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

N.Y.F.S.,


Petitioner,

v.

PAMELA BONDI, *et al.*;

Respondents.

Case No.: 2:25-cv-02556-LK

Agency File Number: 

**PETITIONER'S REPLY IN SUPPORT OF
PETITION FOR WRIT OF HABEAS CORPUS
AND RESPONSE TO RETURN**

Noted for consideration: December 30, 2025

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3 **PETITIONER'S REPLY AND RESPONSE TO RETURN**

4 **I. INTRODUCTION**

5 The court must grant Petitioner's writ of habeas corpus unless the Respondents show
6 cause why it should not. 28 U.S.C. § 2243. Respondents' return must certify the "true cause" of
7 their ongoing deprivation of Petitioner's liberty. *Id.*, see Federal Respondents' Return
8 (hereinafter "Return"), ECF 13. Respondents cannot remedy a due process violation *after*
9 depriving the Petitioner of the liberty before which notice and opportunity were due.
10

11 **ARGUMENT**

12
13 **A. This Court Has Jurisdiction Over Petitioner's Constitutional Claims**

14 Respondents' argument this Court lacks jurisdiction under provisions of the INA at 8
15 U.S.C. § 1252 fails for multiple reasons: First, the Suspension Clause of the Constitution
16 preserves habeas jurisdiction for constitutional claims. Second, the INA does not bar jurisdiction
17 as claimed. Lastly, a petition for review is an inadequate remedy for current constitutional
18 violations.
19

20 **1. The Suspension Clause Preserves Habeas Jurisdiction for Constitutional Challenges to Custody**

21 Even if the INA would ordinarily limit this Court's jurisdiction, the Court retains
22 jurisdiction over Petitioner's core habeas claims pursuant to the Suspension Clause of the U.S.
23 Constitution, which provides that "[t]he Privilege of the Writ of Habeas Corpus shall not be
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1 suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S.
2 Const. Art. I § 9, cl. 2.¹

3
4 **2. The INA does not bar jurisdiction over Petitioners' claims**

5 Respondents argue that Petitioner's constitutional claims are properly brought in a petition
6 for review according to the INA. However, Petitioner does not challenge her order of removal as
7 alleged by Respondents—she challenges Respondents' ongoing, unlawful custody over her
8 person. Her detention-related claims are properly before this court.

9 **a. This Court's jurisdiction is not barred by 8 U.S.C. § 1252(g).**

10 Section 1252(g) bars review when DHS exercises its discretion to "commence
11 proceedings, adjudicate cases, or execute removal orders." *See Reno v. American-Arab Anti-*
12 *Discrimination Committee*, 525 U.S. 471, 482-83 (1999). The provision is "narrow" and applies
13 "only to [these] three discrete actions"—not to the "many other decisions or actions that may be
14 part of the deportation process." *Id.* at 482. None of these actions are at issue here.²

15
16 **b. As Petitioner does not challenge her removal order, 8 U.S.C. § 1252(b)(9)
17 does not limit the Court's jurisdiction.**

18 Section 1252(b)(9) does not prevent federal courts from hearing cases "that do not
19 directly challenge a final order of removal." *See Trinidad y Garcia v. Thomas*, 683 F.3d 952,
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22
23 ¹ The Supreme Court has construed the INA narrowly to avoid serious constitutional questions. *See INS v. St. Cyr*,
24 533 U.S. 289, 300, 305 (2001). The Ninth Circuit has recognized that the Suspension Clause is triggered when, as
here, a petitioner requests release from custody. *Rauda v. Jennings*, 55 F.4th 773, 780 (9th Cir. 2022) (internal
citations omitted).

25 ² *See Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) (finding that § 1252(g) did not bar judicial review of
26 challenges to unlawful detention). "§ 1252(g) does not prohibit challenges to unlawful practices merely because they
are in some fashion connected to removal orders." *Ibarra-Perez v. United States*, 154 F.4th 989, 997 (9th Cir. 2025).

1 958 (9th Cir. 2012) (Thomas, J., concurring) (*citing Nadarajah v. Gonzales*, 443 F.3d 1069, 1075
2 (9th Cir. 2006)). The statute is a “‘targeted’ and ‘narrow’ provision. *Gonzalez v. U.S.*
3 *Immigration and Customs Enforcement*, 975 F.3d 788, 810 (9th Cir. 2020) (*quoting Dep’t of*
4 *Homeland Sec. v. Regents v. Univ. of Cal.*, 140 S. Ct. 1891, 1907 (2020)). “[C]laims challenging
5 the legality of detention” fall outside of (b)(9)’s reach. *Id.* (in the context of immigration
6 detainees); *accord Ozturk v. Hyde*, 136 F.4th 382, 401 (2d Cir. 2025) (holding that (b)(9) did not
7 foreclose review of an immigration habeas petition raising constitutional claims).
8

9 **a. A petition for review is an inadequate remedy.**

10 Petitioner challenges her *present* detention as unlawful. A petition for review in the Ninth
11 Circuit cannot provide timely relief for unconstitutional custody occurring now. In *Jennings v.*
12 *Rodriguez*, the Supreme Court confirmed that district courts have habeas jurisdiction over
13 constitutional challenges to immigration detention, even where those challenges relate to
14 removal proceedings. 583 U.S. 281, 293-94 (2018). The Court distinguished between statutory
15 interpretation questions (which must proceed through petition for review) and constitutional
16 challenges (which are properly heard in habeas). Petitioner's Fourth and Fifth Amendment claims
17 fall squarely in the latter category. *Id.*³
18

19 This court has jurisdiction to reach the merits of Petitioner’s case.
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24 ³ Here, Petitioner challenges the constitutional authority underlying her initial seizure and ongoing detention.
25 Such threshold custody challenges are properly brought in habeas, as recognized in *Jennings*. *Marvan v. Slaughter*,
26 No. 25-cv-49, 2025 WL 1940043 (D. Mont. July 15, 2025), cited by Respondents, is distinguishable. In *Marvan*, the
court found it lacked jurisdiction because the government had recently served a Notice to Appear, commencing fresh
removal proceedings in which the petitioner could raise her claims before an Immigration Judge. *Id.* at *3-4.

1 **B. This Court should grant the relief requested because Respondents have violated**
2 **Petitioner’s Fourth Amendment rights from illegal arrest to the present.**

3 Pursuant to 8 CFR 287.8(c)(2)(iii)(A) an arresting officer is required to identify
4 themselves as an immigration officer authorized to execute an arrest and state that the person is
5 under arrest and the reason for the arrest. In the case of Petitioner, the arresting officers failed to
6 identify themselves as immigration officers and did not state the reason for Petitioner’s arrest.
7 See Return at 13-8 Ex H. 2-3. Petitioner did not cooperate with the arresting officers as she had
8 no reason to believe that they had the authority to arrest her. Although Respondent’s claim that
9 they identified Petitioner, Petitioner has stated that she asked why she was being stopped and
10 offered her license as proof of ID which the officer refused to look at, and the officer refused to
11 state why she was being arrested until she was forced into a van.
12

13 **Petitioner’s Fourth Amendment claims are not moot.**

14 Respondents claim to be presently detaining Petitioner pursuant to §1231(a), based on her
15 prior removal order. Return at pg. 4. However, the warrant issued states that she was eligible for
16 removal and was arrested and detained pursuant §212a6Ai, an alien present without admission or
17 parole for removal proceedings. No notice or evidence of custody re-determination related to the
18 removal order has been provided to Petitioner, her counsel, or the court. *See* II.C. *infra*. This
19 court can “neither accept . . . counsel's *post hoc* rationalizations for agency action nor supply a
20 reasoned basis for the agency's action that the agency itself has not given. *Nw. Envtl. Def. Ctr. v.*
21 *Bonneville Power Admin.*, 477 F.3d 668, 688 (9th Cir. 2007) (quoting *Burlington Truck Lines v.*
22 *United States*, 371 U.S. 156, 168 (1962), and *Bowman Transp., Inc. v. Ark.—Best Freight Sys.,*
23 *Inc.*, 419 U.S. 281, 285-86 (1974) (internal punctuation omitted)).
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1 Evidence provided shows only allegations under INA § 212 (a)(6)(A)(i) (presence without
2 lawful admission or parole). *See* NTA, Dkt. 12 Exh. A and I-213, Dkt 12 Exh. C. Petitioner’s
3 administrative warrant⁴ commands CBP officers to take Petitioner into custody “for removal
4 proceedings.” Warrant, Dkt 12 Exh. D. Individuals detained subject to a final removal order are
5 not subject to or eligible for removal proceedings without further procedure including a
6 reopening of the past proceedings. *See* 8 CFR § 1003.23. Respondents’ assertion of detention
7 pursuant to 8 U.S.C. §1231(a)(6) is incongruous with the charges established in the warrant and
8 represents an impermissible basis for arrest, given the prior deportation order. All available
9 evidence shows Respondents’ actual documented justification for their arrest and detention of
10 Petitioner was presence without lawful admission or parole. *See Nw. Env’tl. Def. Ctr.*, 477
11 F.3d at 668.

14 Respondents also allege that Petitioner’s Fourth Amendment claims impermissibly
15 challenge her *past* custody because (they allege) her *current* custody is premised on § 1231(a).
16 Petitioner’s *past* custody was her CBP arrest effected upon her initial arrival in 2018. *See* NTA
17 Dkt. 13-2 Exh. B. Petitioner raises no claims here related to that period of confinement.
18 Respondent’s present custody, challenged here, began on November 25 when she was stopped
19 and arrested in violation of arresting protocols and charged with and detained under false
20 administrative charges.
21

22 **3. The Government Cannot Cure an Unconstitutional Seizure Post Hoc**
23

1 Respondents' citations to identity carveouts to the exclusionary rule in criminal procedure
2 are inapposite.⁵ Petitioner is not seeking to obscure her identity or suppress evidence thereof. She
3 is seeking freedom from ongoing illegal detention which began when she was stopped and forced
4 out of her vehicle by officers who failed to identify themselves as immigration officers and failed
5 to indicate the reason for her arrest. Forcing Petitioner into handcuffs without any indication to
6 her why the arrest was happening. See Return at 13-8 Ex H. 2-3.

8 **C. The Court should grant the Writ on Count 2 because Respondents deprived
9 Petitioner of notice and a meaningful opportunity to be heard.**

10 It is well-established that the Due Process Clause of the Fifth Amendment to the U.S.
11 Constitution applies to "all 'persons' within the United States," irrespective of their immigration
12 status. *J. G. G. v. Trump*, 145 S. Ct. 1003, 1005 (2025) (citing *Reno v. Flores*, 507 U.S. 292306
13 (1993)); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Due process also requires notice and "the
14 opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v.*
15 *Eldridge*, 424 U.S. 319, 333 (1976) (internal citations omitted). Due process notice requirements
16 apply to immigrants in removal proceedings. See *United States v. Rivera-Valdes*, 2025 WL
17 2672555, at *12 (9th Cir. 2025) (en banc).

23
24 ⁵ For example, Respondents rely on *Barker v. Estelle*, 913 F.2d 1433, 1440 (9th Cir. 1990), and *James v. Reese*, 546
25 F.2d 325, 328 (9th Cir. 1976), for the proposition that a habeas challenge to pretrial detention becomes moot once a
26 conviction issues. Resp. Br. at 3. But those cases involved *criminal convictions*—adjudications on the merits finding
the petitioner guilty beyond a reasonable doubt. A conviction provides an independent legal basis for custody that
supersedes a defect in the arrest. The removal order here does not represent an independent determination that
supersedes the arrest; rather, it flows directly from the unconstitutional seizure.

1 If, as Respondent’s claim, they are detaining Petitioner under 8 U.S.C. § 1231, the Due
2 Process Clause required Respondents to provide notice and a meaningful opportunity for
3 Petitioner to be heard *before* they made an individualized determination about her custody
4 pursuant to 8 U.S.C. § 1231(a)(3). No such notice and opportunity were provided here.
5

6 Courts balance three factors to determine what process is due: (1) the private interest that
7 will be affected by the official action; (2) the risk of an erroneous deprivation of such interest
8 through the procedures used, and the probable value, if any, of additional or substitute procedural
9 safeguards; and (3) the Government’s interest, including the function involved and the fiscal and
10 administrative burdens that the additional or substitute procedural requirement would entail.
11 *Mathews*, 424 U.S. at 335. Here, all three factors strongly favor Petitioner.
12

13 **3. Petitioner has a strong private interest in her freedom from detention.**

14 The first factor strongly favors Petitioner. “Freedom from imprisonment . . . lies at the
15 heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. Thus,
16 “[d]etention, including that of a non-citizen, violates due process if there are not ‘adequate
17 procedural protections’ or ‘special justification[s]’ sufficient to outweigh one’s ‘constitutionally
18 protected interest in avoiding physical restraint.’” *Perera v. Jennings*, 598 F. Supp. 3d 736, 742
19 (N.D. Cal. 2022) (second alteration in original) (quoting *Zadvydas*, 533 U.S. at 690). The Ninth
20 Circuit has held that “[i]n the context of immigration detention, it is well-settled that ‘due
21 process requires adequate procedural protections to ensure that the government’s asserted
22 justification for physical confinement outweighs the individual’s constitutionally protected
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1 interest in avoiding physical restraint.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017)
2 (quoting *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)).

3 **4. Petitioner requests only the statutorily required procedural protections.**

4 The second and third Mathews factors also heavily favor Petitioners because Petitioner
5 requests only the procedural safeguards that are already enshrined in statute and regulations. For
6 Petitioner, detention “without making an individual determination as to whether such [detention]
7 is warranted carries a high risk of erroneous deprivation of liberty, and Respondents could hardly
8 argue that compliance with existing laws would be overly burdensome.” See *Jimenez*, 2025 WL
9 2430381 at *7. The procedural safeguards Petitioner seeks are (1) notice of Respondents’
10 intended custody determination and (2) opportunity to be heard in the custody determination
11 processes that Respondents are legally required to fulfill. *See id.* (finding *Mathews* factors favor
12 Petitioner who “only asks for Respondents to follow the . . . safeguards already in place.”)

13 Respondents infer that because evidence exists to establish that Petitioner would be a
14 flight risk, they are not required to follow due process. However the evidence Respondent are
15 relying on is not congruous with Petitioner’s current situation. Respondents have not provide
16 evidence that Petitioner was provided notice of her final hearing. Petitioner has established
17 herself in the community, has not sought to evade immigration, submitting herself to an
18 evaluation to be a sponsor for her nephew. See Ex A. Through which evaluation her in-abstentia
19 removal order was not flagged, leaving Petitioner ignorant to the fact that it existed. Petitioner
20 has a four-year-old U.S. Citizen child for home she has the sole responsibility to care for. Se
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1 Ex.C. Had a proper custody determination been made, these factors could have been taken into
2 consideration.

3 **a. Respondents did not provide Petitioner with a meaningful opportunity to be heard**
4 **prior to a custody determination under § 1231(a)(3)**

5
6 For Petitioner, these authorities require that she be given notice and an opportunity to be
7 heard before Respondents conduct an individualized custody determination regarding her
8 detention beyond the 90-day removal period. *See* 8 U.S.C. §§ 1231(a)(3), (6), 1357(a)(2); 8
9 C.F.R. §§ 241.4, 241.14, 287.3(d). This review is articulated at 8 C.F.R. § 241.4(a), (d). Since
10 she is over 180 days beyond her final removal order, only “the Executive Associate
11 Commissioner” or delegates “designated in writing” may make such a decision. 8 C.F.R. §
12 241.4(c)(2). And the qualified official must consider a variety of factors that go to flight risk and
13 danger to the community, including her ties to the United States. 8 C.F.R. § 241.4(f).

14
15 Respondents have no interest in detaining Petitioner in violation of her procedural rights. 8
16 U.S.C. § 1357(a)(2) requires that the individual arrested “shall be taken without unnecessary
17 delay” for further consideration of “their right to enter or remain in the United States.” Here,
18 record shows that Respondents never conducted an individualized custody determination which
19 purported to justify Petitioner’s continued custody, as required by 8 U.S.C. § 1357(a)(2). Nor did
20 they provide her with notice or the opportunity to heard before such a decision was made.

21
22 Although Respondents have pointed to evidence that Petitioner could be considered a flight risk, they
23 have not provided evidence that an individualized custody determination has been conducted by the
24 Executive Associate Commissioner. Additionally, no factors of Petitioner’s risk to the community
25

1 have been considered as required by 8 U.S.C. § 1231(a)(6). Respondents have not asserted *any*
2 lawful interest in detaining Petitioner, other than for her deportation, for which they have failed
3 to comply with the required process. *See generally* Return; *Addington v. Texas*, 441 U.S. 418,
4 426 (1979).
5

6 **b. Respondents did not provide notice of their custody authority**

7 Apart from Respondents' Return, neither Petitioner nor her immigration counsel have
8 received any notice of Respondents' decision to invoke their 8 U.S.C. § 1231 custody authority.
9 This failure, standing alone, is enough to show a due process violation.
10

11 Due process requires notice and an opportunity to be heard "at a meaningful time and in a
12 meaningful manner." *Armstrong*, 380 U.S. at 552; *see also Mathews*, 424 U.S. at 901.

13 Petitioner's custody in the post-removal order period is governed by 8 C.F.R. § 241.4, which
14 requires, in part, notice to the detained person regarding the decision to keep them in custody past
15 the presumptive 90-day removal period. 8 C.F.R. § 241.4(d). Again, no such notice has been
16 provided to her, or to her counsel. *See* 8 C.F.R. § 292.5(a) (requiring notice or service on the
17 attorney or representative of record).
18

19 The failure to provide notice in such circumstances violates the Due Process clause because
20 it "deprive[d] [Petitioner] of any way to meaningfully contest the basis for [her] detention." *See*
21 *Martinez v. McAleenan*, 385 F. Supp. 3d 349, 359-60 (S.D.N.Y. 2019). Petitioner's due process
22 rights were violated by the lack of notice related to her custody (re)determination and the writ
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1 can be granted on this ground alone.⁶ See *M-L-G-G- v. Wamsley*, Case No. 6:25-cv-02012-AA
2 (D. Or., 2025) (granting habeas where, as here, Petitioner was ordered removed as a child and
3 detained after removal order became period and removal period lapsed).

4
5 **c. Respondents risk violating Petitioner’s Due Process rights, denying**
6 **Petitioner the ability to care for her four-year-old child, for whom she is the**
7 **sole parent and caregiver.**

8 Continued detention risks further violations of Petitioner’s due process rights with regard
9 to her responsibilities owed to her child. The government has proposed that Petitioner could be
10 removed in the next four weeks. However, Petitioner cannot be removed without her minor child
11 who is a U.S. Citizen. Prior to removal petitioner’s U.S. citizen child will need a passport.
12 Respondent’s have not provided a timeline for when a passport can be issued to Petitioner’s
13 child. The indefinite detention away from her minor child puts the minor child at risk without his
14 mother caring for him.

15 **II. CONCLUSION**

16 Respondents have not presented evidence that their arrest was not procedurally illegal, as
17 they failed to identify themselves and state a reason for the arrest prior to forcing the Petitioner
18 out of her vehicle, into handcuffs and an unmarked van. Respondents have failed to state the
19 proper authority for Petitioner’s continued detention. Additionally, Respondents make no
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25 ⁶ Any later attempts to provide notice would not cure the initial violation, since “the operative question in deciding
26 whether to issue the writ is whether the detention was lawful *at the time the petition was filed.*” See *Martinez v.*
McAleenan, 385 F. Supp. 3d 349, 365-66 (S.D.N.Y. 2019) (emphasis in original).

1 showing they followed the process due for detention pursuant to 8 U.S.C. §1231 this Court
2 should “dispose of the matter as law and justice require” by granting the writ. 28 U.S.C. § 2243.
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6 Dated: December 30, 2025

7
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