JUSTIN D. WHATCOTT, IDAHO STATE BAR NO. 6444
ACTING UNITED STATES ATTORNEY
MICHAEL W. MITCHELL, TEXAS STATE BAR NO. 24037126
ASSISTANT UNITED STATES ATTORNEY
DISTRICT OF IDAHO
1290 W. MYRTLE ST. SUITE 500
BOISE, ID 83702-7788
TELEPHONE: (208) 334-1211
FACSIMILE: (208) 334-9375
Email: Mike.Mitchell@usdoj.gov

Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

KEVIN EDGARDO RAMIREZ SOLIS, Plaintiff, v. MIKE HOLLINSHEAD, Sheriff, Elmore County; JARED CALLAHAN, Acting Director of Boise U.S. Immigration and Customs Enforcement Field Sub-Office; JASON KNIGHT, Director of the Salt Lake City U.S. Immigration and Customs Enforcement Field Office; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; and PAM BONDI, Attorney General of the United States, in their official capacities, Defendants.	Case No. 1:25-CV-00330-DCN **FEDERAL DEFENDANTS' MOTION TO DISMISS SECOND AMENDED WRIT OF HABEAS CORPUS AND RESPONSE**

INTRODUCTION

The Court should dismiss Petitioner Kevin Edgardo Ramirez Solis's Second Amended Petition for Writ of Habeas Corpus (ECF No. 14-1) because it lacks jurisdiction. In the

alternative, the Court should deny the Petition because U.S. Immigration and Customs Enforcement (ICE) acted lawfully in arresting and detaining Solis.

On June 25, 2025, Kevin Edgardo Ramirez Solis (Solis) filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, arguing that his arrest by ICE was unconstitutional. Pet., ECF No. 1. Two weeks later, Solis amended his petition under Federal Rule of Civil Procedure 15, claiming that ICE officers violated his Fourth and Fifth Amendment rights "when they broke Petitioner's window to apprehend him" and "did not timely identify themselves." Am. Pet. 7-9, ECF No. 8. Solis asked this Court to "[a]ssume jurisdiction over this matter," declare that his constitutional rights were violated and issue a writ ordering his immediate release or, alternatively, "schedule a bond hearing within 20 days." Am. Pet. 9.

After Solis filed his amended petition, an immigration judge (IJ) held a bond hearing and denied bond, finding that his detention was mandatory under *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). Exhibit C at 3; Second Am. Pet. 5, ECF No. 14-1. Solis now seeks to amend his petition again. Mot. to Amend Pet., ECF Nos. 14 and 14-1. He repeats his claims that the officers violated the Fourth and Fifth Amendments by breaking his window during arrest. Second Am. Pet. 10-13, ECF No. 14-1. He also claims violations of the Code of Federal Regulations (CFR), alleging that officers did not timely identify themselves and initially withheld that Solis was also being arrested for a prior driving under the influence (DUI) violation. *Id.* at 13. Critically, Solis adds new counts alleging that the IJ erred and violated the Administrative Procedure Act (APA) when she denied him bond. *Id.* at 6-10, 13-15.

Solis asks this Court, among other remedies, to "assume jurisdiction" over this immigration matter and either "release Petitioner immediately" or "issue an order requiring Respondents to schedule [another] bond hearing." *Id.* at 9, 15. This request seeks to bypass the

established immigration adjudication and review process that Congress designed to handle the volume and complexity of immigration cases. *See Mirmehdi v. United States*, 689 F.3d 975, 982 (9th Cir. 2012) ("Congress has established a substantial, comprehensive, and intricate remedial scheme in the context of immigration.") (quoting *Arar v. Ashcroft*, 585 F.3d 559, 572 (2d Cir. 2009)). Solis is properly in the immigration court system, where he has a full opportunity to litigate his claims, including appellate review, as provided by Congress. This Court lacks jurisdiction to adjudicate Solis's removal proceedings, including any challenges that Solis may raise to challenge his removal. Allowing these challenges to be raised here improperly circumvents the immigration judge and the comprehensive immigration system statutorily created to handle such cases and claims.

Solis does not dispute that he entered the United States unlawfully and "without inspection," nor does he contest his criminal record. Second Am. Pet. 5 (admitting that he has prior convictions for "Driving Under the Influence in 2021, and Driving Without Privileges in January of 2025"). He also does not dispute that ICE had probable cause to believe that he violated the Immigration and Nationality Act (INA) and had cause to issue a warrant for his arrest. *Id.* Instead, he argues that ICE officers should not have exercised their discretion to arrest him and that breaking his window during apprehension, pursuant to an indisputably valid arrest warrant, was a flagrant violation of his rights that warrants his immediate release. *Id.* at 10-13.

Solis's rights were not violated. Even if they were, any constitutional challenges he may have can be properly raised in the immigration courts, with further review in the Ninth Circuit. Moreover, habeas relief, like that sought by Solis here, is specifically prohibited by Congress. *See* 8 U.S.C. §§ 1252(a)(5), (b)(9), (g) and 8 U.S.C. § 1226(e). Congress has provided for

review of immigration removal proceedings only in the courts of appeal and so this Court lacks jurisdiction to decide Solis's petition. *Id.* Indeed, within the past several weeks, in a similar case, a district court for the District of Montana denied a writ of habeas corpus citing 8 U.S.C. § 1252(a)(9) and its lack of jurisdiction. *See Marvan v. Slaughter, et* al., No. CV 25-49-H-DLC, 2025 WL 1940043, at *2 (D. Mont. July 15, 2025). Respectfully, this Court should do the same.

Even if this Court was the proper forum and habeas the appropriate vehicle, ICE lawfully stopped, detained, and arrested Solis. It is undisputed that Solis is an alien without legal status and is subject to removal proceedings. Furthermore, even if the act of breaking his window were deemed excessive – which it was not – the exclusionary rule would not suppress Solis's identity or physical presence before ICE. Immigration proceedings would continue because habeas relief does not suppress an individual's identity.

In sum, the petition should be denied, and Solis's case should proceed through administrative immigration proceedings, consistent with thousands of other immigration cases.

FACTUAL BACKGROUND

A. ICE officers had probable cause to arrest Solis and knew his identity before stopping his vehicle.

Prior to Solis's June 24, 2025 arrest, ICE officers had gathered information showing that Solis was in the United States unlawfully. Exhibit A at 2-3; Exhibit B at 2-3. They conducted surveillance, observed Solis, and confirmed his identity as an individual subject to immigration enforcement. Exhibit A at 3; Exhibit B at 3. On June 24, 2025, confident in their identification and after obtaining an arrest warrant, ICE officers surveilled an area near Solis's residence with the intent to arrest him. *Id.*

Officers observed Solis outside his residence, watched him enter a vehicle and drive away from the apartment complex where they believed he was staying. *Id.* A short distance

later, ICE officers activated their emergency lights and initiated a traffic stop. *Id.* Solis complied, stopping his vehicle in a busy gas station parking lot in Meridian, Idaho. Exhibit A at 3-4; Exhibit B at 3-4. Because the location was busy, ICE officers were concerned that Solis might jeopardize public safety if he attempted to flee in a vehicle. Exhibit A at 4; Exhibit B at 4.

Two ICE officers approached Solis's vehicle, positioning themselves on the driver's and passenger's sides. Exhibit A at 3-4; Exhibit B at 3-4. The officers, wearing visible "ICE" badges and body armor, identified themselves as "ICE officers." Exhibit A at 4; Exhibit B at 3-4; Exhibit D (video of encounter provided by Petitioner's counsel). For approximately three minutes, the two ICE officers asked Solis to turn off his car, roll down his window and to exit the vehicle. Exhibit A at 4; Exhibit B at 4. As a video recorded by Solis or his husband shows, one of the officers placed a window punch-pin on the car window and warned Solis that he would break the window if Solis did not open the vehicle door. *Id.;* Exhibit D. After holding the window punch-pin on the window for approximately forty-seconds, the officer advised Solis to divert his eyes - a fact acknowledged by Solis in his Second Amended Petition - before pushing the pin into the window and shattering it. Exhibit A at 4-5; Exhibit B at 4-5; Exhibit D; Second Am. Pet. 5, ECF 14-1.

After the window was shattered, officers opened Solis's door and handcuffed him as he stood in the vehicle doorway. Exhibit A at 4; Exhibit B at 5; Exhibit D. Solis, who was uninjured, was told that he was being arrested for an immigration warrant. Exhibit A at 4-5; Exhibit B at 5. He was then lead away from his vehicle. *Id.* As the video shows, officers spoke with Solis's husband, telling him that Solis would begin removal proceedings. Exhibit A at 5; Exhibit B at 5; Exhibit D. Officers then arranged for Solis's husband to retrieve the vehicle rather than have it towed. Exhibit B at 5.

B. Solis began administrative immigration proceedings.

Following his arrest, Solis was transported to an ICE sub-office for processing on the warrant, then taken to the Elmore County Detention Center in Mountain Home, Idaho, where ICE holds aliens for administrative deportation proceedings. Exhibit A at 5; Exhibit C at 2. That same day, June 24, 2025, Solis was served with a "Notice to Appear," which initiated immigration court proceedings. Exhibit C at 2. Solis had his first appearance for removal proceedings on July 16, 2025, where he was advised of his rights and responsibilities. Exhibit C at 2-3; s*ee, e.g.,* 8 U.S.C. §§ 1229a (a)(1) and (b)(4). On July 18, 2025, Solis had a bond hearing before an IJ, who denied bond, holding that immigration law precluded Solis from receiving a bond. Exhibit C at 3. Solis has 30 days to appeal the IJ's July 18, 2025 order to the Board of Immigration Appeals (BIA), 8 C.F.R. §1003.38, and he has not yet filed an appeal.[1] *Id.* He did, however, file his Second Amended Petition three days later, on July 21, 2025, asking this Court to "assume jurisdiction" despite receiving the very bond hearing he was initially requesting. Pet., ECF No. 1; Second Am. Pet. 15, ECF No. 14-1.

LEGAL STANDARDS

A. Standard of Review under Rule 12(b)(1).

Federal Rule of Civil Procedure 12(b)(1) allows for dismissal based on lack of subject matter jurisdiction. "[W]hen subject matter jurisdiction is challenged under Federal Rule of Procedure 12(b)(1), the plaintiff has the burden of proving jurisdiction in order to survive the

[1] On July 28, 2025, ICE transferred Solis to the Nevada Southern Detention Center. Exhibit C at 3. Solis then requested another custody redetermination hearing and he has received an August 12, 2025 hearing date before an immigration judge on his motion. Exhibit C at 4; *see* 8 C.F.R. § 1003.19(e). The Court retains jurisdiction despite the transfer. *See Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004); *Francis v. Rison*, 894 F.2d 353,354 (9th Cir.1990) ("jurisdiction attaches on the initial filing for habeas corpus relief, and it is not destroyed by a transfer of the petitioner and the accompanying custodial change.")

motion." *Kingman Reef Atoll Invs., LLC v. United States*, 541 F.3d 1189, 1197 (9th Cir. 2008) (internal citation and quotation marks omitted). Further, "[a] jurisdictional challenge under Rule 12(b)(1) may be made either on the face of the pleadings or by presenting extrinsic evidence." *Warren v. Fox Family Worldwide, Inc*., 328 F.3d 1136, 1139 (9th Cir. 2003) (citing *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000).

B. Standard for Habeas Relief.

Habeas proceedings provide a forum to challenge the legality of confinement. *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *see also Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). A district court may grant a writ of habeas corpus only when the petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3); *Estelle v. McGuire*, 502 U.S. 62, 68 (1991) (holding that even non-egregious errors of state law, are insufficient to justify habeas relief). To consider the merits of a habeas petition, the court must first evaluate its jurisdiction. *Rumsfeld*, 542 U.S. at 442.

ARGUMENT

Solis is not entitled to the relief he seeks under 28 U.S.C. § 2241. This Court lacks jurisdiction because Solis's claims are inextricably linked to his immigration removal proceedings, which Congress has expressly reserved for review by the Courts of Appeals, after the administrative process is complete. 8 U.S.C. §§ 1252(b)(9) and 1252(g). In fact, Solis is already exercising his procedural due process rights within the comprehensive immigration system. Furthermore, even if this Court did have jurisdiction, Solis's detention is lawful because he's an admitted alien without status and subject to mandatory detention under immigration law. Finally, while Solis claims his Fourth Amendment rights were violated, his arguments are without merit; ICE officers acted lawfully. But even if there was a violation, release would be

inappropriate because Solis has not shown that his arrest and custody violates the Constitution or laws of the United States.

A. The Court should dismiss the Petition because the Court lacks jurisdiction.

1. The Court lacks jurisdiction over all of Solis's claims because they "aris[e] from any action taken or proceeding brought to remove an alien" and thus fall within the sole jurisdiction of the Court of Appeals on a Petition for Review.

As a threshold matter, 8 U.S.C. §§ 1252(g) and (b)(9) preclude review of Solis's claims. Section 1252(g) specifically deprives courts of jurisdiction, including habeas corpus jurisdiction, to review "any cause or claim by or on behalf of an alien arising from the decision or action by the Attorney General to [1] *commence proceedings*, [2] adjudicate cases, or [3] execute removal orders against any alien under this chapter."[2] 8 U.S.C. § 1252(g) (emphasis added). Section 1252(g) eliminates jurisdiction "[e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title."

Further, Section 1252(b)(9) known as the "zipper clause," "consolidate[s] judicial review of immigration proceedings into one action in the court of appeals." *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 223 (2020). The provision as originally enacted, did not expressly preclude habeas review, meaning habeas relief remained available. *Singh*, 499 F.3d at 976-977 (*citing INS v. St. Cyr*, 433 U.S. 289, 314 (2001)). To remedy that, Congress amended the provision to expressly exclude relief under 28 U.S.C. § 2241, as highlighted below:

> 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

2 Much of the Attorney General's authority has been transferred to the Secretary of Homeland Security and many references to the Attorney General are understood to refer to the Secretary. *See Clark v. Martinez*, 543 U.S. 371, 374 n.1 (2005).

> 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) (Pub. L. 109-13, Div. B, Title I, §§ 101(e), (f), 106(a), May 11, 2005, 119 Stat. 305, 310) (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 . . . ").

Critically, "[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. U.S. Immigration & Customs Enf't Div. of the Dep't of Homeland Sec.*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." All of Solis's claims 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." They are therefore not subject to habeas review in district court. *See* 8 U.S.C. § 1252(b)(9); *J.E.F.M.*, 837 F.3d at 1032-1033.

Solis's argument that he is entitled to bond, and his contention that the IJ violated the INA and APA by denying it, are direct challenges to the removal process and thus not reviewable in district court. Second Am. Pet. 2, 11, 13-15; 8 U.S.C. § 1252(b)(9); *see also Garcia-Perez v. Kane*, No. CV-13-01870-PHX-SRB, 2014 WL 3339794, at *2 (D. Ariz. July 8, 2014) (holding that the Court "lacks jurisdiction to consider this issue" because "[n]o court may set aside any action or decision by the Attorney General" when it relates to "the detention or release of any alien or the grant, revocation, or denial of bond or parole,") (citing 8 U.S.C. § 1226(e)).

Likewise, Solis's claim that ICE officers violated an ICE regulation when they "did not timely identify themselves to Petitioner," and that they violated the Fourth and Fifth Amendments when conducting his arrest, clearly "aris[e] from an[] action taken . . . to remove an alien from the United States," *i.e.*, stemming from an ICE operation seeking to arrest and remove Solis. Second Am. Pet. 10-13, ECF 14-1. Accordingly, such claims are not reviewable outside the immigration court system and its designated appeal process. 8 U.S.C. § 1252(b)(9); *J.E.F.M.*, 837 F.3d at 1031-1033. Indeed, to reach any of Solis's claims, this Court would have to interpret immigration law and evaluate "removal-related activity" – exactly what Congress has prohibited. *Id*.

Because Solis's claims are inextricably intertwined with "the proceeding brought to remove an alien," 8 U.S.C. § 1252(b)(9), judicial review must be appropriately channeled to the court of appeals "after exhausting the administrative process" of the immigration courts. Marvan, 2025 WL 1940043, at *2; *J.E.F.M.*, 837 F.3d at 1029, 1032-1033; *Romero-Romero v. Wofford*, No. 1:24-CV-00944-SKO (HC), 2025 WL 391861, at *4 (E.D. Cal. Feb. 4, 2025) (holding that "Petitioner's disagreement with the IJ's decision . . . is not subject to review by this Court" and noting that he had been "afforded substantial due process" throughout the immigration proceedings, including multiple appeals); *Reyes v. Lunch*, No. 15-cv-00442-MEH, 2015 WL 5081597, at *3 (D. Colo. Aug. 28, 2015 (holding that "federal courts must await exhaustion of all administrative appeals before reviewing immigration decisions, whether by a habeas corpus action or a petition for review."). To hold otherwise would "contravene Congress' express intention to limit review of removal orders to one day in the court of appeals" and "severely undermine the streamlined system Congress sought," permitting individuals, like Solis, to seek "judicial review at the earliest possible moment," well-before the completion of the due

process afforded them in the immigration court system. *Singh v. Holder*, 638 F.3d 1196, 1212 (9th Cir. 2011) (internal quotation marks and citations omitted).

2. The Court should dismiss Counts Four and Five because the Immigration Judge's bond decision is not subject to review.

The Court should also dismiss Solis's claim that ICE and the IJ violated the APA, 5 U.S.C. §§ 701 *et seq*, and the INA. Second Am. Pet. 14-15, ECF No. 14-1. Because the INA precludes judicial review of ICE's bond decisions, Solis's claims are not properly before this court. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1058 (9th Cir. 2008) (holding that the grant or denial of bond is not subject to judicial review citing 8 U.S.C. § 1226(e)); *Hassan v. Chertoff*, 593 F.3d 785, 787 (9th Cir. 2010) ("[J]udicial review of a discretionary determination is also expressly precluded by 8 U.S.C. § 1252(a)(2)(B)(ii)"); *see also Coke v. Scott*, No. 2:25-CV-00694-RSM-BAT, 2025 WL 2108711, at *6 (W.D. Wash. June 18, 2025), report and recommendation adopted, No. 2:25-CV-00694-RSM-BAT, 2025 WL 2107736 (W.D. Wash. July 28, 2025) (rejecting an APA argument because "Petitioner has failed to avail himself of IJ review of the detention decision and thus failed to utilize his administrative remedies.").

B. In the alternative, the Court should deny Solis's petition because he has failed to prove (or even allege) that he is in custody in violation of the Constitution or laws of the United States.

1. The IJ's decision to deny bond was lawful.

This Court should not reach the merits of Solis's writ because his claims must be raised in immigration court and in a petition for review to the court of appeals (*see supra* Section A.1) and because the IJ's decision to deny bond is not reviewable (*see supra* Section A.2). If this Court concludes it has jurisdiction, the Court should find that the IJ's decision to detain Solis and deny bond was lawful (Counts Four and Five), and consistent with recent BIA rulings interpreting the INA.

Solis is an applicant for admission to the United States in 8 U.S.C. § 1229a removal proceedings. *See* Second Am. Pet. 5 (acknowledging that Solis's entry into the United States was without inspection). The IJ concluded that he must be detained pursuant to 8 U.S.C. § 1225(b)(2)(A). Exhibit C at 3. An "applicant for admission" is an "alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival) . . . shall be deemed . . . an applicant for admission." 8 U.S.C. § 1225(a)(1); *Matter of Lemus*, 25 I&N Dec. 734, 743 (BIA 2012) ("Congress has defined the concept of an 'applicant for admission' . . . to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission."). 8 U.S.C. § 1225 is the immigration law controlling the detention for all "applicants for admission." *Id.*

Applicants for admission "fall into one of two [detention] categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Under 8 U.S.C. § 1225(b)(2), an alien "who is an applicant for admission . . . *shall be detained*" in removal proceedings "if the examining immigration officer determines that [the] the alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) (holding that an alien present without admission or parole and apprehended "whether or not at a port of entry," is "ineligible for any subsequent release on bond" under the INA.)

The determination that all "applicants for admission," including Solis, are detained under 8 U.S.C. § 1225(b) complies with the statute. Solis admittedly entered the United States without being admitted or paroled. Second Am. Pet. 5 ("Petitioner entered the United States in 2018 without inspection."), ECF No. 14-1. Once encountered, ICE placed him in 8 U.S.C. § 1229a

removal proceedings. While Solis never "actually request[ed] permission to enter the United States in the ordinary sense," he is "nevertheless deemed to be "seeking admission" under the immigration laws." *Matter of Lemus*, 25 I&N Dec. at 743. He is therefore an "applicant for admission" and subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). His arrest did not convert detention authority to 8 U.S.C. § 1226(a), as Solis suggests. Second Am. Pet. 14; *see Matter of Q. Li*, 29 I&N Dec. at 71 n.4 (holding that statutory detention authority is not governed or "convert[ed]" by "issuance of a warrant"). Aliens detained pursuant to 8 U.S.C. § 1225 may only be released with the Department of Homeland Security's discretionary parole authority, pursuant to 8 U.S.C. § 1182(d)(5). Solis has not been granted that status, although he can request discretionary parole during his immigration proceedings.

2. ICE did not violate Solis's rights when officers broke his window to arrest him on the warrant.

Solis contends that ICE officers violated the Fourth Amendment (Count Two), and his right to due process under the Fifth Amendment (Count One), when they shattered his car window to arrest him. Second Amended Petition 10-13. As an initial matter, this Court should not reach the merits of Solis's arguments because it lacks jurisdiction. (*Supra* Section A.1 *citing* 8 U.S.C. § 1252(b)(9); *J.E.F.M.*, 837 F.3d at 1032-1033.) But if it does, ICE's conduct was lawful. Moreover, were this Court to hold otherwise and find a violation, that would not establish that Solis is entitled to habeas release because ICE's conduct during the arrest does not establish that Solis is being detained in violation of the constitution and releasing Solis is not a lawful remedy.

a. ICE officers' actions complied with the Fourth Amendment.

ICE surveilled Solis, knew who he was, where he was, and had probable cause to detain Solis and serve the administrative warrant. Exhibit A at 3; Exhibit B at 2-3; *Leal-Burboa v.*

Garland, No. 21-70279, 2022 WL 17547799, at *1 (9th Cir. Dec. 9, 2022) (affirming, on a petition for review from the Board of Immigration Appeals, a vehicle stop and detention because ICE officers had "reasonable suspicion" that the driver "was an alien illegally in the United States") (citing 8 C.F.R. § 287.8(b)(2)). "[T]he Supreme Court" has explicitly "opined that, consistent with the Fourth Amendment, immigration authorities may arrest individuals for civil immigration removal purposes pursuant to an administrative arrest warrant issued by an executive official rather than a judge." *Gonzalez v. United States Immigr. & Customs Enf't*, 975 F.3d 788, 825 (9th Cir. 2020) (citing *Abel v. United States*, 362 U.S. 217, 230-34 (1960)). ICE officers were exercising that exact authority on June 24, 2025.

The law evaluates "the reasonableness of an officer's use of force under the Fourth Amendment" by considering whether "the officer's actions are objectively reasonable in light of the facts and circumstances confronting the officer." *Alves v. Cnty. of Riverside*, 135 F.4th 1161 (9th Cir. 2025). Further, "officers need not employ the least intrusive degree of force possible." *Coles v. Eagle*, 704 F.3d 624, 628 (9th Cir. 2012) (internal quotation marks and citation omitted).

The officers' means of arresting Solis were minimally intrusive given the circumstances. Solis, lawfully detained, kept his car running, refused to roll down his window or open his door, and ignored officer instructions for several minutes. Exhibit A at 3-4; Exhibit B at 3-5. These circumstances raised the officers' concern that Solis would flee the busy parking lot and thus endanger public safety. Exhibit A at 4; Exhibit B at 4. Despite this, officers waited several minutes and tried to reason with Solis. *Id.* Only after these efforts failed, did officers advise Solis that they were going to use a punch to shatter his window if he would not exit voluntarily. Exhibit A at 4; Exhibit B at 4-5. They told Solis to close his eyes so he would not be injured – a

fact acknowledged in their Second Amended Petition – before they broke the window. Exhibit A at 4-5; Exhibit B at 4-5; Second Am. Pet. 5, ECF 14-1.

This was not "flagrant disregard for the Petitioner" and "excessive force." Second Am. Pet. 11. It was an objectively reasonable exercise of minimal force to effectuate an arrest, consistent with the Fourth Amendment. *Abel*, 362 U.S. at 230-34. Solis has not cited any case that would hold otherwise.[3] The officers were respectful and careful. Despite the safety concerns and a resistant arrestee, ICE officers carefully broke the window and only used necessary force to handcuff Solis and even minimized the financial impact of the arrest by arranging for his husband to recover the vehicle rather than have it impounded. Solis's conduct, on the other hand, illustrates an ongoing unwillingness to obey U.S. law unless forced to comply.

b. Even if ICE officers violated the Fourth Amendment, Solis would not be released.

Solis does not explain why he would be entitled to release if his Fourth Amendment rights were violated. He does not meet his burden to show that he is in custody in violation of the Constitution of the United States. 28 U.S.C. § 2241(c)(3); *Estelle,* 502 U.S. at 69. He

[3] Solis's citation to cases involving the entry into homes without a search warrant are inapposite. (ECF No. 14-1 at 12 (citing *Payton v. New York*, 445 U.S. 573, 584, 586 (1980) and *Kidd v. Mayorkas*, 734 F. Supp.3d 967 (C.D. Cal. 2024).) "[F]or the purposes of the Fourth Amendment there is a constitutional difference between houses and cars." *South Dakota v. Opperman*, 428 U.S. 364, 382 (1976) (internal quotation marks and citation omitted). Unlike dwellings which the Supreme Court has held to be "private," vehicles are not afforded the same privacy interest, and no warrant is required for entry, only probable cause that a crime occurred. *United States v. Santana,* 427 U.S. 38, 42 (1976); *Maryland v. Dyson*, 427 U.S. 465 (1999). Because vehicles don't have the same privacy interest, and are more "public," officers can lawfully arrest vehicle occupants and "circumstances unique to the automobile context [even] justify a search incident to arrest when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle." *Arizona v. Gant*, 556 U.S. 332, 335 (2009); *see also New York v. Belton*, 453 U.S. 454 (1981). Moreover, "[t]he right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it." *Graham v. Connor*, 490 U.S. 386, 396 (1989).

appears to analogize his arrest to an illegal arrest in the context of a criminal prosecution, arguing that the evidence obtained should be suppressed under the exclusionary rule. Second Am. Pet. 12-13, ECF No. 14-1. Then presumably, the argument continues, that if evidence obtained as a result of his arrest is suppressed, the immigration proceeding should not go forward, and he should be released.

This argument demonstrates that Solis's claims are inextricably intertwined "with the proceeding brought to remove an alien," and should be channeled through the immigration courts to the court of appeals. 8 U.S.C. § 1252(b)(9). But even if officers violated Solis's Fourth Amendment rights, "[i]t is well-established that the exclusionary rule generally does not apply to removal proceedings" without a showing of "egregious" conduct, such as an intentional or deliberate violation of rights. *See Sanchez v. Sessions*, 904 F.3d 643, 649 (9th Cir. 2018*); B.R. v. Garland*, 26 F.4th 827, 841 (9th Cir. 2022). And even in those exceptional cases where there is an "egregious" finding, "[a]n alien's identity is not suppressible." *B.R.*, 26 F.4th at 842 (*citing Lopez-Rodriguez v. Mukasey*, 536 F.3d 1012, 1015 n.5 (9th Cir. 2008). The Supreme Court has made clear that "[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." *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984) ("[R]egardless of how the arrest is effected, deportation will still be possible when evidence not derived directly from the arrest is sufficient to support deportation.").

Solis has made no case for an egregious violation here. And even if there was a violation, he would not be released because ICE had ample evidence of Solis's identity and unlawful status before his arrest. Indeed, as noted, Solis acknowledges that he is an El Salvador national and entered the United States "without lawful immigration status." Second Am. Pet. 1,

3-5; ECF No. 14-1. Nothing more is required – and nothing seized or acquired during ICE's June 2025 arrest will be necessary to prove his unlawful presence.[4]

3. Solis's argument that he is detained unlawfully because ICE violated a regulation lacks merit.

Solis's claim that ICE violated 8 C.F.R. § 287.8(c)(3) (Count Three) because ICE "did not timely identify themselves to Petitioner" and did not "inform Petitioner that he was being arrested for his DUI from years prior until he was already detained in their vehicle" is not sufficient for habeas relief. Second Am. Pet. 13, ECF No. 14-1. This claim is insufficient for habeas relief for several reasons. First, this Court lacks jurisdiction over such claims, which Solis should raise in his ongoing immigration proceedings. *See supra*; *Balogun v. Sessions*, 330 F. Supp. 3d 1211, 1217 (C.D. Cal. 2018) ("Nor can Plaintiff sidestep [the jurisdictional bar in] section 1252(g) by describing his claim as an attack on ICE's failure to follow its internal guidance, as if to make it seem like a reviewable collateral challenge or a severable legal question."). Second, Solis's factual claim is false, and Solis has not supported his assertion with any facts. *See Mayle v. Felix*, 545 U.S. 644, 655 (2005) (noting that habeas rules are "more demanding" than normal lawsuits and require that the petitioner "state the facts supporting each ground" or face dismissal). Solis knew who the ICE officers were, and they identified themselves before making their arrest. Solis pulled over when the officers initiated their emergency lights. ICE officers wore "ICE" badges on their chest while engaged in several

[4] Moreover, even with respect to information beyond identity, "statements and other evidence obtained as a result of an unlawful, warrantless arrest" are admissible in removal proceedings. *See Lopez-Mendoza*, 468 U.S. at 1043. While there is an exception for an "egregious violation," it requires that the petitioner prove that the violation "is prejudicial." *Velazco Castellano v. Garland*, 856 Fed. Appx. 112, 115 (9th Cir. 2021). The very fact that the standard requires a determination of "prejudice" proves that the immigration proceeding must be allowed to conclude before further review. (*Id.*)

minutes of conversation with Solis, and they told Solis who they were before taking him into custody. Exhibit A at 3-5; Exhibit B at 3-4; Exhibit D. Moreover, ICE officers did not arrest Solis for a DUI, despite Solis's claim. Exhibit B at 5; Second Am. Pet. 13, ECF No. 14-1.

Third, even if a violation occurred, Solis has not shown that the claimed regulatory breech rises to the level of a Constitutional violation. *See Flores v. McDawell*, No. 1:21-cv-00054-NONE-JLT (HC), 2021 WL 2634813, at *4 (E.D. Cal. June 25, 2021) (recognizing that errors of state law and regulatory breeches "are not cognizable on federal habeas review") (citing *Estelle*, 502 U.S. at 68)). "[A] petitioner may not create the jurisdiction that Congress chose to remove simply by cloaking [his claim] in constitutional garb." *Torres-Aguilar v. INS*, 246 F.3d 1267, 1271 (9th Cir. 2001); *Dalton v. Specter*, 511 U.S. 462, 472 (1994). Solis's claim about the timing of ICE officer's statements, in circumstances where he already knew who they were, is an attempt to manufacture a constitutional violation from an internal ICE regulation. *Id*.

4. Solis has been afforded due process.

Solis has been afforded due process consistent with the Fifth Amendment. Second Am. Pet. 10-12 (Claim One). He is actively challenging his detention and removal in immigration court. Exhibit C at 3-4. After filing his initial writ, requesting a "bond hearing before an immigration judge," Solis appeared before immigration judges and began removal proceedings. Petition at 2, ECF No. 1; Exhibit C at 2-4. Solis has two upcoming hearings scheduled: a custody redetermination hearing on August 12, 2025, and a master calendar hearing on August 26, 2025. Exhibit C at 4. Through his lawyers, he can argue his position and appeal adverse decisions to the Board of Immigration Appeals and even to the Ninth Circuit. *See Prieto-Romero*, 534 F.3d at 1058 (holding that a non-citizen who disagrees with the IJ's bond determination may "appeal the IJ's bond decision to the BIA") (internal citation omitted). This

process, established by Congress, generally complies with due process. *See J.E.F.M.*, 837 F.3d at 1031-1037 (detailing the due process afforded to aliens in immigration courts and holding that the system complied with due process even where Congress "channel[ed] all claims arising from removal proceedings [] to the federal court of appeals and bypassed the district courts.")[5] But, the mandatory detention of non-citizens during removal proceedings is a "constitutionally permissible part of that process," as "Congress may make rules as to aliens that would be unacceptable if applied to citizens." *Demore v. Kim*, 538 U.S. 510, 511-513 (2003); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of this deportation procedure. Otherwise, aliens arrested for deportation would have opportunities to hurt the United States during the pendency of deportation proceedings.").

CONCLUSION

For the reasons stated, the Court should dismiss Solis's habeas petition for lack of jurisdiction. But even if this Court reaches the merits, Solis is not entitled to habeas relief.

[5] Solis's contention that the "BIA does not provide timely appellate review of detention decisions" is a claim he has failed to prove, and he bears the burden of proof. (ECF No. 14-1 at 9, 12); *Trollope v. Vaughn*, No. CV 18-03902-JLS (JDE), 2018 WL 3913922, at *2 (C.D. Cal. 2018) (citing Federal Habeas Rules 1, 4) (recognizing that under Federal Habeas Rules, where it "plainly appears from the face of the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition," citing Federal Habeas Rules 1, 4 (emphasis in original)). But even if Solis made a showing that BIA appeals take months, he has cited no law that would enable the district courts to step outside the statutory review process created by Congress. 8 C.F.R. § 236.1; *Prieto-Romero*, 534 F.3d at 1059; *also see Coke v. Scott*, No. 2:25-CV-00694-RSM-BAT, 2025 WL 2108711, at *5 (W.D. Wash. June 18, 2025), report and recommendation adopted, No. 2:25-CV-00694-RSM-BAT, 2025 WL 2107736 (W.D. Wash. July 28, 2025).

DATED this 5th day of August, 2025.

JUSTIN D. WHATCOTT
Acting United States Attorney

/s/ Michael W. Mitchell
MICHAEL W. MITCHELL
Assistant U. S. Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 5, 2025, the foregoing **FEDERAL DEFENDANT'S MOTION TO DISMISS WRIT OF HABEAS CORPUS AND RESPONSE** was electronically filed with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the counsel of record for the Petitioner this same day. I also certify that a copy of Exhibit D, to the aforementioned brief, will be sent by Fed-Ex to counsel of record for the Petitioner, and the Court, on August 6, 2025.

Michael W. Mitchell
MICHAEL W. MITCHELL
Assistant United States Attorney
District of Idaho