

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 BRIEF WITH SUPPLEMENTAL AUTHORITIES**

Comes now Petitioner, Ernesto Gerardo Zepeda-Ramirez, by and through undersigned counsel, and respectfully submits this brief advising the Court of supplemental authority pursuant to the Court order from November 14, 2025.

**I. Introduction**

This case is about basic constitutional rights. Mr. Ernesto Gerardo Zepeda-Ramirez, a long-term resident of Illinois with deep family and community ties, was stopped, arrested, and detained by Immigration and Customs Enforcement (ICE) in a manner that violated the most fundamental protections of the Fourth and Fifth Amendments. Petitioner was subjected to an illegal stop, arrest, and continued detention without proper legal process, violating his fundamental rights under the Fourth and Fifth Amendments. The government’s actions—an illegal stop, an illegal arrest, and continued

detention without any individualized process—cannot be cured by a later warrant or by offering a bond hearing after the fact. The only lawful and constitutionally sufficient remedy is Petitioner’s immediate and unconditional release and declaring that all evidence obtained after the illegal stop and arrest merits suppression.

**II. Unlawful Stop and Arrest: Absence of Individualized Suspicion and Probable Cause; Racial and Ethnic Profiling Is Unconstitutional—Even Under *Noem v. Vasquez Perdomo***

The Fourth Amendment prohibits law enforcement from stopping or arresting individuals based solely on ethnicity, appearance, language, or presence in a particular location. The Supreme Court has repeatedly held that “Mexican appearance” or similar ethnic characteristics alone are never sufficient to justify a stop, even near the border. Officers must have “specific articulable facts” that reasonably suggest a person is engaged in unlawful activity—generalizations or stereotypes are not enough. See *United States v. Brignoni-Ponce*, 422 U.S. 873, 886–87 (1975); *Reid v. Georgia*, 448 U.S. 438, 441 (1980).

To lawfully stop an individual for brief questioning about immigration status, the government must have reasonable suspicion—supported by specific, objective facts—that the person is unlawfully present in the United States. This standard is assessed under the totality of the circumstances. See *Brignoni-Ponce*, 422 U.S. at 885 n.10; *United States v. Arvizu*, 534 U.S. 266, 273 (2002); *United States v. Sokolow*, 490 U.S. 1, 7 (1989).

The Supreme Court recently reaffirmed that “[t]o be clear, apparent ethnicity alone cannot furnish reasonable suspicion.” *Noem v. Vasquez Perdomo*, --- S.Ct. ----, 2025 WL 2585637, at \*3 (2025). At most, ethnicity may be a “**relevant factor**” when **considered alongside other salient facts, but it is never sufficient on its own**. *Id.* at \*6 (citing *Brignoni-Ponce*, 422 U.S. at 887). The Court in *Vasquez Perdomo* stayed an

injunction against certain enforcement practices but did not hold that ethnicity or appearance alone can justify a stop. The majority's reasoning did not abrogate the requirement of individualized suspicion or the constitutional prohibition on racial profiling. The stay was based in part on procedural grounds, including issues with the plaintiffs' standing for injunctive relief, not on the merits of the Fourth Amendment claim. *Id.* at \*2.

The Ninth Circuit, applying these principles, has reiterated that detentive stops for immigration enforcement must be based on “specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the person stopped may be illegally in the country.” *Vasquez Perdomo v. Noem*, 148 F.4th 656, 682–83 (9th Cir. 2025). Broad profiles—such as apparent race or ethnicity, language, location, and type of work—do not meet this standard.

In Zepeda's case, the facts are stark and egregious. DHS agents pulled Mr. Zepeda from his car with guns drawn and arrested him based solely on racial profiling, not on any reasonable suspicion or specific facts. He was stopped and seized by armed ICE agents while driving his work truck, without a warrant, probable cause, or any individualized suspicion. The agents offered no explanation, made no request for documents, and provided no basis for the stop. Zepeda had not committed any traffic violation or engaged in any suspicious conduct. The stop was based solely on his ethnicity and presence in a civilian area—a textbook case of unconstitutional racial profiling.

This conduct is precisely the kind of arbitrary and discriminatory policing the Supreme Court has repeatedly condemned. The Court has made clear that “Mexican

ancestry” or similar characteristics do not constitute reasonable suspicion, even near the border, because many native-born and naturalized citizens share these physical traits. *Brignoni-Ponce*, 422 U.S. at 887. The Fourth Amendment prohibits exactly what occurred here: seizing individuals based solely on a set of facts that “describe[s] a very large category of presumably innocent” people. *Noem v. Vasquez Perdomo*, 2025 WL 2585637, at \*9 (dissenting op.).

Even under the standards articulated in *Noem v. Vasquez Perdomo*, profiling Zepeda based solely on his ethnicity and appearance is impermissible. The Supreme Court has never held that ethnicity or appearance alone can justify a stop. The majority in *Vasquez Perdomo* focused on the government’s interest in immigration enforcement but did not abrogate the requirement of individualized suspicion or the constitutional prohibition on racial profiling. The dissent, joined by three Justices, reaffirmed that stops based solely on ethnicity, language, location, and job type are unconstitutional.

The Equal Protection Clause further forbids law enforcement from targeting individuals for investigation or arrest based on race or ethnicity, absent individualized suspicion. See *Whren v. United States*, 517 U.S. 806, 813 (1996). Courts across the country have recognized that racial profiling erodes public trust, perpetuates discrimination, and is fundamentally at odds with constitutional values.

Permitting law enforcement to target individuals like Mr. Zepeda based solely on ethnicity and appearance would subject millions of innocent people to arbitrary stops and detention—a result the Constitution does not permit. *Noem v. Vasquez Perdomo*, 2025 WL 2585637, at \*9 (dissenting op.). (“The Fourth Amendment thus prohibits exactly what the Government is attempting to do here: seize individuals based solely on a set of

facts that “describe[s] a very large category of presumably innocent” people.”).

In sum, the facts of this case demonstrate a clear absence of individualized suspicion or probable cause, and the use of racial profiling in Zepeda’s stop and arrest is unconstitutional under both longstanding Supreme Court precedent and the most recent authority. The government’s conduct cannot be justified under any reading of the Fourth Amendment, and the only appropriate remedy is immediate and unconditional release.

### **III. A Warrant After the Fact Does Not Cure an Illegal Arrest**

The government cannot retroactively “fix” an illegal arrest by obtaining a warrant after the fact or by initiating removal proceedings later. The Supreme Court has long held that the exclusionary rule requires suppression of all evidence obtained as a result of an unlawful arrest—this is the core of the “fruit of the poisonous tree” doctrine. Where the initial arrest is unlawful, all evidence and proceedings that flow from it are tainted and must be set aside. See *Wong Sun v. United States*, 371 U.S. 471, 484–88 (1963); *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920).

This principle is especially critical in immigration detention cases. Courts have repeatedly held that a warrant obtained after an illegal arrest does not cure the original constitutional violation. The exclusionary rule and the “fruit of the poisonous tree” doctrine require suppression of evidence and, in egregious cases, immediate release, where the government’s conduct violates the Fourth Amendment and statutory requirements for arrest and 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 8 U.S.C. § 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. The government's failure to meet the statutory and constitutional prerequisites for a warrantless arrest rendered both the arrest and all derivative evidence unlawful and subject to suppression. The court explicitly rejected the notion that a later warrant or subsequent proceedings could cure the original illegality, holding that the only appropriate remedy was suppression and release from custody.

Similarly, in *Rosado v. Figueroa*, No. CV-25-02157-PHX DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), the court ordered immediate release where the petitioner was detained following an unlawful arrest, finding that continued detention based on tainted evidence was fundamentally incompatible with constitutional protections. The court held that 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.

The Ninth Circuit in *Perez Cruz v. Barr*, 926 F.3d 1128 (9th Cir. 2019), held that ICE 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. The court rejected the government's argument that subsequent proceedings or warrants could cure the original illegality, emphasizing that the

exclusionary rule applies to all evidence derived from the unlawful arrest.

The Supreme Court in *Wong Sun v. United States*, 371 U.S. 471, 484–88 (1963), established that evidence obtained by exploitation of an illegal arrest must be suppressed unless the connection to the illegality is sufficiently attenuated. The Court rejected the idea that subsequent lawful actions (such as obtaining a warrant or confession) could automatically cure the taint of the original illegality.

Other courts have reached the same conclusion. In *State v. Jones*, 275 Or. App. 771 (Or. Ct. App. 2015), the court held that the discovery of a warrant after an unlawful stop does not automatically purge the taint of the initial illegality. The state bears the burden to show attenuation, and the mere existence of a warrant does not cure the original Fourth Amendment violation. The Sixth Circuit in *United States v. Abdi*, 463 F.3d 547 (6th Cir. 2006), held that suppression is warranted where a warrantless arrest does not comply with the Fourth Amendment, and that a subsequent warrant or proceeding does not cure the original constitutional violation. The Fourth Circuit in *United States v. Villa*, 70 F.4th 704 (4th Cir. 2023), reaffirmed that evidence obtained by exploitation of an illegal arrest is suppressible, and that subsequent administrative or criminal proceedings do not automatically purge the taint of the original illegality.

In addition to violating 8 U.S.C. § 1357(a)(2), ICE also violated 8 C.F.R. § 287.8(b)(2) in Petitioner's case, which requires reasonable suspicion based on specific facts for brief detention, and probable cause for arrest. The record is devoid of any such facts, and the government has not alleged, let alone proven, that Zepeda is a danger to the community or a flight risk.

In sum, the government's attempt to justify Zepeda's continued detention by

pointing to a later warrant, Notice to Appear, or removal proceedings is legally and constitutionally insufficient. The only effective and constitutionally sufficient remedy for these ongoing violations is immediate and unconditional release—not a bond hearing, not further process, and not continued detention under a different label.

**Key Authorities:**

- *Wong Sun v. United States*, 371 U.S. 471, 484–88 (1963)
- *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920)
- *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863 (S.D. Ohio 2016) [2.1]
- *Rosado v. Figueroa*, No. CV-25-02157-PHX DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025)
- *Perez Cruz v. Barr*, 926 F.3d 1128 (9th Cir. 2019)
- *State v. Jones*, 275 Or. App. 771 (Or. Ct. App. 2015)
- *United States v. Abdi*, 463 F.3d 547 (6th Cir. 2006)
- *United States v. Villa*, 70 F.4th 704 (4th Cir. 2023)

**IV. Suppression of Evidence: The Fruit of the Poisonous Tree Doctrine**

Evidence obtained through egregious constitutional violations must be suppressed. The Supreme Court’s “fruit of the poisonous tree” doctrine, established in *Wong Sun v. United States*, requires that evidence obtained by exploiting an illegal arrest must be suppressed unless the connection to the illegality is sufficiently attenuated. This rule is designed to prevent the government from benefiting from its own unlawful conduct and to deter future violations of constitutional rights. See *Wong Sun v. United States*, 371 U.S. 471, 484–88 (1963); *Brown v. Illinois*, 422 U.S. 590, 602–04 (1975).

The Supreme Court has recognized that the exclusionary rule applies with

particular force where the constitutional violation is “egregious”—that is, fundamentally unfair or based on race or other grossly improper considerations. See *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1050–51 (1984) (plurality opinion); *Almeida-Amaral v. Gonzales*, 461 F.3d 231, 235 (2d Cir. 2006); *Millan-Hernandez v. Barr*, 965 F.3d 140, 143 (2d Cir. 2020). When a law enforcement officer detains and questions an individual about their immigration status without suspicion of a crime, it strongly suggests the action was improperly based on race. See *Millan-Hernandez*, 965 F.3d at 149; *Zuniga-Perez v. Sessions*, 897 F.3d 114, 125 (2d Cir. 2018).

In Zepeda’s case, the record is clear: the operation leading to his arrest was not based on any individualized suspicion or articulable facts, but rather on broad, generalized assumptions about undocumented immigrants in the Chicago area. The I-213 narrative and the government’s own statements 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 facts linked him to criminal activity or justified his arrest. The only plausible reason for his violent, public arrest—surrounded by six unmarked vehicles, forcibly removed from his work truck at gunpoint, and struck in the chest—was his appearance, race, and ethnicity. This is the very definition of an “egregious” Fourth Amendment violation warranting suppression.

A warrant obtained after an illegal arrest does not retroactively validate the arrest or cure the taint of the original illegality. Courts have consistently held that the government cannot “fix” an unlawful arrest by obtaining a warrant or initiating proceedings after the fact. The exclusionary rule is designed to deter such conduct and to prevent courts from legitimizing evidence or detention derived from unconstitutional

actions. See *Wong Sun*, 371 U.S. at 484–88; *Brown v. Illinois*, 422 U.S. at 602–04; *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863, 872–73 (S.D. Ohio 2016) (suppressing all evidence and ordering release where ICE violated both the Fourth Amendment and 8 U.S.C. § 1357(a)(2)); *Rosado v. Figueroa*, No. CV-25-02157-PHX DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (immediate release ordered where detention was based on an unlawful arrest and all evidence and proceedings derived therefrom were suppressed).

The case law is clear and consistent:

- In *United States v. Pacheco-Alvarez*, the court found that a later warrant or subsequent proceedings could not cure the original illegality, requiring suppression of all evidence and release from custody.
- In *Perez Cruz v. Barr*, 926 F.3d 1128 (9th Cir. 2019), the Ninth Circuit held that ICE may not use the execution of a search warrant as a pretext for mass detentions and interrogations without individualized reasonable suspicion, and that regulatory and constitutional violations in such contexts can require suppression of evidence and termination of removal proceedings.
- In *State v. Jones*, 275 Or. App. 771 (Or. Ct. App. 2015), the court held that the discovery of a warrant after an unlawful stop does not automatically purge the taint of the initial illegality.
- In *Krauss v. Superior Court*, 5 Cal.3d 418 (Cal. 1971), the court explained that a “search-unlawfully-first-obtain-the-warrant-later” procedure would undermine the exclusionary rule, and a warrant obtained after an unlawful search or arrest does not insulate the prior illegality.

- The Sixth Circuit in *United States v. Abdi*, 463 F.3d 547 (6th Cir. 2006), held that suppression is warranted where a warrantless arrest does not comply with the Fourth Amendment, and a subsequent warrant or proceeding does not cure the original constitutional violation.
- The Fourth Circuit in *United States v. Villa*, 70 F.4th 704 (4th Cir. 2023), reaffirmed that evidence obtained by exploitation of an illegal arrest is suppressible, and subsequent administrative or criminal proceedings do not automatically purge the taint.
- In *United States v. Juarez-Torres*, 441 F. Supp. 2d 1108 (D.N.M. 2006), the court held that evidence obtained as a result of an illegal arrest must be suppressed unless the government can show sufficient attenuation, rejecting the argument that subsequent proceedings or warrants could cure the taint.

The Supreme Court and multiple circuits have also clarified that the exclusionary rule applies to all evidence—including identity-related evidence, statements, and documents—if it is the product of an unlawful arrest, unless the government can show that the evidence was obtained by means sufficiently distinguishable to be purged of the primary taint. See *United States v. Olivares-Rangel*, 458 F.3d 1104, 1112 (10th Cir. 2006); *United States v. Guevara-Martinez*, 262 F.3d 751, 755 (8th Cir. 2001); *United States v. Oscar-Torres*, 507 F.3d 224, 230–32 (4th Cir. 2007).

Given the racial profiling and lack of individualized suspicion in Petitioner’s arrest, all evidence obtained through the unlawful arrest—including statements, documents, and identity information—is the “fruit of the poisonous tree” and must be suppressed. The government’s continued reliance on such tainted evidence cannot justify

Zepeda's continued detention. The only effective and constitutionally sufficient remedy is immediate and unconditional release.<sup>1</sup>

V. **Detention Authority: 8 U.S.C. § 1226(a) vs. § 1225(b)(2)**

The government's current policy attempts to classify long-term residents like Petitioner as "applicants for admission" to subject them to mandatory detention under 8 U.S.C. § 1225(b)(2) and deny them bond hearings. However, this interpretation is contrary to the statutory framework and over 2 recent court decisions.

- 8 U.S.C. § 1226(a): This section is the general rule for the arrest and detention of aliens pending a decision on their removal. It allows the Attorney General to arrest and detain an alien **on a warrant** and, "except as provided in subsection (c)" (which pertains to certain criminal aliens subject to mandatory detention), to release the alien on bond or conditional parole (8 USC 1226: "Apprehension and detention of aliens"). This provision requires that ICE (1) detain a noncitizen **on a warrant**; and (2) generally permits a noncitizen to seek release by demonstrating they are not a flight risk or a danger to the community. In Petitioner's case, there was no warrant for his arrest and his arrest was unlawful and not pursuant to a warrant therefore immediate release is warranted.

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• <sup>1</sup> *Wong Sun v. United States*, 371 U.S. 471, 484–88 (1963)  
• *Brown v. Illinois*, 422 U.S. 590, 602–04 (1975)  
• *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1050–51 (1984)  
• *Almeida-Amaral v. Gonzales*, 461 F.3d 231, 235 (2d Cir. 2006)  
• *Millan-Hernandez v. Barr*, 965 F.3d 140, 143 (2d Cir. 2020)  
• *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863, 872–73 (S.D. Ohio 2016)  
• *Rosado v. Figueroa*, No. CV-25-02157-PHX DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025)  
• *Perez Cruz v. Barr*, 926 F.3d 1128 (9th Cir. 2019)  
• *United States v. Olivares-Rangel*, 458 F.3d 1104, 1112 (10th Cir. 2006)  
• *United States v. Guevara-Martinez*, 262 F.3d 751, 755 (8th Cir. 2001)  
• *United States v. Oscar-Torres*, 507 F.3d 224, 230–32 (4th Cir. 2007)

- 8 U.S.C. § 1225(b)(2): This section mandates detention for “applicants for admission” who are not “clearly and beyond a doubt entitled to be admitted”. Noncitizens detained under this section are generally ineligible for bond and subject to mandatory detention. Section 1225 is titled “Inspection by immigration officers; expedited removal of inadmissible aliens” and the entire section talks about inspection, stowaways and people who are apprehended when they are coming into the countries at ports of entry (airports, sea, land borders) or people who are apprehended by authorities as they are trying to enter the country or very shortly thereafter.

However, as of today, 224 federal courts from around the country have challenged and rejected the government’s erroneous classification of people apprehended in the interior of the United States as “applicants for admission” or “arriving aliens”. Attached please find as Exhibit 1 is an updated table of authorities with 224 favorable district court cases from around the U.S. While Petitioner acknowledges the government can produce one new authority (and less than 10 overall from around the country), they vast majority of federal courts, including the Western District of Kentucky, reject the government’s interpretation and agree with Petitioner’s.

Furthermore, the government’s position contradicts the Supreme Court’s holding in *Jennings v. Rodriguez*, where it clarified that § 1226(a) governs the detention of aliens **already in the country pending removal.**

Petitioner, as a long-term resident who was apprehended nowhere near the border and nowhere near an entry point where he was attempting to enter the country. He was arrested without a warrant, is not an “applicant for admission” in the sense intended by §

1225(b)(2). His detention should be governed by § 1226(a), which would require first for ICE to obtain a **valid arrest warrant based on probable cause or reasonable suspicion**, and then would allow him a release on bond, assuming the arrest was lawful pursuant to a valid warrant. In his case, there was no valid arrest warrant, and in addition to that he was also denied bond. See ECF 1-4.

In several cases from the Western District of Kentucky, this Court already determined in several cases that detention for someone apprehended in the interior is governed by § 1226(a) and not by § 1225(b)(2) and therefore the remedy would be immediate release, followed by a bond hearing after release. *Beltran Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Singh v. Lewis*, No. 4:25-cv-96-RGJ, 2025 WL 2699219, at \*3, \*5 (W.D. KY. Sept. 22, 2025); *Sanchez Ballestros v. Noem*, No. 3:25-cv-594-RGJ, 2025 WL 2880831 (W.D. Ky. Oct. 9, 2025); *Gomez Mejia v. Woosley*, No. 4:25-cv-82-RGJ, 2025 WL 2933852 (W.D. Ky, Oct. 15, 2025); *Contreras Orellana v. Noem*, No. 4:25-cv-112-RGJ, 2025 WL 3006763 (W.D. Ky, Oct. 27, 2025); *Martinez-Elvir v. Olson*, No. 3:25-cv-589, 2025 WL 3006772 (W.D. Ky, Oct. 27, 2025); *Hernandez-Alonso v. Tindall*, 2025 WL 3083920 (W.D. Ky, Nov. 4, 2025). In all those cases from the same court, even without an unlawful and egregious arrest such as occurred in Petitioner's case, the relief was release first followed by a bond hearing, even where there was no Fourth and Fifth Amendment violation.

**VI. Denial of Bond and Continued Detention: No Process, No Justification**

After his arrest, Petitioner was denied bond and held in detention under a blanket policy that classifies long-term residents as “arriving aliens,” making them ineligible for bond hearings. This policy shift, implemented by ICE and the BIA in 2025, is arbitrary,

capricious, and contrary to decades of law and agency practice. Zepeda was given no individualized process, no opportunity to contest his detention, and no finding that he is a danger or flight risk [22],[21].

The Supreme Court has held that civil detention must be accompanied by meaningful process and individualized findings (*Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 523 (2003)). The government has not alleged, let alone proven, that Petitioner is a danger or flight risk. The denial of bond and continued detention without process violate both substantive and procedural due process.

**VII. Immediate and Unconditional Release as the Only Constitutionally Sufficient Remedy**

Given the egregious and public nature of Petitioner’s arrest—executed without a warrant, probable cause, or individualized suspicion, and with excessive force—the only constitutionally sufficient remedy is immediate and unconditional release. His arrest and detention were not mere technical errors; they were flagrant violations of the Fourth and Fifth Amendments, fundamentally incompatible with basic principles of due process and equal protection.

Further administrative process or a bond hearing cannot cure the original violation; to do so would only prolong the unlawful deprivation of liberty and compound the irreparable harm to Petitioner and his family. The Supreme Court and lower courts have recognized that, where detention is found to be unlawful and administrative remedies are unavailable or inadequate, immediate release is the only effective remedy. Several cases support the Court’s authority to grant this remedy in this case:

- (1) In *Rosado v. Figueroa*, No. CV-25-02157-PHX DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) the court ordered immediate release where detention was

based on an unlawful arrest, holding that continued detention under such circumstances was unconstitutional and that a bond hearing or further process could not cure the underlying violation (ICE says many in immigration detention no longer qualify for bond hearings).

- (2) *Savane v. Francis*, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025): Habeas granted and immediate release ordered for a petitioner unlawfully detained under § 1225; court found the arrest and detention violated the Fourth Amendment and INA and ordered immediate release, finding that the only effective remedy for egregious constitutional violations is outright release.
- (3) *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025): Immediate release ordered where petitioner was unlawfully detained under § 1225; court found the arrest and all derivative proceedings were tainted and suppression was required, emphasizing that further administrative process would only perpetuate the harm and that the government's conduct required a complete remedy.
- (4) *United States v. Pacheco-Alvarez* held that ICE's failure to meet statutory and constitutional prerequisites for a warrantless arrest required suppression of all evidence and release from custody, rejecting the notion that a later warrant or subsequent proceedings could cure the original illegality

The only effective remedy for Petitioner's unlawful arrest and detention is immediate and unconditional release—not a bond hearing, not further administrative process, and not continued detention under a different label.

#### **VIII. Bond Hearings Are Futile and Would Only Prolong Unlawful Detention**

In Mr. Zepeda's case, agency policy (the July 2025 ICE memo and Matter of

*Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)) categorically forecloses bond hearings for similarly situated noncitizens, making any further process not only futile but a perpetuation of the constitutional violation. The government has not alleged, let alone proven, that Mr. Zepeda is a danger or flight risk. There is no lawful basis for continued detention, and the absence of any process or individualized assessment underscores the necessity of immediate release.

Federal courts have broad authority under 28 U.S.C. § 2243 to “dispose of the matter as law and justice require,” which includes immediate and unconditional release when detention is found to be unlawful. The Supreme Court, in *Hilton v. Braunskill*, 481 U.S. 770, 775 (1987), recognized that the “core of habeas corpus” is the power to order unconditional release from unlawful custody.

The government cannot retroactively justify an unlawful arrest or detention by obtaining a warrant or initiating proceedings after the fact. The only effective remedy is suppression of all tainted evidence and immediate release. See *Wong Sun v. United States*, 371 U.S. 471, 484–88 (1963); *Rosado v. Figueroa*, 2025 WL 2337099; *Savane v. Francis*, 2025 WL 2774452; *Artiga v. Genalo*, 2025 WL 2829434; *Pacheco-Alvarez*, 227 F. Supp. 3d at 872–73.

The public interest is always served by preventing unlawful detention and ensuring that government agencies comply with the law and their own regulations. Judicial integrity requires that courts not become complicit in the perpetuation of constitutional violations. Every additional day of detention inflicts severe and irreparable harm on Mr. Zepeda, his family, his business, and his community.

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. See, e.g., *Patel v. Tindall*, No. 3:25-CV-373-RGJ, 2025 WL 2823607, \*6 (W.D. Ky. Oct. 3, 2025); *Beltran Barrera v. Tindall*, No. 3:25-CV-541-RGJ, 2025 WL 2690565, at \*7 (W.D. Ky. Sep. 19, 2025); *Roble v. Bondi*, 2025 WL 2443453, at \*5 (D. Minn. Aug. 25, 2025) (ordering petitioner’s “release from custody as a remedy for ICE’s illegal re-detention”).

In summary, immediate and unconditional release is the only constitutionally sufficient and effective remedy for Mr. Zepeda’s unlawful arrest and detention. Further administrative process or a bond hearing would only prolong the violation and cannot cure the original illegality. The law and the facts compel this Court to grant the writ of habeas corpus and order Mr. Zepeda’s immediate release.

**IX. Additional Support By Lopez-Mendoza**

The government’s reliance on *Immigration & Naturalization Serv. v. Lopez-Mendoza*, 468 U.S. 1032 (U.S. 1984) to argue that the “body” or identity of a respondent is never suppressible, even if the arrest was unlawful, does not resolve the core issues presented by Petitioner’s habeas petition. This argument misapplies the *Lopez-Mendoza* holding and ignores both the factual context of this case and the distinct legal standards governing civil immigration detention, especially where egregious constitutional violations are at issue. The Supreme Court in *Lopez-Mendoza* addressed a narrow issue, specifically “whether an **admission** of unlawful presence in this country made subsequent to an allegedly unlawful arrest must be excluded as evidence in a civil deportation hearing” (*Id.*, 1034).

*Lopez-Mendoza* held that the exclusionary rule generally does not apply to bar a respondent's physical presence or identity in a civil removal proceeding, even if the initial arrest was unlawful (*Id.*, 1034). However, the Supreme Court **expressly limited its holding to the context of removal (deportation) proceedings, not to collateral challenges to the legality of detention itself.** In doing so, the Court weighed the likely social benefits of excluding unlawfully seized evidence against the likely costs, concluding that on balance, the cost outweighed the social benefits achievable through the application of the exclusionary rule to civil deportation proceedings (*Id.*, 1041-46).

**The Supreme Court's holding supports Petitioner's claims as recognized that the exclusionary rule may still apply in cases involving "egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained"** (*Id.*, 1050-51). The Court also left open the possibility that **suppression might be warranted in cases involving "egregious" or "widespread" violations, or where the government's conduct "shocks the conscience"** (*Id.*, 1051-52).

Zepeda's arrest falls within an egregious, widespread violation where the government's conduct shocks the conscience. Zepeda was violently seized in a public, civilian-heavy location, surrounded by six unmarked vehicles, forcibly removed from his work truck at gunpoint, struck in the chest, and taken into custody without any explanation, warrant, probable cause, or process. Statements that led to his detention resulted from this hostile, forced, warrantless search and seizure.

Allowing immigration and law enforcement to engage in racial profiling without finding probable cause for an arrest to satisfy deportation quotas can result in dire

consequences. Specifically, it dramatically erodes constitutional protections afforded to both citizens and noncitizens (there are widespread reports of ICE arresting and beating U.S. citizens across the country). Moreover, the prospect of losing evidence obtained through such unlawful means that might be used to mandatorily detain noncitizens during removal proceedings could supply some residual deterrent to unlawful conduct by law enforcement, military, and immigration officials (*Id.*, 1043). By contrast, the cost of excluding such evidence is low, given the government has other means, beyond evidence derived from the arrest, to determine a noncitizen's identity and alienage. It just cannot do so pursuant to an unlawful search and seizure.

The instant case is distinguishable from *Lopez-Mendoza* in that the social benefits to excluding the unlawfully seized evidence that resulted in Zepeda's arrest and detention far outweigh the costs. Notably, the application of the exclusionary rule to habeas proceedings is likely to provide significant, more substantial, and additional deterrence to unlawful arrests and detention of noncitizens, which is a missing piece to applying the rule in removal proceedings. Importantly, there is convincing indication that application of the exclusionary rule in habeas proceedings involving noncitizens will contribute materially to the protection of Fourth Amendment rights of all persons, including those who are in the United States lawfully, but are persons of color or ethnically diverse.

#### **Habeas Petitions Challenge the Lawfulness of Detention, Not Just Removal**

Zepeda's habeas petition is distinguishable from the facts in *Lopez-Mendoza* for several reasons. Notably, *Lopez-Mendoza* sought review of a removal order, and did not bring habeas actions. Rather, he challenges the lawfulness of his ongoing detention under the Fourth and Fifth Amendments, the Immigration and Nationality Act (INA), and

applicable regulations that resulted from information obtained pursuant to unlawful arrest.

The Supreme Court and lower courts have repeatedly recognized that habeas review is available to challenge the legality of executive detention, and that such review is distinct from the merits of removal proceedings. See *Boumediene v. Bush*, 553 U.S. 723, 779–80 (2008); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 285–86 (2018). Moreover, even *Lopez-Mendoza* recognized the possibility of declaratory relief against INS (now DHS) as a means of challenging the validity of the agency’s practices (*Id.*, 1045). The Supreme Court highlighted that no challenge was raised to INS’s own internal regulations in that case, which is in stark contrast to Zepeda’s writ of habeas. In fact, the Supreme Court acknowledged that its “conclusions concerning the exclusionary rule’s value might change, if there developed good reason to believe that Fourth Amendment violations by INS officers were widespread,” which is exactly what is occurring in the United States today illustrated by the circumstances of Petitioner’s arrest.

### **Egregious Constitutional Violations Require a Remedy**

The facts of Zepeda’s case are not routine. He was violently seized in a public, civilian-heavy location, surrounded by six unmarked vehicles, forcibly removed from his work truck at gunpoint, struck in the chest, and taken into custody without any explanation, warrant, probable cause, or process. After his violent, unlawful arrest, Zepeda was immediately transferred between facilities, denied any opportunity to contest his detention, and categorically refused bond due to a blanket agency policy. These facts present egregious violations of the Fourth and Fifth Amendments, including the use of

excessive force, lack of individualized suspicion, and denial of any process. This is not the issue at stake in *Lopez-Mendoza*, which the Supreme Court described as “the exclusion of credible evidence gathered in connection with peaceful arrests by INS officers” (Id., 1051).

Courts have recognized that the exclusionary rule and the “fruit of the poisonous tree” doctrine may apply in civil immigration contexts where the government’s conduct is especially egregious or where continued detention is based solely on evidence obtained through unconstitutional means. See *Wong Sun v. United States*, 371 U.S. 471, 484–88 (1963); *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863, 872–73 (S.D. Ohio 2016) (suppressing evidence and ordering release where ICE violated both the Fourth Amendment and 8 U.S.C. § 1357(a)(2)).

#### **The Government’s Position Would Sanction Ongoing Constitutional Violations**

Accepting the government’s argument would mean that even the most egregious, violent, and lawless seizures—executed without any process, probable cause, or individualized suspicion—could be insulated from judicial review, so long as the government could physically bring the person before a removal proceeding. This is fundamentally incompatible with the Constitution and the statutory framework governing immigration detention. The Supreme Court has made clear that habeas corpus is available to remedy ongoing unlawful detention, and that courts must have the authority to order release where continued custody is based on unconstitutional conduct (*Boumediene*, 553 U.S. at 779–80); (*Zadvydas*, 533 U.S. at 687).

#### **Distinguishing Between Removal Proceedings and Detention Challenges**

*Lopez-Mendoza* does not bar suppression or release in the context of a habeas

petition challenging the lawfulness of detention, especially where the government's conduct is egregious and ongoing. The exclusionary rule may not preclude the government from initiating removal proceedings, but it does preclude the government from justifying continued detention based solely on evidence or circumstances obtained through unconstitutional means—particularly where, as here, the arrest and all subsequent custody are the direct result of an unlawful seizure.

### **The Remedy for Unlawful Detention Is Immediate Release**

Where, as here, the arrest and continued detention are the direct result of egregious constitutional violations, the only appropriate remedy is immediate release. The government cannot cure the taint of an unlawful arrest through subsequent proceedings or after-the-fact justifications. See *Nardone v. United States*, 308 U.S. 338, 341 (1939); *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920).

*Lopez-Mendoza* does not insulate the government from judicial review of the lawfulness of detention where egregious constitutional violations are present. Petitioner's habeas petition challenges the ongoing deprivation of liberty resulting from an unlawful arrest and continued detention, not merely the initiation of removal proceedings. The exclusionary rule and the writ of habeas corpus remain available to remedy such violations, and immediate release is the only constitutionally sufficient remedy under these circumstances.

### **X. Conclusion**

Petitioner's arrest and detention were illegal from the start. The government cannot justify its actions by pointing to later warrants, removal proceedings, or blanket policies that deny individualized process. The Constitution requires more. The only

lawful remedy is Mr. Zepeda-Ramirez's immediate and unconditional release.

This 17th day of November, 2025.

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**CERTIFICATE OF SERVICE**

I certify that on November 17, 2025, I electronically filed the foregoing **PETITIONER'S BRIEF WITH SUPPLEMENTAL AUTHORITIES** 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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