IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Guadalupe A. Cardona y Cardona, **Daniel A. Pascual Diaz,** Petitioners, **v.** **Kristi Noem,** *et al.*, Respondents.	**Civil Case No. 1:25-cv-02262-ABA**

RESPONDENTS' REPLY TO PETITIONERS' OPPOSITION TO MOTION TO DISMISS

In their Opposition (ECF No. 10) to Respondents' Motion to Dismiss (ECF No. 9), Respondents argue that (1) 8 U.S.C § 1252 is inapplicable in this case, and (2) that "Fourth Amendment law is the only applicable law." ECF No. 10 at 2-5. Neither argument overcomes the conclusion that, because removal proceedings have commenced in immigration court, this Court lacks jurisdiction.

First, Petitioners are incorrect that 8 U.S.C. 1252(g) is "inapposite" in this case. ECF No. 10 at 5. In addition to barring district courts from adjudicating challenges to the execution of final orders of removal, that statute also bars district courts from reviewing challenges to the *commencement* of immigration proceedings. *See Sissoko v. Rocha*, 509 F.3d 947, 950–51 (9th Cir. 2007) (holding that § 1252(g) barred review of a Fourth Amendment false-arrest claim that "directly challenge[d] [the] decision to commence expedited removal proceedings"); *Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal—and thus necessarily prevents us from considering whether the agency should have used a different statutory

procedure to initiate the removal process."); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) ("The Government's decision to arrest Saadulloev on April 4, 2023, clearly is a decision to 'commence proceedings' that squarely falls within the jurisdictional bar of § 1252(g)."). Here, Petitioners seek to challenge their arrest by ICE—*i.e.*, how DHS commenced the removal proceedings in this case. This Court lacks jurisdiction to review this claim.

Second, the Fourth Amendment does not confer jurisdiction upon this Court. Rather, Petitioners can present their Fourth Amendment arguments through a motion to suppress in Immigration Court, the BIA, and ultimately to the appropriate appellate court. *See INS v. Lopez-Mendoza,* 468 U.S. 1032, 1050-51 (1984) (Explaining that motions to suppress may be available in immigration proceedings for "egregious violations of the Fourth Amendment or other liberties that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained."). As another district court recently explained:

> Petitioner's argument that an illegal arrest automatically results in an illegal detention is misguided. As the Government points out, "[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 ... occurred." *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984). **Put differently, "[t]he mere fact of an illegal arrest has no bearing on a subsequent deportation proceeding."** *Id.* (quoting *In re Lopez-Mendoza*, No. A22452208 (BIA, Sept. 19, 1979)). **Thus, even if Petitioner's initial arrest was unlawful, her detention pending removal may stand.**

Rodrigues De Oliveira v. Joyce, No. 2:25-CV-00291-LEW, 2025 WL 1826118, at *5 (D. Me. July 2, 2025) (emphasis added). Put simply, while Petitioners may raise the legality of their arrest in their immigration proceedings, the existence of that issue does not grant jurisdiction in this Court.

Additionally, even assuming a Fourth Amendment violation occurred, district courts routinely hold that, because an individual's identity and their immigration status cannot be suppressed, (1) a habeas action is not the proper vehicle to seek relief and (2) release is not an appropriate remedy. *See e.g.*, *H.N. v. Warden, Stewart Det. Ctr.*, No. 7:21-CV-59-HL-MSH, 2021 WL 4203232, at *5 (M.D. Ga. Sept. 15, 2021) (Explaining that "even if the Court accepted Petitioner's argument that his initial detention was somehow unlawful, he is still not entitled to habeas relief."); *Jorge S. v. Sec'y of Homeland Sec.*, No. 18-CV-1842 (SRN/HB), 2018 WL 6332717, at *4 (D. Minn. Nov. 15, 2018), *report and recommendation adopted*, No. 18-CV-1842 (SRN/HB), 2018 WL 6332507 (D. Minn. Dec. 4, 2018) ("Release from Jorge S.'s *current* detention because his detention *previously* had been unlawful would be a remedy ill-fitted to the specific injury alleged.") (emphasis in original); *Amezcua-Gonzalez v. Lobato*, No. C16-979-RAJ-JPD, 2016 WL 6892934, at *2 (W.D. Wash. Oct. 6, 2016), *report and recommendation adopted sub nom. Amezcua–Gonzalez v. Lobato*, No. C16-979-RAJ, 2016 WL 6892547 (W.D. Wash. Nov. 22, 2016) (finding that "even if petitioner's arrest amounts to an egregious Fourth Amendment violation, he is not entitled to habeas relief, and his petition should be denied."). Because habeas relief is improper, the Court should dismiss the Petition, and Petitioners can present their unlawful arrest challenge to an immigration court.

CONCLUSION

WHEREFORE, the Respondents respectfully request this Court enter an Order DENYING and DISMISSING the Petition.

Dated July 25, 2025

Respectfully Submitted,

Kelly O. Hayes
United States Attorney

By: */s/ Thomas F. Corcoran*
Thomas Corcoran (Bar No. 24894)
Matthew T. Shea (Bar No. 19443)
Assistant United States Attorneys
U.S. Attorney's Office
District of Maryland
36 S. Charles Street, 4th Floor
Baltimore, Maryland 21201
(410) 209-4800
Counsel for Respondents