

District Judge James L. Robart

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSE LABRADOR ABADIN,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

Case No. 2:25-cv-02411-JLR

FEDERAL RESPONDENTS'¹
RETURN MEMORANDUM

Noted for Consideration:
December 23, 2025

U.S. Immigration and Customs Enforcement ("ICE") lawfully detains Petitioner Jose Labrador Abadin pursuant to 8 U.S.C. § 1225(b)(1) as an arriving alien.

I. BACKGROUND

Petitioner is a native and citizen of Cuba entered the United States in December 2020 and was apprehended near the United States – Mexico border that same day. Pet., ¶¶ 2,12; Yeski Decl., ¶ 4. The following day, Petitioner claimed fear of returning to Mexico. Yeski Decl., ¶ 5. An asylum officer interviewed Petitioner and determined that Petitioner had not established a clear

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by undersigned counsel.

1 probability of persecution and torture in Mexico. *Id.* As a result, he was returned to Mexico under
2 Migrant Protection Protocols. *Id.*

3 On December 15, 2020, the Department of Homeland Security (“DHS”) issued Petitioner
4 a [REDACTED] charging him with inadmissibility under 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.*, ¶ 6;
5 Lambert Decl., Ex. A, [REDACTED]. On April 20, 2021, Petitioner was paroled into the United
6 States for the purpose of attending his immigration court proceedings. Yeski Decl., ¶ 7. He
7 notified the immigration court that he now lived in Florida. *Id.*, ¶ 8. For unknown reasons, no
8 hearings were conducted. *Id.*, ¶ 9. Petitioner’s parole expired on or about April 17, 2022. *Id.*,
9 ¶ 10. Petitioner missed his check-in with DHS in Orlando, Florida on April 18, 2022. *Id.*, ¶ 11.

10 On July 3, 2025, Petitioner filed a Form I-485 with U.S. Citizenship & Immigration
11 Services (“USCIS”) to apply for adjustment of status. Pet., ¶ 15. That application remains
12 pending.

13 On November 16, 2025, DHS arrested Petitioner in Portland, Oregon, where Petitioner
14 now apparently lived. Yeski Decl., ¶¶ 12, 13; Pet., ¶ 16; Lambert Decl., Ex. B, [REDACTED]; Ex.
15 C, [REDACTED]. DHS did not have knowledge of his relocation before his arrest.

16 On December 4, 2025, Petitioner filed a motion to terminate his removal proceedings due
17 to his pending Form I-485. Yeski Decl., ¶ 14. A week later, Petitioner, while represented by
18 counsel, appeared before an immigration judge, who denied the motion to terminate. *Id.*, ¶¶ 15,
19 16. DHS filed and served Petitioner with additional charges of inadmissibility that charged
20 Petitioner as an arriving alien under 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.*, ¶ 17. Petitioner is
21 scheduled to appear before the Tacoma Immigration Court for a master calendar hearing on
22 December 23, 2025. *Id.*, ¶ 18.

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II. LEGAL STANDARD

“The district courts of the United States ... are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon Mobil Corp. v. Allopah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions. To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

III. ARGUMENT

A. Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b).

Congress established the expedited removal process in 8 U.S.C. § 1225 to ensure that the Executive could “expedite removal of aliens lacking a legal basis to remain in the United States.” *Kucana v. Holder*, 558 U.S. 233, 249 (2010); *see also Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 106 (2020) (“[Congress] crafted a system for weeding out patently meritless claims and expeditiously removing the aliens making such claims from the country.”). Section 1225 applies to “applicants for admission” to the United States, who are defined as “alien[s] present in the United States who [have] not been admitted” or noncitizens “who arrive[] in the United States,” whether or not at a designated port of arrival. 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2),” both of which are subject to mandatory detention. *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

1 Relevant here, Section 1225(b)(1) applies to “arriving aliens” and “certain other”
2 noncitizens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of
3 valid documentation.” *Id.*; 8 U.S.C. §§ 1225(b)(1)(A)(i), (iii). Expedited removal proceedings
4 under Section 1225(b)(1) include additional procedures if a noncitizen indicates an intention to
5 apply for asylum² or expresses a fear of persecution, torture, or return to the noncitizen’s country.
6 *See* 8 U.S.C. § 1225(b)(1)(A)(ii); 8 C.F.R. § 235.3(b)(4). If the asylum officer or immigration
7 judge does not find a credible fear, the noncitizen is “removed from the United States without
8 further hearing or review.” 8 U.S.C. §§ 1225(b)(1)(B)(iii)(I), (b)(1)(C); 1252(a)(2)(A)(iii), (e)(2);
9 8 C.F.R. §§ 1003.42(f), 1208.30(g)(2)(iv)(A). If the asylum officer or immigration judge finds a
10 credible fear, the noncitizen is generally placed in full removal proceedings under 8 U.S.C. §
11 1229a, but remains subject to mandatory detention. *See* 8 C.F.R. § 208.30(f); 8 U.S.C. §
12 1225(b)(1)(B)(iii)(IV).

13 Expedited removal under Section 1225(b)(1) is a distinct statutory procedure from removal
14 under Section 1229a. Section 1229(a) governs full removal proceedings initiated by a notice to
15 appear and conducted before an immigration judge, during which the noncitizen may apply for
16 relief or protection. By contrast, expedited removal under Section 1225(b)(1) applies in narrower,
17 statutorily defined circumstances and allows for their removal without a hearing before an
18 immigration judge, subject to limited exceptions. For these noncitizens, DHS has discretion to
19 pursue expedited removal under Section 1225(b)(1) or Section 1229a. *Matter of E-R-M- & L-R-*
20 *M-*, 25 I&N Dec. 520, 524 (BIA 2011).

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24 ² Noncitizens must apply for asylum within one year of arriving in the United States, 8 U.S.C. § 1558(a)(2)(B), except if the noncitizen can demonstrate “extraordinary circumstances” that justify moving that deadline. *Id.* § 1558(a)(2)(D).

1 The sole means of release from detention pursuant to Section 1225(b) is temporary parole
2 ‘for urgent humanitarian reasons or significant public benefit,’ § 1182(d)(5)(A).” *Jennings*, 583
3 U.S. at 283. This parole terminates automatically at the expiration of the time for which parole
4 was authorized, or upon service of a charging document for either expedited removal proceedings
5 under Section 1225(b) or removal proceedings under Section 1229a. 8 C.F.R. 212.5(e)(1); (2)(i).
6 Upon termination of parole, the applicant reverts to the status that he or she had at the time of
7 parole. *See id.*

8 Despite his mandatory detention status as an arriving alien under 8 U.S.C. § 1225(b)(1),
9 Petitioner asserts that his re-detention without “a rational and individualized determination of
10 whether he is a safety or flight risk. Pet., ¶ 56. “Due process is flexible and calls for such
11 procedural protections as the particular situation demands.” *Mathews v. Eldridge*, 424 U.S. 319,
12 334 (1976). Although Petitioner cites to regulations concerning revocation of custodial decisions
13 under 8 U.S.C. § 1226(b), Petitioner was paroled into the United States under Section 1182(d)(5).
14 Petitioner’s parole automatically terminated without written notice when it expired in 2022. 8
15 C.F.R. § 212.5(e)(1). Thus, no individual assessment was required.

16 However, the facts also support Petitioner’s re-detention. His parole had expired, and he
17 had moved across the country without notification or permission of the immigration court or DHS.
18 Although Petitioner filed a Form I-485 with USCIS earlier this year, he does not allege that he in
19 any way sought to address his expired parole. Because Petitioner is an arriving alien, ICE must
20 detain him pursuant to 8 U.S.C. § 1225(b)(1).

21 **B. Petitioner’s Administrative Procedure Act claims must be dismissed for lack of**
22 **subject matter jurisdiction.**
23
24

1 Petitioner seeks to challenge his detention on grounds that it violates Section 706(2)(A) of
2 the Administrative Procedure Act (“APA”). Pet., ¶¶ 35-47. The Court has no subject matter
3 jurisdiction to hear these claims.

4 Where other adequate statutory remedies exist, the APA does not apply. *See* 5 U.S.C.
5 § 704 (“Agency action made reviewable by statute and final agency action *for which there is no*
6 *other adequate remedy in a court* are subject to judicial review.”) (emphasis added). Simply put,
7 “federal courts lack jurisdiction over APA challenges whenever Congress has provided another
8 ‘adequate remedy.’” *Brem-Air Disposal v. Cohen*, 156 F.3d 1002, 1004 (9th Cir. 1998).

9 Because habeas corpus is a fully adequate remedy on a claim seeking redress for custodial
10 detention that is alleged to be unlawful, relief is jurisdictionally unavailable under the APA. *See*
11 *Trump v. J. G. G.*, 604 U.S. 670, 671 (2025) (vacating TROs based on the APA because Plaintiffs’
12 claims necessarily implied the invalidity of the Plaintiffs’ confinement and removal under the
13 “Alien Enemies Act” and so had to be brought as habeas corpus claims in the jurisdiction of their
14 confinement). As Justice Kavanaugh stated in his concurring opinion, “[e]specially given the
15 history and precedent of using habeas corpus to review transfer claims, and given 5 U.S.C. § 704,
16 which states that claims under the APA are not available when there is another ‘adequate remedy
17 in a court,’ I agree with the Court that habeas corpus, not the APA, is the proper vehicle here.” *Id.*,
18 at 674; *cf. O’Banion v. Matevousian*, 835 Fed. Appx. 347, 350 (10th Cir. 2020) (holding that
19 “habeas actions” provide an “adequate remedy” displacing APA review under Section 704); *and*
20 *see Lucas v. Fed. Bureau of Prisons*, 2018 WL 3038496, at *2 (S.D.N.Y. June 19, 2018)
21 (“Accordingly, because plaintiff could adequately remedy his conditions of confinement claim in
22 a habeas corpus petition, the Court does not have jurisdiction to decide his APA claim.”).

23 Moreover, to be reviewable under the APA an action must be a “final agency action,”
24 which is to say that it is the “consummation of the agency’s decision making process.” *See Bennett*

1 *v. Spear*, 520 U.S. 154, 177–78 (1997). Administrative detention for purposes of removal
2 proceedings is not within that category because it is only an intermediary step in the process. *See*
3 *Gamez Lira v. Noem*, 2025 WL 2581710, at *4 (D.N.M. Sept. 5, 2025). Accordingly, Petitioner’s
4 claims based on alleged APA violations should be denied.

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6 **C. Petitioner’s claims concerning alleged constitutional violations during his arrest are
not a basis for habeas claims of unlawful detention.**

7 Petitioner’s Fourth Amendment claims concerning his arrest by immigration officers are
8 not cognizable in this habeas action. Pet., ¶¶ 48-51; *see Marroquin Salazar v. Noem*, No. 5:25-
9 cv-02367, 2025 WL 3535050, at *1 (C.D. Cal. Dec. 8, 2025) (adopting and quoting the Report &
10 Recommendation, attached hereto as Exhibit D (the “*Marroquin-Salazar R&R*”)). Even if
11 Petitioner could establish his claim – which Federal Respondents do not concede, it should not be
12 brought via habeas and release would not be an appropriate form of relief.

13 Since removal proceedings are underway, Petitioner’s current custody flows not from his
14 arrest and initial post-arrest detention, but from the authority of the Immigration and Nationality
15 Act (“INA”). *See, e.g.*, 8 U.S.C. § 1225(b). The legality of Petitioner’s arrest is not presently
16 relevant and thus cannot be the basis for habeas relief. The habeas statute allows a petitioner who
17 is “in custody” to challenge that custody on various grounds, 28 U.S.C. § 2241(c), including that
18 “[h]e is in custody in violation of the Constitution or laws or treaties of the United States.” 28
19 U.S.C. § 2241(c)(3). The statute is written in the present tense, making clear that Section 2241
20 only allows a petitioner to challenge his current custody, not his past custody. *See Preiser v.*
21 *Rodriguez*, 411 U.S. 475, 484 (1973) (“the essence of habeas corpus is an attack by a person *in*
22 *custody* upon the legality of *that custody*” (emphasis added)).

1 While Petitioner is free to challenge his current custody based on that statutory authority,
2 any habeas claim basis on his arrest is now moot, since the arrest is not the source of his present
3 custody. *See Barker v. Estelle*, 913 F.2d 1433, 1440 (9th Cir. 1990) (habeas petition challenging
4 pretrial detention was moot once petitioner was incarcerated pursuant to a judgment of conviction);
5 *James v. Reese*, 546 F.2d 325, 328 (9th Cir. 1976) (same).

6 The INA, 8 U.S.C. § 1101 *et seq.*, entrusts the Executive branch to remove inadmissible
7 and deportable noncitizens and to ensure that noncitizens who are removable are in fact removed
8 from the United States. “[D]etention necessarily serves the purpose of preventing deportable []
9 aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that if
10 ordered removed, the aliens will be successfully removed.” *Demore v. Kim*, 538 U.S. 510, 528
11 (2003). The Supreme Court has long held that deportation proceedings “would be in vain if those
12 accused could not be held in custody pending the inquiry” of their immigration status. *Wong Wing*
13 *v. United States*, 163 U.S. 228, 235 (1896). Congress intended for all applicants for admission to
14 be detained during the course of their removal proceedings. *See Jennings*, 583 U.S. at 299
15 (interpreting the “plain meaning” of sections 1225(b)(1) and (2) to mean that applicants for
16 admission be mandatorily detained for the duration of their immigration proceedings).

17 Furthermore, this Court does not have jurisdiction to hear Petitioner’s claims that should
18 be raised in his immigration proceedings. In 8 U.S.C. §1252(b), Congress “consolidated judicial
19 review of immigration proceedings into one action in the court of appeals.” *Guerrero-Lasprilla v.*
20 *Barr*, 589 U.S. 221, 233 (2020) (quotation marks and citation omitted). This provision is known
21 as the “zipper clause” because it “consolidates or ‘zips’ ‘judicial review’ of immigration
22 proceedings into one action in the court of appeals.” *Singh v. Gonzales*, 499 F.3d 969, 976 (9th
23 Cir. 2007) (citation omitted). This statute provides:

Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section. *Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of Title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.*

8 U.S.C. § 1252(b)(9) (emphasis added); *see also* 8 U.S.C. § 1252(a)(5) (“a petition for review . . . shall be the sole and exclusive means for judicial review of an order of removal”). “Taken together, § 1252(a)(5) and § 1252(b)(9) mean that any issue – whether legal or factual – arising from any removal-related activity can be reviewed only through the [petition for review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016).

While claims “collateral to, or independent of” the removal process are still subject to habeas review, “[w]hen a claim by an alien, however it is framed, challenges the procedure and substance of an agency determination that is ‘inextricably linked’ to the order of removal, it is prohibited by section 1252(a)(5).” *Id.* Here, Petitioner’s claims are inextricably linked to “questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien.” 8 U.S.C. § 1252(b)(9).

Finally, the remedy for an unlawful arrest is the suppression of evidence obtained therefrom, not release from custody. *See INS v. Lopez-Mendoza*, 468 U.S. 1032, 1040-41 (1984); *United States v. Garcia-Beltran*, 443 F.3d 1126, 1131-32 (9th Cir.), cert. denied, 549 U.S. 935 (2006); *see also Martinez-Medina v. Holder*, 673 F.3d 1029, 1033-34 (9th Cir. 2011) (exclusionary rule applies in civil removal proceedings only when the Fourth Amendment violation is egregious). “The ‘body’ or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search,

1 or interrogation occurred.” *Lopez-Mendoza*, 468 U.S. at 1039; *see also Stone v. Powell*, 428 U.S.
2 465, 485 (1976) (noting that “judicial proceedings need not abate when the defendant's person is
3 unconstitutionally seized” (citing *Gerstein v. Pugh*, 420 U.S. 103, 119 (1975); *Frisbie v. Collins*,
4 342 U.S. 519 (1952))); *Garcia-Beltran*, 443 F.3d at 1132 (“[T]here is no sanction to be applied
5 when an illegal arrest only leads to discovery of the man’s identity.” (quotation omitted)).

6 Accordingly, the extent that Petitioner seeks his release from custody based on the
7 allegedly unlawful arrest, there is no basis for the Court to grant such relief. *See, e.g., Rodrigues*
8 *De Oliveira v. Joyce*, 2025 WL 1826118, at *5 (D. Me. July 2, 2025) (“Petitioner’s argument that
9 an illegal arrest automatically results in an illegal detention is misguided. . . . [E]ven if Petitioner’s
10 initial arrest was unlawful, her detention pending removal may stand.”); *Alonso-Portillo v. Bondi*,
11 2025 WL 2483393, at *11 (S.D. Ohio Aug. 28, 2025) (“Traditional application of the exclusionary
12 rule results in the suppression of evidence, as ‘fruits of the poisonous tree,’ obtained in violation
13 of the Fourth Amendment. But the rule does not, as Alonso-Portillo asserts here, dictate his
14 immediate release from detention.”); *Marvan v. Slaughter*, 2025 WL 1940043, at *3-4 (D. Mont.
15 July 15, 2025) (petitioner could not obtain habeas relief on Fourth Amendment violation where
16 administrative removal proceedings had commenced); *H.N. v. Warden*, Stewart Det. Ctr., 2021
17 WL 4203232, at *5 (M.D. Ga. Sept. 15, 2021) (“even if the Court accepted Petitioner’s argument
18 that his initial detention was somehow unlawful, he is still not entitled to habeas relief.”); *Medina*
19 *v. U.S. Dep’t of Homeland Sec.*, 2017 WL 1101370, at *1-2 (W.D. Wash. Mar. 24, 2017)
20 (immigration detainee was not entitled to habeas relief because “the remedy for an unlawful arrest
21 in violation of the Fourth Amendment is suppression of evidence,” so if he “desire[d] release from
22 his current detention, his avenue for seeking such release should occur in the context of his removal
23 proceedings” (citations omitted)); *Amezcu-Gonzalez v. Lobato*, 2016 WL 6892934, at *2 (W.D.
24 Wash. Oct. 6, 2016) (dismissing petition challenging immigration detainee’s arrest on Fourth

Amendment grounds where detainee did not dispute that he was subject to final order of removal, and his “only assertion [was] that he should be released because his arrest violated the Fourth Amendment”; “even if petitioner’s arrest amounts to an egregious Fourth Amendment violation, he is not entitled to habeas relief”), report and recommendation adopted, 2016 WL 6892547 (W.D. Wash. Nov. 22, 2016); *Nyuwa v. Gurule*, 2014 WL 12984435, at *1 (D. Ariz. June 13, 2014) (“It is doubtful that Petitioner’s arrest was unlawful. But even if it was, his allegedly unlawful arrest does not invalidate his current immigration detention because ‘the “body” or identity of a defendant in a criminal or civil proceeding is never itself suppressible as the fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred.’” (*quoting Lopez-Mendoza*, 468 U.S. at 1039)).

IV. CONCLUSION

Accordingly, this Court should deny Petitioner’s habeas claims that his arrest and detention are unlawful.

DATED this 18th day of December, 2025.

Respectfully submitted,

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I certify that this memorandum contains 3,146 words, in compliance with the Local Civil Rules.