SCOTT E. BRADFORD, OSB #062824
United States Attorney
District of Oregon
ARIANA N. GAROUSI, CSB #347758
Assistant United States Attorneys
1000 SW Third Ave., Suite 600
Portland, Oregon 97204-2936
Telephone: (503) 727-1000
Email: Ariana.Garousi@usdoj.gov
Attorneys for Respondents

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

M-J-M-A-,

Petitioner,

v.

LAURA HERMOSILLO;[1] TODD LYONS; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM; U.S. DEPARTMENT OF HOMELAND SECURITY; PAMELA BONDI,

Respondents.

Case No.: 6:25-cv-02011-MTK

RESPONDENTS' RESPONSE TO PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

[1] Laura Hermosillo should be substituted for Cammilla Wamsley as a party in this action. *See* Fed. R. Civ. P 25(d).

Respondents, through counsel, submit this Response to Petitioner's Reply in support of the Petition for Writ of Habeas Corpus. This Response is supported by the Declaration of Matthew Cantrell dated November 17, 2025 ("11/17/25 Cantrell Decl.").

ARGUMENT

I. Respondents' return complied with the requirements of 8 U.S.C. § 2243 and the accompanying Rules.

Petitioner does not meaningfully engage with the case law cited by Respondents, which states that an unlawful arrest cannot be challenged through a habeas petition. Instead, Petitioner incorrectly argues that the Court should strike Respondents' return from the record because it "fail[s] to comply with the statutory terms or the directive of the Court to file [a] return." ECF 30 at 7.

Under 8 U.S.C. § 2243, "[a] court, justice or judge 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." (emphasis added). Indeed, § 2243 states that the person to whom the order to show cause is directed "shall make a return certifying the true cause of detention," but compliance with § 2243 is further clarified by the Rules Governing Section 2254 Cases. *See Harway v. Ives*, No. 3:18-cv-00143-BR, 2018 WL 792038, at *1 (D. Or. Feb. 8, 2018) (applying the Rules Governing Section 2254 Cases to petitions filed under section 2241); Rule 1(b) ("The district court may apply any or all of these rules to a habeas corpus petition not covered by Rule 1(a)."). Rule 4 indicates, "[if] the petition

is not dismissed, the judge must order the respondent to file an answer, motion, or other response within a fixed time, or to take other action the judge may order." In addition, to address the allegations in the petition, an answer to a petition "must state whether any claim in the petition is barred by a . . . procedural bar . . . ." Rule 5(b).

Here, Petitioner urges the Court to elevate form over substance. A return is not the only way to respond to a habeas petition, especially when a petition is procedurally barred. *See White v. Lewis*, 874 F.2d 599, 602–03 (9th Cir. 1989) (holding that a motion to dismiss may be a proper means of responding to a petition for a writ of habeas corpus where respondent raises procedural grounds for dismissing the petition); *Schwarz v. Meinberg*, 478 F. App'x 394, 395 (9th Cir. 2012) (rejecting contention that court erred by permitting respondent to file motion to dismiss to petition); *Mower v. Copenhaver*, No. C 07-3891 CW, 2007 WL 4411527, at *2 (N.D. Cal. Dec. 14, 2007) (declining to default or penalize respondent for filing a motion to dismiss instead of an answer to the petition); *White v. Ayers*, No. C 06-6365 SI, 2007 WL 1655618, at *7 (N.D. Cal. June 7, 2007) (explaining that a court issuing a show cause order as to why the petition should not be granted is not meant to "preclude respondent to move to dismiss the petition for a threshold procedural problem").

Respondents' filing should not be "stricken from the docket" or considered "a concession of the illegality of Petitioner's detention" because it raises a crucial

threshold issue that must be resolved as to whether the petition is even cognizable in habeas.

Additionally, Respondents' Return and the November 5, 2025, Cantrell Declaration both clearly state that Petitioner is unlawfully present in the United States. ECF 25 at 2; ECF 26 ¶¶ 3–4. Petitioner is therefore removable under INA § 237(a)(1)(B) and not entitled to remain in the United States. Petitioner does not and cannot contest the facts that inform her removability. And, as a result of being removable, ICE detained Petitioner under INA § 236(a). 11/17/25 Cantrell Decl. ¶ 3. Respondents' return unequivocally states the factual bases for Petitioner's detention—that she overstayed her visa and has no lawful status to remain here. ECF 25 at 2; ECF 26 ¶¶ 3–4.

But despite Petitioner's assertion that Respondents have not filed an acceptable response to the Petition, two truths remain. First, Petitioner's challenge to an unlawful arrest cannot be challenged in a habeas petition. The title of Respondents' brief does not somehow invalidate the arguments made therein. Second, Respondents' filing indicates that Petitioner is unlawfully present in the United States, which constitutes the factual basis for her immigration detention. Accordingly, the Court should reject Petitioner's request to strike Respondents' filing from the record or consider Respondents' filing as a concession to grant the petition.

II. Petitioner cannot challenge an unlawful arrest through a habeas petition.

In her reply, Petitioner boils this matter down to two questions the Court must resolve: "(1) whether Respondents' exercise of executive detention was unlawful and

(2) if it was, what remedy is Petitioner due." ECF 30 at 8. Petitioner urges the Court to find her detention was unlawful "because the unlawful stop and arrest are the only basis by which Respondents asserted their custody authority over [her]." *Id.*

Petitioner's attempt to conflate an allegedly unlawful arrest with an allegedly unlawful detention to create a cognizable habeas claim should be rejected. *See L-J-P-L- v. Wamsley*, No. 3:25-cv-01390-IM, 2025 WL 2430268, at *6 n.3 (D. Or. Aug. 22, 2025); *see also Streeter v. Craven*, 418 F.2d 273, 274 (9th Cir. 1969) ("[D]efects in an arrest are not cognizable in habeas corpus . . . ."); *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) (finding that Petitioner was not entitled to habeas relief even if his immigration stop was unlawful because identity is never suppressible in immigration proceedings); *Rodrigues De Oliveira v. Joyce*, No. 2:25-cv-00291-LEW, 2025 WL 1826118, at *5 (D. Me. July 2, 2025) ("Petitioner's argument that an illegal arrest automatically results in an illegal detention is misguided.").

Petitioner also misunderstands why she was detained. As previously discussed, Petitioner was detained because she overstayed her visa and remains in the United States without lawful status. *See* discussion *supra* section I. The way in which she was encountered by immigration authorities has no bearing on the uncontroverted fact that Petitioner is unlawfully present. *See INS v. Lopez-Mendoza*, 468 U.S. 1032, 1040 (1984). Because Petitioner is unlawfully present, ICE has the authority to subject her to removal proceedings and detain her. 8 U.S.C. §§ 1229a(a)(1)–(2), 1226(a); *Flores-Torres v. Mukasey*, 548 F.3d 708, 710 (9th Cir. 2008)

("Section 1226 of the INA vests the Attorney General with the authority to detain an 'alien' during removal proceedings."). How the stop was carried out does not invalidate Petitioner's detention because identity is never suppressible. *See U.S. ex rel. Bilokumsky v. Tod*, 263 U.S. 149, 158 (1923); *Lopez-Mendoza*, 468 U.S. at 1039; *United States v. Guzman-Bruno*, 27 F.3d 420, 421–22 (9th Cir. 1994); *Hoonsilapa v. INS*, 575 F.2d 735, 738 (9th Cir. 1978) ("We hold that there is no sanction to be applied when an illegal arrest only leads to discovery of the man's identity and that merely leads to the official file."), *modified by* 586 F.2d 755 (9th Cir. 1978).

Habeas is simply not the vehicle to challenge an unlawful arrest. *L-J-P-L-*, 2025 WL 2430268, at *6 n.3; *Bilokumsky*, 263 U.S. at 158. This is especially true where Petitioner does not contest that she is removable. As such, the Court should deny the writ because Petitioner cannot challenge her arrest as unlawful under habeas corpus.

III. Petitioner's right to counsel claim does not necessitate release.

Though not pled in her Petition, Petitioner contends that Respondents violated her Due Process rights by interfering with her access to counsel while she was being processed for detention and transportation on October 30. ECF 30 at 16. Even if she was in detention, which she is not, the alleged denial of access to counsel would not result in release from detention in a habeas proceeding.[2]

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[2] Though Petitioner is not in detention, she contends she "*will* once again be subject to detention" if the Court does not intervene. ECF 30 at 20 (emphasis added). But Petitioner offers no explanation how she, in particular, will be subject to detention as the result of an unlawful arrest. Petitioner's contention about future detention is speculative.

Petitioner fails to allege she suffered an injury that necessitates release as the result of her meeting with counsel. Petitioner contends that Respondents "exacerbated her ability to be heard on any individualized determination of her continuing custody" by cutting her meeting short with her attorney. ECF 30 at 18. However, it is unclear how a longer meeting would have ensured Petitioner would not be detained as the facts for why Petitioner was detained remain the same: that she is present in the United States without lawful immigration status. Petitioner has failed to demonstrate that she was prejudiced by her meeting with counsel being cut short. *Cf. Gomez-Velazco v. Sessions*, 879 F.3d 989, 993 (9th Cir. 2018) ("If the right to counsel has been wrongly denied only at a discrete stage of the proceeding, and an assessment of the error's effect can readily be made, then prejudice must be found to warrant reversal.")

Petitioner also points to no law that enshrines her right to counsel during either the booking and transfer process or the initial decision to detain under 8 U.S.C. § 1226(a). Notably, "the protections that apply in the civil immigration context do not mimic those afforded to defendants in criminal proceedings." *Zuniga v. Garland*, 86 F.4th 1236, 1239 (9th Cir. 2023). Petitioner's right to counsel would only attach if she was "in any removal proceedings before an immigration judge." 8 U.S.C. § 1362; *see Tawadrus v. Ashcroft*, 364 F.3d 1099, 1103 (9th Cir. 2004) ("Although there is no Sixth Amendment right to counsel in an immigration hearing, Congress has recognized it among the rights stemming from the Fifth Amendment guarantee of due process that adhere to individuals that are the subject of removal proceedings.").

But since no NTA was filed, removal proceedings never commenced. *See* 8 C.F.R. § 1003.14. Nevertheless, even if Petitioner had a right to counsel, she could not be released from custody for a denial of that right. *L-J-P-L-*, 2025 WL 2430268, at *6 n.3 (finding release was not an appropriate remedy for alleged denial of access to counsel).

CONCLUSION

Respondents respectfully request the Court deny Petitioner's Writ for Petition of Habeas Corpus.

Respectfully submitted this 17th day of November, 2025.

SCOTT E. BRADFORD
United States Attorney
District of Oregon

/s/ Ariana N. Garousi
ARIANA N. GAROUSI
Assistant United States Attorney
Attorneys for Respondents