IN THE UNITED STATES DISTRICT COURT
OF MARYLAND

GUADALUPE A. CARDONA Y CARDONA,

DANIEL A. PASCUAL,

PETITIONERS,

* CASE NO. 1:25-cv-02262-ABA

V.

KRISTI NOEM,

DHS SECRETARY,

& *

PAMELA BONDI,

ATTORNEY GENERAL, *ET AL.*, *

RESPONDENT(S).

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**PETITIONER'S MEMORANDUM IN SUPPORT OF THEIR REPLY TO RESPONDENT'S MOTION TO DISMISS THE AMENDED WRIT OF HABEAS CORPUS**

Now come the Petitioners, by and through counsel and files the instant Reply and Memorandum in Opposition to the Respondents' Motion to Dismiss, and for good cause states:

## UNDISPUTED FACTS

1. The Petitioners since our last filing have been issued two sets of Notices to Appear (NTAs) in Immigration Court. First in Hyattsville, Md. Immigration Court on August 12, 2025, at 0800 hours (ECF No. 4P. 2), and a recent one changing Cardona's hearing to July

30, 2025 in Pearsall, Texas; and for Pascual Diaz on July 18, 2025 in Hyattsville, Md.

2.Both Petitioners last known address was 7200 Wells Parkway, University Park, Md. 20782, until their removal to Farmville, Va initially, and now Pearsall, Texas Detention Center.

3. Both Petitioners are still in immigration detention in Pearsall, Texas, upon information an belief, and thus still remain in the Continental U.S. per this Court's Order.

4. Petitioners risk losing their financial savings, work, employment, liberty, and limb if not released from detention by the Government.

5. Neither Petitioner has been charged, had criminal contacts nor convicted of any criminal offenses.

6. Petitioners may qualify for either Cancellation of Removal upon the issuance of an NTA by USCIS, if not CAT petitions.

7. Since DHS has not filed a I-213 in either case in immigration court, nor charged either Petitioner with criminal inadmissibility grounds, it is undisputed neither Petitioner poses a safety, terrorism, or other risk to the United States.

8. The Government's response has not refuted, nor called into question the basis of the Affidavit of Support filed in support of the Habeas petition, and therefore those averments remain part of the original Habeas petition. (See, Govt's Mot. At 2).

## APPLICABLE LAW

### i. Neither Rule 12(b)(1) nor 8 U.S.C. Section 1252 Warrant Dismissal

9. A Rule 12(b)(1) motion to dismiss for lack of jurisdiction must be denied if the original complaint or petition alleges sufficient facts to "invoke subject matter jurisdiction." *Kerns v. United States*, 585 F3d 187, 192 (4th Cir. 2009).

10. Additionally, 8 U.S.C. Section 1252(a)(5) and (b)(9) concern actions for judicial review of "orders of removal" or "...questions of law and fact...arising from any action taken or proceeding brought to remove an alien from the United States...".

11. The case cited by the Government, *Bonhometre v. Gonzalez*, 414 F. 3d 442, 446 (3d Cir. 2005), although from a non-controlling circuit, only reiterates the above basic notions of judicial review from "final" orders of removal, and is inapposite to our case.

12. Yet, the Government fails to note or even cite the most salient and apposite case to ours, which is *McCleskey v. Kemp* 481 U.S. 271 (1987).

13. In McCleskey, the Supreme Court held that a habeas petitioner must show "specific evidence" of racial discrimination in their individual case, not merely statistical evidence of a racial disparity. Id.

14. More specifically in our case, the Petitions for habeas are precisely based on racial profiling[1] and the lack of even reasonable articulable suspicion upon the stop of Petitioners' vehicle in Maryland, and not concerned with any immigration proceeding. (See, Original and Amended Petitions for Habeas).

**ii. Fourth Amendment Law Is The Only Applicable Law**

15. The Fourth Amendment of the United States Constitution, which contrary to the Government's arguments is not at issue in an analysis of 8 U.S.C. Section 1252, states that "[t]he right of the people to be secure in their persons, houses, papers, and effects,

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[1] As this Court is aware purposeful racial discrimination may occur where state action expressly classifies individuals on the basis of their race, *see Grutter v. Bollinger*, 539 U.S. 22 306, 326-27 (2003); where a facially race-neutral policy "impartial in appearance" is in fact applied unevenly based on race, *see Yick Wo v. Hopkins*, 118 U.S. 356, 373-74 (1886); or where a race-neutral policy which is applied evenhandedly results in a racially disproportionate impact and was motivated by discriminatory intent, *see Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.,* 429 U.S. 252, 264-65 (1977); *see also Washington v. Davis,* 426 U.S. 229, 242 (1976).

against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

16. The Supreme Court has stated that in evaluating whether a search is reasonable, the Supreme Court has established a variety of doctrinal tests to be used depending on the specific context of the search.; and that the most important standard is the reasonable expectation of privacy test.

17. In fact, "[a]s the text of the Fourth Amendment indicates, the ultimate measure of the constitutionality of a government search is 'reasonableness,'" *Maryland v. King,* 569 U.S. 435, 447 (2013) (*quoting Veronica School Dist. 47 v. Acton*, 515 U.S. 646, 652 (1995)).

**ARGUMENT**

18. In both the original and Amended Petitions, it is alleged with sufficient and ample specificity that the Petitioners were "racially profiled by ICE, DHS and other agents," and "that was the sole reason for their detention," according to their guidance and training.[2] (See, Original Habeas, Amended Petition).

19. This language alone is sufficient to survive a Rule 12(b)(1) challenge.

20. Moreover, it follows that the habeas petitions filed in this case challenge neither the "method" nor the "commencement of immigration proceedings" in their cases. (i.e. immigration concerns are thus not the material basis of the habeas claims, but rather a collateral consequence of their illegal detention). (Id.).

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[2] See, Homan, Border Tzar Admits Violating 4th Amendment with racial profiling: https://www.msnbc.com/rachel-maddow-show/maddowblog/white-house-border-czar-suggests-ice-can-detain-people-based-physical-rcna218285

21. Rather, the habeas claims specifically that they were seized illegally on the road on the basis of their appearance, and therefore their race on a public road – and not at a port-of-entry or other legal subterfuge.

22. It follows, that the Government's reliance on case law that addresses Federal Court challenges to the "methods" or "commencement" of immigration removal cases under 8 U.S.C. Section 1252 is inapposite. (See, Gov. Motion at 6).

**CONCLUSION**

WHEREFORE, for the above reasons, the Petitioners seek and asks the court:

1. To hold an evidentiary hearing on the merits of the petitions filed;
2. Continue Staying their removal to a foreign state other than Maryland, and order their return to Maryland.
3. To Continue Staying their removal to a foreign nation other than the United States,
4. To hold an immediate hearing via WEBEX or other online platform to determine the egregious basis of Petitioners' arrest by ICE, USCIS or DHS;
5. To determine a bond hearing pending proof by USCIS, ICE or DHS that they are a danger to society;
6. To Suppress under the Fourth Amendment the immigration proceedings if the Court finds that the US Government engaged in "egregious misconduct"
7. And to pass any other lawful relief the Court deems necessary.

Respectfully submitted,

/s/Abraham F. Carpio

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 22nd day of July, 2025, a copy of the foregoing was mailed to EOIR, Office of Chief Counsel 31 Hopkins Plaza, Rm 1600, Baltimore, MD 21201, and to Thomas Corcoran, AUSA, via email at: Thomas.Corcoran@usdoj.gov

/s/ Abraham Fernando Carpio

Abraham F. Carpio, Esq.