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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Eugene Division

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

Petitioners,

v.

LAURA HERMOSILLO,[1] 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

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

ORAL ARGUMENT REQUESTED

Expedited Hearing Requested

[1] Respondent Camilla Wamsley was initially listed as the lead Respondent, as she then held the position of Seattle Field Office Director of the Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"). Laura Hermosillo has been substituted as the current acting official in this position.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Regulations

Constitutional Provisions

PETITIONER'S REPLY ISO PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

Like many Oregonians, Petitioners A-B-D- and C-C-S- were simply heading into work on the morning of October 30, 2025, when they were swept up in Respondents' dragnet of immigration enforcement in Woodburn—one of Oregon's most heavily Latino cities comprised of mostly farmworkers.[2] This stop was part of an ongoing and indiscriminate dragnet meant to achieve a quota of arrests, regardless of what the law requires the U.S. Department of Homeland Security ("DHS") to do when taking away someone's liberty. DHS had no lawful basis to stop A-B-D- or C-C-S-, had no warrant or probable cause to arrest them, and made no individualized custody determination before transferring them to an out-of-state detention center away from their community and legal representation. Respondents released Petitioners from detention on Orders of Release on Recognizance on October 31, 2025. Petitioners remain in Respondents' custody, subject to electronic monitoring via ankle shackles and mandatory check-ins.

Respondents' position, as expressed in their papers filed in this case, is that DHS has limitless power to arrest and detain anyone—citizen and immigrant alike—merely because DHS wants to. But the U.S. Constitution could not speak more clearly: "No person shall be . . . deprived of life, liberty, or property, without due process of law". U.S. Const. amend. V. Petitioners' detention has been unlawful at every moment. Respondent DHS unlawfully stopped and detained them, without reasonable suspicion; unlawfully arrested them without a warrant and without probable cause or reason to believe they had committed an immigration violation, and that they would flee before a warrant could be obtained; and denied them notice and a meaningful opportunity to be heard before making a custody determination, in violation of their constitutional right to due process and Respondents' own regulations, including by egregiously interfering with her right to counsel.

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[2] FOX 12 Oregon, *More than 30 immigrants were detained by ICE in Woodburn, an immigrant justice group claims* (Oct. 31, 2025), available at https://www.kptv.com/2025/10/31/30-arrested-by-ice-woodburn-local-organizers-say/ (last visited Nov. 1, 2025).

Respondents' Response does not offer *any* explanation or authority for the "true cause" of Petitioners' detention, as required by 28 U.S.C. § 2243. *See* Respondents' Response to Habeas Petition (hereinafter, "Response"), ECF 11. Instead, they submit a declaration from Deportation Officer Destiny Holani, whose declaration speaks to the specific stop and arrest of Petitioners A-B-D- and C-C-S- almost exclusively through inadmissible hearsay. Declaration of Destiny Holani ("Holani Decl."), ECF 12. Although Respondents do not contest that there are ongoing restrictions on Petitioners' liberty, Respondents nevertheless argue that Petitioners' habeas case is moot. Response at 7-8. Respondents then raise inapposite, malformed legal arguments that Petitioners may not challenge their unlawful detention in habeas proceedings. Response at 8-23. Respondents are incorrect. Because Respondents can provide no lawful authority for Petitioners' detention at any moment – nor do they even attempt to assert a lawful basis for their current continuing custody – this Court should "dispose of the matter as law and justice require" by granting the writ with appropriate remedies. 28 U.S.C. § 2243.

FACTUAL BACKGROUND

On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including "Protecting the American People Against Invasion," an executive order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a framework for mass deportation. The "Protecting the American People Against Invasion" EO instructs the DHS Secretary "to take all appropriate action to enable" ICE, U.S. Customs and Border Protection ("CBP"), and U.S. Citizenship and Immigration Services ("USCIS") to prioritize civil immigration enforcement procedures, including mass detention. At the same time, President Trump has indicated that noncitizens like Petitioners are not entitled to due process, the Fifth Amendment notwithstanding.[3]

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[3] *See, e.g.,* NBC News, Meet the Press interview of President Donald Trump (May 4, 2025), https://www.nbcnews.com/politics/trump-administration/read-full-transcript-president-donald-trump-interviewed-meet-press-mod-rcna203514, https://perma.cc/9HHY-35JC (last visited Sept. 18, 2025).

In late May, Respondent Secretary Noem and White House Deputy Chief of Staff Stephen Miller met with ICE leadership, setting a new arrest quota of 3,000 arrests per day.[4] Following this directive, ICE agents were instructed in an e-mail to "turn the creativity knob up to 11" and aggressively "push the envelope" in arrests, including by pursuing "collaterals"—individuals for whom the agency by definition would not have arrest warrants.[5] As another e-mail put it: "If it involves handcuffs on wrists, it's probably worth pursuing."[6]

The overriding message, communicated by and to Respondents, is that agents and officers carrying out immigration operations on the ground must prioritize arrest numbers, regardless of an individual's circumstances and that detention is more important than the law.

I. The Series of Warrantless Arrests in Woodburn

Respondent and then-ICE Seattle Field Office Director, Cammilla Wamsley, recently testified that her office, which oversees Oregon, has set a goal to detain at least fifty immigrants a day. *See Oregon v. Trump*, No. 3:25-cv-01756-IM, ECF 146 at 52 (Nov. 7, 2025). As a part of the efforts to meet that number, the morning of October 30, 2025, starting about 5 a.m., DHS launched an immigration dragnet of Woodburn, Oregon and its environs. *See* Sami Edge, *ICE detains 35 people in Woodburn, immigrant rights coalition says*, Oregonlive (Oct. 30, 2025), https://www.oregonlive.com/crime/2025/10/ice-detains-29-people-in-woodburn-immigrant-rights-coalition-says.html, https://perma.cc/43EQ-TE64. Individuals with information about the arrests and tactics described it as "the largest raid or action like this we've seen so far in this administration". *Id.* DHS's actions caused school officials to alert staff and individuals who responded in the community

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[4] Elizabeth Findell, et al., *The White House Marching Orders That Sparked the L.A. Migrant Crackdown*, The Wall Street Journal (June 9, 2025), https://www.wsj.com/us-news/protests-los-angeles-immigrants-trump-f5089877; Brittany Gibson & Stef W. Kight, Scoop: *Stephen Miller, Noem tell ICE to supercharge immigration arrests*, Axios (May 28, 2025), https://www.axios.com/2025/05/28/immigration-ice-deportations-stephen-miller.

[5] José Olivares, *US immigration officers ordered to arrest more people even without warrants*, The Guardian (June 4, 2025), https://www.theguardian.com/us- news/2025/jun/04/immigration-officials-increased-detentions-collateral-arrests, https://perma.cc/54HH-SNSN.

[6] *Id.*

described the scene as "traumatic." *Id.* It appears that the dragnet took place predominantly around apartment complexes between 5:00 AM to 7:30 AM, when many Woodburn farmworkers were heading to work. *See* Sophia Cossette, *Arresting 'Oregon's economic engine': Woodburn-area leaders speak out against arrest of 31 immigrants, farmworkers in Thursday ICE raids*, The Newberg Graphic (Oct. 31, 2025), https://newberggraphic.com/2025/10/31/arresting-oregons-economic-engine-woodburn-area-leaders-speak-out-against-arrest-of-31-immigrants-farmworkers-in-thursday-ice-raids/, https://perma.cc/89YJ-SW2U.

II. Petitioners' Unlawful Detention and Ongoing Custody

Petitioners A-B-D- and C-C-S- allege that they were unlawfully detained in one of the series of warrantless arrests that occurred in Woodburn on October 30, 2025. Both Petitioners were detained in the early morning of October 30 while on their way to work in a shared van. Declaration of A-B-D- ("A-B-D- Decl.") ¶ 4; Declaration of C-C-S- ("C-C-S- Decl.") ¶ 5.[7]

Both Petitioners have shared the same: that although neither tried to flee or resist arrest, and although Respondents never asked their names, Respondents arrested them without any warrant or explanation. A-B-D- Decl. ¶ 8; C-C-S- Decl. ¶¶ 7-11. After their arrest, Respondents handcuffed Petitioners and transported them to the Portland ICE Field Office. *Id.* Respondents took a photo of Petitioner A-B-D-, which he believes they submitted to a facial recognition system to identify him. A-B-D- Decl. ¶ 10. In Portland, Respondents took the fingerprints of Petitioner C-C-S-, despite still not explaining any basis for her arrest. C-C-S- Decl. ¶ 11. Both Petitioners were able to meet very briefly with attorneys at the Portland ICE Field Office, though it was not a meaningful meeting as they had only a few minutes and no Mam interpretation. A-B-D- Decl. ¶ 13; C-C-S- Decl. ¶¶ 13-14.

After their short consultations with counsel, Petitioners were transported by Respondents to the detention center in Tacoma, Washington. A-B-D- Decl. ¶ ¶ 13-14; C-C-S- Decl. ¶¶ 14-15. At 4:30pm

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[7] Petitioners were stopped and arrested in the same encounter as were the petitioner M-L-G-G- and R-G-S-, whose habeas proceedings are separately pending before this Court. *See M-L-G-G- v. Wamsley*, No. 6:25-cv-02012-AA (D.Or. filed Oct. 30, 2025).

PT, this Court issued an Order which Petitioners' counsel immediately served on Respondents counsel. *See* ECF 2 ("Unless otherwise ordered by this Court, Petitioners shall not be moved outside of the District of Oregon without first providing advance notice of the intended move."); Declaration of Stephen Manning ("Manning Decl.") ¶ 2. At approximately 4:39pm PT, Respondents transported Petitioners outside the district of Oregon. Respondents' Notice of Petitioner's Status Pursuant to Court Order ECF 2 at 2. After Petitioners' counsel brought this issue to Respondents' counsel, Petitioners were released on Orders of Recognizance the next day, enabling their return to the district in compliance with the Court's Order. Manning Decl. ¶¶ 6-7.

Both Petitioners were released from detention in Tacoma with electronic ankle shackles and are required to regularly report with Respondents. A-B-D- was released with an ankle monitor and told to report to the Portland ICE office shortly after release. A-B-D- Decl. ¶ 17. The monitor is causing him significant pain, but Respondents have refused to remove it. *Id.* ¶¶ 17-18. Additionally, A-B-D- also must regularly check-in though the ISAP application on his phone. *Id.* ¶ 19. This has been very disruptive because, on check-in days, A-B-D- must wait by his phone until Respondents call him. *Id.* ¶¶ 18-19. Similarly, C-C-S- was released with an ankle monitor, which is also painful for her to wear and makes her daily life more difficult. C-C-S- Decl. ¶ 19. In addition to the physical reminders of her restraint, C-C-S- also has been impacted emotionally as one of her family members was detained with her and remains in detention. *Id.*

III. Respondents' Response and Accompanying Declaration

On November 10, 2025, Respondents filed papers captioned "Response to Habeas Petition," ECF 11; an accompanying evidentiary declaration from Destiny Holani, ECF 12; and five exhibits submitted under seal. In the Response, Respondents assert broadly that "the facts are undisputed that their detention and arrest were lawful." Response at 1. Respondents argue that the petition is moot because they allege Petitioners were both released from the detention center on Friday, October 31 and any claims regarding their conditions of supervision "must be raised in immigration court proceedings." *Id.* at 13-14. Respondents further argue that the petition should be denied because violations of the

Fourth Amendment cannot be raised to challenge detention and Fourth Amendment challenges can only be brought in administrative immigration court proceedings as a defense against removal (but not detention) or via a damages action and thus dismissed for lack of jurisdiction. *Id.* at 8-13. Respondents argue that Petitioners' Fourth Amendment claim was insufficiently pled and that the evidence presented in the Holani Declaration is undisputed, therefore the Fourth Amendment claim should be dismissed on the merits. *Id.* at 13-20. Respondents assert that unlawful stops and seizure claims can only be raised through the Fourth Amendment and therefore any Administrative Procedure Act claims are barred in habeas proceedings. *Id.* at 20-21. Respondents assert that the Fifth Amendment claim can only be heard by an administrative immigration court in removal proceedings and therefore is jurisdictionally barred. *Id.* at 21-22. Finally, Respondents assert that the only proper respondent is Laura Hermosillo and that Petitioners should be required to pay an additional $405 in filing fees to assert their APA, Fourth Amendment, and Fifth Amendment claims. *Id.* at 22-23

As explained below, the Respondents' arguments lack merit. The Respondents' arguments are based on facts that are non-existent, inadmissible, or misunderstood, and their legal arguments are both incoherent and wrong. The Court may grant this petition and order the Petitioners' release on at least three independent, related grounds: (a) the Respondents have no admissible evidence to support Petitioners' detention; (b) the Respondents have not identified a single statutory basis authorizing the Petitioners' detention; *and/or* (c) the Petitioners' executive detention violates their constitutional and statutory rights. Each of these grounds independently provide a basis for ordering the immediate release of A-B-D- and C-C-S- from Respondents' continued custody, including equitable relief that will prevent the recurrence of their unlawful detention.

ARGUMENT

I. Petitioners' Claims Are Not Moot.

On October 30, 2025, Petitioners challenged the validity of their executive detention itself and brought a "core" habeas claim for which relief is clearly available. *See Trump v. J.G.G.*, 604 U.S. 670, 672 (2025); *Nance v. Ward,* 597 U.S. 159, 167 (2022) (confirming that a petitioner "must proceed in

habeas when the relief he seeks would necessarily imply the invalidity of his conviction or sentence") (internal quotations omitted). In filing their *habeas corpus* petitions, A-B-D- and C-C-S- sought freedom from unlawful executive detention, requesting (1) a return to the status quo of their freedom from detention, and (2) a remedy ensuring that the Respondents would not engage in similar unlawful executive activity against them in the future. The Court retains authority to grant the requested relief and should do so. *See* 28 U.S.C. § 2241 et. seq.; 28 U.S.C. § 2201 et. seq., 28 U.S.C. § 1651(a).

Respondents' release of Petitioners after they filed their petition does not moot their claims. Where Respondents voluntarily cease allegedly unlawful conduct, they bear a "formidable burden" of proving mootness because "a defendant's voluntary cessation of a challenged practice will moot a case only if the defendant can show that the practice cannot reasonably be expected to recur." *Federal Bureau of Investigations v. Fikre*, 601 U.S. 234, 241 (2024); *see also A. A. R. P. v. Trump*, 605 U.S. 91, 96-98 (2025) (applying the voluntary cessation doctrine and finding the government's agreement not to remove petitioners while their habeas petitions were pending did not moot the case); *E-M- v. Bostock, et al.*, Case No. 3:25-cv-1083-SI, ECF 28 at 7 (D.Or. Aug. 12, 2025) at 6 ("[S]imply voluntarily releasing Petitioner after he filed his Petition fails to moot his claims."). To meet this formidable burden, the Supreme Court has required either (1) evidence that the party has repudiated its past conduct, *Los Angeles County v. Davis*, 440 U.S. 625, 628, 632-33 (1979), or (2) a "clearly effective barrier" to the conduct's recurrence, *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 457 n.1 (2017). Neither condition is present here.

Here, Respondents have in no way admitted let alone repudiated their unlawful conduct. Nowhere in their papers do Respondents provide *any* lawful justification for their stop, arrest, and detention of Petitioners. *See generally* Response; Holani Decl. Second, Respondents have made no assurances that any of their unlawful conduct will not reoccur. *Id.* Indeed, the facts of record establish that Respondents released Petitioners detention only because they were transferred out of the District in violation of this Court's Order. *See* ECF 2; Manning Decl. ¶¶ 6-7. Respondents have also maintained electronic ankle monitors on both Petitioners, despite the discomfort and serious challenges that such

restraints have caused for them. A-B-D- ¶¶ 16-19; C-C-S- Decl. ¶ 18-19. Respondents have neither repudiated their past unlawful actions nor given assurances it will not reoccur in the future.

This Court clearly retains the authority to grant the relief that Petitioners seek to sufficiently protect them from Respondents' future unlawful conduct, as it has done before. *See, e.g., Jimenez*, No. 3:25-cv-00570-MTK, 2025 WL 2430381, at *2 (D. Or. Aug. 22, 2025). "[I]mmediate physical release [is not] the only remedy under the federal writ of habeas corpus." *J. G. G.*, 604 U.S. at 672 (alteration in original); *see also Carafas v. LaVallee*, 391 U.S. 234, 239 (1968). Federal courts retain the "power to fashion appropriate relief other than immediate release," and the habeas statute directs the courts "to determine the facts and dispose of the case summarily, 'as law and justice require.'" *Peyton v. Rowe*, 391 U.S. 54, 66–67 (1968), quoting Rev. Stat. § 761 (1874), *superseded by* 28 U.S.C. § 2243.

The Court should grant the writ of habeas corpus, including the declaratory and equitable relief it deems necessary to ensure that Respondents do not again deprive Petitioners of their liberty and their right to counsel in violation of statute, regulation, or the U.S. Constitution.

II. The Petition Should Be Granted Because There Is No Statutory Authorization For Detention.

The Court may grant the petition and order A-B-D- and C-C-S-'s immediate release from their electronic ankle monitors because the Respondents have failed to identify any statutory basis that could authorize their detention. Accordingly, the Court may grant the petition on all of the claims.

By statute, Respondents must file a return (styled here by Respondents as a "response") that sets forth the "true cause" of detention. 28 U.S.C. § 2243. For habeas purposes, the statute provides that "[t]he person to whom the writ or order is directed shall make a return certifying the true cause of the detention." 28 U.S.C. § 2243. The purpose of the true certification required by 8 U.S.C. § 2243 is so that the Court may have a record on which to assess the lawfulness of the executive detention.

Nowhere in Respondents' 23 pages of argument do they mention *any* statute that could possibly purport to authorize Petitioners' detention. Likewise, in the seven paragraphs of their supporting declaration, not once do the Respondents state the legal basis for the detention. *See generally* Holani

Decl. Instead, Respondents improperly conflate the basis for Petitioners' removal proceedings with the basis for Respondents' custody. *See* Response at 8.

As a matter of well-established law, Respondents are simply not correct that "Petitioners cannot obtain habeas relief where administrative removal proceedings have already commenced." Response at 8. It is eminently clear that the commencement of such removal proceedings does not limit this Court's jurisdiction to hear Petitioner's claims of unlawful detention brought in *habeas*. *See Zadvydas*, 533 U.S. at 688 (clarifying that INA's jurisdictional bars do "not deprive [a non-citizen] of the right to rely on 28 U.S.C. § 2241 to challenge detention that is without statutory authority"). Federal courts routinely grant release to noncitizens who are actively in removal proceedings pursuant to 8 U.S.C. § 1229a. *See, e.g.*, *Martinez v. Clark*, 124 F.4th 775, 779 (9th Cir. 2024) (the district court has habeas jurisdiction to review an immigration judge's "dangerousness" finding in bond proceedings pending removal); *Jimenez,* 2025 WL 2430381, at *6 (granting the writ for asylum-seeking petitioner in removal proceedings); *O-J-M- v. Bostock*, No. 3:25-cv-00944-AB at 1 (D.Or. July 14, 2025) (granting release to asylum seeker whose removal proceedings were dismissed but not administratively final); *Y-Z-L-H- v. Bostock*, 792 F. Supp. 3d 1123, 1147 (D.Or. 2025) (same). Habeas relief is properly available even for noncitizens who have received an administratively final removal order. *See, e.g., Zadvydas*, 533 U.S. at 688 (the government cannot detain a person indefinitely after an order of deportation); *M-S-L v. Bostock*, No. 6:25-cv-01204 at 34-35 (D. Or. Aug. 21, 2025) (granting release on pre-existing conditions of supervision for petitioner subject to administratively final reinstated order of removal); *Ceesay v. Kurzdorfer*, 2025 WL 1284720, at *15 (W.D.N.Y. May 2, 2025) (affirming that "[n]oncitizens subject to a removal order may be released pursuant to 8 C.F.R. § 241.4 or 8 C.F.R. § 241.13"). Whether or not Respondents have a lawful basis for Petitioners' removal proceedings is not the issue in this case; nor is it a lawful justification for Respondents to deprive Petitioners of their liberty.

Respondents' failure to comply with the statutory directive to identify the "true cause" of detention means that they have presented no lawful basis for Petitioners' detention. As agents of the Executive Branch, Respondents must always have a statutory grant of authority to act; this principle is all the more salient when agency action takes the form of physical restraint. *See, e.g., Ryan, LLC v. Fed.*

Trade Comm'n, 746 F.Supp.3d 369, 387 (N.D.Tex. 2024) ("Agencies … have only the powers that Congress grants through a textual commitment of authority.") (cleaned up). Therefore, the Court may grant the writ because Respondents have identified no statutory basis for Petitioners' detention.

III. The Petition Should be Granted Because There is No Evidence that Authorizes Detention.

Even assuming a cognizable grant of statutory authorization for detention, the Court may grant the Petition and order the Petitioners' release on any or all of the claims because there is no admissible evidence that gives rise to any lawful reason under the INA's detention provisions. 28 U.S.C. § 2243; 8 U.S.C. § 1226(a); 8 U.S.C. § 1357(a).

The Court should strike the inadmissible statements in the Declaration of Destiny Holani, ECF 7. In their Response, Respondents rely exclusively on the declaration of Destiny Holani as evidentiary support for Petitioners' stop and arrest. But their sole witness and declarant assert facts that are outside her personal knowledge and are, therefore, inadmissible hearsay. Her credibility is also suspect as to portions of the declaration that pertain to her own eyewitness experience, as the facts pertaining to her arrest of R.G.S. have been directly challenged in other proceedings before this Court. The Court should strike the inadmissible portions of the Holani Declaration.

Respondents' other exhibits submitted under seal are similarly unavailing. None of the exhibits provide a lawful basis for Petitioners' stop or arrest; notably, even Petitioners' Form I-213s, which should describe the basis for arrest, offers no factual details whatsoever regarding the facts leading to Petitioners' stop and arrest in Woodburn. Holani Decl. Exs. A, D. While Respondents have submitted documents purporting to be Petitioners' Notices to Appear in removal proceedings, these documents are legally sufficient only to commence Petitioners' administrative proceedings before the immigration court; they do not purport to authorize either Petitioner's detention pursuant to any statutory custody authority, nor could they. Had Respondents made an individualized custody determination for either Petitioner, that determination should appear on a Form I-862 "Notice of Custody Determination"; notably, no such document appears in the record.

Because there is no evidence supporting Respondents' lawful authority to detain Petitioners under the immigration laws, the Court should grant the writ.

A. The Federal Rules of Evidence apply in proceedings under 28 U.S.C. § 2241

The Federal Rules of Evidence generally apply in proceedings under 28 U.S.C. § 2241. Federal Rule of Evidence 1101 states that the Rules govern "civil cases and proceedings," and then lists several exceptions, none of which includes habeas proceedings. Fed. R. Evid. 1101(b), (d). Subsection (e) then clarifies that another statute or set of rules "may provide for admitting or excluding evidence independently from these rules." Fed. R. Evid. 1101(e). That exception also does not apply, as federal habeas rules do not displace the Rules of Evidence. Significantly, the comment to Rule 1101 clarifies that "[t]he rule does not exempt habeas corpus proceedings." Fed. R. Evid. 1101 advisory committee's note to subdivision (d). Consistent with this reading, the Supreme Court has applied the Federal Rules of Evidence to determine admissibility in a habeas proceeding. *See, e.g.*, *Amadeo v. Zant*, 486 U.S. 214, 227 n.5 (1988). By their plain text, the Federal Rules of Evidence make clear that they apply in full force in the present case.

B. Portions of the Holani Declaration should be stricken as inadmissible hearsay.

Significant portions of the Holani Declaration are inadmissible in these proceeding because they consist of hearsay. Hearsay is defined as an out-of-court statement submitted for the truth of the matter asserted in that statement. *See* Fed. R. of Evid. 801(c); *see also United States v. Lucas-Hernandez*, 102 F.4th 1039, 1043 (9th Cir. 2024). While an opposing party's out of court statements are generally not hearsay, *see* Fed. R. Evid. 801(d)(2), the witness testifying to those out of court statements must have personal knowledge of them. *See* Fed. R. Evid. 602; *cf. Lucas-Hernandez,* 102 F.4th at 1043–44 (considering whether Border Patrol Agent's testimony was admissible when he relied on interpreter to testify to opposing party's statements); *Rivas v. Napolitano*, 714 F.3d 1108, 1116 (9th Cir. 2013) (Bea, J., concurring in part and dissenting in part) (a witness must have personal knowledge of opposing party's statements when testifying). The comment to Rule 602 explicitly explains,

> This rule does not govern the situation of a witness who testifies to a hearsay statement as such, if he has personal knowledge of the making of the statement. Rules 801 and 805 would be applicable. This rule would, however, prevent him from testifying to the subject matter of the hearsay statement, as he has no personal knowledge of it.

Fed. R. Evid. 602 advisory committee's note. When a statement contains "double hearsay" (two out-of-court statements that each qualify as hearsay), each statement must qualify under some exception to the hearsay rule. *See* Fed. R. Evid. 805; *see also, e.g., United States v. Arteaga*, 117 F.3d 388, 396 n.12 (9th Cir. 1997).

The best evidence rule provides that "[a]n original writing, recording, or photograph is required in order to prove its content unless these rules or a federal statute provides otherwise." Fed. R. Evid. 1002. "The rule is the familiar one *requiring* production of the original of a document to prove its contents[.]" Fed. R. Evid. 1002 advisory committee's note (italics added). In other words, a declarant cannot simply assert what a document contains where that document itself can "prove its content." *Id.; accord, e.g., United States v. Valdovinos-Mendez*, 641 F.3d 1031, 1035 (9th Cir. 2011) (finding the best evidence rule does not apply when an immigration official testifies as to the lack of records, and noting that this differs from testimony where the "[a]gent . . . testif[ies] to the contents of the records sought to be proved," in which case the rule applies); *Gonzalez v. City of McFarland*, No. 1:13-CV-00086-JLT, 2014 WL 3940295, at *3 (E.D. Cal. Aug. 12, 2014) (concluding that city violated the best evidence rule in submitting a declaration summarizing the contents of an auditor's report instead of the report itself); *Medina v. Multaler, Inc.*, 547 F.Supp.2d 1099, 1112 n.55 (C.D. Cal. 2007) (concluding that an employee's declaration was inadmissible under the best evidence rule where the employee stated that her supervisor sent emails that disparaged her because the employee did not produce the emails and instead testified as to their contents).

Ms. Holani attests that during the stop and arrest of the van carrying Petitioners, she was involved in the apprehension of another passenger in the van, "R.G.S." Holani Decl. ¶ 6. Ms. Holani explains that "myself and other officers chased and caught the front passenger, R.G.S. Our supervisor and other ICE officers remained at the van to secure the scene and the rest of the passengers while we were apprehending R.G.A. and R.G.S. and escorting them back to the van". *Id.* By her own admission,

Ms. Holani was thus not directly engaged in any field encounter with A-B-D- or C-C-S-, as she was engaged in the apprehension of another individual.[8]

Separate from concerns about her credibility, at no point in Ms. Holani's declaration does she indicate that she ever personally spoke with A-B-D- or C-C-S-; indeed, her declaration indicates that she was otherwise engaged while other "ERO Officers" conducted further interactions with both Petitioners. The Petitioner thus asks the Court to strike the following paragraphs from the Holani Declaration because the application of the hearsay rule to the declaration demonstrate that they are inadmissible as evidence:

Paragraph 7 of the Holani Declaration. Paragraph 7 should be stricken in its entirety because it violates the hearsay rule and is inadmissible. While Ms. Holani references her own experience at the scene of stop and arrest in paragraphs 3-6 ("myself and my partner . . .", "I observed . . .", "I approached", "my partner and I observed . . ."), in paragraph 7 she instead refers to "Several ERO Officers", describing how it was these unnamed officers who "conducted field interviews of the remaining passengers, including the Petitioners in this case, A.B.D. and C.C.S." Ms. Holani does not attest that she heard or observed these interactions; to the contrary, she attests that she was otherwise engaged in the apprehension of "R.G.S.", the front passenger in the van. Ms. Holani may therefore not assert these statements based on her personal knowledge. None of the hearsay exceptions apply.

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[8] Ms. Holani's statements regarding the arrest of R.G.S. also raise serious concerns as to her credibility. In another case pending before this court, Ms. Holani has submitted another declaration pertaining to this same arrest, where she attests that this individual R.G.S. who allegedly fled the scene of arrest is one of the petitioners in the case. *See M-L-G-G- v. Wamsley*, No. 6:25-cv-02012-AA, ECF 8 at ¶ 8 (describing that "Petitioner R.G.S. was in the passenger seat in the aforementioned van", "fled on foot from the van", resisted arrest, and was subsequently interviewed "and determined positive identification of Petitioner R.G.S."). The declaration of Petitioner R-G-S- in that case directly refutes this account. *See id.*, ECF 31 at ¶¶ 11-12 ("I saw that the wife of the driver, who was sitting right next to the driver, tried to escape. My lawyer has told me that the government says I am the person who ran, but that is not correct; it was the driver's wife. I was sitting in the back and got out of the van and allowed myself to be arrested without resisting. I think that the government has confused me with the driver's wife because her name also starts with R (her initials are R-A-G-) and she also speaks Mam.").

Paragraph 8 of the Holani Declaration. Paragraph 8 should be stricken in its entirety because it violates the hearsay rule and is inadmissible. Paragraph 8 of Ms. Holani's declaration contains an oddity that bears remark and scrutiny by the Court as it seems to be written in a fashion that could mislead the Court about Ms. Holani's personal knowledge and serves to call into question her truthfulness. While Ms. Holani references her own experience at the scene of stop and arrest in paragraphs 3-6 ("myself and my partner . . .", "I observed . . .", "I approached", "my partner and I observed . . ."), she then describes "Several ERO Officers" in paragraph 7, and subsequently in paragraph 8 shifts to the first person plural ("At no point during the encounter did we hear . . ."). It appears that Ms. Holani is offering for the truth of the matter observations made by other ERO officers which she attempts to elide as personal knowledge, which draws into question the veracity of all of Ms. Holani's assertions in her declaration.[9] None of the hearsay exceptions apply.

Paragraph 9 of the Holani Declaration. The first sentence of Paragraph 9 should be stricken in its entirety because it violates the hearsay rule and is inadmissible. Ms. Holani uses the passive tense in this paragraph to avoid stating who determined that Petitioners were unlawfully present in the United States. She writes "After it was conclusively determined through their own consensual admissions that all of the individuals in the van were unlawfully present in this country." Ms. Holani does not attest that she made or contributed to these determinations for either Petitioner and therefore cannot make this assertion based on her personal knowledge.[10] None of the hearsay exceptions apply.

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[9] If the Court does not strike the indicated portions of the Holani declaration, Petitioner requests an opportunity to issue interrogatories and conduct a deposition of Ms. Holani, her partner, and the "ERO Officers" referred to in the declaration. 28 U.S.C. § 2246; *E-M- v. Bostock*, 3:25-cv-1083-SI, ECF 28 (D.Or. 2025) (order granting discovery in habeas case); *M-J-M-A- v. Wamsley*, 6:25-cv-02011-MTK, ECF 13 (ordering "the agent(s) or officer(s) involved in Petitioner's arrest" and "anyone else with knowledge of the basis for Petitioner's detention" to attend evidentiary hearing "in person, and be available to testify, subject to direct and cross-examination and the examination of this Court").

[10] There are other reasons to suspect that Ms. Holani is not being truthful or, at a minimum, is obfuscating. Ms. Holani repeatedly describes the interactions of ERO Officers with Petitioners as "consensual" or otherwise voluntary. *See* Holani Decl. ¶¶ 7, 9, 10. Yet Ms. Holani references the need

Paragraph 10 of the Holani Declaration. Paragraph 10 should be stricken entirely because it violates the hearsay rule and is inadmissible. Again, Ms. Holani offers observations made by other ERO officers which she elides as personal knowledge, further drawing into question the veracity of all of Ms. Holani's assertions in her declaration. She states that "we engaged in a consensual encounter asking the remaining passengers for their identification . . . Not one of the passengers refused to give us their names." At this time, Ms. Holani was by her own admission engaged in apprehending "R.G.S." and thus has no personal knowledge of the exchange that she repeatedly emphasizes, without personal knowledge, occurred for every passenger ("each and every passenger", "without exception", "Not one of the passengers refused . . ."). [11] None of the hearsay exceptions apply.

Paragraph 11 of the Holani Declaration. The first clause of Paragraph 11 should be stricken in its entirety because it violates the hearsay rule and is inadmissible. Ms. Holani again uses the vague "we" to elide personal knowledge of other ERO Officers' encounter with Petitioners. As established above, Ms. Holani has no personal knowledge that Respondents "received the above-referenced information through a consensual encounter." None of the hearsay exceptions apply.

Paragraph 12 of the Holani Declaration. The first clause of Paragraph 12 should be stricken in its entirety because it violates the hearsay rule and is inadmissible. Ms. Holani has no personal knowledge that "all of the passengers admitted they were unlawfully present in the United States and had no legal status here". None of the hearsay exceptions apply.

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to "remove" and "relocate" individuals' handcuffs, *see id.* ¶ 9, without clarifying when during the encounter Petitioners and their fellow passengers who supposedly conversed "voluntarily" were handcuffed. Both Petitioners' declarations make clear that they were in Respondents custody involuntarily from the moment of the stop. *See* A-B-D- Decl.; C-C-S- Decl. Moreover, another passenger arrested from the same van, M-L-G-G-, has submitted a declaration attesting to agents' violence in "pulling people out of the van. I saw them grab the woman before me and push her to the ground. I did not want to get hurt like her . . ." *See M-L-G-G- v. Wamsley*, No. 6:25-cv-02012-AA, ECF 30 at ¶ 11. None of these facts make it into Ms. Holani's declaration and their omission, particularly when contrasted with her repetition that passengers "voluntarily" provided information, undermines the credibility of her declaration and her oath to tell the truth.

[11] By contrast, both Petitioners state that they were not asked to identify themselves and instead were later apparently identified through biometrics. *See* A-B-D- Decl. ¶¶ 8-10; C-C-S- Decl. ¶ 11.

Paragraphs 13-17 of the Holani Declaration. Paragraphs 13-17 should be stricken in their entirety because they violate the hearsay rule and the best evidence rule and are inadmissible. Ms. Holani does not assert that she heard or observed any of these facts. None of the hearsay exceptions apply. To the extent that Ms. Holani summaries the contents of documents that Respondents rely on—Exhibits A-C—her summary violates the best evidence rule because these documents can speak for themselves as to their contents. Nor does Ms. Holani provide any indication of personal knowledge that A-B-D-'s Notice to Appear was "properly served". *See* Holani Decl. ¶ 17. Accordingly, Paragraphs 13-18 pertaining to "Petitioner A.B.D." should be struck in their entirety.[12]

Paragraphs 18-22 of the Holani Declaration. Paragraphs 18-22 should be stricken in their entirety because they violate the hearsay rule and the best evidence rule and are inadmissible. Ms. Holani does not assert that she heard or observed any of these facts. None of the hearsay exceptions apply. Nor does Ms. Holani provide any indication of personal knowledge that C-C-S-'s Notice to Appear was "properly served". *See* Holani Decl. ¶ 22. To the extent that Ms. Holani summarizes the contents of documents that Respondents rely on—Exhibits D-E—her summary violates the best evidence rule because these documents can speak for themselves as to their contents. Accordingly, Paragraphs 13-18 pertaining to "Petitioner C.C.S." should be struck in their entirety. Paragraph 19 is particularly egregious hearsay, as Ms. Holani makes statements about supposed admissions C.C.S. made "to DHS officers" without, again, even identifying these officers. Indeed, an examination of Exhibit D indicates that a single DHS officer, "DO Licon", alleges that C-C-S- made these admissions. Holani Decl., Ex. D at 2. DO Licon does not submit a sworn statement to this Court, nor does his signature appear on the Form I-213, only his typed name. DO Licon also refers repeatedly to Petitioner

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[12] If the Court does not strike the indicated portions of the Holani declaration, Petitioner requests an opportunity to issue interrogatories and conduct a deposition of the officers named on these documents, including "S Smith" and "C Wilson", whose names appear on the Form I-213 and Notice to Appear for A-B-D-. *See* Holani Decl. Exs. A, C.

C-C-S- by the wrong gender throughout the Form I-213, further placing the accuracy of his observations and his credibility in question.[13] *See id.*

For the reasons above, the Court should strike and disregard the majority of the Holani Declaration because it is inadmissible. All the legal arguments asserted by Respondents in their Response regarding Petitioners' stop and arrest rely *solely and exclusively* on the contents of the Holani Declaration. However, those paragraphs are inadmissible, and Respondents did not offer any admissible evidence. Accordingly, there is no underlying support for their arguments relating to Petitioners' stop and arrest. The assertions of counsel are not evidence. *See United States v. Combs*, 379 F.3d 564, 575 (9th Cir. 2004) (referencing the "standard jury instructions" that "statements and arguments of counsel [are] not evidence"). Moreover, as explained *infra* § IV.B.3., the documents submitted to the Court as Exhibits to the Holani Declaration cannot serve as the basis for Petitioners' lawful detention because they were obtained solely through Petitioners' biometric information that was derived exclusively from their unlawful stop and arrest. Because Respondents thus provide no admissible evidence to support the executive detention of Petitioners, the Court must grant the writ.

IV. The Petition Should be Granted Because Petitioners' Executive Detention is Unlawful.

Respondents' Response offers no legal justification for any moment of Petitioners' custody that began on October 30, 2025. Respondents' agents stopped the vehicle in which Petitioners were traveling and seized them without any reasonable suspicion; conducted their warrantless arrests without any probable cause; and continued their detention without affording them notice or an opportunity to be heard before an individualized determination of their custody was made, including by denying them the opportunity to meet with counsel with necessary interpretation before making such a determination. The Court should grant the writ and issue appropriate remedial relief on all Counts.

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[13] If the Court does not strike the indicated portions of the Holani declaration, Petitioner requests an opportunity to issue interrogatories and conduct a deposition of the "DHS officers", including "DO Licon", whose name is provided on the Form I-213 for C-C-S-, and "K Kresser", whose name appears on the Notice to Appear. *See* Holani Decl. Exs. D-E.

A. Respondents deprived Petitioners of their liberty in violation of their due process rights.

The Court should grant the writ on Count Six, because Respondents deprived A-B-D- and C-C-S- of notice and a meaningful opportunity to be heard prior to their detention under the Due Process Clause of the U.S. Constitution.

Respondents' only legal authority to deprive an individual of liberty is delegated by Congress through the Immigration and Nationality Act ("INA"). This statutory custody authority must be read against the backdrop of the U.S. Constitution. *United States v. Witkovich,* 353 U.S. 194, 202 (1957) (affirming "cardinal principle" that statutes must be read in accordance with Constitution); *United States v. Butler*, 297 U.S. 1, 62 (1936) ("The Constitution is the supreme law of the land . . . All legislation must confirm to the principles it lays down."); *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001) (limiting statutory custody authority for post-removal order detention because it must be "read in light of the Constitution's demands"). "No person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const. amend V. It is well-established that the Due Process Clause of the Fifth Amendment applies to "all 'persons' within the United States," irrespective of their immigration status. *J. G. G.*, 145 S. Ct. 1003, 1005 (2025) (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)); *Zadvydas*, 533 U.S. at 693. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). Due process also requires notice and "the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

Following their warrantless arrest, Respondents continued to detain Petitioners without giving them a meaningful opportunity to be heard before making an individualized custody determination. After a warrantless arrest, 8 U.S.C. § 1357(a)(2) requires that the individual arrested "be taken without unnecessary delay" for further consideration of "their right to enter or remain in the United States." Under 8 U.S.C. § 1226(a), immigration officers may choose to either extend detention or to release an individual from custody; this decision is based on an individualized determination of their danger and flight risk. *See* 8 U.S.C. § 1226(a); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. 37 (BIA

2006). Unless there is an emergency—here, there was none—the regulations require an individualized opportunity to be heard on whether detention is warranted. The regulation at 8 C.F.R. § 287.3(d) requires that, within 48 hours of a warrantless immigration arrest, an immigration officer make an individualized custody determination as to whether the noncitizen should remain in custody or be released. Likewise, the regulation at 8 C.F.R. § 236.1(c)(8) requires an opportunity for the noncitizen to be heard on flight risk and dangerousness.

Respondents offer no statutory basis for Petitioners' continued custody. *See generally* Response. Nor do the exhibits to the Holani Declaration contain any Notice of Custody Determination for either Petitioner. *See* Exs. A-E (attaching A-B-D-'s and C-C-S-'s Forms I-213, Biometric printouts from IDENT database, and Notices of Appear). The record thus demonstrates that Respondents have detained Petitioners in violation of their due process rights because they have made no individualized custody determination that justifies Petitioners' current detention – let alone provided them with notice and an opportunity to be heard. Respondents' arguments that conflate removability with detention do not hold otherwise.

Where the government seeks to deprive an individual of a protected interest, the Supreme Court has directed that courts balance three factors to determine what process is due:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. at 335. In applying this balancing test, it is clear that Respondents provided inadequate process when they deprived both Petitioners of notice and a right to be heard before receiving an individualized custody determination. The three-factor test established in *Mathews* is the controlling framework for determining what process is due for both A-B-D- and C-C-S. *See Jimenez*, 2025 WL 2430381, at *6-7 (applying *Mathews* factors to uphold immigration petitioner's right to an individualized custody determination).; *see also E.A. T.-B. v. Wamsley*, 2025 WL 2402130, at *3-6

(W.D. Wa. Aug. 19, 2025) (applying *Mathews* factors to assess right to pre-deprivation hearing). Here, all three factors strongly favor Petitioners.

First, A-B-D- and C-C-S- have an exceptionally strong interest in freedom from physical confinement and in an opportunity to be heard prior to any restraint of their liberty. "Freedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690; *see also Jimenez*, 2025 WL 243038 *6-7. Thus, "[d]etention, including that of a non-citizen, violates due process if there are not 'adequate procedural protections' or 'special justification[s]' sufficient to outweigh one's 'constitutionally protected interest in avoiding physical restraint.'" *Perera v. Jennings*, 598 F. Supp. 3d 736, 742 (N.D. Cal. 2022) (second alteration in original) (quoting *Zadvydas*, 533 U.S. at 690). Similarly, the Ninth Circuit has held that "[i]n the context of immigration detention, it is well-settled that 'due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)). The Supreme Court has long underscored this point. *See, e.g.*, *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." (citation omitted)). Petitioners' liberty interests are particularly weighty given the civil context. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) ("[g]iven the civil context, [a noncitizen's] liberty interest is arguably greater" that the interest of parolees).

Second, "the risk of erroneous deprivation of [Petitioners'] liberty interest in the absence of a pre-detention hearing is high." *E.A. T.-B.*, 2025 WL 2402130, at *4. The procedural safeguards that Petitioners seek are notice and the opportunity to be heard in the custody determination process that Respondents are legally required to engage in pursuant to statute and regulation, as well as their Due Process rights. *See Jimenez*, 2025 WL 2430381 at *7 (finding *Mathews* factors favor Petitioner where "Petitioner only asks for Respondents to follow the procedural safeguards already in place in applicable statutes and regulations."). These authorities require that Petitioners be given notice and an opportunity

to be heard before Respondents conduct an individualized assessment to determine whether they are a flight risk or a danger to the community. *See* 8 U.S.C. §§ 1226(a); 1357(a)(2); 8 C.F.R. §§ 236.1(c)(8), 287.3(d); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. at 38.

Here, instead, Petitioners received neither notice or an opportunity to be heard before they were deprived of their liberty. *See generally* A-B-D- Decl.; C-C-S- Decl. (describing arrest and detention). The failure to provide notice in such circumstances violates the Due Process clause because it "deprive[d] [Petitioners] of any way to meaningfully contest the basis for [their] detention." *See Martinez v. McAleenan*, 385 F. Supp. 3d 349, 359-60 (S.D.N.Y. 2019) (granting a habeas writ where the Petitioner was denied the proper notice in the context of reinstatement of removal). Indeed, the right to be heard "has little reality or worth unless one is informed that the matter is pending" and can then choose how to respond. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *accord United States v. Rivera-Valdes,* No. 21-30177, 2025 WL 2672555, at *12 (9th Cir. Sept. 18, 2025) (en banc) (applying, to the immigration context, *Mullane*'s requirement that notice must be "reasonably calculated" to provide a meaningful opportunity to appear and contest the charges). Had Respondents conducted such an assessment, they would have been compelled to conclude that Petitioners' facts and circumstances did not present any lawful basis for detention. *See Zadvydas*, 533 U.S. at 690 (explaining that "government detention violates [the Due Process] Clause" in civil proceedings, including immigration proceedings, unless there is "a special justification, such as harm-threatening mental illness, [that] outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'") (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)); *see also Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

Finally, Respondents have no interest in depriving Petitioners of their procedural rights. As it stands, the record shows that Respondents never conducted an individualized custody determination purporting to justify either Petitioner's continued custody, as explicitly required by 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.3(d) – nor, necessarily, did they give Petitioners the opportunity to be heard before such a decision was made. In the immigration context, the Supreme Court has recognized

only two valid purposes for civil detention: to mitigate the risk of flight and to prevent danger to the community. *Hernandez*, 872 F.3d at 981 (noting that "the temporary detention of noncitizens may sometimes by justified by concerns about public safety or flight risk"); *Zadvydas*, 533 U.S. at 689 (the two goals of the INA's custody authority are "ensuring the appearance of [noncitizens] at future immigration proceedings" and "[p]reventing danger to the community"); *see also* 8 C.F.R. § 236.1(c)(8) (requiring consideration of flight risk and dangerousness in custody determination under 8 U.S.C. § 1226(a)). Here, neither purpose of detention was satisfied. Based on the facts of record, neither Petitioner is a flight risk. Both A-B-D- and C-C-S- have been residing in the United States since 2023 and have built community ties; moreover, at the time of the unlawful arrest, they both complied with the agents' instructions and did not attempt to resist nor flee. A-B-D- Decl. ¶¶ 3, 7; C-C-S- Decl. ¶ ¶ 3, 8. Based on the facts of record, Petitioners are also not a danger to the community. For A-B-D-, on the records provided by Respondents, particularly his Form I-213, the section corresponding to "criminal record" is blank and in no other part of his records is there a mention of any criminal history and he states he does not have any criminal history. Holani's Decl. Ex. A at 1; A-B-D-Decl. ¶ 3. Similarly, as shown by Respondent's Form I-213 and her declaration, C-C-S- does not have a criminal record and her records check showed no prior arrests or convictions. Holani Decl. Ex. D at 4; C-C-S- Decl. ¶ 4.

B. Respondents' custody of Petitioners has been unlawful from the moment of their stop and arrest.

Respondents' argument that "any claims of unlawful arrest are not cognizable under habeas" misses the entire basis of Petitioners' habeas petition: that from the moment of their initial stop, every moment of Petitioner's subsequent custody was unlawful. The questions the Court must resolve in Petitioners' habeas corpus proceedings are (1) whether Respondents' exercise of executive detention was unlawful and (2) if it was, what remedies are Petitioners due. To frame it another way, if Petitioners' arrest and subsequent detention based on that arrest was unlawful, does habeas provide a remedy for their unlawful executive detention? The answer is yes, because the unlawful stop and arrest are the only basis by which Respondents asserted their custody authority over both A-B-D- and C-C-S-; no subsequent determination of continuing custody was ever made. When Respondents arrested and

detained Petitioners, they were required to have a lawful basis to do so. This Court squarely has equitable authority to determine whether such a lawful basis existed and, if not, to grant appropriate remedies. *See Carafas*, 391 U.S. at 238 (the *habeas* statute is "shaped to guarantee the most fundamental of all rights, [in order] to provide an effective and speedy instrument by which judicial inquiry may be had into the legality of the detention of a person").

1. Respondents conducted a stop and seizure of Petitioners without reasonable suspicion.

Pursuant to 8 U.S.C. §§ 1357(a)(1) and (3), immigration officers are authorized to conduct vehicle stops and question an individual "believed to be [a noncitizen] as to his right to be or to remain in the United States." However, the Fourth Amendment requires that such immigration stops, except those "at the border and its functional equivalents," must be based on reasonable suspicion. *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975); *see also Benitez-Mendez v. I.N.S.*, 752 F.2d 1309, 1311 (9th Cir. 1983), *amended*, 760 F.2d 907 (9th Cir. 1983). Under federal regulations, before even briefly detaining an individual for questioning, an immigration officer must have "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 [a noncitizen] illegally in the United States." 8 C.F.R. § 287.8(b)(2). Race or apparent ethnicity, standing alone, cannot form the basis for reasonable suspicion. *Brignoni-Ponce*, 422 U.S. at 886-87. Similarly, reasonable suspicion may not be based solely on "[a] person's mere propinquity to others independently suspected of [unlawful] activity." *Perez Cruz v. Barr*, 926 F.3d 1128, 1138 (9th Cir. 2019).

Respondents' detentive stop of Petitioners' vehicle further violates their binding nationwide policy on vehicle stops. In deciding to stop a vehicle for civil immigration enforcement purposes, Respondent ICE must comply with the settlement agreement in *Castañon Nava et al. v. Dep't of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.) (hereafter, "*Nava* Broadcast Policy"). Pursuant to an October 7, 2025, order, ICE reissued the *Nava* Broadcast Policy to all ICE officers nationwide on October 22, 2025, with the instruction that it remain in effect through February 2, 2026. *See id.* at Dkt. 224, 224-1 at ¶ 5. Under this policy, ICE officers "may stop a vehicle to enforce civil immigration laws

only if they are aware of specific, articulable facts that reasonably warrant suspicion that the vehicle contains [a noncitizen] who may be illegally in the country." *See* Settlement Agreement, *id.*, *available at* https://perma.cc/54EX-YGM7 (last visited Nov. 1, 2025).[14] Petitioners' stop without compliance with the *Nava* Broadcast Policy is a violation of the *Accardi* doctrine, which requires the agency to follow its own policies, and the APA. *See Accardi v. Shaughnessy*, 347 U.S. 260, 266-268 (1954); 5 U.S.C. § 706(2)(A).

Respondents' Response offers no justification for Respondents' stop and seizure of Petitioners' themselves, let alone any "specific, articulable facts" sufficient to meet the lawful standard for reasonable suspicion. By their own admission, Respondents stopped the vehicle in which Petitioners were traveling to work based on surveillance of another target. Holani Decl. ¶ 3. Nevertheless, Respondents proceeded to assert custody over all other passengers in the van, ordering them out of the vehicle, handcuffing them, and transporting them nearly an hour to the Portland ICE Field Office before producing any paperwork. Holani Decl. ¶ 5, 7. Both, A-B-D- and C-C-S- describe that agents surrounded the van they were traveling in and were yelling in English and Spanish, made all passengers step out of the vehicle and then proceeded to line them up to handcuff them and get them into the agents' vehicles to be transported without any further explanation. A-B-D- Decl. ¶¶ 5-9; C-C-S- Decl. ¶¶ 7-10. Respondents did not provide Petitioners with a reason for their arrest nor did they provided them with a warrant or any other documentation. A-B-D- Decl. ¶ 8; C-C-S- Decl. ¶ 10. The record thus shows that Respondents conducted a detentive stop and seizure of Petitioners despite having *no* reasonable suspicion that they were unlawfully in the United States. The Court should grant the writ on Counts One, Two, and Five.

2. Respondents arrested Petitioners without probable cause.

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[14] Notably, the remedy for those arrested in violation of this agreement within the jurisdiction of the Chicago Field Office is prompt release from custody. *Castañon Nava v. Dep't of Homeland Sec.*, 2025 WL 2842146, at *5.

Respondents' warrantless arrest of Petitioners without probable cause of an immigration violation is in violation of their statutory and regulatory authority. Under the INA, an immigration officer may conduct a warrantless arrest only if that officer has "reason to believe" that an individual is in the United States in violation of the immigration laws and is "likely to escape before a warrant can be obtained for [their] arrest." 8 U.S.C. § 1357(a)(2). A "reason to believe" is equivalent to "the constitutional requirement of probable cause." *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980). 8 C.F.R. § 287.8(c)(2)(i) specifies that before making a warrantless arrest, an immigration officer must have probable cause "to believe that the person to be arrested has committed an offense against the United States or is [a noncitizen] illegally in the United States."

Here, Respondents had no justification for Petitioners' warrantless arrests. The record thus shows that Respondents conducted a warrantless arrest of Petitioner despite having *no* reasonable suspicion – let alone probable cause – that they were unlawfully in the United States. A warrantless immigration arrest "must be based on consent or probable cause" that the person is in fact a noncitizen. *Brignoni-Ponce*, 422 U.S. at 881–82; *id.* at 884 (explaining that the "broad congressional power over immigration ... cannot diminish the Fourth Amendment rights of citizens who may be mistaken for [noncitizens]"). Respondents arrested Petitioners following a vehicle stop in which they were targeting another individual. *See* Holani Decl. ¶¶ 3-4 (describing targeted arrest of driver of the van, who was promptly arrested). Respondents' assertion that "[e]very 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" is inadmissible hearsay that is not supported by other evidence in the record. *See* Holani Decl. ¶ 7; *see also id.* ¶ 10 (same).

Based on the facts in the record, Petitioners were clearly collateral arrests to Respondents' surveillance target. *See* Holani Decl. ¶¶ 3-4. The only conclusion is thus that their warrantless arrest, which was part of Respondents' widespread sweeps aiming to meet quotas, was unlawfully based solely on their apparent race and ethnicity. It is clear that an immigration officer may not establish probable

cause on the basis of race alone.[15] *Brignoni-Ponce*, 422 U.S. at 886-87. Nor may an immigration officer establish probable cause on the basis of a noncitizen's silence pursuant to her Fifth Amendment rights. *See Hurd v. Terhune,* 619 F.3d 1080, 1088 (9th Cir. 2010) (affirming "the fundamental principle that a suspect's silence in the face of questioning cannot be used as evidence against him"). Because Respondents arrested Petitioners without probable cause to believe that they were unlawfully in the United States, the Court should grant the writ on Counts One and Three.

Petitioners' warrantless arrests were independently illegal because Respondents had no probable cause that either A-B-D- or C-C-S- was a flight risk, such that Respondents had no time to reasonably obtain a warrant. The regulation at 8 C.F.R. § 287.8(c)(2)(ii) requires that before making a warrantless arrest, an immigration officer must make an individualized determination that an individual is "likely to escape before a warrant can be obtained." *See also Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995) (requiring officers to have "grounds for a reasonable belief that they were particularly likely to escape"). Respondents arrested Petitioners while they were on their way to work. A-B-D- Decl. ¶ 4; C-C-S- Decl. ¶ 5. Petitioners complied with every direction and did not attempt to flee. A-B-D- Decl. ¶ 7; C-C-S- Decl. ¶ 8. Because Respondents had no evidence *at all* to support a probable cause finding that either Petitioner was a flight risk, the Court should grant the writ on Petitioners' Counts One and Four.

The Court should additionally grant the writ under Count Five, based on Respondents' violation of the *Nava* Broadcast Policy's provisions on warrantless arrests. Pursuant to this policy, ICE is required to consider a delineated set of factors before effectuating a warrantless arrest. In particular, before concluding whether or not the person is at risk of fleeing before a warrant is obtained, ICE must

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[15] Respondents incorrectly claim that the Supreme Court has overruled the Equal Protection Clause of the U.S. Constitution. Respondents misleading quote *Noem v. Vasquez Perdomo*, *see* Response at 18, but they cite not a holding but a *concurrence* by a single member of that Court. 2025 WL 2585637, at *3 (S. Ct. Sept. 8, 2025) (Kavanaugh, J., concurring); *see also Public Watchdogs v. Southern California Edison Co.*, 984 F.3d 744, 757 n.7 (9th Cir. 2020) (Supreme Court "concurring opinions have no binding precedential value").

consider "the totality of circumstances," including "the ICE Officer's ability to determine the individual's identity, knowledge of that individual's prior escapes or evasions of immigration authorities, attempted flight from an ICE Officer, ties to the community (such as a family, home, or employment) or lack thereof, or other specific circumstances that weigh in favor or against a reasonable belief that the subject is likely to abscond." *See* Settlement Agreement, *Castañon Nava et al. v. Dep't of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.).[16] In conducting Petitioners' arrest, the record shows that Respondents' agents had *no* evidence weighing toward flight risk. To the contrary, the circumstances heavily weighed against a risk of flight: Petitioners were on their way to work and did not attempt to flee when stopped by immigration agents. A-B-D- Decl. ¶¶ 4, 7; C-C-S- Decl. ¶¶ 5, 8. Petitioners' warrantless arrest without consideration of the factors required by the *Nava* Broadcast Policy is again a violation of the *Accardi* doctrine and the APA. *See Accardi*, 347 U.S. at 266-268; 5 U.S.C. § 706(2)(A).

3. Respondents have continued to detain Petitioners based solely on information derived from their unlawful stop and arrest.

Significant portions of Respondents' declaration are not admissible, *see supra* § II, and Petitioners' custody under 8 U.S.C. § 1226(a) is not lawful, *see supra* § III.A. Even if they were, however, the Court should still grant the writ because by Respondents' own account, Respondents' assertion of Petitioners' immigration status is based solely on information derived from evidence that was the fruit of their unlawful stop and arrest.

Respondents relied on information that was solely the fruit of Petitioners' unlawful arrest to obtain their immigration records and to seek to justify their continued custody. Because Petitioners' "arrest and detention were blatantly unlawful from the start, the only commensurate and appropriate equitable remedy to even partially restore [them] is to immediate[ly] release [them] and enjoin the Government from similar transgressions." *See Martinez*, 385 F.Supp.3d at 373.

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[16] *See supra* n. 16.

"Under [the exclusionary] rule, evidence obtained in violation of the Fourth Amendment cannot be used in a criminal proceeding against the victim of the illegal search and seizure", nor may "the fruits of the illegally seized evidence" be considered. *United States v. Calandra*, 414 U.S. 338, 347 (1974). The exclusionary rule is intended "to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures", *id.*, as well as to serve "the vital function of preserving judicial integrity", *Adamson v. Comm'r*, 745 F.2d 541, 546 (9th Cir. 1984). The Ninth Circuit has explicitly applied the exclusionary rule in civil proceedings where, as here, "evidence is obtained by deliberate violations of the fourth amendment, or by conduct a reasonable officer should know is in violation of the Constitution", *Adamson*, 745 F.2d at 545, including where an "egregious" violation of the Fourth Amendment occurs in an immigration arrest based on the subject's race, *Gonzalez-Rivera v. I.N.S.*, 22 F.3d 1441, 1452 (9th Cir. 1994). *See also I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1050 (1984) (clarifying that its decision did not deal "with egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness"). Because Respondents' stop and arrest of Petitioners was an egregious violation of their Fourth Amendment rights, the exclusionary rule prevents Respondents from using any evidence obtained solely from that arrest in any subsequent custody determination.

In the present case, Respondents seek to justify *a posteriori* an unlawful stop, warrantless arrest and seizure by utilizing information and evidence supposedly obtained from their egregious arrest of Petitioners without reasonable suspicion or probable cause. The record makes clear that Respondents obtained Petitioners' immigration records *solely* based on biometric information taken as a result of Petitioners' egregious unlawful arrests. *See* A-B-D- Decl. ¶ 10 (describing how officers only identified him after "they took my picture in the van"); C-C-S- Decl. ¶ 11 (describing how Respondents fingerprinted her and "had still never even asked me my name"). In such circumstances, Petitioner's biometric information and any subsequent records are properly suppressible under the exclusionary rule. *See United States v. Martinez-Rodriguez,* No. 1:25-CR-00200 (AMN), 2025 WL 2355630, at *10 (N.D.N.Y. July 23, 2025) (suppressing fingerprints derived from unlawful ICE traffic stop); *United*

States v. Cabrera, No. 24-CR-02180-JAH, 2025 WL 1564872, at *4–5 (S.D. Cal. Mar. 28, 2025) ("Defendant's fingerprint which lead to the A-File are suppressible as fruit of the poisonous tree."); *see also Taylor v. Alabama*, 457 U.S. 687, 692–93 (1982) (confession was fruit of unlawful arrest when it followed "initial fingerprints, which were themselves the fruit of petitioner's illegal arrest").

Respondents contend that it does not matter how Petitioners were detained and how they obtained the information about their immigration status, as "identity . . . is never itself suppressible." Response at 11. But the cases they cite are inapposite; Petitioners challenge here not the initiation of removal proceedings but the deprivation of their liberty, which occurred as a direct result of evidence obtained through their unlawful arrest. *Contra* Response at 11-12.[17] And even in the specific context of immigration removal proceedings, although the person and identity of the respondent are not themselves suppressible, other evidence to prove unlawful stay or non-citizenship is inadmissible if it is the fruit of the unlawful arrest. *Lopez-Mendoza*, 468 U.S. at 1043. Importantly, where the only evidence leading to an individual's immigration record is obtained through unlawful arrest, courts have found that information derived from the unlawful arrest is suppressible as "fruit of impermissible government action". *See Cabrera*, No. 24-CR-02180-JAH, 2025 WL 1564872, at *4–5 (suppressing

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[17] The cases Respondents cite are also factually distinguishable from the case at hand in material ways. *Lopez-Mendoza* addresses the effect of an unlawful arrest on removability (determined in an immigration proceeding), *not* on the lawfulness of detention (determined in a habeas petition). *See* 468 U.S. at 1040. *Streeter v. Craven* involves a habeas challenge to the validity of a state criminal conviction. 418 F.2d 273, 274-75 (9th Cir. 1969). The quote from *L-J-P-L- v. Wamsley* is dicta, as the district court decided in that case that the mandatory detention statute for reinstatement of removal gave the Court "no choice but to conclude that, under existing laws, Petitioner's detention is lawful." 2025 WL 2430268, at *1 (D.Or. Aug. 22, 2025); *but see M-S-L- v. Bostock*, No. 6:25-cv-01204-AA, 2025 WL 2430267, at *15 (D.Or. Aug. 21, 2025) (deciding a petitioner subject to the same reinstatement authority had been unlawfully detained and granting the habeas petition). The petitioner in *H.N. v. Warden, Stewart Detention Center*, was also held in "post-final-order-of removal detention as authorized by 8 U.S.C. § 1231(a)"; the court correctly noted that the validity of his *removal* order must be challenged through a petition for review to the Circuit court and could not be challenged via habeas. No. 7:21-cv-59-HL-MSH, 2021 WL 4203232, at *5 (M.D. Ga. Sept. 15, 2021). And the language from *Rodrigues De Oliveira v. Joyce* is arguably dicta since the court found jurisdiction and granted the habeas petition on different grounds. No. 2:25-cv-00291-LEW, 2025 WL 1826118 (D. Maine July 2, 2025).

immigration records because they were "derived from information gathered pursuant to Defendant's unlawful seizure and detail statements made by the Defendant after his stop"); *Martinez*, 385 F. Supp. 3d at 367 (S.D.N.Y. 2019) (suppressing reinstatement order because "Defendants only produced and served that order by violating a host of Petitioner's Constitutional rights"). In other words, Respondents may not use information gained through their unlawful seizure of Petitioners as the basis for their subsequent custody determination and call it lawful. *See Martinez*, 385 F. Supp. 3d at 359-60; *Lopez-Mendoza*, 468 U.S. at 1043; *Cabrera*, No. 24-CR-02180-JAH, 2025 WL 1564872, at *5.

Nor can the government cure the illegality of an arrest by producing retroactive documents. *Martinez*, 385 F. Supp. 3d at 359-60 (granting a writ of habeas corpus finding that Petitioners detention was unconstitutional at the time he was taken into custody and such detention cannot be 'fixed' *post hoc*). The Supreme Court has a longstanding line of precedents finding that when a deprivation of liberty is achieved by methods that offend Due Process and conduct that shocks the conscience, that detention is unlawful. *Rochin v. California*, 342 U.S. 165, 172-174 (1952) (reversing a judgment where a conviction was obtained by methods that offend the Due Process Clause and "conduct that shocks the conscience"). This is exactly the situation for Petitioners.

Respondents' purported justification for Petitioners' custody rests solely on information that was supposedly obtained in the course of and as the fruit of Petitioners' unlawful stop and arrest. Respondents purportedly confirmed further immigration details for Petitioner A-B-D- based on "further database checks" obtained from his biometric data derived exclusively from his unlawful arrest. *See* Holani Decl. ¶ 14, Ex. B (providing "biometric printout from DHS's IDENT database"); A-B-D- Decl. ¶ 10 (identifying Petitioner after taking his picture while already in shackles). Respondents purportedly confirmed further immigration details for Petitioner C-C-S- based on information she "further admitted" after being interrogated at the Portland ICE Field Office following her unlawful arrest. *See* Holani Decl. ¶ 19, Ex. D. Because such information was solely derived from Petitioners' unlawful stop and arrest, this information must be suppressed from any subsequent custody determination. *See United States v. Martinez-Rodriguez*, No. 1:25-CR-00200 (AMN), 2025 WL 2355630, at *10 (N.D.N.Y. July

23, 2025) (underlining that the government had not explained how any identity evidence was obtained independently from an unlawful seizure, and as such all evidence from the illegal stop – including agents observations, statements, fingerprints, photographs – would be excluded). The Court should thus suppress information obtained through Petitioner's unlawful stop and arrest, including any statements made or information obtained from facial recognition software and their fingerprints, as the fruit of their unlawful arrest, and further grant the writ on Count One.

V. Respondents' Additional Counterarguments Are Meritless.

Respondents make several arguments relating to jurisdiction and others about the merits. However, all of their arguments are meritless.

A. Respondents' jurisdictional arguments are meritless.

Respondents' arguments against Petitioners' due process claim, *see* Response at 21-22, impermissibly conflate their authority to seek Petitioners' removal from the United States with their authority to lawfully detain them.

Whether Petitioners are removable from the United States is not the legal question at issue in this case. *See Carafas*, 391 U.S. at 238 (clarifying that the *habeas* statute entails "judicial inquiry . . . into the legality of the detention of a person"); *cf. Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (finding habeas jurisdiction when a petitioner is "not even challenging any part of the process by which their removability will be determined"). Respondents allege that Petitioners are removable and have purported to initiate removal proceedings against them in immigration court. *See* Response at 6-7; Holani Decl. ¶¶ 17, 22, Exs. C, E. In those proceedings, Petitioners may raise defenses to removability and/or apply for relief from removal.

Additionally, neither jurisdictional bar that Respondents cite applies here. *See* Response at 9-10, 12, 21. No provision of the Immigration and Nationality Act strips this Court of jurisdiction over Petitioners' claims, which are brought in the core of habeas.

This Court's jurisdiction is not barred by 8 U.S.C. § 1252(g). This case challenges actions that are not among the actions enumerated in § 1252(g), which bars review when DHS exercise its

discretion to "commence proceedings, adjudicate cases, or execute removal orders".[18] *See Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482-83 (1999). The provision is "narrow" and applies "only to [these] three discrete actions"- and *not* to the "many other decisions or actions that may be part of the deportation process." *Id.* at 482. Detention decisions decidedly do not fall among the three discretionary acts rendered unreviewable.[19] *See Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) (finding that section 1252(g) did not bar judicial review of challenges to unlawful detention). Moreover, "§ 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Ibarra-Perez v. United States*, 154 F.4th 989, 997 (9th Cir. 2025). Neither does it bar constitutional claims or challenges to the government's authority to act in the first place. *See, e.g., Walters v. Reno*, 145 F.3d 1032 (9th Cir. 1998) (permitting due process claims against a legacy INS practice of obtaining removal orders) *and Arce v. United States*, 899 F.3d 796 (9th Cir. 2018) (permitting claim based on Attorney General's lack of

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[18] Moreover, even if this action could be construed as challenging one of these three discrete actions, a "district court may consider a purely legal question that does not challenge the Attorney General's discretionary authority, even if the answer to that legal question—a description of the relevant law—forms the backdrop against which the Attorney General later will exercise discretionary authority." *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004); *see also Madu v. U.S. Attorney Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006) ("While [section 1252(g)] bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions.").

[19] Respondents cite *Alvarez v. U.S. Immigration and Customs Enforcement*, 818 F.3d 1194 (11th Cir. 2016) for the opposite proposition, *see* Response at 9, but they are incorrect. *Alvarez*, which is not a habeas case, held that "the district court **erroneously concluded** that it had no jurisdiction to entertain the merits" of the Plaintiff's detention-related claim but that no *Bivens* remedy was available to him. *Id.* at 1212 (emphasis added). Though there is some discussion of § 1252(g) barring review of Alvarez's pre-removal order claims, *id.* at 1204, that is arguably dicta considering the case's holding. Regardless, the Petition here sounds squarely in habeas. *Burien v. Warden, et. al.*, is also not convincing, as the petitioner there had been issued a final order removal, that he did not appeal, and did not argue that "his warrantless arrest makes his custody unlawful", as Petitioner argues here. No. 25-cv-60459, 2025 WL 2763202, at *2-*3 (S.D. Fla. Sept. 26, 2025). And *S.Q.D.C. v. Bondi* is both on appeal, *see* No. 25-2823 (8th Cir. Sept. 16, 2025), and in tension with at least dozens, if not hundreds, of district court decisions to the country from around the country finding jurisdiction over similar facts. *See, e.g Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 at *7 (E.D. Mich. Sept. 9, 2025) (citing a dozen federal court decisions finding jurisdiction over habeas challenges to Respondents' novel and incorrect interpretation of their § 1226(b)(2)(A) detention authority).

authority to execute a removal order in violation of a court order). This is precisely the type of challenge brought here, as ICE altogether lacks the authority to arrest and detain Petitioners in violation of the U.S. Constitution, the INA, and their own agency policy.

Nor does 8 U.S.C. § 1252(b)(9) limit the Court's jurisdiction here, as this jurisdiction-stripping provision does not prevent federal courts from hearing cases "that do not directly challenge a final order of removal." *See Trinidad y Garcia v. Thomas*, 683 F.3d 952, 958 (9th Cir. 2012) (Thomas, J., concurring) (citing *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075 (9th Cir. 2006)). The statute is a "'targeted' and 'narrow' provision that is certainly not a bar where, as here, the parties are not challenging any removal proceedings.'" *Gonzalez v. U.S. Immigration and Customs Enforcement*, 975 F.3d 788, 810 (9th Cir. 2020) (quoting *Dep't of Homeland Sec. v. Regents v. Univ. of Cal.*, 140 S. Ct. 1891, 1907 (2020)). "[C]laims challenging the legality of detention" fall outside of (b)(9)'s reach. *Id.* (in the context of immigration detainers); *accord Ozturk v. Hyde*, 136 F.4th 382, 401 (2d Cir. 2025) ((b)(9) does not foreclose review of an immigration habeas petition raising constitutional claims). Despite Respondents' insinuation otherwise, Response at 8-12, Petitioners here do not challenge any removal order,[20] review of which would be channeled to the federal courts only through a Petition for Review of the same; they challenge their unlawful detention via habeas. Thus, the Court is not barred by either of these provisions from hearing this case.

Moreover, even if a provision of the INA would ordinarily operate to limit the Court's jurisdiction, the Court still retains jurisdiction over Petitioners' core habeas claims pursuant to the Suspension Clause of the U.S. Constitution, which provides that "[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. Art. I § 9, cl. 2. If this Court lacks jurisdiction to hear Petitioners' claims, there is *no* other adequate forum that would allow them, Oregon residents with significant ties to the United States, to challenge their unlawful detention. Such a "miscarriage[] of justice" would undoubtedly run

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[20] Indeed, no removal order appears to have been issued in either Petitioner's case. *See* Holani Decl. Exs. C, E (Notices to Appear to initiate removal proceedings before an immigration judge).

afoul of the Suspension Clause, the "fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." *Harris v. Nelson*, 394 U.S. 286, 290–91 (1969). Further, the Ninth Circuit has recognized that the Suspension Clause can be triggered when a petitioner is requesting release from custody. *Rauda v. Jennings*, 55 F.4th 773, 780 (9th Cir. 2022) (citing *Hamama v. Adducci*, 912 F.3d 869, 880 (6th Cir. 2018)). The Suspension Clause squarely applies here, where Petitioners seek relief from unlawful executive detention.

B. Respondents' FTCA argument is meritless.

The Respondents argument that the Petitioners may only bring their unlawful arrest claims in FTCA proceedings is meritless. The statute plainly provides that a person who is in custody in violation of the Constitution or laws of the United States may sue in habeas. 28 U.S.C. § 2241(c)(3). Habeas—the Great Writ—is "the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action" and is sufficiently flexible to "reach all manner of illegal detention,...cut through barriers of form and procedural mazes," and "insure that miscarriages of justice...are surfaced and corrected." *Harris v. Nelson*, 394 U.S. 286, 290-91 (1969). The FTCA does not provide an injunctive remedy to resolve Petitioners' *present, ongoing* detention in violation. While Petitioners also have a damages claims, that is in addition to, not in lieu of, their rights to invoke the Great Writ.

C. Respondents' "only proper respondent" and filing fee arguments are meritless.

The Respondents' argument that only the Acting Seattle Field Office Director may be named as a respondent is meritless. While challenges to detention—the "core" of habeas—must be brought against the immediate custodian, *Rumsfeld v. Padilla*, 542 U.S. 426, 434-435 (2004), the Petitioner may name additional respondents when a remedy beyond just release is necessary, *Doe v. Garland*, 109 F.4th 1188, 1194-97 (9th Cir. 2024). There is no dispute that the immediate custodian, the Seattle Field Office Director, is named in the petition.[21] But the Court need not reach this issue at all, because

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[21] As noted *supra* n. 1, Petitioners previously named the former Seattle Field Office Director, Cammilla Wamsley, who has since been replaced in her official capacity by Acting Director Laura Hermosillo.

even if the Respondents had some basis to complain about the additional respondents, it is immaterial to the primary remedy of release. *See Rasul v. Bush*, 542 U.S. 466, 478–79 (2004) ("[A] district court acts 'within [its] respective jurisdiction' within the meaning of § 2241 as long as 'the custodian can be reached by service of process.'"); *Dunn v. U.S. Parole Commission*, 818 F.2d 742, 744 (10th Cir. 1987) ("So long as the petitioner names as respondent a person or entity with power to release him, there is no reason to avoid reaching the merits of his petition.")

Respondents' filing fee argument is also meritless. The habeas writ extends to all persons who are "in custody in violation of the Constitution or laws or treaties of the United States[.]" 28 U.S.C. § 2241(c)(3). The Fourth Amendment and Fifth Amendment are part of the "Constitution…of the United States." The APA, the INA, and the associated regulations are part of the "laws…of the United States." The Accardi Doctrine arises under the "laws…of the United States." Petitioners' claims are properly brought in habeas and they have paid the necessary fee.

VI. CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court grant the writ of habeas corpus and issue the remedy that "law and justice require" in order to release Petitioners from Respondents' unlawful custody and to protect them from future unlawful deprivations of their liberty and their fundamental rights. *See* 8 U.S.C. § 2243.

Dated: November 26, 2025.

Respectfully submitted,

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