IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

NERY VIDAL REMIREZ ZAPET, Petitioner, v. **LADEON FRANCIS,** *et al.*, Respondents.	Civil Action No. 1:25-CV-07085-VMC

RESPONDENTS' SUPPLEMENTAL BRIEF ON THE PETITION FOR HABEAS CORPUS

Respondents respectfully submit this brief under the Court's January 8, 2026, order requesting further briefing. Respondents understand the Court's request to be focused solely on Count Eleven of the Amended Petition, which concerns Petitioner Zapet's allegation that he was unlawfully arrested. Therefore, this brief does not address the issue of detention under 8 U.S.C. § 1225(b)(2). Respondents' arguments on that issue can be found in previous documents. (*See* Doc. 11.)

This brief has three parts. First, this brief reviews the facts surrounding Zapet's arrest. Second, this brief explains why that arrest was lawful under the Fourth Amendment and under 8 U.S.C. § 1357. Third, this brief argues that

Zapet's remedy for an unlawful arrest, if any, can be had only in immigration court.

1. Facts

The facts of Zapet's arrest are partly disputed. According to the I-213 (the form used by immigration officials to document encounters with deportable aliens), officers from ICE Atlanta Fugitive Operation Unit were surveilling a house in Canton, Georgia, with the hope of arresting an alien with a final order of removal who had failed to depart the United States. (*See generally*, I-213 (Doc. 11-2)). Officers observed several individuals leaving the house and entering a vehicle. (*Id.*) The report does not specifically state that the officers believed that the target individual was among those leaving the house, but that seems to have been the case because the officers ceased surveilling the house and followed the vehicle. (*Id.*) Zapet assumes instead that the officers abandoned their surveillance and followed the unknown individuals *despite* knowing that their target was not among them. Common sense suggests that this is not the best assumption, but the I-213 report does not specifically state otherwise. The relevant officers are currently deployed in Minnesota and could not be reached by agency counsel during the past three days. The Court may not find it necessary to resolve this dispute for the reasons given below.

In any event, the officers soon stopped the vehicle and interviewed the passenger. (*Id.*) During that stop, Zapet admitted that he was a citizen of Guatemala and that he was illegally present in the United States. (*Id.*) He did not provide a U.S. address to the officer. (*Id.*) Based on these facts, Zapet was arrested. (*Id.*) He was remanded to ICE custody and initially held without bond under 8 U.S.C. § 1225, which is where this case began.

The Court is aware of the facts since then. Zapet petitioned for a writ of habeas corpus, arguing that his detention was unlawful for many reasons. (Docs. 1 & 8.) Meanwhile, ICE stated removal proceedings against Zapet under 8 U.S.C. § 1226. Those proceedings are ongoing.

This Court has already ruled, on a preliminary basis, that ICE cannot hold Zapet without bond under 8 U.S.C. § 1225. (Doc. 14.) But the Court recognized, in the alternative, that ICE could hold Zapet under § 1226 while his removal proceedings were underway, if ICE provided him with a bond hearing before an immigration judge as required by that statute. (*Id.*) ICE complied with this Court's order and provided Zapet with a bond hearing. The immigration judge concluded that bond was not appropriate and remanded Zapet to custody. His removal proceeding continues.

2. The Officers Properly Arrested Zapet

The first question is whether Zapet's arrest was lawful. If his arrest was lawful, then the Court need not consider the issue of remedies.

Two standards could be used to answer the question of whether the arrest was lawful: the Fourth Amendment or 8 U.S.C. 1357, a statute that grants immigration officers the power to conduct arrests. Zapet focuses on the latter, but this brief will address both for the sake of completeness.

A. The officers properly arrested Zapet under the Fourth Amendment.

As described above, officers had an arrest warrant for an unnamed individual and were staking out a residence with the hope of arresting that person. The officers then followed a car that picked up several people from the residence because the officers suspected that the relevant individual was among those who entered the car.

If the officers reasonably believed that their target was in the car, the officers had authority to stop the car and investigate. *Steagald v. United States*, 451 U.S. 204, 213, 214 n.7 (1981) (recognizing that an arrest warrant authorizes the police to seize a person and deprive him of his liberty); *United States v. Cortez*, 449 U.S. 411, 417 n.2 (1981) ("an officer may stop and question a person if there are reasonable grounds to believe that person is wanted for past criminal conduct."); *United States v. Cotton*, 721 F.2d 350, 351 (11th Cir. 1983) (reasonable suspicion

justified stop of vehicle due to either that criminal activity was afoot or that defendant, for whom there was an outstanding arrest warrant, was in the vehicle); *United States v. Dooley*, No. 2:09-CR-00016-WCO, 2011 WL 2162687, at *2 (N.D. Ga. June 2, 2011) ("[Be]cause law enforcement officers in this case knew of defendant's outstanding arrest warrant and knew that criminal activity was in progress so long as defendant remained a fugitive, they could lawfully stop his vehicle.") (citing *Cotton*, 721 F.2d at 351); *United States v. Provens*, No. 5:09-CR-53-KOB-TMP, 2009 WL 10695199, at *3 (N.D. Ala. June 25, 2009) ("Little authority is required to support the conclusion that police may conduct a traffic stop for the purpose of executing an arrest warrant for someone in the car.") (citations omitted), *report and recommendation adopted*, No. 5:09-CR-53-KOB-TMP, 2009 WL 10695232 (N.D. Ala. Aug. 5, 2009); *see also United States v. Rosario*, 305 Fed. App'x 882, 885 (3d Cir. Jan. 15, 2009) ("[T]he Government established probable cause to stop the vehicle to execute the ... arrest warrant."); *United States v. Helton*, 232 Fed. Appx. 747, 749 (10th Cir. Apr. 9, 2007) (traffic stop was a reasonable investigative stop for purposes of executing an arrest warrant, even though passenger in car turned out not to be subject of warrant).

Once the car was stopped, the officers also had authority to interview and question the passengers so long as the officers did not prolong the stop. *See United States v. Buie*, No. 24-11916, 2025 WL 2952696, at *3 (11th Cir. Oct. 20,

2025). Here, Zapet has not argued that the overall stop was prolonged by his questioning; after all, one member of the car was being arrested under an outstanding warrant so the stop was going to take several minutes regardless.

During the questioning, Zapet admitted that he was a citizen of Guatemala and that he had no immigration papers. Those facts provided probable cause for the officer to suspect a violation of the immigration laws. "It is by now hornbook law that 'the Constitution permits an officer to arrest a suspect without a warrant if there is probable cause to believe that the suspect has committed or is committing an offense.'" *Scott v. City of Miami*, 139 F.4th 1267, 1273 (11th Cir. 2025) (quoting *Michigan v. DeFillippo*, 443 U.S. 31, 36 (1979)). In addition, as discussed in the next section, a federal statute specifically instructs immigration officers to arrest aliens who are "in the United States in violation of any [immigration law]." 8 U.S.C. § 1357(a)(2); *see also United States v. Murillo-Gonzalez*, 524 F. Supp. 3d 1139, 1150 (D.N.M. 2021), aff'd, No. 22-2123, 2024 WL 3812480 (10th Cir. Aug. 14, 2024) (reviewing and approving of the arrest of the driver on immigration charges after a vehicle was stopped to arrest a passenger).

B. The officers properly arrested Zapet under 8 U.S.C. § 1357.

Zapet has also argued that his arrest violated 8 U.S.C. § 1357(a)(2), which authorizes immigration officers to conduct arrests. The relevant paragraph specifically grants immigration officers the power:

> to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States.

Zapet argues that the above language requires immigration officers to obtain a warrant before arresting a suspect. The language does not say this. Rather, the language specifically authorizes officers to make warrantless arrests if a suspect is "likely to escape before a warrant can be obtained."

Here, the arresting officer thought Zapet was a flight risk. This type of on-the-scene judgment deserves deference. *See Murillo-Gonzalez*, 524 F. Supp. 3d at 1151 ("The Court defers to the officer's on-the-scene judgments and concludes that [officer] had probable cause to make a warrantless arrest for deportation proceedings under 8 U.S.C. § 1357(a)(2)."") Also, the facts and circumstances here support the judgment the officer made. Zapet was not being interviewed in his home or at his job. He was standing on the side of the road. He had not produced valid identifying documents. The officers reasonably believed that if they left the scene to obtain a warrant, Zapet would not be there when they returned nor would he be easily found again afterwards. On these facts, the warrantless arrest

was proper. *See Aguirre v. I.N.S.* 553 F.2d 501, 502 (5th Cir. 1977) ("Petitioner's voluntary admissions prior to arrest formed a sufficient basis for the arresting officer to believe that petitioner might abscond before a warrant could be obtained, thus justifying the warrantless arrest."); *United States v. Quintana*, 623 F.3d 1237, 1239 (8th Cir. 2010) (valid traffic stop for speeding, alien presented foreign ID enough to find likely to escape); *Contreras v. United States*, 672 F.2d 307, 308–09 (2d Cir. 1982) (applying 1357 broadly); *United States v. Murillo Gonzalez*, 524 F. Supp. 3d 1139, 1148–52 (D.N.M. 2021) (warrantless arrest of passenger of vehicle).

3. Zapet's Remedy, If Any, Is in Immigration Court

If the Court disagrees and thinks Zapet's arrest was unlawful—or even if the Court prefers not to decide whether the arrest was lawful—the Court should still reject Zapet's Count Eleven because no relief is available.

Now, Zapet is being held in custody under 8 U.S.C. § 1226 while his removal proceeding goes forward. Zapet has argued that he should have been granted bond by the immigration judge, but this Court has correctly refused to hear that argument.[1] Congress has clearly instructed district courts not to

[1] (Doc. 20 (PI Order) at 3 n.2 ("The Court remains unconvinced that it has jurisdiction to hear arguments related to the immigration judge's bond denial in this case because that claim is not in the Amended Petition and the Court does not believe it has jurisdiction to review the bond denial.").)

second-guess bond determinations made by immigration judges. *See* 8 U.S.C. § 1226(e) ("No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole."). Therefore, the only question is whether the circumstances of the initial arrest authorize this Court to grant relief to Zapet.

Any such relief is foreclosed by the Supreme Court's decision in *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032 (1984). That case involved two aliens who had been unlawfully arrested. The first alien objected to his removal proceedings continuing at all, and the second alien objected to that as well as the use of the statements he made after his unlawful arrest. In both cases, the Supreme Court denied relief. As to the termination of the removal proceedings, the Court stated that the "body" of a defendant can never be suppressed as the fruit of an unlawful arrest *even in a criminal case*. *Lopez-Mendoza*, 468 U.S. at 1039–40. As to the suppression of evidence, the Court ruled that the exclusionary ruled does not apply in civil immigration proceedings. *Id.* at 1047, 1050.

Zapet will likely try to distinguish the case on the basis that he is not asking for the exclusion of evidence, nor is he directly asking for the termination of his immigration proceeding. Either outcome would be foreclosed by *Lopez-Mendoza*. Rather, he asks this Court to use its habeas jurisdiction to reach out and release him from his current detention as the fruit of an unlawful arrest. But he

offers this Court no authority for doing such a thing. The question in a habeas case is whether he is properly detained. He is, under 8 U.S.C. § 1226, because he has been detained pending a removal proceeding. Although the proceeding began after an (allegedly) unlawful arrest, *Lopez-Mendoza* teaches that the proceeding should go forward nonetheless, and therefore all the restrictions that apply to such hearings—including detention—should go forward too. The entire proceeding, with all its appurtenances, should continue. That conclusion fairly follows from the Supreme Court's unwillingness to grant any relief in *Lopez-Mendoza*. Using habeas to address an unlawful arrest, as opposed to an unlawful detention, stretches the writ too far. "Although the scope of the writ of habeas corpus has been extended beyond that which the most literal reading of the statute might require, the Court has never considered it a generally available federal remedy for every violation of federal rights." *Lehman v. Lycoming Cty. Children's Servs. Agency*, 458 U.S. 502, 510, (1982).

What is more, Zapet's request would contravene jurisdictional barriers enacted by Congress in 8 U.S.C. §§ 1252(b)(9) and 1252(g). Both of those statutes prevent district courts from interfering with removal proceedings. Now that this Court has ordered ICE to cease relying on 8 U.S.C. § 1225 to hold Zapet, he is being held solely under the authority of 8 U.S.C. § 1226—that is, the statute that authorizes detention during removal proceedings. The Eleventh Circuit has

explicitly held that "securing a[] [non-citizen] while awaiting a removal determination constitutes an action taken to commence proceedings" within the purview of section 1252(g). *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013); *see also id.* (holding that the non-citizen's "claims that [the ICE agents] illegally procured an arrest warrant, that the agents illegally arrested him, and that the agents illegally detained him each arise from an action taken to commence removal proceedings."); *Cho v. United States*, No. 5:13-cv-153-MTT, 2016 WL 1611476, at *7 (M.D. Ga. Apr. 21, 2016) ("Plaintiff's claims that she was falsely arrested when she was transferred into ICE custody . . . 'challenge[] the actions the agents took to commence removal proceedings—exactly the claims that § 1252(g) bars from the subject-matter jurisdiction of federal courts.'" (quoting *Gupta*, 709 F.3d at 1065 (alterations in original))).

In sum, this Court should decline to order relief—even if the arrest was unlawful—for two reasons: (1) because Zapet's detention under 8 U.S.C. § 1226 is lawful and thus the purpose of habeas (to address unlawful detention) is not met, and (2) because Congress has instructed the district courts not to intervene during removal proceedings.

None of the cases cited by Zapet in his previous filings changes this analysis. He cites cases such as *Ramirez Ovando v. Noem*, --- F.Supp.3d ----, No. 1:25-CV-03183-RBJ, 2025 WL 3293467 (D. Co., Nov. 25, 2025), and *Escobar Molina*

v. U.S. Dep't of Homeland Security, --- F.Supp.3d ----, 2025 WL 3465518 (D. D.C., Dec. 2, 2025), for the proposition that warrantless arrests are illegal. But those are prospective-relief cases, where the courts were ordering ICE not to engage in future arrests beyond the confines of § 1357. To the extent the first decision also ordered a remedy for past arrests, the court engaged in little to no analysis regarding its power to grant such relief. *See Ramirez Ovando*, 2025 WL 3293467, at *11 (stating, without further analysis, "Because plaintiffs' injuries from the warrantless arrest are ongoing, they must be returned to their original pre-detention position: to wit, no ankle monitors, or reporting requirements, or other release conditions, and their bonds refunded.")

Zapet also argue that his immediate release is the only proper remedy to be granted. In support, he cites numerous decisions from his amended petition (pg. 48–49) where courts ordered the release of someone in Zapet's circumstances. But those decisions were all based on the inapplicability of 8 U.S.C. § 1225. That issue was presented by Counts One through Ten of Zapet's petition. None of these decisions, so far as we call tell—there are many of them—was about the unlawfulness of the initial arrest. (It is also not clear that these courts even considered the alternative relief of detention under 8 U.S.C. § 1226, but the judges in this district have all unanimously done so.) Zapet also cited

additional cases in his recent correspondence (Doc. 19), but these cases too seem to be about the 1225-issue and not about the lawfulness of the arrest.[2]

To be clear, Zapet is not entirely without remedy, although his path is narrow. Several courts, including the Eleventh Circuit, have assumed without deciding that defendants in immigration proceedings can raise the lawfulness of their initial arrest. *See Aguayo v. Garland*, 78 F.4th 1210, 1217 (10th Cir. 2023); *Westover v. Reno*, 202 F.3d 475, 479 (1st Cir. 2000); *Min-Shey Hung v. United States*, 617 F.2d 201, 203 (10th Cir. 1980); *Escalona-Escalona v. U.S. Att'y Gen.*, No. 20-14061, 2022 WL 3042859, at *5 (11th Cir. Aug. 2, 2022). Therefore, Zapet can raise the issue before his immigration judge and can argue that the proceedings should be terminated because his initial arrest was allegedly unlawful. He will likely how to prove, however, that the underlying Fourth Amendment violation here was "egregious," which this one does not seem to be.

Although he may be able to raise his Fourth Amendment arguments, he will not be able to raise his arguments under 8 U.S.C. § 1357. That statute—to the extent it provides greater protection that the Fourth Amendment itself—does not prescribe any remedies for its violation. The statute is merely hortatory. *States v.*

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[2] In the middle of his list of citations, Zapet cites *Gonzalez v. Joyce*, No. 25 Civ. 8250, 2025 WL 2961626 (S.D.N.Y. Oct. 19, 2025), along with two other cases for the idea that a person arrested in a courthouse must be released. Those cases were decided under the Fifth Amendment, not the Fourth.

Santos-Portillo, 997 F.3d 159, 167 (4th Cir. 2021) (Wilkinson, J.); *see also id.* at 163 ("There is absolutely no statutory basis for Santos-Portillo's argument that we should suppress the evidence against him. 8 U.S.C. § 1357(a) makes no mention of suppression or any other remedy for those arrested without an administrative warrant."); *United States* v. *De La Cruz*, 835 F.3d 1, 6 (1st Cir. 2016); *United States* v. *Abdi*, 463 F.3d 547, 556 (6th Cir. 2006); *Westover v. Reno*, 202 F.3d 475, 480 (1st Cir. 2000).

Conclusion

The Court should deny Count Eleven from Zapet's amended petition because his arrest was unlawful and because, even if it were not, no relief is available from this Court in a habeas proceeding.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Local Rule 7.1(D), that the above memorandum was prepared in 13-point, Book Antiqua font.

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CERTIFICATE OF SERVICE

I hereby certify that the above document was filed using the Court's CM/ECF system, which will provide notice to all counsel of record.

This 13th day of January, 2026.

s/ Anthony C. DeCinque
ANTHONY C. DECINQUE