

Magistrate Judge S. Kate Vaughn

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

J.A.M.,

Petitioner,

v.

LAURA HERMOSILLO *et al.*,

Respondents.

Case No. 2:25-cv-02736-SKV

RESPONDENTS' RETURN

Noting Date: January 20, 2026

I. INTRODUCTION

This Court should Deny Petitioner J.A.M.'s Petition for Writ of Habeas Corpus. Dkt. No. 1 ("Pet."). It is indisputable that Petitioner is subject to a reinstated order of removal, detained pursuant to 8 U.S.C. § 1231(a), and that he does not have legal status to remain in the United States. Instead, Petitioner seeks release from immigration detention based on various claims concerning his arrest and detention. This Court lacks jurisdiction to review most of these claims. Furthermore, Petitioner's detention is lawful.

The reinstatement of Petitioner's removal order, and subsequent detention, does not violate due process. *See Morales-Izquierdo v. Gonzales*, 486 F.3d 484, 497–98 (9th Cir. 2007)

1 (reinstatement meets due process); *Demore v. Kim*, 538 U.S. 510, 523 (2003) (detention is a
2 constitutionally permissible aspect of the government's enforcement of the immigration laws).

3 Accordingly, Federal Respondents respectfully request that the Court deny the Petition.
4 Federal Respondents do not believe that an evidentiary hearing is necessary.

5 II. BACKGROUND

6 A. Legal Background

7 The Immigration and Nationality Act ("INA") governs the detention and release of
8 noncitizens during and following their removal proceedings. *See Johnson v. Guzman Chavez*, 594
9 U.S. 523, 527 (2021). This includes an expedited process for noncitizens who reenter the United
10 States without authorization after having already been removed. *See* 8 U.S.C. § 1231(a)(5)
11 (reinstatement of removal orders).

12 If the Attorney General finds that an alien has reentered the United States illegally
13 after having been removed or having departed voluntarily, under an order of
14 removal, the prior order of removal is reinstated from its original date and is not
15 subject to being reopened or reviewed, the alien is not eligible and may not apply
16 for any relief under this Act, and the alien shall be removed under the prior order
17 at any time after the reentry.

18 *Id.*; *see also* 8 C.F.R. §§ 241.8, 1241.8 (procedures for reinstating removal order). If the alien
19 expresses a fear of returning to the designated country, "the alien shall be immediately referred to
20 an asylum officer for an interview to determine whether the alien has a reasonable fear of
21 persecution or torture" pursuant to 8 C.F.R. § 208.31. 8 C.F.R. § 241.8(e). If it is determined that
22 the alien has not established a reasonable fear of persecution or torture, the asylum officer will
23 inform the alien in writing of the decision and ask whether the alien wishes to have an immigration
24 judge review the negative decision. 8 C.F.R. § 208.31(f). If requested, the immigration judge will
conduct a de novo review. 8 C.F.R. § 1208.31(g). If the immigration judge concurs with the
asylum officer's determination that the alien does not have a reasonable fear of persecution or

1 torture, the immigration judge will return the case to DHS for removal of the alien. 8 C.F.R.
2 § 1208.31(g)(1).

3 **B. Factual Background**

4 Petitioner is a Mexican national who unlawfully entered the United States in 2005.
5 Hubbard Decl., ¶¶ 4, 5; Lambert Decl., Ex. A, Form I-213. U.S. Customs and Border Patrol
6 served Petitioner with a Notice of Expedited Removal and removed him the same day. Hubbard
7 Decl., ¶ 5; Lambert Decl., Ex. B, Notice and Order of Expedited Removal; Ex. C, Notice to Alien
8 Ordered Removed/Departure Verification. Petitioner subsequently reentered the United States
9 without inspection or parole at an unknown date at an unknown location. Hubbard Decl., ¶ 6.

10 In 2016, Petitioner sought a U-visa as a derivative beneficiary on his spouse's U-visa
11 petition filed with U.S. Citizenship and Immigration Services ("USCIS"). Pet., ¶ 65; Hubbard
12 Decl., ¶ 7. USCIS denied his spouse's petition in 2022. Hubbard Decl., ¶ 7. However, his spouse's
13 petition has been subsequently remanded back to USCIS after an administrative appeal. The
14 petition remains pending. *Id.*

15 On December 7, 2025, ICE arrested Petitioner during a targeted immigration enforcement
16 operation. Hubbard Decl., ¶ 8; Lambert Decl., Ex. D, Form I-213; Ex. E, Warrant for Arrest; Ex.
17 F, Record of Sworn Statement. Pursuant to 8 U.S.C. § 1231(a)(5), DHS reinstated the prior order
18 of removal. Lambert Decl., Ex. G, Notice of Intent/Decision to Reinstate Prior Order. Because
19 Petitioner claimed fear of return to Mexico, ICE submitted a reasonable fear referral to USCIS.
20 Hubbard Decl., ¶ 8. On December 30, 2025, the USCIS officer determined that Petitioner did not
21 have a reasonable fear of return to Mexico. *Id.*, ¶ 9. At Petitioner's request, an immigration judge
22 conducted a de novo review of Petitioner's fear claim. *Id.*, ¶ 10. The immigration court held a
23 hearing where Petitioner, represented by counsel, had the opportunity to present argument and
24

1 evidence to support his claim. *Id.* The immigration judge concurred with the negative fear finding
 2 and returned the case to DHS for Petitioner's removal. *Id.*

3 On January 6, 2026, Petitioner filed a Petition for Review with the Ninth Circuit Court of
 4 Appeals and a temporary stay of removal has issued. *A.M. v. Bondi*, No. 26-85, Dkt. No. 6 (9th
 5 Cir.) (temporary stay of removal is in effect until further order of the court).

6 III. LEGAL STANDARD

7 It is axiomatic that "[t]he district courts of the United States . . . are courts of limited
 8 jurisdiction. They possess only that power authorized by Constitution and statute." *Exxon Mobil*
 9 *Corp. v. Allopah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). "[T]he
 10 scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present
 11 day." *Dep't of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1974 n. 20 (2020). Title 28
 12 U.S.C. § 2241 provides district courts the authority to grant habeas relief "within their respective
 13 jurisdictions."

14 To warrant a grant of habeas corpus, the burden is on the petitioner to prove that his or
 15 her custody is in violation of the Constitution, laws, or treaties of the United States. *See* 28
 16 U.S.C. § 2241(c)(3); *Lambert v. Blodgett*, 393 F.3d 943, 969 n.16 (9th Cir. 2004).

17 IV. ARGUMENT

18 A. Petitioner's detention does not violate due process.

19 Petitioner's detention is constitutionally and statutorily lawful. First, Petitioner is detained
 20 pursuant to 8 U.S.C. § 1231(a)(6) because he is subject to a reinstated order of removal.¹ *Johnson*,

21 _____
 22 ¹ Federal Respondents acknowledge that Petitioner has a pending PFR. In non-reinstatement of removal order cases,
 23 an administrative order is not considered final while a PFR with a stay or removal is pending. 8 U.S.C.
 24 § 1231(a)(1)(B)(ii). However, undersigned counsel does not have access to what the PFR is challenging or if it
 challenges the underlying removal order or the negative fear determination. However, Section 1231(a)(5) explicitly
 prohibits aliens from seeking review or relief from the order after it is reinstated following unlawful reentry. *Johnson*,
 594 U.S. at 535. Thus, Petitioner's order should be considered "final" even if there is a stay in place by the Ninth
 Circuit while Petitioner challenges the negative fear determination. *See id.*, a 539 ("[R]emoval orders and

1 594 U.S. at 533-34 (a reinstated order of removal is administratively final); *see also Padilla-*
2 *Ramirez v. Bible*, 882 F.3d 826, 830-33 (9th Cir. 2017) (finding that detention during withholding
3 only proceedings is pursuant to Section 1231 and not Section 1226).

4 Petitioner incorrectly asserts that his detention violates due process. Pet., ¶ 119. But
5 Petitioner's detention is lawful and based on his prior order of removal. He provides no legal
6 support that a pre-detention determination concerning flight risk or a danger to the community
7 must be made before detaining someone who unlawfully reentered the United States after a prior
8 removal, leading to a reinstatement of the prior removal order. Unlike in other cases recently
9 considered by district courts, DHS did not previously release Petitioner from immigration
10 detention into the United States; DHS removed Petitioner from the United States. He chose to
11 return unlawfully and without permission.

12 Petitioner's assertion that due process requires pre-detention procedures because of his
13 spouse's pending U visa petition is untenable. As described above, USCIS denied the petition in
14 2022. Since that time, the petition has been remanded back to USCIS because of an administrative
15 appeal. But even though the petition remains pending, the petition has no relevance to his detention
16 or his removability. The filing of a U visa petition "has no effect on ICE's authority to execute a
17 final order . . ." 8 C.F.R. § 214.14(c)(1)(ii). To hold that a pending U visa petition grants
18 additional procedures prior to detention or removal would improperly equate the filing of a U visa
19 petition with a of custody determination by DHS – which has no basis in law.

20 Petitioner's detention comports with due process as he is subject to a reinstated order of
21 removal pursuant to 8 U.S.C. § 1231(a)(5). Petitioner does not dispute that he was previously
22

23 _____
24 withholding-only proceedings address two distinct questions. As a result, they end in two separate orders and the
finality of the order of removal does not depend in any way on the outcome of the withholding-only proceeding.”).

1 removed from the United States. This prior removal order provides probable cause for his
2 continued detention.

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

5 Petitioner’s claims concerning his stop and arrest by immigration officers are not
6 cognizable in this habeas action. *Marroquin Salazar v. Noem*, No. 5:25-cv-02367, 2025 WL
7 3535050, at *1 (C.D. Cal. Dec. 8, 2025) (adopting and quoting the Report & Recommendation,
8 attached hereto as the “*Marroquin-Salazar R&R*”). Petitioner asserts that his arrest violated the
9 Fourth Amendment because he was allegedly seized without probable cause (Pet., ¶¶ 77-80); and
10 that he was allegedly seized “based solely on race” (Pet., ¶¶ 81-83). Petitioner seeks his release
11 from immigration custody. Pet., Prayer for Relief. But even if he could establish any of his claims
12 – which Federal Respondents do not concede, they should not be brought via habeas and release
13 would not be an appropriate form of relief.

14 Petitioner’s current custody flows not from his arrest and initial post-arrest detention, but
15 from the authority of the Immigration and Nationality Act (“INA”). *See, e.g.*, 8 U.S.C. §
16 1225(b)(2). The legality of Petitioner’s arrest is not presently relevant and thus cannot be the basis
17 for habeas relief. The habeas statute allows a petitioner who is “in custody” to challenge that
18 custody on various grounds, 28 U.S.C. § 2241(c), including that “[h]e is in custody in violation of
19 the Constitution or laws or treaties of the United States.” 28 U.S.C. §2241(c)(3). The statute is
20 written in the present tense, making clear that Section 2241 only allows a petitioner to challenge
21 his current custody, not his past custody. *See Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (“the
22 essence of habeas corpus is an attack by a person *in custody* upon the legality of *that custody*”
23 (emphasis added)).
24

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 Finally, the remedy for an unlawful arrest is the suppression of evidence obtained
18 therefrom, not release from custody. *See INS v. Lopez-Mendoza*, 468 U.S. 1032, 1040-41 (1984);
19 *United States v. Garcia-Beltran*, 443 F.3d 1126, 1131-32 (9th Cir.), cert. denied, 549 U.S. 935
20 (2006); *see also Martinez-Medina v. Holder*, 673 F.3d 1029, 1033-34 (9th Cir. 2011) (exclusionary
21 rule applies in civil removal proceedings only when the Fourth Amendment violation is egregious).
22 “The ‘body’ or identity of a defendant or respondent in a criminal or civil proceeding is never itself
23 suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search,
24

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.

1 Wash. Oct. 6, 2016) (dismissing petition challenging immigration detainee’s arrest on Fourth
 2 Amendment grounds where detainee did not dispute that he was subject to final order of removal,
 3 and his “only assertion [was] that he should be released because his arrest violated the Fourth
 4 Amendment”; “even if petitioner’s arrest amounts to an egregious Fourth Amendment violation,
 5 he is not entitled to habeas relief”), report and recommendation adopted, 2016 WL 6892547 (W.D.
 6 Wash. Nov. 22, 2016); *Nyuwa v. Gurule*, 2014 WL 12984435, at *1 (D. Ariz. June 13, 2014) (“It
 7 is doubtful that Petitioner’s arrest was unlawful. But even if it was, his allegedly unlawful arrest
 8 does not invalidate his current immigration detention because ‘the “body” or identity of a
 9 defendant in a criminal or civil proceeding is never itself suppressible as the fruit of an unlawful
 10 arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred.’” (*quoting*
 11 *Lopez-Mendoza*, 468 U.S. at 1039)).

12 **C. Petitioner’s Administrative Procedure Act claims must be dismissed for lack of**
 13 **subject matter jurisdiction.**

14 Petitioner seeks to challenge his detention on grounds that it violates Section 706(2) of the
 15 Administrative Procedure Act (“APA”). Pet., ¶¶ 84-107. Petitioner’s APA claims fail because
 16 such claims are only available when “there is no other adequate remedy” available, 5 U.S.C. § 704,
 17 which is not true here given the availability of habeas claims alleging constitutional or legal error.
 18 The Supreme Court has explained that “[w]hen Congress enacted the APA to provide a general
 19 authorization for review of agency action in the district courts, it did not intend that general grant
 20 of jurisdiction to duplicate the previously established special statutory procedures relating to
 21 specific agencies.” *Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988).

22 That is true here. A complete system for review of immigration court decisions is part of
 23 the statutory scheme governing removal, the INA. In *Marcello v. Bonds*, the Supreme Court
 24 examined whether the INA’s provisions supplanted the APA and concluded “that Congress was

1 setting up a specialized administrative procedure applicable to deportation hearings” which, while
2 drawing from the APA, was specially “adapt[ed] . . . to the particular needs of the deportation
3 process.” 349 U.S. 302, 308 (1955). And while the federal courts’ habeas jurisdiction to review
4 discretionary immigration determinations is limited, *see* 8 U.S.C. § 1252(a)(2)(B), that does not
5 mean that habeas remedies are “inadequate” for purposes of the APA, because the APA itself
6 contains a similar provision prohibiting judicial review of “agency action [that] is committed to
7 agency discretion by law,” 5 U.S.C. § 701(a)(2). Accordingly, the APA does not provide a separate
8 avenue for review of Petitioner’s unlawful arrest or detention claims.

9 Moreover, to be reviewable under the APA an action must be a “final agency action,”
10 which is to say that it is the “consummation of the agency’s decision-making process.” *See Bennett*
11 *v. Spear*, 520 U.S. 154, 177–78 (1997). Administrative detention for purposes of removal
12 proceedings is not within that category because it is only an intermediary step in the process. *See*
13 *Gamez Lira v. Noem*, 2025 WL 2581710, at *4 (D.N.M. Sept. 5, 2025). Accordingly, Petitioner’s
14 claims based on alleged APA violations should be denied.

15 To the extent that this Court looks at the merits of the APA claims, Petitioner has not
16 demonstrated that ICE arbitrarily detained him or exceeded its immigration detention authority in
17 doing so. Petitioner reentered the United States unlawfully. ICE detained him and reinstated the
18 prior order of removal pursuant to 8 U.S.C. § 1231(a)(5). Petitioner has not articulated how his
19 detention violates any relevant regulation or even demonstrated how his detention purportedly is
20 contrary to ICE’s Policy Number 11005.4, Interim Guidance on Civil Immigration Enforcement
21 Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits,
22 available at <https://www.ice.gov/doclib/foia/policy/11005.4.pdf> (last visited Jan. 13, 2026)
23 (“Policy 11005.4”).
24

1 Accordingly, Petitioner's APA claims should be denied.

2 **D. Section 1252(g) precludes this Court's review of Petitioner's challenge to ICE's change**
 3 **in policy as applied to him.**

4 Petitioner challenges his detention, which is a result of ICE's decision to reinstate his
 5 removal order, by asserting that ICE improperly rescinded a prior policy that limited immigration
 6 enforcement of U visa petitioners. Pet., ¶¶ 108-116. On January 20, 2025, ICE issued ICE Policy
 7 11005.4, which rescinded and superseded ICE Policy 11005.3. While Policy 11005.3 was in place,
 8 it required ICE employees, "absent exceptional circumstances" to "refrain from taking civil
 9 immigration enforcement action against known beneficiaries of victim-based immigration benefits
 10 and those known to have a pending application for such benefits." ICE Policy 11005.3, Using a
 11 Victim-Centered Approach with Noncitizen Crime Victims, *available at*
 12 https://www.ice.gov/doclib/foia/policy/11005.3_UsingVictimCenteredApproachNoncitizenVicti
 13 [ms.pdf](https://www.ice.gov/doclib/foia/policy/11005.3_UsingVictimCenteredApproachNoncitizenVicti) (last visited Jan. 13, 2026). But Petitioner's challenge is solely to invalidate his detention
 14 and reinstatement of removal – he seeks no specific relief asking this Court to require ICE to apply
 15 the prior policy. Thus, this Court lacks jurisdiction to review this claim. 8 U.S.C. §§ 1252(a)(5),
 16 (g); *see also D'Ambrosio v. Scott*, 784 F. Supp. 3d 699, 704 (D. Vt. 2025) (finding that an argument
 17 that a removal order was unlawful because it violated ICE Policy 11005.3 to be an "indirect"
 18 challenge to a final order of removal that district courts are foreclosed from adjudicating).

19 **CONCLUSION**

20 For the foregoing reasons, this Court should deny the Petition.

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1 DATED this 13th day of January, 2026.

2 Respectfully submitted,

3 CHARLES NEIL FLOYD
4 United States Attorney

5 s/ Michelle R. Lambert

6 MICHELLE R. LAMBERT, NYS #4666657
7 Assistant United States Attorney
8 United States Attorney's Office
9 1201 Pacific Avenue, Suite 700
10 Tacoma, WA 98402
11 Phone: 253-428-3824
12 Fax: 253-428-3826
13 Email: michelle.lambert@usdoj.gov

14 *Attorneys for Federal Respondents*

15 *I certify that this memorandum contains 3,327*
16 *words, in compliance with the Local Civil Rules.*