SCOTT E. BRADFORD, OSB #062824
United States Attorney
DIANNE SCHWEINER, CSB #188013
Assistant United States Attorney
United States Attorney's Office
District of Oregon
1000 SW Third Ave., Suite 600
Portland, Oregon 97204-2936
Telephone: (503) 727-1102
dianne.schweiner@usdoj.gov

Attorneys for Respondents

THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

A-B-D-, an adult; and C-C-S-, an adult,

Petitioners,

v.

LAURA HERMOSILLO, Seattle Acting Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"); TODD LYONS, Acting Director of Immigration Customs Enforcement ("ICE"); U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM, Secretary of the Department of Homeland Security ("DHS"); U.S. DEPARTMENT OF HOMELAND SECURITY; and PAMELA BONDI, Attorney General of the United States,

Respondents.

Case No.: 6:25-cv-02014-AA

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Statutes

Regulations

I.

INTRODUCTION

Petitioners filed a Petition for Writ of Habeas Corpus on October 30, 2025 claiming "on information and belief," without providing any actual evidence and while citing inaccurate facts, that they were unlawfully stopped and arrested by ICE officers. (ECF 1). To obtain habeas relief, Petitioners must prove that they are "in custody" and have a continuing detention that violates the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241. But here, Petitioners were released from DHS custody over a week ago on October 31, 2025. Petitioners may claim they are still improperly restrained because they were released with ankle bracelets and under an order of supervision, but as this brief will demonstrate, there is no jurisdiction for Petitioners to raise these claims in a district court habeas petition and even if there were, the facts are undisputed that their detention and arrest were lawful.

Petitioners' claims fail for all of the following reasons:

1. Petitioners' Fourth Amendment claims lack subject matter jurisdiction because any claims of unlawful arrest are not cognizable under habeas and do not give rise to habeas relief, but rather must be addressed by the immigration court in its removal proceedings, in the court of appeals after a final decision by the Board of Immigration Appeals, or in an FTCA lawsuit for unlawful arrest;

2. Petitioners fail to state a claim under the Fourth Amendment because they fail to address the accurate legal standards for reasonable suspicion and probable cause, and fail to state sufficient facts supporting the notion that ICE Officers lacked the authority to conduct the stop and effectuate the arrests of Petitioners;

3. Petitioners APA claims fail for lack of subject matter jurisdiction and for failure to state a claim because under recent Supreme Court precedent, the APA does not provide a separate cause of action for challenges that are exclusively cognizable in habeas;

4. Petitioners fail to state a claim under the Fifth Amendment because they fail to state any facts demonstrating they have been denied due process in any forum, and Respondent's undisputed facts herein show Petitioners have been served with Notices to Appear in Immigration Court where any due process arguments should be raised;

5. All Respondents except for Laura Hermosillo (the Acting Field Office Director of ICE) must be dismissed from the case as the only properly-named Respondent in a habeas action is the immediate custodian of Petitioners' detention; and

6. Petitioners non-habeas claims should be dismissed for failure to pay the required civil action filing fees.

II.

FACTUAL BACKGROUND

This Petition involves two separate petitioners, A.B.D. and C.C.S., both of whom are citizens of Guatemala and neither of which have lawful status in the United States. Although the Court need not reach the merits of Petitioners' arrest because there is no jurisdiction to do so in this habeas case, the following undisputed facts demonstrate ICE Officers had reasonable suspicion to stop Petitioners and probable cause to arrest them under the INA.

A. FACTS OF PETITIONERS' DETENTION AND ARREST

On October 30, 2025, at approximately 5:18 a.m., ICE Officer Destiny Holani and her partner ran the vehicle registration of the license plate of a passenger van they encountered in Marion County, Oregon against immigration and criminal databases. (Holani Decl., ¶ 3). Their investigation revealed that the registered owner of the van was an unlawful immigrant subject to a prior expedited removal order from the United States (R.G.A.). *Id.* Fully badged, and with reasonable suspicion that the van was being driven by R.G.A., an individual illegally located in the United States and present in this country in violation of the INA, Officer Holani and her partner conducted a stop of the vehicle using activated emergency lights after running the license plate. *Id.*

Officer Holani observed her partner ask the driver of the van (R.G.A.) for his name and he voluntarily confirmed his identity and confirmed their suspicions that he was unlawfully present in the United States. (Holani Decl., ¶ 4). Officer Holani's partner then placed handcuffs on R.G.A. with the intent to arrest him. *Id.* Officer Holani approached the female front passenger in the van (R.G.S.), opened the front passenger

door, and asked for her identity. *Id.* R.G.S. confirmed that she was not a citizen of the United States and was unlawfully present in this country. *Id.*

During this time, Officer Holani and her partner observed that there were approximately ten other individuals located in the back of the van, several of whom were retrieving their cameras, filming the Officers, moving rapidly, reaching for their backpacks and appearing agitated. (Holani Decl., ¶ 5). This all occurred while it was pitch dark in the van. *Id.* Believing the situation to be incredibly unsafe, the Officers asked the passengers to stop moving about and reaching for the contents of their backpacks, and gave them commands in English and Spanish to cease doing so, but they did not heed the Officers' warnings. *Id.* The passengers continued to appear incredibly agitated and started moving towards the front of the van since those were the only two doors open at the time. *Id.* Both Officer Holani and her partner are fluent in Spanish, and gave their commands for the passengers to stop the concerning behavior in both English and Spanish. *Id.* The Officers also called for backup, realizing that just two officers were not properly equipped to safely manage the situation with over ten individuals in the van under the circumstances. *Id.* Shortly thereafter, the Officers' supervisor had arrived at the scene to assist with the remaining passengers and secure the back door to the van which had not yet opened. *Id.* Thereafter several other ICE officers arrived in several vehicles. *Id.*

During the encounter both the undocumented driver/owner of the van (R.G.A.) and the undocumented passenger Officer Holani had determined to be unlawfully present in the United States (R.G.S.) fled the scene and started running away in the dark. (Holani Decl., ¶ 6). This was so despite the fact that R.G.A. was already in handcuffs, had already been arrested, and had already been placed in their government vehicle. *Id.* Officer Holani's partner chased and caught R.G.A., and Officer Holani and other officers chased and caught the front passenger, R.G.S. *Id.* Their supervisor and other officers remained at the van to secure the scene and the rest of the passengers while Officer Holani and her partner were apprehending R.G.A. and R.G.S. and escorting them back to the van. *Id.*

Several ERO Officers conducted field interviews of the remaining passengers, including the Petitioners in this case, A.B.D. and C.C.S. (Holani Decl., ¶ 7). Every single passenger in the van, including Petitioners A.B.D. and C.C.S., consensually and voluntarily disclosed to the ERO Officers on the scene that they were citizens of foreign countries and that they had no legal basis to be present in the United States. *Id.* Not one passenger ever indicated they had a lawful basis to be present in the United States. *Id.*

At no point during the encounter did Officer Holani or her partner hear Petitioners A.B.D. or C.C.S., or any other passenger in the van, ask for an attorney. (Holani Decl., ¶ 8). At no time during the encounter did the Officers hear Petitioners A.B.D. or C.C.S., or any other passenger in the van, express any fear of returning to their country of origin or request a fear interview from an immigration court. *Id.*

After it was conclusively determined through their own consensual admissions that all of the individuals in the van were unlawfully present in this country, the driver and all of the passengers were handcuffed and transported to a nearby Walmart located approximately 8 minutes away from the scene. (Holani Decl., ¶ 9). Officer Holani and the other ERO Officers initially transported the detainees to that location so that they could safely remove their handcuffs in a lighted parking lot, instead of in the pitch dark area where they initially encountered the individuals, and so that they could safely relocate their handcuffs to a more comfortable position in the front of their bodies before the remainder of their transport to the Portland ICE facility which Officers knew would take approximately an hour. *Id.*

Officer Holani and her fellow ERO Officers had reasonable suspicion to pull over the van driven by R.G.A. since his license plate revealed that the owner was an unlawful immigrant subject to a prior expedited removal order from the United States. (Holani Decl., ¶ 10). Once they conducted the stop of the van and confirmed the illegal presence of R.G.A., the Officers engaged in a consensual encounter asking the remaining passengers for their identification and asking whether they had any legal basis to be present in the

United States. *Id.* At that time each and every passenger in the van voluntarily provided their names and other identifying information, and denied legal status or citizenship, without exception. *Id.* Not one of the passengers refused to give their names and identifying information, although they could have refused if they wanted. *Id.* Because they voluntarily agreed to reveal their names, countries of origin and other identifying information, that portion of the encounter was consensual and gave the ICE Officers probable cause to arrest the Petitioners.

Even if the Officers had not received the above-referenced information through a consensual encounter as they did, Officer Holani and her fellow officers believed they had reasonable suspicion to question each of the passengers about their citizenship under the INA based on the totality of circumstances described above. (Holani Decl., ¶ 11). These circumstances include, but are not limited to, identifying that the license plate of the van was registered to an unlawful immigrant, the suspicious behavior of the passengers, the fleeing of two individuals (one of whom was already handcuffed and arrested), the sheer number of passengers in the van as opposed to only the two ICE Officers on the scene, and the fact the passengers would not listen to the Officers' commands to cease reaching into their backpacks and navigating towards the front of the van in the pitch dark. *Id.*

Once all of the passengers admitted they were unlawfully present in the United States and had no legal status here, the Officers believed they had probable cause to arrest them and transport them to the Portland ICE facility for administrative processing. (Holani Decl., ¶ 12). The Petitioners have been charged as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) of the INA since they are unlawfully present in the United States without being admitted or paroled. (Holani Decl., Exhibits A, C, D and E).

B. PETITIONER A.B.D. HAS NO LAWFUL STATUS IN THE U.S.

Petitioner A.B.D. is a native and citizen of Guatemala. (Holani Decl., ¶ 13). He admitted that entered the United States at an unknown location on an unknown date. *Id.* Additionally, he admitted that both his father and his mother are citizens of Guatemala and

do not possess U.S. citizenship. *Id.* (*See also* Exhibit A, Form I-213, Record of Deportable/Inadmissible Alien, filed under seal.

During the encounter ERO Officers conducted further database checks on Petitioner A.B.D. and determined that he had been previously expelled from the United States on September 24, 2021 under Title 42. (Holani Decl., ¶ 14; *see also* Exhibit B, biometric printout from DHS's IDENT database, filed under seal).

According to DHS's EARM database, Petitioner A.B.D. was transported to the Northwest ICE Processing Center in Tacoma, Washington ("NWIPC") on October 30, 2025, where he was booked into the facility at approximately 7:28 p.m. (Holani Decl., ¶ 15). He was released from DHS custody under an Order of Recognizance at approximately 4:49 p.m. on the following day, October 31, 2025. *Id.*

At the time of his detainment and arrest on October 30, 2025, and as of the current date, Petitioner A.B.D. has no current legal status to be in (or remain in) the United States and has not filed any applications with DHS that would provide legal immigration status within the United States. (Holani Decl., ¶ 16).

Petitioner A.B.D. has been properly served with a Notice to Appear charging that he is subject to removal pursuant to 8 U.S.C. § 212(a)(6)(A)(i) of the Immigration and Nationality Act. (Holani Decl., ¶ 17; *see also* Exhibit C, Notice to Appear, filed under seal).

C. PETITIONER C.C.S. HAS NO LAWFUL STATUS IN THE U.S.

Petitioner C.C.S. was born in Guatemala. (Holani Decl., ¶ 18). She admitted that entered the United States at an unknown location on an unknown date. *Id.* Additionally, C.C.S. has admitted that both her father and her mother are citizens of Guatemala and do not possess U.S. citizenship. *Id.* (See also Exhibit D, Form I-213, Record of Deportable/Inadmissible Alien, filed under seal).

During her administrative processing, C.C.S. also admitted that she is not lawfully here, having last entered the United States without inspection on an unknown date an

unknown location by eluding inspection. (Holani Decl., ¶ 19; Exhibit D, page 2). C.C.S. further admitted to DHS officers that she has never applied for or received permission to legally enter or remain in the United States. *Id.* (Exhibit D, page 2). Additionally, C.C.S. admitted to DHS officers during her detention that she has no fear of persecution or torture if removed from the United States. *Id.* (Exhibit D, page 2).

According to DHS's EARM database, Petitioner C.C.S. was processed at the Portland, Oregon ICE office and transferred to the NWIPC, where she was booked in at approximately 7:19 p.m. on October 30, 2025. (Holani Decl., ¶ 20). Petitioner C.C.S. was released from DHS custody under an Order of Recognizance at 4:56 p.m. the following day, October 31, 2025. *Id.*

At the time of her detainment and arrest on October 30, 2025, and as of the current date, Petitioner C.C.S. has no current legal status to be in (or remain in) the United States and has not filed any applications with DHS that would provide legal immigration status within the United States. (Holani Decl., ¶ 21). Petitioner C.C.S. has been properly served with a Notice to Appear charging that she is subject to removal pursuant to 8 U.S.C. § 212(a)(6)(A)(i) of the Immigration and Nationality Act. (Holani Decl., ¶ 22; *see also* Exhibit E, Notice to Appear, filed under seal).

III.

ARGUMENT

A. PETITIONERS' HABEAS CLAIMS ARE NOW MOOT

The habeas statute allows a petitioner who is "in custody" to challenge that custody on certain grounds, 28 U.S.C. § 2241(c), including that "[h]e is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). The statute is written in the present tense, making clear that Section 2241 only allows a petitioner to challenge his current custody, not his past custody. *See Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) ("the essence of habeas corpus is an attack by a person in custody upon the legality of that custody").

Here, the legality of Petitioners' arrest over a week ago is not presently relevant and thus cannot be the basis for habeas relief. Petitioners were released from DHS custody on Friday, October 31, 2025. (Holani Decl.). While Petitioners may claim they are still improperly restrained because they were released with ankle bracelets and under an order of supervision, those are claims they must raise in immigration court proceedings, not in a district court habeas petition. This is because Petitioners cannot obtain habeas relief where administrative removal proceedings have already commenced. *See Immigration & Naturalization Serv. v. Lopez-Mendoza, 46*8 U.S. 1032, 1040 (1984) (finding that the "mere fact of an illegal arrest has no bearing on a subsequent deportation proceeding"); *Nora Noemi Marroquin-Salazar v. Noem, et al.,* 5:25-cv-02367-FLA-JC (C.D. Cal. 2025) (denying the petitioner's claim of unlawful detention based in similar grounds). Since removal proceedings are underway, Petitioners' current alternative custody (i.e. ankle bracelets and orders of supervision) flows not from their arrest and initial detention, but from the authority of the Immigration and Nationality Act. Petitioners are free to challenge their current ankle bracelets and requirement to check in with DHS in their immigration proceedings, any habeas claim based on their arrest is now moot. *See Barker v. Estelle*, 913 F.2d 1433, 1440 (9th Cir. 1990) (habeas petition challenging pretrial detention was moot once petitioner was incarcerated pursuant to a judgment of conviction); *James v. Reese*, 546 F.2d 325, 328 (9th Cir. 1976) (same).

B. PETITIONERS' FOURTH AMENDMENT CLAIMS SHOULD BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION

Petitioners bear the burden of establishing this Court has subject matter jurisdiction over their claims. *See Ass'n of Am. Med. Colls. v. United States*, 217 F.3d 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). Petitioners will be unable to meet their burden because this Court lacks subject matter jurisdiction over Petitioners' claims and therefore this claim should be dismissed under Rule 12(b)(1).

1. Jurisdiction Lies with the Immigration Court and Court of Appeals

As confirmed by the Ninth Circuit, 8 U.S.C. § 1252(b)(9), the so-called "zipper clause" of the INA, "consolidates or zips judicial review of immigration proceedings into one action in the court of appeals." *Singh v. Gonzales*, 499 F.3d 969, 976 (9th Cir. 2007) (citation modified). That statute provides:

> 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 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) (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"). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that any issue – whether legal or factual – arising from any removal-related activity can be reviewed only through the [petition for review] process." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016); *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483, 485 (1999) (explaining that § 1252(b)(9) channels judicial review of all decisions and actions leading up to or consequent upon final orders of deportation, including non-final orders, into proceedings before a court of appeals).

Furthermore, Congress has specified that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders." 8 U.S.C. § 1252(g). "By its plain terms," § 1252(g) bars the Court "from questioning ICE's discretionary decisions to commence removal" and "detain [Petitioner] during his removal proceedings." *Alvarez v. U.S. Immigration & Customs Enf't, 81*8 F.3d 1194, 1203 (11th Cir. 2016). *See also Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007) (holding § 1252(g) precludes judicial review of unlawful detention or false arrest claims

arising from decisions regarding the commencement of proceedings, adjudication of cases, or execution of removal orders"); *S.Q.D.C. v. Bondi*, No. 25-cv-3348 (PAM/DLM), 2025 WL 2617973, at *2 (D. Minn. Sept. 9, 2025) (finding § 1252(g) jurisdictionally bars review of petition challenging ongoing detention during removal proceedings); *Buriev v. Warden, GEO, Broward Transitional Ctr.*, No. 25-cv-60459, 2025 WL 2763202, at *3 (S.D. Fla. Sept. 26, 2025) (denying habeas petition for claim that immigration officials unlawfully arrested petitioner "without issuing a warrant").

2. Any Collateral Claims are Inextricably Intertwined to Removal

While claims "collateral to, or independent of" the removal process are still subject to habeas review, "[w]hen a claim by an alien, however it is framed, challenges the procedure and substance of an agency determination that is 'inextricably linked' to the order of removal, it is prohibited by section 1252(a)(5)." *J.E.F.M.*, 837 F.3d at 1031; *Martinez v. Napolitano*, 704 F.3d 620, 623 (9th Cir. 2012).

Here, all claims by A.B.D. and C.C.S. 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." 8 U.S.C. § 1252(b)(9). Even if Petitioners were to argue their order requiring supervision or ankle-bracelets somehow constitute a collateral claim, such an argument fails because those conditions have been placed on Petitioners due to their immigration violations, they have been issued Notices to Appear, and these conditions are inextricably linked to immigration proceedings properly brought against them. Their release under an Order of Recognizance and with ankle bracelets is entirely lawful, because immigration law permits release of noncitizens on conditions as an alternative to detention. The fact that Petitioners have been released with conditions—including ankle monitoring and periodic check-ins with DHS—is a lawful use of government discretion under the statute and does not render their detention unlawful or create a basis for habeas relief.

Petitioners cannot circumvent the entire statutory scheme requiring any claims involving their removal be raised through the immigration court and the court of appeals by simply jumping to district court alleging constitutional violations. Even if a district court judge were to opine that their arrest was unlawful under the Fourth Amendment, that finding would not entitle Petitioners to release from their alternative conditions or any other relief in a habeas petition because how they came into custody is no defense to immigration proceedings. *See United States v. Alvarez-Machain*, 504 U.S. 655, 662-70 (1992) (fact that the defendant was kidnapped to bring him before the court was not a defense to prosecution); *Frisbie v. Collins*, 342 U.S. 519, 522 (1952) (same); *Ker v. Illinois*, 119 U.S. 436, 444 (1886) (same).

3. Suppression of Arrest Evidence is Inapplicable

As the Supreme Court has made clear, "regardless of how the [immigration] arrest is effected, deportation will still be possible when evidence not derived directly from the arrest is sufficient to support deportation." *Lopez-Mendoza., 46*8 U.S. at 1043. This is because "[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." *Id.* at 1039. As such, "[t]he mere fact of an illegal arrest has no bearing on a subsequent deportation proceeding." *Id.* at 1040; *see also Streeter v. Craven*, 418 F.2d 273, 274 (9th Cir. 1969) ("defects in an arrest are not cognizable in habeas corpus"); *L-J-P-L- v. Wamsley*, No. 3:25-cv-01390-IM, 2025 WL 2430268, at *6 n.3 (D. Or. Aug. 22, 2025) (claims of unlawful immigration arrest "are not appropriately raised in a habeas petition"); *H.N. v. 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); *De Oliveira v. Joyce*, No. 2:25-cv-00291-LEW, 2025 WL 1826118, at *5 (D. Me. July 2, 2025) ("argument that an illegal arrest automatically results in an illegal detention is misguided").

Additionally, immigration authorities are authorized to continue to use any identifying information to confirm Petitioners' identities and unlawful status in this country, and the fact that Petitioners have already admitted their unlawful status (and that their fingerprints and database records unquestionably confirm this fact) gives the government continued authority to prosecute their removal proceedings regardless of what occurred during their initial arrest. *See United States v. Ortiz-Hernandez*, 427 F.3d 567, 577 (9th Cir. 2005). Therefore, there is no habeas relief to be gained in this action since any finding by a district court judge that Petitioners' arrest was somehow unlawful will not circumvent their continued removal proceedings or the fact they have admitted to being unlawfully present in the United States.

4. Petitioners' Remedy for Unlawful Arrest Lies in the FTCA

The Federal Tort Claims Act provides a remedy for torts committed by federal employees including unlawful detention, wrongful arrest, and false imprisonment. Petitioners have the right to sue the government for these claims in an FTCA case, and raising this claim in a habeas petition is yet another improper attempt to circumvent the FTCA's statutory scheme.

In short, because 8 U.S.C. § 1252(b)(9) applies, this Court lacks jurisdiction to grant habeas relief based on Petitioners' Fourth Amendment claims of unlawful detention or arrest and judicial review of those claims must be channeled to the Court of Appeals. Indeed, claims relating to an immigrant's detention and arrest are routinely raised in petitions for review to the court of appeals. *See, e.g., Gamez-Reyes v. Bondi, 22-1449,* No. 23-2681, 2025 WL 501400, at *1 (9th Cir. Feb. 14, 2025); *Santiago v. Garland*, No. 22-619, 2023 WL 6875282, at *1 (9th Cir. Oct. 18, 2023); *B.R. v. Garland*, 26 F.4th 827, 840 (9th Cir. 2022); *Marvan v. Slaughter*, No. CV 25-49-H-DLC, 2025 U.S. Dist. LEXIS 134643 (D. Mont. July 15, 2025) (holding that jurisdiction was lacking to review a similar Fourth Amendment claim brought in a habeas petition). Furthermore, in addition to raising any claims of unlawful detainment or arrest in immigration court or at the court of

appeals, Petitioners have the alternative remedy of bringing an unlawful arrest claim under the FTCA should they wish to do so.

C. PETITIONERS' FOURTH AMENDMENT CLAIMS SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM

This Court need not reach the merits of Petitioners' Fourth Amendment claims based on the authority cited above establishing that the Court lacks subject matter jurisdiction of such claims in a habeas petition. However, in the event the Court is inclined to reach these issues, Petitioners fail to state a claim under the Fourth Amendment and therefore this claim should be dismissed under the alternative ground of Rule 12(b)(6).

In their Fourth Amendment claim, Petitioners make the conclusory statement that "Respondents had no basis to detain or arrest Petitioners and inquire about their immigration status other than their race and apparent ethnicity." But Petitioners fail to address the accurate legal standards for reasonable suspicion and probable cause, and fail to state a claim with sufficient facts supporting the notion that ICE Officers lacked the authority to conduct the stop and effectuate the arrests of Petitioners.

1. ICE Officers' Authority to Make Warrantless Arrests

The U.S. Supreme Court has identified three types of reasonable, and thus permissible, warrantless encounters between law enforcement and citizens: (1) consensual encounters in which contact is initiated by an officer without any articulable reason whatsoever and the citizen is briefly asked questions; (2) a temporary involuntary detention (or Terry stop) which must be predicated upon reasonable suspicion; and (3) arrests which must be based upon probable cause. The second of these exceptions was first spelled out by the Supreme Court in *Terry v. Ohio*, 392 U.S. 1 (1968), where it held that "an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable articulable suspicion that criminal activity is afoot." *Id.* at 30; *see also United States v. Manzo-Jurado*, 457 F.3d 928, 934–35 (9th Cir. 2006) (explaining reasonable suspicion standard for believing a person is in the country illegally).

To determine whether a particular stop is permissible under the Fourth Amendment, a court "must look at the 'totality of the circumstances' of [the] case to see whether the detaining officer has a 'particularized and objective' basis for suspecting legal wrongdoing." *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (citation omitted). "This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'" *Id.* Reasonable suspicion is defined as "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *United States v. Cotterman*, 709 F.3d 952, 968 (9th Cir. 2013) (citations omitted). This assessment is to be made in light of the totality of the circumstances. *Id.* Even when factors considered in isolation from each other are susceptible to an innocent explanation, they may collectively amount to a reasonable suspicion. *Id.* at 956.

2. ICE Officers' Authority to Question, Stop and Arrest Under the INA

Pursuant to federal statute, immigration officers have the specific authority to interrogate and make arrests without a warrant if they have reason to believe an individual is in the United States illegally or has committed a crime. 8 U.S.C. § 1357 (a)(1) and (2). Like all law enforcement officers, ICE officers are also permitted to conduct a temporary involuntary detention (or Terry stop), if predicated upon reasonable suspicion. 8 C.F.R. § 287. In addition to their authority to arrest individuals for immigration violations, ICE officers also have the authority to make arrests for *any* offense committed in their presence against the United States. 8 U.S.C. § 1357(a)(5).

Subsection (b) of 8 C.F.R. § 287.8 defines an interrogation or detention and provides as follows:

> (1) Interrogation is questioning designed to elicit specific information. An immigration officer, like any other person, has the right to ask questions of anyone as long as the immigration officer does not restrain the freedom of an individual, not under arrest, to walk away.

> (2) If the immigration officer has a reasonable suspicion, based on specific articulable facts, that the person being questioned is, or is attempting to be, engaged in an offense against the United States or is an alien illegally in the United States, the immigration officer may briefly detain the person for questioning.
>
> (3) Information obtained from this questioning may provide the basis for a subsequent arrest, which must be effected only by a designated immigration officer, as listed in 8 CFR 287.5(c). The conduct of arrests is specified in paragraph (c) of this section.

Pursuant to subsection (c)(2):

> (i) An arrest shall be made only when the designated immigration officer has reason to believe that the person to be arrested has committed an offense against the United States or is an alien illegally in the United States.
>
> (ii) A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained.

And pursuant to subsection (f)(4):

> (4) Nothing in this section prohibits an immigration officer from entering into any area of a business or other activity to which the general public has access or onto open fields that are not farms or other outdoor agricultural operations without a warrant, consent, or any particularized suspicion in order to question any person whom the officer believes to be an alien concerning his or her right to be or remain in the United States.

8 C.F.R. § 287.8.

In addition to this clear statutory and regulatory authority, in *United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975), the Supreme Court elaborated on an immigration officer's authority to conduct a Terry stop when questioning an individual's citizenship and immigration status:

> [W]e hold that when an officer's observations lead him reasonably to suspect that a particular vehicle may contain aliens who are illegally in the country, he may stop the car briefly and investigate the circumstances that provoke suspicion. As in Terry, the stop and inquiry must be "reasonably related in scope to the justification for their initiation." (Citation omitted). **The officer may question the driver and passengers about their citizenship and immigration status,** and he may ask them to explain suspicious circumstances, but any further detention or search must be based on consent or probable cause.

Id. at 881-82 (emphasis added).

Here, Officer Holani and her fellow officers met the standards under all subsections of § 287.8. They had reasonable suspicion to pull the van over and question the inhabitants of the van because the license plate revealed it was owned by an unlawful immigrant. (Holani Decl.). They had the right to interrogate and ask A.B.D. and C.C.S. for their names and whether they had a lawful basis to be present in the United States, and those passengers voluntarily offered that information to the officers under a consensual encounter before being handcuffed or arrested. *Id.* Ninth Circuit law is clear that "[l]aw enforcement officers do not implicate much less 'violate the Fourth Amendment by merely approaching an individual on the street. . .[or] by asking him if he is willing to answer some questions.'" *United States v. Kim*, 25 F.3d 1426, 1430 (9th Cir. 1994) (citation omitted). In *Kim*, a suspect was questioned while sitting in his parked vehicle by a plainclothes federal agent who "parked his unmarked car so as to block partially the egress of Kim's vehicle," with backup officers waiting nearby. *Id.* at 1428. After receiving a tip regarding possible drugs, the agent asked Kim to retrieve a suitcase from the trunk of the car and give permission for the agent to see the contents, and Kim agreed. After finding the contents of the suitcase empty, the officer asked Kim if he could remove and open a vial/container visible in Kim's pocket, and Kim agreed. That vial contained several grams of crystal meth. Kim was later arrested by federal agents in a separate related incident and successfully prosecuted for possession of drugs and firearms. On appeal, the Ninth Circuit held the initial encounter with the agent near the car was a consensual encounter as Kim voluntarily consented to the initial search. *Id.* Similarly here, A.B.D. and C.C.S. were asked for their names and country of citizenship and they agreed to provide that information to the ICE Officers, when they could have refused to answer. They were not handcuffed or arrested when they were asked those identity questions. Officers believed that portion of the encounter to be consensual.

Even if A.B.D. and C.C.S. had not consensually admitted they were unlawfully here, the totality of the circumstances gave Officer Holani and her fellow Officers the requisite reasonable suspicion to briefly detain and question them to determine their citizenship status. The totality of the circumstances included, but were not limited to, the fact that (a) the license plate of the van was registered to an unlawful immigrant, (b) the suspicious behavior of the passengers, (c) the fleeing of two individuals (one of whom was already handcuffed and arrested), (c) the sheer number of passengers in the van that were moving about and acting agitated in contrast to just two ICE Officers initially on the scene, (d) the fact the passengers would not listen to the Officers' commands to cease reaching into their backpacks and navigating towards the front of the van where the officers were located in the pitch dark, and (e) the high risk that A.B.D. and C.C.S. would flee the scene and attempt to escape before a warrant could be secured in light of the fact this is exactly what two other passengers in the van did. *Id.* *See also Illinois v. Wardlow*, 528 U.S. 119, 124-25 (2000) ("Headlong flight—wherever it occurs—is the consummate act of evasion" and "is certainly suggestive of [wrongdoing]"). Furthermore, ICE Officers' motivations in stopping the van "cannot change the objective reasonableness of their actions." *United States v. Taylor*, 60 F.4th 1233, 1240 (9th Cir. 2023).

The subsequent admissions by A.B.D. and C.C.S. that they were unlawfully in the country, as well as the Officers' subsequent database checks, further confirmed that the Officers had the legal authority to arrest Petitioners under the INA. Under the circumstances, the immigration officers met the legal standards for (a) a consensual encounter, (b) reasonable suspicion to stop, briefly detain and question, and (c) probable cause to arrest. Since Petitioners have failed to state any actual facts or put forth any evidence suggesting the officers unlawfully questioned or arrested them, and this Response contains undisputed evidence that the officers acted lawfully, Petitioners cannot state a constitutional claim for a Fourth Amendment unlawful arrest in this habeas action.

3. The ICE Officers' Motivations for the Stop and Arrest are Irrelevant

Petitioners claim that "Respondents only detained Petitioners because of their race." (ECF 1, ¶ 55). But in addition to the fact the evidence presented in this Response demonstrates otherwise, both the Supreme Court and the Ninth Circuit have held that as long as objectively justifiable behavior for the officers' questions exists, the officers' motivations are irrelevant. According to the Supreme Court, "[n]ot only have we never held, outside the context of inventory search or administrative inspection…that an officer's motive invalidates objectively justifiable behavior under the Fourth Amendment; but we have repeatedly held and asserted the contrary." *Whren v. United States*, 517 U.S. 806, 812-13 (1996) (rejecting the argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved). *See also Kim*, 25 F.3d at 1431 (holding "[w]here contact between the citizenry and law enforcement officials does not rise to the threshold of a Fourth Amendment event….the agent's motivation for approaching [a person is] therefore irrelevant").

Additionally, Petitioners' allegations of racial profiling cannot state a claim under the Fourth Amendment as recently construed by the Supreme Court in *Noem v. Perdomo*, 222 L. Ed. 2d 1213, 2025 U.S. LEXIS 2779 (Sept. 8, 2025). In *Noem*, the Supreme Court considered whether immigration officers violated the Fourth Amendment by conducting stops based on apparent race or ethnicity, among other factors. The Court held that while "apparent ethnicity alone cannot furnish reasonable suspicion; under this Court's case law regarding immigration stops, however, it can be a 'relevant factor' when considered along with other salient factors." *Id.* at 1216. *See also Marvan*, 2025 U.S. Dist. LEXIS 134643 (holding "while the Court takes allegations of racial profiling and constitutional violations seriously, Petitioner cannot bypass the immigration courts and proceed directly to district court….Instead, he must exhaust the administrative process before he can access the federal courts"). *Id.* at *11 (citing *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1029 (9th Cir. 2016)) (internal quotations omitted).

Here, the ICE Officers had proof that Petitioners' van was driven by an unlawful immigrant as well as several other factors as described above, and they clearly did not base their reasonable suspicion solely on anyone's apparent race or ethnicity. Petitioners' claims of racial profiling therefore fail as a matter of law under the Supreme Court's recent decision in *Noem* and the Ninth Circuit's decision in *J.E.F.M.*

4. Petitioners' Claims Respondents Violated the Ultra Vires Doctrine, Accardi Doctrine, and Nava Broadcast Policy All Fail to State a Claim

Petitioners have failed to articulate any violation of the ultra vires doctrine or state any facts showing ICE Officers exceeded their authority. ICE Officers are statutorily authorized to stop, detain, question and arrest noncitizens unlawfully present in the United States, as clearly established by the authority cited above including 8 C.F.R. § 287.8. Based on the undisputed evidence presented herein, ICE Officers did not exceed their authority nor have Petitioners stated any facts sufficiently demonstrated that they did.

Petitioners have likewise failed to articulate any violation of the Accardi Doctrine or the Nava Broadcast Policy, or state any facts whatsoever showing ICE Officers violated any internal DHS policies or regulations. Those policies merely reiterate the statutory authorizations and requirements applicable to immigration officers, and do not create any additional or higher legal standard upon ICE Officers when pursuing their statutory duties to detain and arrest illegal immigrants unlawfully present in this country.

The undisputed facts in this brief demonstrate all the specific factors considered by the ICE Officers when they pulled over the van registered to an unlawful immigrant, and the totality of the circumstances present allowing them to legally question, detain and arrest the remaining passengers all of whom admitted their unlawful presence in this country. The fact that the driver of the van (conclusively determined to have illegal status) fled the scene *after* he was handcuffed, *after* he was arrested, and *after* he was placed in a government ICE vehicle, in addition to the fact another identified undocumented immigrant passenger in the van fled the scene and required multiple ICE Officers to chase

her, more than satisfies the probable cause standard applicable to ICE Officers under either the relevant INA statutes or the language delineated under the Nava Broadcast Settlement Agreement from Illinois. After all passengers had volunteered the fact they were illegally present in this county, and after two of the passengers fled and escaped the scene, it was entirely reasonable for ICE Officers to conclude the remaining passengers might flee and attempt escape as well before the Officers could obtain warrants.

Petitioners' attempt to avoid their removal proceedings by arguing in a district court habeas petition that DHS somehow did not comply with its own internal policies has no basis in reality under the circumstances of this case, is not supported by the facts alleged in the Petition, and does not comport with the clear statutory authority and Supreme Court and Ninth Circuit law authorizing immigration officers to arrest the two unlawful immigrants who have filed this petition.

D. PETITIONERS' ADMINISTRATIVE PROCEDURE ACT CLAIMS SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM AND FOR LACK OF SUBJECT MATTER JURISDICTION

In Counts Two through Five, Petitioners attempt to assert violations of the Administrative Procedure Act under 5 U.S.C. § 706(2)(A). Section 706(2)(A) provides that courts shall "hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law". But in each of their claims, Petitioners merely regurgitate their (also invalid and jurisdictionally barred) Fourth Amendment unlawful stop and arrest claims and simply relabel them as "APA" claims. Claims of stops and warrantless arrests without reasonable suspicion or probable cause are Fourth Amendment violations that must be analyzed under constitutional standards, not APA claims analyzed under arbitrary and capricious review standards. Furthermore, the arbitrary and capricious standard under § 706(2)(A) reviews agency policymaking, rulemaking, and programmatic decisions, not individual enforcement actions like arrests. Therefore, Petitioners have failed to state a claim under 5 U.S.C. § 706(2)(A) because their stated challenges are constitutional, not administrative.

Even to the extent Petitioners appear to loosely reference other sections of the APA in the body of their Petition (i.e. 5 U.S.C. § 706(2)(B) and (C)), they do so without articulating any facts explaining which provision was violated and under what circumstances and have therefore failed to state a claim. Even if they had, the Supreme Court recently opined that claims that fall within the "core" of the writ of habeas corpus, like those asserted by Petitioners here (i.e. their claim challenging the legality of their custody), must be brought in habeas and not under the Administrative Procedure Act. *Trump v. J.G.G.*, 604 U.S. 670, 672, 145 S. Ct. 1003, 2025 U.S. LEXIS 1450 (2025) (Kavanaugh, J., concurring). "Given that 5 U.S.C. § 704, which states that claims under the APA are not available when there is another 'adequate remedy in a court,'... habeas corpus, not the APA, is the proper vehicle here." *Id.* at 674.[1] The APA does not provide a separate cause of action for challenges that are exclusively cognizable in habeas. Moreover, district court review under the APA requires final agency action under 5 U.S.C. § 704, and there is no allegation in the Petition that any final agency action has occurred and Petitioners have no order of removal as they have yet to appear in immigration court. For these reasons, Petitioners' attempt to repackage their Fourth Amendment constitutional claims as APA claims must be rejected for both failure to state a claim and for lack of subject matter jurisdiction.

E. PETITIONERS FAIL TO STATE A CLAIM FOR VIOLATION OF DUE PROCESS UNDER THE FIFTH AMENDMENT

Petitioners' Fifth Amendment due process claims are also barred by the jurisdictional framework set forth in 8 U.S.C. §§ 1252(g) and 1252(b)(9). While the Fifth Amendment protects all persons within the United States, including unlawfully present aliens, due process claims arising from removal proceedings should be raised in the immigration forum. Due process protections for aliens in removal proceedings are

[1] Although the main claim asserted in J.G.G. involved the Aliens Enemy Act, the same legal principle applies.

extensive and are properly reviewed through the immigration court and petition for review process. These include the right to a hearing, the right to counsel, the right to present evidence, and the right to cross-examine witnesses. Petitioners have not been denied these protections, but rather, they have been served with Notices to Appear and will have a full hearing before an immigration judge where they may raise any Fifth Amendment due process claims relevant to their proceedings. Petitioners have failed to state any facts in this Petition demonstrating they have been denied due process in any forum, and therefore their Fifth Amendment claim should be dismissed for failure to state a claim.

To the extent Petitioners may argue that their stop and arrest violated due process because officers lacked reasonable suspicion or probable cause, such claims "are inextricably linked" to their removal proceedings and thus must be brought through the petition for review process, not district court habeas. *J.E.F.M.*, 837 F.3d at 1032-33 (quoting *Martinez v. Napolitano*, 704 F.3d 620, 623 (9th Cir. 2012)). Additionally, any such claims are simply an attempt to relabel their Fourth Amendment unlawful seizure allegations which, as established above, cannot be argued in the present habeas petition under the circumstance of this case.

F. THE ONLY PROPERLY NAMED RESPONDENT IN THIS HABEAS PETITION IS THE ACTING FIELD OFFICE DIRECTOR OF ICE

For "core" habeas challenges brought under 28 U.S.C. § 2241, that is, challenges to present physical custody, the only proper respondent is the immediate custodian of the habeas petitioner, "not the Attorney General or some other remote supervisory official." *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Thus, the United States Attorney General, the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"), and the Secretary of the Department of Homeland Security ("DHS") are not proper respondents to this habeas petition because none of those officials has any immediate responsibility for Petitioners' detention. *See id.* at 440 n.13 ("[T]he proper respondent is the person responsible for maintaining—not authorizing—the custody of the prisoner.").

Here, Laura Hermosillo, the Seattle Acting Field Office Director of ICE/ERO, is the only person with proper custody under the INA and is the only properly-named Respondent in this habeas action. All other Respondents lack the requisite custody or immediate control over Petitioners' detention and should be immediately dismissed from this action.

G. PETITIONERS HAVE NOT PAID THEIR REQUIRED FILING FEES

Petitioners have failed to pay the required filing fee for their Petition. While habeas petitions carry a $5 filing fee set by 28 U.S.C. § 1914(a), claims under the APA, Fourth Amendment and Fifth Amendment require a Petitioner to pay the standard civil action fee which is currently $405. As such, the Court should decline to entertain Petitioners' civil action claims unless and until they pay the required filing fee.

IV.

CONCLUSION

For the foregoing reasons, the Court should deny the Petition.

Dated this 10th day of November, 2025.

Respectfully Submitted,

SCOTT E. BRADFORD
United States Attorney
District of Oregon

/s/ Dianne Schweiner
DIANNE SCHWEINER
Assistant United States Attorney
Attorneys for Respondents