
24

1 accused could not be held in custody pending the inquiry” of their immigration status. *Wong Wing*
 2 *v. United States*, 163 U.S. 228, 235 (1896).

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

10 Judicial review of all questions of law and fact, including interpretation and
 11 application of constitutional and statutory provisions, arising from any action
 12 taken or proceeding brought to remove an alien from the United States under
 13 this subchapter shall be available only in judicial review of a final order under
 14 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.

15 8 U.S.C. § 1252(b)(9) (emphasis added); *see also* 8 U.S.C. § 1252(a)(5) (“a petition for review . . .
 16 shall be the sole and exclusive means for judicial review of an order of removal”). “Taken
 17 together, § 1252(a)(5) and § 1252(b)(9) mean that any issue – whether legal or factual – arising
 18 from any removal-related activity can be reviewed only through the [petition for review] process.”
 19 *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016).

20 While claims “collateral to, or independent of” the removal process are still subject to
 21 habeas review, “[w]hen a claim by an alien, however it is framed, challenges the procedure and
 22 substance of an agency determination that is ‘inextricably linked’ to the order of removal, it is
 23 prohibited by section 1252(a)(5).” *Id.* Here, Petitioner’s claims are inextricably linked to
 24 “questions of law and fact, including interpretation and application of constitutional and statutory

1 provisions, arising from any action taken or proceeding brought to remove an alien.” 8 U.S.C. §
2 1252(b)(9).

3 Finally, the remedy for an unlawful arrest is the suppression of evidence obtained
4 therefrom, not release from custody. *See INS v. Lopez-Mendoza*, 468 U.S. 1032, 1040-41 (1984);
5 *United States v. Garcia-Beltran*, 443 F.3d 1126, 1131-32 (9th Cir.), cert. denied, 549 U.S. 935
6 (2006); *see also Martinez-Medina v. Holder*, 673 F.3d 1029, 1033-34 (9th Cir. 2011) (exclusionary
7 rule applies in civil removal proceedings only when the Fourth Amendment violation is egregious).
8 “The ‘body’ or identity of a defendant or respondent in a criminal or civil proceeding is never itself
9 suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search,
10 or interrogation occurred.” *Lopez-Mendoza*, 468 U.S. at 1039; *see also Stone v. Powell*, 428 U.S.
11 465, 485 (1976) (noting that “judicial proceedings need not abate when the defendant's person is
12 unconstitutionally seized” (*citing Gerstein v. Pugh*, 420 U.S. 103, 119 (1975); *Frisbie v. Collins*,
13 342 U.S. 519 (1952))); *Garcia-Beltran*, 443 F.3d at 1132 (“[T]here is no sanction to be applied
14 when an illegal arrest only leads to discovery of the man’s identity.” (quotation omitted)).

15 Accordingly, because Petitioner seeks his release from custody based on an allegedly
16 unlawful arrest, there is no basis for the Court to grant such relief. *See, e.g., Rodrigues De Oliveira*
17 *v. Joyce*, 2025 WL 1826118, at *5 (D. Me. July 2, 2025) (“Petitioner’s argument that an illegal
18 arrest automatically results in an illegal detention is misguided. . . . [E]ven if Petitioner’s initial
19 arrest was unlawful, her detention pending removal may stand.”); *Alonso-Portillo v. Bondi*, 2025
20 WL 2483393, at *11 (S.D. Ohio Aug. 28, 2025) (“Traditional application of the exclusionary rule
21 results in the suppression of evidence, as ‘fruits of the poisonous tree,’ obtained in violation of the
22 Fourth Amendment. But the rule does not, as Alonso-Portillo asserts here, dictate his immediate
23 release from detention.”); *Marvan v. Slaughter*, 2025 WL 1940043, at *3-4 (D. Mont. July 15,
24 2025) (petitioner could not obtain habeas relief on Fourth Amendment violation where

1 administrative removal proceedings had commenced); *H.N. v. Warden*, Stewart Det. Ctr., 2021
2 WL 4203232, at *5 (M.D. Ga. Sept. 15, 2021) (“even if the Court accepted Petitioner’s argument
3 that his initial detention was somehow unlawful, he is still not entitled to habeas relief.”); *Medina*
4 *v. U.S. Dep’t of Homeland Sec.*, 2017 WL 1101370, at *1-2 (W.D. Wash. Mar. 24, 2017)
5 (immigration detainee was not entitled to habeas relief because “the remedy for an unlawful arrest
6 in violation of the Fourth Amendment is suppression of evidence,” so if he “desire[d] release from
7 his current detention, his avenue for seeking such release should occur in the context of his removal
8 proceedings” (citations omitted)); *Amezcu-Gonzalez v. Lobato*, 2016 WL 6892934, at *2 (W.D.
9 Wash. Oct. 6, 2016) (dismissing petition challenging immigration detainee’s arrest on Fourth
10 Amendment grounds where detainee did not dispute that he was subject to final order of removal,
11 and his “only assertion [was] that he should be released because his arrest violated the Fourth
12 Amendment”; “even if petitioner’s arrest amounts to an egregious Fourth Amendment violation,
13 he is not entitled to habeas relief”), report and recommendation adopted, 2016 WL 6892547 (W.D.
14 Wash. Nov. 22, 2016); *Nyuwa v. Gurule*, 2014 WL 12984435, at *1 (D. Ariz. June 13, 2014) (“It
15 is doubtful that Petitioner’s arrest was unlawful. But even if it was, his allegedly unlawful arrest
16 does not invalidate his current immigration detention because ‘the “body” or identity of a
17 defendant in a criminal or civil proceeding is never itself suppressible as the fruit of an unlawful
18 arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred.’” (*quoting*
19 *Lopez-Mendoza*, 468 U.S. at 1039)).

20 Therefore, this Court should deny Petitioner’s unlawful arrest claims.

21 V. CONCLUSION

22 For the foregoing reasons, this Court should deny the habeas petition.

23 //

24 //

1 DATED this 26th day of February, 2026.

2 Respectfully submitted,

3 s/ Michelle R. Lambert

4 MICHELLE R. LAMBERT, NYS #4666657

5 Assistant United States Attorney

6 United States Attorney's Office

7 Western District of Washington

8 1201 Pacific Ave., Ste. 700

9 Tacoma, WA 98402

10 Phone: (253) 428-3824

11 Fax: (253) 428-3826

12 Email: michelle.lambert@usdoj.gov

13 *Attorney for Federal Respondent*

14 *I certify that this memorandum contains 3,310*
15 *words, in compliance with the Local Civil Rules*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee in the Office of the United States Attorney for the Western District of Washington and of such age and discretion as to be competent to serve papers;

I further certify that on this date, I electronically filed the foregoing with Exhibit F, Declaration of Adrian Leyba , and the Declaration of Michelle R. Lambert with the supporting Exhibits A through E, with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to the following CM/ECF participant(s):

- 0 -

I further certify that on this date, I arranged for service of the foregoing on the following non-CM/ECF participant, via Certified Mail, return receipt requested, postage prepaid, addressed as follows:

Ezequiel Lopez Cruz, *Pro Se* Petitioner


NW Detention Center
1623 E. J Street, Suite 5
Tacoma, WA 98421-1615

DATED this 26th day of February, 2026.

s/ Stephanie Huerta-Ramirez

STEPHANIE HUERTA-RAMIREZ, Legal Assistant
United States Attorney's Office
Western District of Washington
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Phone: 206-553-7970
Fax: 206-553-4073
Email: stephanie.huerta-ramirez@usdoj.gov