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

Suraj Suraj,

Petitioner,
v.

PAMELA BONDI, United States Attorney
General;
KRISTI NOEM, Secretary of U.S. Department
of Homeland Security;
TODD LYONS, Acting Director, U.S.
Immigration and Customs Enforcement;
LAURA HERMOSILLA, Field Office Director,
ICE Seattle Field Office;
BRUCE SCOTT, Warden, Northwest ICE
Processing Center;

Case No.: 2:25-cv-02699-RAJ

Agency File Number: 

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

Noted for Consideration January 16, 2025

PETITIONER'S TRAVERSE AND RESPONSE TO RETURN

PETITION FOR WRIT OF
HABEAS CORPUS
(CASE NO.2:25-cv-02699-RAJ)

Page 1

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INTRODUCTION

The court must grant Petitioner's writ of habeas corpus unless the Respondents show cause why it should not. 28 U.S.C. § 2243. Respondents' return must certify the "true cause" of their deprivation of Petitioner's liberty. *Id.*, see Federal Respondents' Return (hereinafter "Return"), ECF 8.

Respondents claim to be detaining Petitioner pursuant to 8 U.S.C. § 1225(b). However, they have failed to present evidence to justify Petitioner's detention under this statute. Additionally, Respondents have failed to present evidence that they did not violate Petitioner's fourth amendment rights, and his fifth amendment right to due process.

The Writ of habeas corpus should be granted as Petitioner's arrest and subsequent detention violated both his fourth amendment and fifth amendment rights.

Respondents' custody of Petitioner has been unlawful from the moments leading up to his arrest.

From the moment of ICE questioning Petitioner, every moment of Petitioner's subsequent custody was unlawful. The questions the Court must resolve in Petitioner's habeas corpus proceedings are (1) whether Respondents' exercise of executive detention was unlawful and (2) if it was, what remedy is Petitioner due. To frame it another way, if Petitioner's arrest and subsequent detention as a result of that arrest was unlawful, does habeas provide a remedy for his unlawful executive detention? The answer is yes, because the unlawful stop and arrest are the only basis by which Respondents asserted their custody authority over Petitioner. When Respondents arrested and detained Petitioner, they were required to have a lawful basis to do so. This Court squarely has equitable authority to determine whether such a lawful basis existed and, if not, to grant appropriate remedies. See *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (the

habeas statute is “shaped to guarantee the most fundamental of all rights, [in order] to provide an effective and speedy instrument by which judicial inquiry may be had into the legality of the detention of a person”).

1. Respondents conducted a stop and seizure of Petitioner without reasonable suspicion.

Under the Fourth Amendment and their own regulations, Respondents may not conduct a stop of Petitioner without reasonable suspicion. Because Petitioner was stopped by Respondents without a qualifying reasonable suspicion, based on specific articulable facts, the Court should grant the Petition on Counts One, and Two. Pursuant to 8 U.S.C. §§ 1357(a)(1) and (3), immigration officers are authorized to conduct stops and question an individual “believed to be [a noncitizen] as to his right to be or to remain in the United States.” However, the Fourth Amendment requires that such immigration stops, except those “at the border and its functional equivalents,” must be based on reasonable suspicion. *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975); see also *Benitez-Mendez v. I.N.S.*, 752 F.2d 1309, 1311 (9th Cir. 1983), amended, 760 F.2d 907 (9th Cir. 1983). Under federal regulations, before even briefly detaining an individual for questioning, an immigration officer must have “a reasonable suspicion, based on specific articulable facts, that the person being questioned is, or is attempting to be, engaged in an offense against the United States or is [a noncitizen] illegally in the United States.” 8 C.F.R. § 287.8(b)(2). Race or apparent ethnicity, standing alone, cannot form the basis for reasonable suspicion. *Brignoni-Ponce*, 422 U.S. at 886-87. Similarly, reasonable suspicion may not be based solely on “[a] person’s mere propinquity to others independently suspected of [unlawful] activity.” *Perez Cruz v. Barr*, 926 F.3d 1128, 1138 (9th Cir. 2019).

2. Respondents arrested Petitioner without probable cause. Petitioner has a constitutional, statutory, and regulatory right to be free from immigration arrest without probable cause.

Because Respondents arrested Petitioner without the requisite probable cause, the Court should grant the Petition on Counts One, and Two. Respondents' warrantless arrest of Petitioner without probable cause of an immigration violation is in violation of their statutory and regulatory authority.¹⁴ Under the INA, an immigration officer may conduct a warrantless arrest only if that officer has "reason to believe" that an individual is in the United States in violation of the immigration laws and is "likely to escape before a warrant can be obtained for [their] arrest." 8 U.S.C. § 1357(a)(2). A "reason to believe" is equivalent to "the constitutional requirement of probable cause." *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980). 8 C.F.R. § 287.8(c)(2)(i) specifies that before making a warrantless arrest, an immigration officer must have probable cause "to believe that the person to be arrested has committed an offense against the United States or is [a noncitizen] illegally in the United States."

Here, Respondents had no justification for Petitioner's warrantless arrest – nor any probable cause of an immigration violation that could have justified their issuance of an administrative warrant after the fact. When Petitioner asked why he was being arrested, the ICE officer responded, "Because you are asking too many questions." *See* Petitioner's Declaration ¶ 10. The record thus shows that Respondents conducted a warrantless arrest of Petitioner despite having no reasonable suspicion – let alone probable cause – that he was unlawfully in the United States. A warrantless immigration arrest "must be based on consent or probable cause" that the person is in fact a noncitizen. *Brignoni-Ponce*, 422 U.S. at 881–82; *id.* at 884 (explaining that the

“broad congressional power over immigration ... cannot diminish the Fourth Amendment rights of citizens who may be mistaken for [noncitizens]”).

Based on the facts in the record, Respondents had no knowledge of the existence of Petitioner leading up to the arrest of their target. They carried out no investigation as to Petitioner’s immigration status, yet claimed he had been arrested on Immigration Violations. Thus the only conclusion is that his warrantless arrest, which was part of Respondents’ widespread sweeps aiming to meet quotas, was unlawfully based solely on his apparent race and ethnicity and proximity to their initial target. It is clear that an immigration officer may not establish probable cause on the basis of race alone. *Brignoni-Ponce*, 422 U.S. at 886-87. Because Respondents arrested Petitioner without probable cause to believe that he was unlawfully in the United States, the Court should grant the writ on Counts One and Two.

Petitioner’s warrantless arrest was independently illegal because Respondents had no probable cause that he was a flight risk, such that Respondents had no time to reasonably obtain a warrant. The regulation at 8 C.F.R. § 287.8(c)(2)(ii) requires that before making a warrantless arrest, an immigration officer must make an individualized determination that an individual is “likely to escape before a warrant can be obtained.” See also *Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995) (requiring officers to have “grounds for a reasonable belief that they were particularly likely to escape”). Respondents arrested Petitioner while entering the home of their target to retrieve his wallet and phone. When questioned and detained Petitioner did not make any efforts to run or evade the Immigration Officers. As Respondents had no evidence at all to support a probable cause finding that Petitioner was a flight risk, the Court should grant the writ on Petitioner’s Counts One and Two.

The Court should additionally grant the writ under Count Two, based on Respondents' violation of the Nava Broadcast Policy's provisions on warrantless arrests. Pursuant to this policy, ICE is required to consider a delineated set of factors before effectuating a warrantless arrest. In particular, before concluding whether or not the person is at risk of fleeing before a warrant is obtained, ICE must consider "the totality of circumstances," including "the ICE Officer's ability to determine the individual's identity, knowledge of that individual's prior escapes or evasions of immigration authorities, attempted flight from an ICE Officer, ties to the community (such as a family, home, or employment) or lack thereof, or other specific circumstances that weigh in favor or against a reasonable belief that the subject is likely to abscond." See Settlement Agreement, *Castañon Nava et al. v. Dep't of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.).¹ In conducting Petitioner's arrest, the record shows that Respondents' agents had no evidence weighing toward flight risk. Petitioner's warrantless arrest without consideration of the factors required by the Nava Broadcast Policy is again a violation of the Accardi doctrine and the APA. See *Accardi*, 347 U.S. at 266-268; 5 U.S.C. § 706(2)(A).

3. Respondents have continued to detain Petitioner based solely on information derived from his unlawful stop and arrest.

Petitioner's custody under 8 U.S.C. § 1226(a) is not lawful. Even if it were, however, the Court should still grant the writ because by Respondents' own account, Respondents' assertion of Petitioner's immigration status is based solely on information derived from evidence that was the fruit of his unlawful stop and arrest. Respondents relied on information that was solely the

¹ Notably, the remedy for those arrested in violation of this agreement within the jurisdiction of the Chicago Field Office is prompt release from custody. *Castañon Nava v. Dep't of Homeland Sec.*, 2025 WL 2842146, at *5 ("Class members who are arrested contrary to the terms of the Agreement and are in ICE custody shall be released from custody on their own recognizance without posting bond as soon as practicable" unless subject to mandatory detention under the INA).

fruit of Petitioner's unlawful arrest to obtain his immigration records and to seek to justify his continued custody. Because Petitioner's "arrest and detention were blatantly unlawful from the start, the only commensurate and appropriate equitable remedy to even partially restore [him] is to immediate[ly] release [him] and enjoy the Government from similar transgressions." See *Martinez*, 385 F.Supp.3d at 373.

"Under [the exclusionary] rule, evidence obtained in violation of the Fourth Amendment cannot be used in a criminal proceeding against the victim of the illegal search and seizure", nor may "the fruits of the illegally seized evidence" be considered. *United States v. Calandra*, 414 U.S. 338, 347 (1974). The exclusionary rule is intended "to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures", *id.*, as well as to serve "the vital function of preserving judicial integrity", *Adamson v. Comm'r*, 745 F.2d 541, 546 (9th Cir. 1984). The Ninth Circuit has explicitly applied the exclusionary rule in civil proceedings where, as here, "evidence is obtained by deliberate violations of the fourth amendment, or by conduct a reasonable officer should know is in violation of the Constitution", *Adamson*, 745 F.2d at 545, including where an "egregious" violation of the Fourth Amendment occurs in an immigration arrest based on the subject's race, *Gonzalez-Rivera v. I.N.S.*, 22 F.3d 1441, 1452 (9th Cir. 1994) (concluding that "the officers' conduct in this case constituted a bad faith, egregious constitutional violation that warrants the application of the exclusionary rule"). See also *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1050 (1984) (clarifying that its decision did not deal "with egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness"). Because Respondents' stop and arrest of Petitioner was an egregious violation of his Fourth Amendment rights, the

exclusionary rule prevents Respondents from using any evidence obtained solely from that arrest for any subsequent custody determination.

Respondents may not use information gained through their unlawful seizure of Petitioner as the basis for their subsequent custody determination and call it lawful. See *Martinez*, 385 F. Supp. 3d at 359-60; *Lopez-Mendoza*, 468 U.S. at 1043; *Cabrera*, No. 24-CR-02180-JAH, 2025 WL 1564872, at *5.17 Nor can the government cure the illegality of an arrest by producing retroactive documents. *Martinez*, 385 F. Supp. 3d at 359-60 (granting a writ of habeas corpus finding that Petitioner's detention was unconstitutional at the time he was taken into custody and such detention cannot be 'fixed' post hoc); *Di Primo Decl.* ¶ 8 (purporting to retroactively justify Petitioner's arrest with pre-signed warrant approved by remote supervisor). The Supreme Court has a longstanding line of precedents finding that when a deprivation of liberty is achieved by methods that offend Due Process and conduct that shocks the conscience, that detention is unlawful. *Rochin v. California*, 342 U.S. 165, 172-174 (1952) (reversing a judgment where a conviction was obtained by methods that offend the Due Process Clause and "conduct that shocks the conscience"). This is exactly the situation for Petitioner, particularly as any information gained by Respondents subsequent to Petitioner's unlawful arrest was further in violation of due process owed to Petitioner.

Respondents may not lawfully detain Petitioner under 8 U.S.C. § 1225(b)(2)(A).

Respondents have no lawful basis to apply 8 U.S.C. § 1225(b)(2)(A) as their custody authority to detain Petitioner. Respondents have adopted a new blanket policy to classify any noncitizens who previously arrived in the United States without documentation as subject to mandatory detention under 8 U.S.C. § 1225(b)(2). ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission, AILA Doc. No. 25071607, July 8, 2025,

available at <https://www.aila.org/library/ice-memo-interim-guidanceregarding-detention-authority-for-applications-for-admission>. Dozens of federal courts have rejected this policy as unlawful, finding that 8 U.S.C. § 1225(b)(2) does not apply to individuals such as Petitioner who are already residing in the United States and may not be detained without an individualized custody determination pursuant to 8 U.S.C. § 1226. See, e.g., *J.Y.L.C. v. Bostock*, No. 3:25-cv-02083AB (D.Or. Nov. 12, 2025) (citing over 30 habeas corpus cases across the United States rejected 8 U.S.C. § 1225(b)(2) as an unlawful custody application); see also Kyle Cheney, “More than 100 judges have ruled against the Trump admin’s mandatory detention policy,” POLITICO, Oct. 31, 2025 04:29 PM, <https://www.politico.com/news/2025/10/31/trump-administration-mandatory-detentiondeportation00632086>. Moreover, courts have similarly found that sections 1226(a) and 1225(b)(2) are mutually exclusive, and the government may not contend that a person who has resided in the United States for months or even years is now an “applicant for admission” under §1225(b)(2). *Martinez v. Hyde*, 792 F. Supp. 3d 211, 223 (D. Mass. 2025) (concluding § 1225(b)(2) “simply had no application” in case of noncitizen detained who had entered the U.S. more than a year before); *Patel v. Crowley*, 2025 WL 2996787, at *5-9 (N.D. Ill. Oct. 24, 2025) (granting a habeas corpus petition after finding the BIA holding on *Yajure Hurtado* unpersuasive and stating that “virtually all courts that have considered this issue have rejected the reasoning” that a person “seeking admission” is synonymous with an “applicant for admission”); see also *Jennings v. Rodriguez*, 583 U.S. 281, 289, 138 S. Ct. 830, 838 (2018) (distinguishing § 1225, which applies to noncitizens “seeking admission into the country”, from § 1226, authorizing detention for certain noncitizens “already in the country”).

Respondents may not simply decide that §1225(b)(2) applies without at least some factual basis to assert that the Petitioner is an “applicant for admission.” See *Patel*, 2025 WL

2996787, at *6. Instead, the only basis they could have—but for which they have no facts to support—would be 8 U.S.C. § 1226(a), for which they must conduct an individualized custody determination. *Lopez Benitez*, 2025 WL 2371588, at *10 (emphasis added).

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant the writ of habeas corpus and issue the remedy that “law and justice require” in order to protect Petitioner from future unlawful deprivations of his liberty and his fundamental rights. See 8 U.S.C. § 2243.

Dated: 01/20/2026

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