

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION

ERNESTO GERARDO ZEPEDA RAMIREZ)
)
Petitioner,)
)
vs.)
)
ADAM SMITH, *in his official capacity*)
As Jailer of Christian County Jail; and)
TODD LYONS, *in his official capacity as Acting*)
Director of Immigration and Customs Enforcement; and)
SAM OLSON, *Chicago Field Office Director for*)
Detention and Removal Operations, Immigration &)
Customs Enforcement; and)
KRISTI NOEM, *Secretary of Homeland Security; and*)
PAMELA BONDI, *U.S. Attorney General.*)
)
Respondents.)
)

CASE NO.:
5:25-cv-00186-BJB

**PETITIONER’S RESPONSE TO RETURN OF ORDER TO SHOW CAUSE
AND BRIEF IN SUPPORT OF GRANTING THE WRIT OF HABEAS CORPUS**

Comes now Petitioner, Ernesto Gerardo Zepeda-Ramirez, by and through undersigned counsel, and respectfully submits this Response to the Return of Order to Show Cause, ECF 8, and Brief in Support of Granting the Writ of Habeas Corpus. This petition challenges the lawfulness of Petitioner’s ongoing detention by the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), at the Christian County Detention Center, Kentucky, following his arrest on October 13, 2025, in Mount Prospect, Illinois.

I. INTRODUCTION

This habeas petition challenges only the legality of Petitioner’s detention—not the merits of his removal proceedings—and seeks immediate release on the grounds that his arrest and detention violate the Fourth and Fifth Amendments, the Immigration and

Nationality Act (INA), and applicable regulations. Petitioner incorporates by reference all arguments raised in his response to the motion to dismiss, including the absence of any statutory bar to this Court’s review, the primacy of the Suspension Clause, and the constitutional requirement for meaningful judicial review of executive detention as articulated in *Boumediene v. Bush*, 553 U.S. 723, 779–80 (2008). Petitioner further reiterates that he is not an “arriving alien” under 8 U.S.C. § 1225(b)(2), as he was apprehended in the interior of the United States nearly two decades after his entry and is not “seeking admission.” As such, any detention against him may only be authorized under 8 U.S.C. § 1226(a). This response focuses on the factual and legal deficiencies in Respondents’ justification for his arrest and detention and demonstrates why immediate release is warranted in his case.¹

II. FACTUAL BACKGROUND

Ernesto Gerardo Zepeda-Ramirez is a 47-year-old citizen of Mexico who has resided in the United States since approximately 2007. He lives in Lansing, Illinois, with his wife—who suffers from a heart condition and is dependent on his support—and their three children. Zepeda operates a longstanding construction business, is regarded as a person of good moral character, and maintains strong community ties, including active membership in his local church. He has no criminal record.

¹ Petitioner also notes that administrative remedies futile in his case: following his egregious arrest—where he was forcibly stopped in the road, surrounded by armed agents, struck in the chest, and taken into custody without explanation or any request for documents—he was immediately transferred to the Broadview Processing Center and subsequently to Kentucky. Under the binding policy of *Matter of Yajure Hurtado* and the July 2025 ICE memo, immigration judges uniformly deny bond to similarly situated noncitizens, and there is no statutory exhaustion requirement for habeas relief in these circumstances. The futility of administrative remedies further underscores the necessity of judicial intervention. Finally, the public interest is always served by preventing unlawful detention and ensuring that government agencies comply with the law and their own regulations. This response will demonstrate, through the factual record and applicable law, that Petitioner’s arrest and continued detention are unlawful, and that immediate release is warranted.

Immigration History and Circumstances of Arrest

Zepeda entered the United States without inspection through the southern border in Texas approximately seventeen years ago and has since built his life and family in the Chicago area. On October 13, 2025, Zepeda, who owns a construction company, was driving his Silverado 3500 work truck to deliver materials to a job site in Mount Prospect, Illinois, where his workers were present. After completing his delivery and while driving back to Chicago, Zepeda was abruptly stopped in the road directly in front of Redemption Bible Church, located at 505 W Golf Rd, Mt Prospect, IL 60056. At that location, six unmarked vehicles suddenly surrounded and blocked his truck. Agents exited their vehicles with large guns drawn; one officer struck Zepeda in the chest, forcibly pulled him out of his vehicle, and took him into custody. At no point did the agents provide any explanation, ask for identification or documents, or state the basis for the stop.

This arrest was executed without a warrant, without probable cause, and without any individualized suspicion. The use of force and the manner of the stop—roadblock, multiple armed agents, physical violence, and the absence of any explanation—underscore the egregious and unconstitutional nature of the government's conduct. Zepeda was immediately transferred to the Broadview Processing Center in Chicago, and subsequently to the Christian County Detention Center in Hopkinsville, Kentucky.

Procedural Timeline and Detention

Following his arrest, ICE initiated removal proceedings by serving Zepeda with a Notice to Appear (NTA), scheduling a hearing before Immigration Judge Brandon J. Josephsen on November 17, 2025. The I-213 Record of Deportable/Inadmissible Alien confirms that Zepeda was apprehended in the interior of the United States, not at the

border. Despite these facts, the government classified him as an “arriving alien” or “applicant for admission” under 8 U.S.C. § 1225(b), subjecting him to mandatory detention and rendering him ineligible for bond hearings.

Lack of Probable Cause and Procedural Deficiencies

The circumstances of Zepeda’s arrest and detention reveal a complete absence of probable cause, individualized suspicion, or lawful process. He was not the subject of any warrant, was not engaged in any criminal activity, and was not provided any explanation for his seizure. The agents did not request identification or documents, nor did they articulate any basis for the stop or arrest. The use of force—striking him in the chest and forcibly removing him from his vehicle—was wholly unjustified and excessive under the circumstances. Zepeda was then transferred between facilities and held for days before being moved to Kentucky, all without any meaningful process or opportunity to contest his detention. These facts demonstrate not only a violation of statutory requirements for arrest and detention under the INA, but also a flagrant disregard for the constitutional protections afforded by the Fourth and Fifth Amendments. The government’s actions deprived Zepeda of his liberty without due process, and the procedural deficiencies in his arrest and continued detention demand immediate judicial intervention.

The factual record demonstrates that Zepeda’s arrest was executed in a manner wholly lacking in lawful process or justification. At no point did the agents provide any explanation, ask for identification or documents, or state the basis for the stop. This arrest was not supported by a valid warrant for interior apprehension as required under 8 U.S.C. § 1226(a), nor was there probable cause or exigent circumstances justifying warrantless detention. The I-213 narrative was issued after the fact and confirm that Zepeda was

apprehended solely based on his presence in the United States without inspection—a civil, not criminal, violation—and that no specific, articulable facts linked him to criminal activity or justified his arrest. The agents did not allege any criminal suspicion, did not request documents, and used excessive force in the course of the arrest. The government has not alleged, let alone proven, that Zepeda is a danger to the community or a flight risk. The classification of Zepeda as an “arriving alien” is a result of a controversial policy shift by ICE in July 2025, which aligns with a recent Board of Immigration Appeals (BIA) decision and disrupts decades of established legal precedent.

Futility of Administrative Remedies

Due to the binding nature of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and ICE’s July 2025 policy memo, immigration judges uniformly deny bond to similarly situated noncitizens, rendering any request for a bond hearing futile. Zepeda’s experience—immediate transfer, denial of bond, and lack of any meaningful administrative remedy—exemplifies the closure of all administrative avenues for securing release. The exhaustion of administrative remedies is not required for habeas petitions under 28 U.S.C. § 2241, and the futility of administrative remedies in light of these policies further underscores the necessity of judicial intervention.

In summary, the factual record establishes that Zepeda’s arrest and continued detention were executed without a valid warrant, without individualized probable cause, with excessive force, and in violation of statutory and constitutional safeguards. The improper classification as an “arriving alien,” the absence of any showing of danger or flight risk, and the futility of administrative remedies all support the claim that his continued detention is unlawful and immediate release is warranted.

III. JURISDICTIONAL AND HABEAS REVIEW ARE PROPER IN THIS CASE

The government contends that this Court lacks subject matter jurisdiction to review Petitioner's habeas petition, relying on 8 U.S.C. §§ 1252(b)(9) and (g). These arguments are unavailing. The Supreme Court has repeatedly held that these provisions do not bar federal courts from reviewing collateral challenges to the legality of detention, as opposed to direct challenges to removal orders. It is critical to distinguish that Petitioner's challenge is to the legality of his detention—not to the merits of his removal proceedings.² Numerous district courts, including those in the Western District of Kentucky, have recognized that habeas review of detention is collateral to removal and not barred by these provisions.³

Moreover, there is no statutory exhaustion requirement for habeas petitions under 28 U.S.C. § 2241, and any administrative remedies are futile in this context. The binding nature of *Matter of Yajure Hurtado* and the uniform denial of bond to similarly situated noncitizens render any request for a bond hearing before an immigration judge ineffective. Additionally, the July 2025 ICE memo and *Matter of Yajure Hurtado* constitute final agency actions subject to judicial review under the Administrative Procedure Act (APA). Under the *Accardi* doctrine, agencies must follow their own rules

² The Supreme Court and lower courts have repeatedly held that such challenges are collateral and not barred by jurisdiction-stripping provisions. In *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482–83 (1999), the Court clarified that § 1252(g) applies only to three discrete actions—commencing proceedings, adjudicating cases, or executing removal orders—and does not preclude review of claims that are independent of, or collateral to, the removal process. Similarly, § 1252(b)(9) channels review of removal orders to the courts of appeals, but does not eliminate habeas jurisdiction over challenges to the fact or duration of detention, which are distinct from the merits of removal proceedings.

³ Moreover, the constitutional requirement for habeas review is firmly established. In *Boumediene v. Bush*, 553 U.S. 723, 779–80 (2008), the Supreme Court held that the writ of habeas corpus is a fundamental safeguard against unlawful executive detention, and that Congress may not eliminate meaningful judicial review of the legality of detention. The Suspension Clause, U.S. Const. art. I, § 9, cl. 2, guarantees access to habeas relief for all persons detained within the U.S., including noncitizens challenging the lawfulness of their detention. Even if the government's jurisdictional arguments under § 1252 were accepted, they could not constitutionally foreclose habeas review of core liberty interest in freedom from unlawful detention.

and procedures, and failure to do so is independently reviewable.⁴

Respondents' jurisdictional arguments are unavailing. The Court retains authority to review the legality of Petitioner's detention, and the Constitution, the INA, and the APA all require meaningful judicial review and individualized process before depriving a person of liberty. The government's position would insulate unlawful detention from review, contrary to the weight of authority and fundamental principles of due process.

Application of *Rosado v. Figueroa* and Procedural Due Process

Rosado v. Figueroa, No. CV-25-02157-PHX DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), is directly on point and highlights the constitutional and statutory deficiencies present in Zepeda's case. In *Rosado*, the court held that detaining a noncitizen without individualized findings, prior notice, or a meaningful opportunity to respond violates the Fifth Amendment's due process requirements. The court further made clear that the government cannot bypass due process by reclassifying long-term residents as "arriving aliens" or by detaining individuals without a specific showing of necessity. The Fourth Amendment's protections also apply, requiring that warrantless arrests be supported by probable cause and comply with statutory safeguards; mere presence in the United States without lawful status is not enough to justify detention or a warrantless arrest under 8 U.S.C. § 1357(a)(2).

⁴ The procedural due process analysis under *Mathews v. Eldridge*, 424 U.S. 319 (1976), further supports Petitioner's entitlement to a meaningful hearing and release. Under *Mathews*, courts must weigh (1) the private interest affected by the official action; (2) the risk of erroneous deprivation through the procedures used, and the probable value of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens of additional procedures. Here, Petitioner's interest in freedom from physical restraint is at the core of the liberty protected by the Due Process Clause. The risk of erroneous deprivation is substantial, as demonstrated by the lack of individualized suspicion, the absence of a valid warrant, and the government's reliance on generalized assumptions rather than specific facts. Additional procedural safeguards would significantly reduce this risk. The government's interest in efficient immigration enforcement does not outweigh the fundamental liberty interest at stake, particularly where less restrictive alternatives to detention are available and the government has not shown that Petitioner is a danger or flight risk.

Zepeda's circumstances are materially indistinguishable. He is a long-term resident apprehended in the interior, not at the border, and was detained without a valid warrant, individualized findings, or any showing of flight risk or danger. Respondents' reliance on blanket policies and reclassification as an "arriving alien" cannot substitute for the individualized process and judicial oversight required by the Constitution. As in Rosado, seeking administrative remedies such as a bond hearing would be futile, given the binding effect of Matter of Yajure Hurtado and the uniform denial of bond in similar cases, as well as the absence of any statutory exhaustion requirement for habeas relief. The public interest is best served by preventing unlawful detention and ensuring government compliance with the law. Upholding due process and the rule of law in civil detention is essential to maintaining public trust and the integrity of the legal system.

In sum, this Court retains jurisdiction to review Zepeda's habeas petition, and the Constitution requires meaningful judicial review and individualized process before depriving a person of liberty. The procedural and substantive deficiencies in Zepeda's arrest and detention mirror those found unlawful in Rosado, requiring immediate judicial intervention and release. The balancing test of *Mathews v. Eldridge* and the principles articulated in *Rosado v. Figueroa* compel the conclusion that Zepeda is entitled to a prompt hearing and immediate release.

IV. UNLAWFULNESS OF THE ARREST AND DETENTION

A. Lack of Probable Cause and Individualized Suspicion, Excessive Force

The circumstances of Zepeda's arrest and continued detention are egregiously deficient under both constitutional and statutory standards. On October 13, 2025, Zepeda was driving his work truck, returning to Chicago after delivering materials, when six

unmarked vehicles suddenly surrounded and blocked his truck in the road directly in front of the Church. Agents exited their vehicles with large guns drawn; one officer struck Zepeda in the chest, forcibly pulled him out of his vehicle, and took him into custody. At no point did the agents provide any explanation, ask for identification or documents, or state the basis for the stop. Zepeda was immediately transferred to the Broadview Processing Center in Chicago, and subsequently to Kentucky.

The Fourth Amendment requires that any arrest be supported by probable cause, and the INA further mandates that warrantless arrests for civil immigration violations are permissible only where there is probable cause to believe the individual is removable and is likely to escape before a warrant can be obtained (8 U.S.C. § 1357(a)(2)). Here, there is no evidence—either in the I-213 narrative or any related documents—that ICE officers had individualized suspicion or articulable facts linking Zepeda to criminal activity, suggesting a likelihood of escape, or otherwise justifying the use of force and the manner of the stop. The agents did not allege any criminal conduct, did not request documents, and did not articulate any basis for the arrest. The government has not alleged, let alone proven, that Zepeda posed any risk of flight or danger to the community.

Driving his vehicle on the road near a surveilled location (Church) does not establish probable cause or reasonable suspicion under the Fourth Amendment or 8 U.S.C. § 1357(a)(2); see also 8 C.F.R. § 287.8(b)(2) (requiring reasonable suspicion based on specific facts for brief detention, and probable cause for arrest). See I-213 narrative provided by Respondents, ECF Dkt. 8-1.

The Supreme Court has made clear that probable cause must be grounded in specific, objective facts, not generalized assumptions or stereotypes. See *Terry v. Ohio*,

392 U.S. 1, 21–22 (1968). The mere fact of Zepeda’s presence in the United States without inspection—a civil, not criminal, violation—does not, by itself, justify a warrantless arrest or prolonged detention, particularly in the absence of any evidence of likely escape or exigent circumstances. The I-213 narrative confirms that Zepeda was arrested as part of a broad enforcement operation, not based on individualized suspicion or any articulable facts specific to him. The use of excessive force—striking Zepeda in the chest and forcibly removing him from his vehicle—further underscores the unreasonableness and unconstitutionality of the seizure.

In sum, the circumstances of Zepeda’s arrest—roadblock, excessive force, lack of probable cause, absence of any explanation or process—violate both the Fourth and Fifth Amendments and the statutory requirements of the INA. The government’s actions deprived Zepeda of his liberty without lawful basis or meaningful process, and immediate judicial intervention is required to remedy these ongoing violations.

B. No Likelihood of Escape or Exigent Circumstances

The statutory framework is equally clear: under 8 U.S.C. § 1357(a)(2), ICE may only make a warrantless arrest for a civil immigration violation if there is both probable cause of unlawful presence and probable cause that the person is likely to escape before a warrant can be obtained. Courts have repeatedly held that mere unlawful presence is a civil, not criminal, violation, and that suspicion or knowledge of a civil immigration violation does not provide probable cause for a criminal arrest or for prolonged detention. In *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863 (S.D. Ohio 2016), the court held that ICE agents violated both the Fourth Amendment and § 1357(a)(2) by arresting a noncitizen without a warrant, without probable cause of a criminal offense, and without

evidence of likely escape. The court emphasized that civil immigration violations alone do not justify warrantless arrest or prolonged detention, and that the exclusionary rule applies where both the Fourth Amendment and § 1357(a)(2) are violated, requiring suppression of all evidence derived from the unlawful arrest. Critically, the court found that stable community ties, lack of criminal history, and cooperation with officers all weigh against a finding of likely escape. Mr. Zepeda, like *Pacheco-Alvarez*, has deep roots in the community, no criminal history, and was not attempting to flee or evade law enforcement. The government has not alleged, let alone demonstrated, any facts suggesting that Petitioner was likely to escape before a warrant could be obtained.

C. Fourth Amendment and Lack of Probable Cause

The Fourth Amendment protects individuals from unreasonable searches and seizures, generally requiring a warrant issued upon probable cause. A warrantless arrest is reasonable **only if supported by probable cause**—i.e., facts and circumstances within the officer’s knowledge sufficient to warrant a prudent person in believing that the suspect has committed or is committing an offense. Mere proximity to criminal activity, or to a person suspected of a crime, does not by itself establish probable cause. **There must be individualized suspicion based on specific facts.** The Supreme Court has held that “**mere proximity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search or arrest that person.**” *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979). This principle is especially salient in the immigration context, where officers must have individualized probable cause to arrest each person.⁵

⁵ *Rosado v. Figueroa*, No. CV-25-02157-PHX DLR, 2025 WL 2337099 (D. Ariz., Aug. 11, 2025), is directly on point and reinforces these principles. The court found that the detention and arrest of a resident during the execution of a warrant for another individual, without individualized suspicion or evidence of flight risk, violated both the Fourth Amendment and statutory requirements. The court emphasized that

The circumstances of Petitioner Zepeda's arrest, as established by the factual record and the I-213 narrative, raise grave concerns of pretextual and selective enforcement in violation of the Equal Protection Clause. On October 13, 2025, while driving his work truck back to Chicago after delivering materials to a job site, Zepeda was suddenly surrounded and blocked in the road directly in front of Redemption Bible Church, by six unmarked vehicles. Agents exited with large guns drawn; one officer struck Zepeda in the chest, forcibly pulled him out of his vehicle, and took him into custody. At no point did the agents provide any explanation, ask for identification or documents, or state the basis for the stop. The arrest was executed with overwhelming force and without any individualized suspicion, probable cause, or lawful justification.

The record is devoid of any specific, articulable facts linking Zepeda to criminal activity, the subject of any warrant, or any ongoing investigation. The agents did not allege criminal conduct, did not request documents, and did not articulate any basis for the arrest. Instead, Zepeda was targeted and seized as part of a broad enforcement operation, in a civilian-heavy environment, with no individualized findings or process. Such conduct—relying on generalized assumptions about immigration status, the use of excessive force, and the absence of any lawful basis—constitutes impermissible selective enforcement and raises a strong inference of discriminatory intent.

The Equal Protection Clause prohibits law enforcement from targeting individuals for investigation or arrest based on race or ethnicity, absent individualized suspicion.

“mere presence within the United States in violation of U.S. immigration law is not, by itself, sufficient to conclude that an alien is likely to escape before a warrant for arrest can be obtained,” and that the government must demonstrate both probable cause and a likelihood of escape to justify a warrantless arrest under 8 U.S.C. § 1357(a)(2). The court further held that detaining a resident of a dwelling must be reasonable in scope and duration, and that detentions that are unduly prolonged or exploitative may violate constitutional protections.

See *Whren v. United States*, 517 U.S. 806, 813 (1996) the Supreme Court held that the Constitution forbids selective enforcement of the law based on consideration such as race. Here, the pretextual nature of the stop—roadblock, armed agents, physical violence, and immediate transfer—without any explanation or request for documents, underscores the lack of individualized suspicion and renders the arrest constitutionally infirm.

In sum, the government’s position fails under both the law and the facts. Zepeda was arrested and detained without a valid warrant, without individualized probable cause, and without any showing of likely escape or exigent circumstances. The arrest was based not on specific, articulable facts, but on generalized assumptions and the execution of a broad enforcement operation. As *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863 (S.D. Ohio 2016), and *Rosado v. Figueroa*, No. CV-25-02157-PHX DLR, 2025 WL 2337099 (D. Ariz., Aug. 11, 2025), make clear, such practices violate both the Fourth Amendment and statutory requirements, and all evidence derived from the unlawful arrest must be suppressed. The government’s continued reliance on evidence obtained through unconstitutional means cannot justify Zepeda’s continued detention, and immediate release is the only appropriate remedy.

D. No Likelihood of Escape

in *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863 (S.D. Ohio 2016), is directly on point and reinforces these principles. The court held that ICE agents violated both the Fourth Amendment and § 1357(a)(2) by arresting a noncitizen without a warrant, without probable cause of a criminal offense, and without evidence of likely escape. The court emphasized that ICE may only make a warrantless arrest for a civil immigration violation if there is both probable cause of unlawful presence and probable cause that the

person is likely to escape before a warrant can be obtained. Critically, the court found that stable community ties, lack of criminal history, and cooperation with officers all weigh against a finding of likely escape. In *Pacheco-Alvarez*, the government failed to show any facts suggesting the defendant was likely to escape, and the court suppressed all evidence obtained as a result of the unlawful arrest as fruit of the poisonous tree.

Here, Mr. Zepeda, like *Pacheco-Alvarez*, has deep roots in the community, no criminal history, and was not attempting to flee or evade law enforcement. The government has not alleged, let alone demonstrated, any facts suggesting that Petitioner was likely to escape before a warrant could be obtained.

E. Civil vs. Criminal Violations

Mere unlawful presence in the United States is a civil, not criminal, violation. Suspicion or knowledge of a civil immigration violation does not provide probable cause for a criminal arrest or for prolonged detention. Courts have repeatedly held that civil immigration violations alone do not justify warrantless arrest or prolonged detention. The government must demonstrate both probable cause of a removable offense and a likelihood of escape to justify a warrantless arrest under 8 U.S.C. § 1357(a)(2).

In sum, the government's position fails under both the law and the facts. The record demonstrates that Mr. Zepeda was arrested and detained without a valid warrant, without individualized probable cause, and without any showing of likely escape or exigent circumstances. The arrest was based on driving in the area of enforcement, not on specific, articulable facts. As *Pacheco-Alvarez* and *Rosado v. Figueroa* make clear, such practices violate both the Fourth Amendment and statutory requirements, and all evidence derived from the unlawful arrest must be suppressed. The government's reliance

on evidence obtained through unconstitutional means cannot justify Petitioner's detention, and immediate release is the only appropriate remedy.⁶

F. Suppression of Evidence and the Fruit of the Poisonous Tree Doctrine

Because Petitioner's arrest was unlawful, all evidence obtained as a result—including statements, documents, and identity information—must be suppressed as fruit of the poisonous tree. The exclusionary rule, as articulated in *Wong Sun v. United States*, 371 U.S. 471, 484–88 (1963), prohibits courts from legitimizing evidence derived from unconstitutional conduct, both to deter future violations and to preserve judicial integrity. This principle is reinforced by *Rosado v. Figueroa*, which holds that continued reliance on evidence obtained through an unlawful arrest to justify detention is fundamentally incompatible with constitutional and statutory requirements.

United States v. Pacheco-Alvarez, 227 F. Supp. 3d 863 (S.D. Ohio 2016), is directly on point. There, the court held that ICE may only make a warrantless arrest for a civil immigration violation if there is both probable cause of unlawful presence and probable cause that the person is likely to escape before a warrant can be obtained. The court emphasized that the exclusionary rule applies when both the Fourth Amendment

⁶ Other courts held that ICE and other law enforcement agencies may not use the execution of a search warrant as a pretext for mass detentions and interrogations without individualized reasonable suspicion. Regulatory and constitutional violations in such contexts can require suppression of evidence and termination of removal proceedings. In *Perez Cruz v. Barr*, 926 F.3d 1128 (9th Cir. 2019), petitioner was detained during a large-scale workplace raid by ICE agents. ICE obtained a search warrant for employment records but used the opportunity to detain over 100 workers suspected of being undocumented, detained, frisked and questioned about immigration status, leading to his arrest and removal proceedings. The Ninth Circuit found that ICE's operation was not a legitimate execution of a documents warrant, but rather a preplanned mass detention and interrogation aimed at arresting undocumented workers. The agents lacked individualized reasonable suspicion to detain noncitizens. The court held that the *Summers* exception did not apply because the central purpose of the operation was not to conduct a safe and efficient search, but to detain and interrogate workers and agents' actions violated 8 C.F.R. § 287.8(b)(2). Because the regulatory violation was prejudicial and compliance with the regulation is constitutionally mandated, suppression of the evidence was warranted. Evidence of alienage (as opposed to mere identity) is subject to suppression if it is the fruit of an unlawful detention. The Court granted the petition for review and held that evidence may be suppressed if obtained in violation of a regulation benefitting the alien or through egregious Fourth Amendment violations.

and 8 U.S.C. § 1357(a)(2) are violated, and suppression is warranted where there is no independent criminal offense. The court further clarified that stable community ties, lack of criminal history, and cooperation with officers all weigh against a finding of likely escape, and that mere unlawful presence is a civil, not criminal, violation.

Applying these principles to Zepeda, the government has failed to show any likelihood of escape or exigency: he has strong community ties, no criminal history, and made no attempt to flee or evade law enforcement. The record contains no facts suggesting risk of flight or exigent circumstances. As in Pacheco-Alvarez, the government's failure to meet the statutory and constitutional prerequisites for a warrantless arrest renders both the arrest and all derivative evidence unlawful and subject to suppression. The exclusionary rule is not only constitutionally required but also essential to prevent courts from becoming complicit in the use of unlawfully obtained evidence. As the Supreme Court stated in *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920), evidence acquired in violation of the law "shall not be used at all."

Permitting the government to cure the defect by subsequent proceedings or after-the-fact justifications would undermine these constitutional protections and incentivize further unlawful conduct. Accordingly, the government's continued reliance on tainted evidence is unlawful, and immediate release is the only appropriate remedy. The arrest and detention of Mr. Zepeda—executed without a valid warrant, individualized probable cause, or exigent circumstances, and with excessive force—violate both statutory and constitutional standards. The lack of individualized suspicion and procedural safeguards compels the conclusion that Petitioner's continued detention is unlawful and that immediate release is warranted.

G. The Taint of Illegality Cannot Be Cured by Subsequent Proceedings

While this habeas action is limited to challenging the lawfulness of Petitioner's detention, the government cannot justify continued custody by relying on evidence obtained through unconstitutional means. The Supreme Court has long recognized that the exclusionary rule serves not only to deter future violations but also to prevent courts from legitimizing the use of unlawfully obtained evidence. See *Nardone v. United States*, 308 U.S. 338, 341 (1939). Where, as here, both the arrest and subsequent detention stem directly from an unlawful seizure, all evidence derived from that illegality must be suppressed as fruit of the poisonous tree. The government cannot cure the taint of an unlawful arrest through subsequent proceedings or after-the-fact justifications. The only appropriate remedy is immediate release from custody, as continued detention based on tainted evidence is fundamentally incompatible with constitutional protections.

V. CONSTITUTIONAL VIOLATIONS AND DUE PROCESS

The continued detention of Mr. Zepeda violates the Fifth Amendment's guarantee of due process, both substantively and procedurally. The Supreme Court's framework in *Mathews v. Eldridge*, 424 U.S. 319 (1976), governs the analysis of what process is due before the government may deprive an individual of liberty. Under *Mathews*, courts must weigh: (1) the private interest affected by the official action; (2) the risk of erroneous deprivation through the procedures used, and the probable value of additional or substitute procedural safeguards; and (3) the government's interest, including function involved and fiscal and administrative burdens that additional procedures would entail.

In Zepeda's case, the deprivation of liberty is severe and ongoing. He was seized in a public roadway, forcibly removed from his vehicle, and taken into custody without

any explanation, notice, or opportunity to contest the necessity of his detention. He was immediately transferred between facilities and ultimately held in Kentucky, far from his family and community, with no process or hearing. The government's actions denied Zepeda the procedural safeguards required by the Fifth Amendment, including notice, an opportunity to be heard, and a fair determination of the necessity of detention.⁷

A. Application of the *Mathews v. Eldridge* Test

(1) Private Interest at Stake

The private interest at stake here is the most fundamental: freedom from physical restraint. The Supreme Court has repeatedly recognized that “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Zepeda’s liberty interest is of the highest order. He is a long-term resident of the United States, the sole provider for his family, and the owner of a construction business that supports not only his household but also his employees. His wife suffers from a serious heart condition and is medically dependent on his care and financial support. His three children, ages 21, 16, and 6, rely on his presence for their emotional and material well-being. The abrupt and violent nature of his arrest—being forcibly stopped in the road, surrounded by six vehicles, agents with guns drawn, struck in the chest, and taken into custody without any explanation or opportunity to respond—has caused severe hardship and trauma to his family. The deprivation of liberty under these circumstances, with no process or justification, demands the strictest

⁷ Petitioner further notes that administrative remedies are futile in this context: under the binding policy of *Matter of Yajure Hurtado* and the July 2025 ICE memo, immigration judges uniformly deny bond to similarly situated noncitizens, and there is no statutory exhaustion requirement for habeas relief in these circumstances. The futility of administrative remedies and the lack of a statutory exhaustion requirement for habeas further support the need for immediate judicial intervention.

procedural protections under the Due Process Clause.

(2) Risk of Erroneous Deprivation and Value of Additional Safeguards

The risk of erroneous deprivation in Zepeda's case is acute. He was arrested without a warrant, without any individualized probable cause, and based solely on his presence in the United States without inspection—a civil, not criminal, violation. The agents did not articulate any suspicion of criminal activity, did not request identification or documents, and used excessive force in executing the arrest. The government's procedures—relying on a blanket policy of mandatory detention for individuals classified as “arriving aliens,” without individualized findings of danger or flight risk—create a significant risk that individuals who pose no threat to the community or risk of absconding will be needlessly and unlawfully detained. The absence of any meaningful opportunity to contest the basis for detention compounds this risk. Additional procedural safeguards would dramatically reduce the likelihood of erroneous deprivation and ensure that only those for whom detention is truly necessary are deprived of their liberty.

(3) Government's Interest

While the government has a legitimate interest in enforcing immigration laws and ensuring the appearance of noncitizens at removal proceedings, these interests do not outweigh the fundamental liberty interest at stake—especially where, as here, the government has made no individualized showing that Zepeda is a danger to the community or a flight risk. The arbitrary and excessive nature of Zepeda's roadside seizure—executed with overwhelming force, without explanation, and in the absence of any lawful basis—undermines any claim of necessity or public safety. Less restrictive alternatives to detention, such as release on recognizance, are available and adequate to

serve the government's interests in most cases. The government's interest in administrative efficiency cannot justify the wholesale denial of due process protections to long-term residents facing civil detention. Requiring the government to follow lawful, individualized process conserves scarce detention resources for those who present genuine danger or flight risk, and upholds public trust in the legal system.⁸

B. Due Process Principles from *Rosado v. Figueroa*

The principles articulated in *Rosado v. Figueroa*, No. CV-25-02157-PHX DLR, 2025 WL 2337099 (D. Ariz., Aug. 11, 2025), further reinforce the constitutional deficiencies in the government's approach. In *Rosado*, the court held that the re-detention of a noncitizen without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond violated the procedural requirements of the Fifth

⁸ Moreover, the government blatantly violated the law by asserting that Petitioner is subject to mandatory detention as an "arriving alien" or "applicant for admission." When the government ignores law (and agency breaks its own regulations, policies and procedures), it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. This waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas corpus petition in federal court to compel Respondents to comply with law, requiring Respondents to instead follow the law and their regulations reduces fiscal and administrative burdens on the government. Furthermore, the government's interest is further diminished by the potential constitutional violations that arise from denying noncitizens their due process rights, as the interpretation effectively eliminates the procedural safeguards intended to prevent erroneous deprivation of liberty. The government should not be allowed arbitrary detention, but required to uphold constitutional and statutory rights, ensuring due process, and compelling government agencies to adhere to their own established rules and obligations. The government interest is likewise served by upholding the rule of law and constitutional rights, ensuring that civil detention comports with due process, and ensuring government agencies comply with their own regulations, thereby conserving scarce detention resources for those who present genuine danger or flight risk. Arbitrary detention undermines public trust in government and the rule of law. Ensuring that agencies follow their own procedures protects individuals from arbitrary government action and promotes fairness within the legal system. Requiring DHS to seek individualized relief rather than invoking an automatic detention mechanism promotes accurate decision-making and conserves governmental resources. The statutory and regulatory scheme that requires a warrant for an arrest favors adherence to lawful, individualized process, conservation of scarce detention resources for individuals who present genuine danger or flight risk, and confidence in the legal system and upholding fundamental due process protections. Requiring DHS to use those tailored mechanisms, rather than relying on non-merits warrantless arrests, advances the rule of law and efficient resource allocation. As-applied relief here maintains the integrity of the immigration adjudication system without broad disruption. See, e.g., *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) ("There is generally no public interest in the perpetuation of unlawful agency action. To the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.")

Amendment. The court emphasized that civil detention comports with due process only when a “special justification” outweighs the individual’s constitutionally protected interest in avoiding physical restraint. In the absence of such justification, continued detention is arbitrary and constitutionally impermissible.

Zepeda’s circumstances are even more egregious than those in *Rosado*. He is a long-term resident, apprehended in the interior of the United States, not at the border, while engaged in lawful employment activities. He was forcibly stopped in the road in front of a Church, surrounded by six unmarked vehicles, agents with large guns drawn, physically struck in the chest, and pulled from his truck without any explanation or opportunity to respond. There was no individualized finding of necessity, no prior notice, and no process whatsoever.⁹

C. Public Interest and Equitable Considerations

The public interest is always served by preventing unlawful detention and ensuring that government agencies comply with the law and their own regulations. Courts have repeatedly recognized that upholding constitutional and statutory rights in the context of civil detention is essential to maintaining public trust and the integrity of the legal system. See, e.g., *Diaz v. Kaiser*, No. 25-cv-05071, 2025 WL 1676854, at 3 (N.D. Cal. June 14, 2025). Arbitrary or prolonged detention not only harms the individual but also imposes significant fiscal and administrative burdens on the government and the public at large. Moreover, administrative remedies are futile in this context. The futility of seeking a bond hearing before an immigration judge, combined with the lack of any

⁹ As in *Rosado*, the government’s reliance on blanket policies and reclassification as an “arriving alien” cannot substitute for the individualized process and judicial oversight required by the Constitution. The lack of any process, the use of excessive force, and the absence of any lawful justification for Zepeda’s detention render it constitutionally infirm and require immediate judicial intervention. Immediate release is the only constitutionally sufficient remedy

meaningful process, further underscores the necessity of immediate judicial intervention.

VI. REMEDY

Given the fundamental liberty interest at stake, the high risk of erroneous deprivation, and the government's failure to provide adequate procedural safeguards, the only constitutionally sufficient remedy is immediate release. The court in *Rosado* ordered the petitioner's immediate release, finding that continued detention under such circumstances was unlawful and that a bond hearing or further administrative process would not cure the underlying constitutional violation. The same result is warranted here. In sum, the continued detention of Mr. Zepeda, absent individualized findings and meaningful process, violates the Fifth Amendment's guarantee of due process. The balancing of interests under *Mathews v. Eldridge* and the principles articulated in *Rosado v. Figueroa*—together with the futility of administrative remedies and the strong public interest in preventing unlawful detention—compel the conclusion that immediate release is required to remedy these ongoing constitutional violations. The government's position fails under both the law and the facts, and immediate release is the only effective remedy for the ongoing deprivation of Petitioner's liberty.

Legal Authority Supporting Immediate Release

Federal courts, including those in the Western District of Kentucky and across the country, have repeatedly recognized their broad authority under 28 U.S.C. § 2243 to order immediate and unconditional release where a petitioner's detention is found to be unlawful. The general habeas corpus statute, 28 U.S.C. § 2243, provides that the court "shall ... dispose of the matter as law and justice require," affording broad discretion to fashion appropriate relief, including immediate and unconditional release when warranted

by the facts and law. See *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) (“federal courts are afforded ‘broad discretion’ to fashion an appropriate remedy in connection with a grant of habeas relief”). Courts have likewise recognized that the “core of habeas corpus” is the power to order release from unlawful detention, and that the court’s remedial authority under § 2243 is not limited to remand for further administrative proceedings. See, e.g., *Jones v. Zenk*, 495 F. Supp. 2d 1289, 1295–96 (N.D. Ga. 2007) (the habeas court “shall ... dispose of the matter as law and justice require,” and may order immediate release where appropriate). Accordingly, where, as here, continued detention is inappropriate and in violation of statutory and constitutional rights, the Court is fully empowered to grant immediate and unconditional release, rather than remanding for a bond hearing or further administrative process which will take more time and cost more money to Petitioner who has been unlawfully arrested and detained.

Recent decisions from the Western District of Kentucky and other jurisdictions have granted immediate release to petitioners in circumstances closely analogous to those presented here, where the arrest and detention were found to be unlawful and in violation of constitutional and statutory rights.¹⁰

In *Rosado v. Figueroa*, the court held that continued detention of a noncitizen without individualized findings or meaningful process violates the Fourth and Fifth

¹⁰ See, e.g., *Savane v. Francis*, No. 1:25-cv-6666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (Petitioner arrested pursuant to 1225 which was improper; habeas granted, and immediate release ordered within one business day); *Artiga v. Genalo*, No. 25-CV-5208, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) (Petitioner unlawfully detained pursuant to 1225, government ordered to transport Petitioner back to EDNY within 24 hours and immediately upon effectuating his transfer, to release him from custody); *J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025) (given the deprivation of Petitioner’s liberty, the absence of any deliberative process prior to or contemporaneous with the deprivation, and the statutory and constitutional rights implicated, immediate release ordered); *Jose Alejandro v. Olson*, No. 1:25-cv-02027-JPH-MKK, 2025 WL 2896348 (S.D. Ind., October 11, 2025) (immediate release ordered within 24 hours). These recent cases and others demonstrate that immediate release is a viable and necessary remedy (and at times the only equitable remedy) when the Government is recalcitrant or when detention is clearly without statutory or constitutional basis, like in Petitioner’s case.

Amendments and warrants immediate release. The court emphasized that due process is denied when the government detains an individual without prior notice, a showing of changed circumstances, or an opportunity to respond, and that the government's interest in efficient enforcement does not outweigh the individual's fundamental liberty interest—especially where there is no evidence of danger or flight risk.

These principles apply with full force here. Zepeda's arrest and detention were executed without a valid warrant, individualized probable cause, or exigent circumstances, and the government has failed to provide any individualized justification for his continued detention. Given the unlawful nature of Zepeda's initial and ongoing detention, his strong family and community ties, and his lack of any significant criminal history, the government cannot meet its burden to show that continued detention is necessary to prevent flight or danger to the community. In fact, the government has not even alleged that Zepeda poses such risks, let alone provided any proof.

Federal courts have broad discretion to grant immediate release when a petitioner's detention is found to be unlawful. Ordering immediate release in these circumstances does not preclude the government from re-arresting Zepeda in the future should lawful grounds arise, but it does ensure that constitutional and statutory protections against arbitrary detention are upheld. This approach preserves public safety and judicial integrity while rectifying the ongoing violation of Zepeda's rights.

VII. CONCLUSION AND PRAYER FOR RELIEF

For the foregoing reasons, Petitioner Zepeda respectfully requests that this Court grant the writ of habeas corpus and order his immediate release from custody. The record demonstrates that his arrest and detention were unlawful under the Fourth and Fifth

Amendments, the INA, and applicable regulations. The government has failed to provide individualized findings or meaningful process, and continued detention is not justified by any showing of danger or flight risk. The Court possesses clear statutory and equitable authority to grant immediate and unconditional release, and such relief is warranted to remedy the ongoing violation of Petitioner's constitutional and statutory rights.

WHEREFORE, Petitioner respectfully prays that this Honorable Court:

- 1) GRANT the Petition for Writ of Habeas Corpus.
- 2) DECLARE that Petitioner's arrest was unlawful.
- 3) DECLARE that Petitioner is not an "arriving alien" or "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b).
- 4) DECLARE that Petitioner's detention is governed by 8 U.S.C. § 1226(a) and that his arrest was unlawful and order his immediate release.
- 5) ENJOIN Respondents from re-arresting Petitioner absent new lawful grounds supported by individualized findings and due process.
- 6) DECLARE that the July 2025 ICE memo and the BIA's Matter of Yajure Hurtado are unlawful as applied to Petitioner, being arbitrary, capricious, in excess of statutory authority, and violative of the APA and the Accardi doctrine.
- 7) ORDER Respondents to release Petitioner from custody forthwith.
- 8) AWARD Petitioner his reasonable attorneys' fees and costs incurred in this action.
- 9) GRANT such other and further relief as this Court deems just and proper.

Respectfully Submitted,

This 10th day of November, 2025.

/s/ Karen Weinstock

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CERTIFICATE OF SERVICE

I certify that on November 10, 2025, I electronically filed the foregoing **PETITIONER'S RESPONSE TO RETURN OF ORDER TO SHOW CAUSE AND BRIEF IN SUPPORT OF GRANTING THE WRIT OF HABEAS CORPUS** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

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