District Judge Lauren King

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

N.Y.F.S., Petitioner, v. PAMELA BONDI, *et al.*, Respondents.	Case No. 2:25-cv-02556-LK FEDERAL RESPONDENTS' RETURN[1] Noted for Consideration: December 30, 2025

I. INTRODUCITON

This Court should deny Petitioner N.Y.F.S's Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (Dkt. No. 1, "Petition" or "Pet.") because she is lawfully detained pursuant to 8 U.S.C. § 1231(a). In 2018, U.S. Department of Homeland Security ("DHS") placed her in removal proceedings after she entered the United States without inspection. Although Petitioner made at least one immigration court appearance, an immigration judge ordered her removed in absentia when she failed to appear for hearing immigration hearing in 2019. Petitioner does not assert that she ever contacted the immigration court or U.S. Immigration and Customs

[1] Respondent Bruce Scott is not a federal official and is not represented by undersigned counsel.

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Enforcement ("ICE") since 2019. ICE detained her in November 2025 to execute the removal order and anticipates that it will be able to remove Petitioner within the next four weeks. To the extent that Petitioner challenges her removal order, the appropriate forum to raise that claim is through the administrative process or the Ninth Circuit – not this Court. 8 U.S.C. §§ 1252(b)(9), (a)(5), (g).

Furthermore, this Court should deny Petitioner's claim that her arrest violated the Fourth Amendment. Pet., ¶¶ 34-40. She wrongly asserts that she was arrested without a warrant and without probable cause. But her claims concerning her arrest and detention prior to her removal detention are not justiciable in this proceeding. Finally, Petitioner's bare assertion that she will be transferred from NWIPC in violation of due process lacks any factual basis. Pet., ¶¶ 46-47.

Accordingly, this Court should deny the Petition.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Honduras. Hubbard Decl., ¶ 3. In 2008, DHS encountered Petitioner near the U.S. - Mexico border and removed her via the expedited removal process. Id., ¶ 4; Lambert Decl., Ex. A, Notice and Order of Expedited Removal. Ten years later, in 2018, DHS again encountered Petitioner in California after she had entered the United States without inspection. Hubbard Decl., ¶ 5. DHS issued her a notice to appear, charging her as removable under 8 U.S.C. § 1182(a)(6)(A)(i), and placed her in removal proceedings in the immigration court closest to her listed residence in West Jordan, Utah. Id., ¶ 5; Lambert Decl., Ex. B, Notice to Appear. ICE released Petitioner on an order of release on her own recognizance ("OREC"), which imposed reporting requirements and other conditions on release, including enrollment in Alternatives to Detention ("ATD"). Hubbard Decl., ¶ 6; Lambert Decl., Ex. C, Notice of Custody Determination; Ex. D, OREC; Ex. E, Monitoring Agreement.

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After her release, Petitioner appeared before the immigration court in Salt Lake City, Utah and the immigration judge granted her request for continuance so that she could retain counsel. Hubbard Decl., ¶ 8. However, she failed to appear at her master calendar hearing in April of 2019, resulting in her being ordered removed to Honduras in absentia. Id., ¶ 16; Lambert Decl., Ex. F, Order. In October 2019, Petitioner's enrollment in ATD was terminated as she was deemed a program absconder. Hubbard Decl., ¶ 15. Petitioner alleges that she left Utah to flee the father of her children. Pet., ¶ 15. Petitioner does not allege that she ever contacted the immigration court or ICE after leaving Utah.

On November 25, 2025, ICE became aware that Petitioner was in the Portland area. Hubbard Decl., ¶ 17. ICE prepared an arrest warrant and initiated a targeted enforcement operation. Id.; Lambert Decl, Ex. G, Warrant for Arrest. The next day, ICE conducted a targeted arrest of Petitioner. Hubbard Decl., ¶ 18; Lambert Decl., Ex. H, Form I-213. She was subsequently transported to the Northwest ICE Processing Center in Tacoma, Washington. Hubbard Decl., ¶ 20. On December 23, 2025, ICE served Petitioner with notice of her OREC revocation. Hubbard Decl., ¶ 23; Lambert Decl., Ex. I, OREC revocation paperwork.

ICE is processing Petitioner for her removal to Honduras. Hubbard Decl., ¶¶ 21-25. It is anticipated that Petitioner will be removed within the next four weeks. Id., ¶ 25.

III. 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. Allopath 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

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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).

IV. ARGUMENT

A. Petitioner is lawfully detained pursuant to 8 U.S.C. § 1231(a).

The INA governs the detention and release of noncitizens during and following their removal proceedings. See Johnson v. Guzman Chavez, 594 U.S. 523, 527 (2021). The general detention periods are generally referred to as "pre-order" (meaning before the entry of a final order of removal) and, relevant here, "post-order" (meaning after the entry of a final order of removal). Compare 8 U.S.C. § 1226 (authorizing pre-order detention) with § 1231(a) (authorizing post-order detention).

When a final order of removal has been entered, a noncitizen enters a 90-day "removal period." 8 U.S.C. § 1231(a)(1). Congress has directed that the Secretary of Homeland Security "shall remove the alien from the United States." Id. To ensure a noncitizen's presence for removal and to protect the community from dangerous noncitizens while removal is being effectuated, Congress mandated detention. 8 U.S.C. § 1231(a)(2). During the removal period, ICE[2] is charged with attempting to effect removal of a noncitizen from the United States. 8 U.S.C. § 1231(a)(1).

Section 1231(a)(6) authorizes DHS to continue detention of noncitizens after the expiration of the removal period. Unlike Section 1231(a)(2), Section 1231(a)(6) does not mandate detention and does not place any temporal limit on the length of detention under that provision. 8 U.S.C. § 1231(a)(6). Although there is no statutory time limit on detention

[2] Under 8 C.F.R. § 241.2(b), ICE deportation officers are delegated the Secretary of Homeland Security's authority to execute removal orders.

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pursuant to Section 1231(a)(6), the Supreme Court has held that a noncitizen may be detained only "for a period reasonably necessary to bring about that [noncitizen's] removal from the United States." Zadvydas, 533 U.S. at 689. The Supreme Court has further identified six months as a presumptively reasonable time to bring about a noncitizen's removal. Id., at 701.

Here, Petitioner is the subject of an order of removal that became final in April of 2019. Lambert Decl., Ex. F. Petitioner has never been detained, and ICE has not previously had the opportunity to execute the removal order because Petitioner was ordered removed in absentia and did not comply with her terms of release. She admits to fleeing Utah – the location where her removal proceedings were ongoing. But she does not assert that she attempted to notify the immigration court or ICE of her relocation. Thus, the removal period could not have commenced after her order of removal in absentia. In any event, ICE believes that she will be removed in the reasonably foreseeable future. Hubbard Decl., ¶ 25.

B. Petitioner's claims concerning alleged constitutional violations during his arrest are not a basis for habeas claims of unlawful detention. [Pet., ¶¶ 34-40]

Petitioner's claim concerning her arrest by immigration officers is not cognizable in this habeas action. Marroquin Salazar v. Noem, No. 5:25-cv-02367, 2025 WL 3535050, at *1 (C.D. Cal. Dec. 8, 2025) (adopting and quoting the Report & Recommendation, attached hereto as Exhibit E (the "Marroquin-Salazar R&R")). Petitioner asserts that her arrest violated the Fourth Amendment because she was arrested without probable cause. Pet., ¶ 39. On the merits, this is incorrect as ICE has generated an arrest warrant the day before her arrest; she was arrested based on an outstanding order of removal providing probable cause that she is in the country unlawfully; and she failed to comply with her initial terms of release.

Petitioner's current custody flows not from her arrest and initial post-arrest detention, but from the authority of the Immigration and Nationality Act ("INA"). See, e.g., 8 U.S.C. §

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1225(b)(2). The legality of Petitioner's arrest is not presently relevant and thus cannot be the basis for habeas relief. The habeas statute allows a petitioner who is "in custody" to challenge that custody on various grounds, 28 U.S.C. § 2241(c), including that "[h]e is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §2241(c)(3). The statute is written in the present tense, making clear that Section 2241 only allows a petitioner to challenge her current custody, not her past custody. See Preiser v. Rodriguez, 411 U.S. 475, 484 (1973) ("the essence of habeas corpus is an attack by a person in custody upon the legality of that custody" (emphasis added)).

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

The INA, 8 U.S.C. § 1101 et seq., entrusts the Executive branch to remove inadmissible and deportable noncitizens and to ensure that noncitizens who are removable are in fact removed from the United States. "[D]etention necessarily serves the purpose of preventing deportable [] aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that if ordered removed, the aliens will be successfully removed." Demore v. Kim, 538 U.S. 510, 528 (2003). The Supreme Court has long held that deportation proceedings "would be in vain if those accused could not be held in custody pending the inquiry" of their immigration status. Wong Wing v. United States, 163 U.S. 228, 235 (1896). Petitioner did not show up for her removal proceedings and did not comply with her OREC. Thus, detention has a legitimate purpose in this case.

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

Accordingly, the extent that Petitioner seeks her release from custody based on the allegedly unlawful arrest, there is no basis for the Court to grant such relief. See, e.g., Rodrigues De Oliveira v. Joyce, 2025 WL 1826118, at *5 (D. Me. July 2, 2025) ("Petitioner's argument that an illegal arrest automatically results in an illegal detention is misguided. . . . [E]ven if Petitioner's initial arrest was unlawful, her detention pending removal may stand."); Alonso-Portillo v. Bondi, 2025 WL 2483393, at *11 (S.D. Ohio Aug. 28, 2025) ("Traditional application of the exclusionary rule results in the suppression of evidence, as 'fruits of the poisonous tree,' obtained in violation of the Fourth Amendment. But the rule does not, as Alonso-Portillo asserts here, dictate his immediate release from detention."); Marvan v. Slaughter, 2025 WL 1940043, at *3-4 (D. Mont. July 15, 2025) (petitioner could not obtain habeas relief on Fourth Amendment violation where administrative removal proceedings had commenced); H.N. v. Warden, Stewart

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Det. Ctr., 2021 WL 4203232, at *5 (M.D. Ga. Sept. 15, 2021) ("even if the Court accepted Petitioner's argument that his initial detention was somehow unlawful, he is still not entitled to habeas relief."); Medina v. U.S. Dep't of Homeland Sec., 2017 WL 1101370, at *1-2 (W.D. Wash. Mar. 24, 2017) (immigration detainee was not entitled to habeas relief because "the remedy for an unlawful arrest in violation of the Fourth Amendment is suppression of evidence," so if he "desire[d] release from his current detention, his avenue for seeking such release should occur in the context of his removal proceedings" (citations omitted)); Amezcua-Gonzalez v. Lobato, 2016 WL 6892934, at *2 (W.D. 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)).

C. Petitioner's detention comports with procedural due process. [Pet., ¶¶ 41-45]

Petitioner incorrectly alleges that her detention is arbitrary and "not based on a rational and individualized determination of whether he is a safety or a flight risk ...." Pet., ¶ 44. DHS has a rational reason to detain Petitioner: she is subject to an in absentia removal order.

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In the Ninth Circuit, removal orders issued in absentia become final upon the earlier of (i) the 180-day period to file a motion to reopen expires, or (ii), the Board of Immigration Appeals ("BIA") affirms the order. Cui v. Garland, 13 F.4th 991, 996 (9th Cir. 2021). Petitioner claims to be seeking to reopen her removal proceedings now. Pet., ¶ 5. Because her in absentia removal order was issued in 2019, there is no question that the 180-day deadline for filing a motion has expired. Accordingly, she is subject to a final order of removal. This will remain true unless her proceedings are reopened, and the removal order terminated.

Petitioner failed to appear at her last immigration hearing and has been subject to an in absentia removal order for more than six years. While courts have found that due process requires notice and an opportunity to be heard prior to re-detention of a noncitizen, these procedures should not be required in this case. "Due process is flexible and calls for such procedural protections as the particular situation demands." Mathews v. Eldridge, 424 U.S. 319, 334 (1976). The Mathews test demonstrates that Petitioner's detention is consistent with her due process rights. Under Mathews, "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Id., at 333 (internal quotation marks omitted). This calls for an analysis of (1) "the private interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards," and (3) the Government's interest. Id., at 334-35.

Federal Respondents recognize the "weighty liberty interests implicated by the Government's detention of noncitizens." Reyes v. King, No. 19-cv-8674, 2021 WL 3727614, at *11 (S.D.N.Y. Aug. 20, 2021). However, Petitioner's interest in her liberty generally does not mean that she possesses a separate or heightened liberty interest in the continuation of her release from ICE detention after failing to appear for her removal proceedings and non-compliance with

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release provisions. The recognized liberty interests of U.S. citizens and aliens who have been ordered removed are not coextensive: the Supreme Court has 'firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.'" Rodriguez Diaz v. Garland, 53 F.4th 1189, 1206 (9th Cir. 2022) (quoting Demore v. Kim, 538 U.S. 510, 522 (2003)). As the Supreme Court has explained, "[i]n the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens." Mathews v. Diaz, 426 U.S. 67, 79-80 (1976).

Turning to the second Mathews factor, the risk of a constitutionally significant deprivation of Petitioner's liberty here without a pre-detention hearing is minimal. Petitioner had notice of the requirements of her OREC (Lambert Decl., Exs, D and E). Petitioner failed to appear for an immigration hearing that was scheduled after she had requested a continuance to find counsel. Hubbard Decl., ¶ 8. Petitioner left her prior residence without notifying ICE of her relocation. Based on these actions, it would not be reasonable to require pre-detention notice here. Based on her past actions, Petitioner would likely not show up or respond if noticed of ICE's decision to re-detain her before taking her into custody.

Turning to the third Mathews factor, the Ninth Circuit has emphasized that the Mathews test "must account for the heightened government interest in the immigration detention context." Rodriguez Diaz, 53 F.4th at 1206. Invoking the Supreme Court's 2003 Demore decision, the Ninth Circuit in Rodriguez Diaz recognized that "the government clearly has a strong interest in preventing aliens from 'remain[ing] in the United States in violation of our law.'" Rodriguez Diaz, 53 F.4th at 1208 (quoting Demore, 538 U.S. at 518). Here, Petitioner has been subject to a final order of removal in absentia since 2019. Petitioner's absence is why this order had not been previously executed. Petitioner cannot reasonably argue that she did not realize that she failed to continue with her removal proceedings. She left her prior residence and did not notify ICE or the

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immigration court of her relocation. The government has a strong interest in removing noncitizens who do not appear for their immigration proceedings.

V. CONCLUSION

For these reasons, this Court should deny the Petition.

DATED this 23rd day of December, 2025.

Respectfully submitted,

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I certify that this memorandum contains 3,113 words, in compliance with the Local Civil Rules.