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**II. RESPONDENTS' VERSION OF THE FACTS AND WHY THIS COURT
SHOULD NOT ACCEPT IT**

Respondent's evidence lacks both completeness and authenticity and the declarations Respondents have submitted are provided by individuals with no first-hand knowledge of the events described in any of the documents they declare to be authentic. These individuals are:

- Deportation Officer ("DO") Michael Hardy. Officer Hardy prepared and signed or initialed the following forms:
 - Return Exhibit D: DHS form I-213, Record of Deportable/Inadmissible Alien, dated December 7, 2025.
 - RETURN EXHIBIT G: DHS form I-871, Notice of Intent/Decision to Reinstate Prior Order, dated December 7, 2025
 - RETURN EXHIBIT C (pages 2-3) DHS form I-296, Notice to Alien Ordered Removed/Departure Verification (interpretation certificate), dated December 7, 2025, certifying he's fluent in Spanish and English and he'd read two pages of information from form M-488, Information about Reasonable Fear Interview to petitioner in Spanish.
- Supervisory Detention and Deportation Officer ("SDDO") J. Tobias: According to RETURN EXHIBIT D, SDDO Tobias reviewed the evidence and signed RETURN EXHIBIT G, the reinstatement order Form on I-871) on Dec 7, 2025.
- DO Armando Meneses Jr.: Completed RETURN EXHIBIT F, Record of Sworn statement dated December 7, 2025, by writing "no" to record the petitioner's response as to whether he would give a statement.

- 1 • ASDDO A. (signature illegible): Signed and issued RETURN EXHIBIT E, DHS form I-200,
2 Warrant for Arrest of Alien, dated December 7, 2025, purporting to determine there was
3 probable cause to arrest Petitioner.
- 4 • DO Logan: Served RETURN EXHIBIT E, DHS form I-200 Warrant for Arrest of Alien on
5 Petitioner on Dec 7, 2025, at 07:30 AM in the Spanish language.

6 Respondents also provided a declaration from DO Christopher Hubbard and AUSA
7 Michelle Lambert. These declarations are not based on first-hand knowledge. Notably
8 absent from any of Respondents' exhibits are declarations from any of the five officers
9 (Hardy, Tobias, Meneses, [signature illegible], and Logan) who prepared respondent's
10 exhibits D through G, and part of C. Failure to submit first hand declarations from these five
11 officers should be considered a major defect in respondent's proof.

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13 First, return exhibits D, E, F, and G, and the interpretation certificate in Return Exhibit C,
14 all purport to have been created on December 7, 2025. They are written in a manner that makes
15 them appear contemporaneous with petitioner's arrest. That they were not created
16 contemporaneously is established by the fact that unsigned and materially different documents
17 were presented to Petitioner's immigration counsel when Petitioner was included in a prior
18 habeas petition before this court. Enabnit Decl., ¶¶ 4, 5 and Petitioner's Exhibits A-E.

19 For example, petitioner's exhibit E, previously furnished by the U.S. attorney's office, is
20 supposed to match respondent's exhibit G. There are material differences such as petitioner's
21 exhibit E (again from the U.S. attorney's office) is unsigned and undated, whereas the ones
22 furnished with the return, is signed and there are other differences.

23 As another example respondent's exhibit D, the I-213 dated December 7, 2025,
24 corresponds to petitioner's exhibit C. Both are dated December 7, 2025. Petitioner's exhibit is
25

1 not signed, but respondent's exhibit is signed. Petitioner's exhibit is 3 pages, but the
2 respondent's exhibit is 4 pages.

3 There are also internal inconsistencies in the exhibits attached to the return.

4 Return Exhibit D (form I-213), on page 1 has box checked indicating petitioner is
5 "Married." But on page 3 of the I-213, the narrative states that Petitioner "claimed to be single."
6 It's highly unlikely that petitioner said he was single, especially given that he is a derivative on
7 his spouse's pending U visa petition.

8 On page 3, in the middle, of the I-213 (RETURN EXHIBIT D) it is stated that "Upon
9 interview [Petitioner] claimed to be a native and citizen of Mexico" and made several other
10 statements to officers. But this is contradicted by Return Exhibit F, Record of Sworn Statement.
11 But this is contradicted by RETURN EXHIBIT F, Record of Sworn Statement, which indicates that
12 Petitioner was not willing to answer officers' questions after his arrest. Return Ex. F, pg 1.

13 Respondents' exhibits and the declarations by individuals with no knowledge of the
14 events they describe are, at best, unreliable hearsay and more likely to be partial or complete
15 fabrications. This court should not rely on this version of the facts and should suppress all of
16 Respondents' exhibits as unreliable hearsay.

17
18 **III. RESPONDENTS DEPRIVED PETITIONER OF HIS LIBERTY IN VIOLATION**
19 **OF HIS DUE PROCESS RIGHTS.**

20 Respondents argue that "Petitioner is detained pursuant to 8 U.S.C. § 1231(a)(6) because
21 he is subject to a reinstated order of removal." Return at 4. Whether Petitioner is subject to a
22 reinstated order of removal is not the legal question at issue. *See Carafas v. LaVallee*, 391 US
23 234, 238 (1968) (clarifying that the *habeas* statute entails "judicial inquiry . . . into the legality of
24 the detention of a person"); *cf. Jennings v. Rodriguez*, 583 U.S. 281, 294, (2018) (finding *habeas*
25

1 jurisdiction when a petitioner is “not even challenging any part of the process by which their
2 removability will be determined”). The undisputed record demonstrates that Respondents
3 violated Petitioner’s procedural due process rights on December 7, 2025.

4 **A. Petitioner was arrested and detained pursuant to U.S.C. § 1226(a).**

5 Respondents’ Return seeks to conflate Petitioner’s initial arrest and detention under 8
6 U.S.C. § 1226(a) with detention post removal order pursuant to 8 U.S.C. § 1231(a)(6). This is an
7 important point for Respondents because it allows Respondents to distinguish Petitioner’s case
8 from “other cases recently considered by district courts” in which similar deprivations of liberty
9 supported this (and other) courts’ grants of habeas petitions. Return at 5.

10
11 Essentially, respondents argue that because petitioner is subject to a reinstated order of
12 removal (a fact petitioner does not concede but which need not be addressed for the present
13 argument), he is not guaranteed the same due process rights as other individuals present in the
14 United States. *Id.*

15 Respondents’ argument fails, however, because the initial deprivation of Petitioner’s
16 liberty was committed pursuant to U.S.C. § 1226(a). This s supported by RETURN EXHIBIT E, an
17 I-200 administrative warrant supposedly served on petitioner on December 7, 2025, at 07:30.
18 This I-200 warrant in Return Exhibit E purported authorize an arrest “pursuant to sections 236
19 [(8 U.S.C. § 1226)] and 287 of the Immigration and Nationality Act.” Respondents cannot
20 invoke § 1226 to execute the arrest and then disavow the due process implications that this and
21 other courts have said attach to such an arrest.

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B. Respondents violated Petitioner's due process rights when they made a custody determination without consideration of flight risk or danger to the community.

In the civil immigration context, a custody determination under 8 U.S.C. § 1226(a) must be based on either Petitioner's flight risk or her danger to the community; see *Matter of Guerra*, 13 I&N Dec. 37 (BIA 2006). Here, neither condition was met.

The procedural safeguards of 8 U.S.C. § 1226 are designed to prevent the erroneous deprivation of his liberty: notice and an opportunity to be heard before an individualized custody determination, and the ability to complete a brief, active consultation with counsel at the time his custody determination should have been made. *See, e.g., Trump v. J.G.G.*, 604 U.S. 670, 673 (immigrants in detention are "entitled to notice and an opportunity to be heard 'appropriate to the nature of the case'") (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)); *Torres v. United States Dep't of Homeland Sec.*, 411 F. Supp. 3d. 1036, 1061-62 (the right to counsel "begins before any court proceeding, with notices from the agency to the immigrant and with the detention itself"); 8 C.F.R. § 292.5(b) (providing the right to representation "whenever an examination is provided for in this chapter").

Instead, the record as it stands shows that respondents made no individualized custody determination, nor did they provide Petitioner with notice or an opportunity to be heard before they deprived him of his liberty. Respondents compounded these violations by significantly curtailing Petitioner's access to counsel at a crucial moment when meaningful access could have prevented Petitioner's continued unlawful custody¹, including his transfer 120 of miles away to Tacoma, Washington.

¹ Respondents' Return Exhibit D indicates that Petitioner was advised that he would not be allowed to make a phone call until he was transferred 145 miles north, across state lines, to a detention center in Tacoma, WA. Return Ex D at 3.

1 As this Court recently affirmed, “The Supreme Court has consistently held that ‘the
2 Constitution requires some kind of a hearing before the State deprives a person of liberty or
3 property.’” *Y.M.M. v. Wamsley*, No. 2:25-cv-02075-TMC, Dkt. 14 at 4 (W.D. Wash. Nov. 6,
4 2025) (quoting *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1035 (N.D. Cal. 2025) and
5 *Zinerman v. Burch*, 494 U.S. 113, 127 (1990)).

6 While urgent circumstances may sometimes justify a prompt post-deprivation hearing,
7 “absent evidence of urgent concerns, a pre-deprivation hearing is required to satisfy due
8 process.” *Id.* Here, no urgent concerns existed. Petitioner has lived in the United States for 20
9 years and was known to the agency at least since filing his derivative U visa petition in 2016.
10 Yet, Respondents have now arrested him without notice and have detained him since December
11 7, 2025.

12 Respondents offer no evidence of the necessity to deprive petitioner of his liberty now
13 when apparently no such necessity had existed for the previous nine years. Courts in this District
14 have repeatedly held that such warrantless, hearing-free detention violates due process. *See*
15 *Ramirez Terra v. Wamsley*, No. 2:25-cv-01723-MJP-TLF, 2025 WL 2637663, at *3–4 (W.D.
16 Wash. Sept. 12, 2025) (ordering release where ICE failed to provide a pre-deprivation hearing);
17 *see also E.A.T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130, at *2–6 (W.D. Wash.
18 Aug. 19, 2025). Because Respondents violated Petitioner’s due process rights, this Court should
19 grant the writ on Count Nine.
20

21 **IV. RESPONDENTS CONTINUED TO DETAIN PETITIONER BASED SOLELY ON**
22 **INFORMATION DERIVED FROM HIS UNLAWFUL STOP AND ARREST.**
23
24

1 Respondents argue that the legality of Petitioner's arrest is irrelevant under *INS v. Lopez-*
2 *Mendoza*, 468 U.S. 1032 (1984) and that habeas relief is not available to him. This ignores the
3 Ninth Circuit's binding exception: evidence must be suppressed in immigration proceedings if it
4 was obtained through an "egregious violation" of the Fourth Amendment or if the agency's
5 conduct fundamentally violates Due Process. *Gonzalez-Rivera v. INS*, 22 F.3d 1441 (9th Cir.
6 1994); *Orhorhaghe v. INS*, 38 F.3d 488 (9th Cir. 1994). Here, the Respondents' own exhibits
7 reveal both an egregious seizure and either subsequent fabrication of evidence to justify it, or a
8 clear violation of the petitioner's right to remain silent.

9
10 **A. Habeas is the appropriate form of relief**

11 Respondents contend that "Petitioner's arrest is not presently relevant and thus cannot be
12 the basis for habeas relief." Return at 6. Respondents ask this court to lend its weight to a policy
13 that would allow them to detain anyone, anywhere, for any reason. So long as Respondents are
14 able to subsequently produce documentation justifying the present detention of whomever they
15 choose to arrest, the manner in which that arrest was effected—no matter how egregious—would
16 not give rise to habeas relief. This Court should reject this argument because the entire point of
17 the habeas statute is to "guarantee the most fundamental of all rights, [in order] to provide an
18 effective and speedy instrument by which judicial inquiry may be had into the legality of the
19 detention of a person". *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968).

20 //

21 **B. There were no "voluntary statements" justifying the Warrant.**

22 The foundation of Petitioner's current detention is RETURN EXHIBIT E, Warrant for Arrest
23 of Alien (Form I-200). In the I-200 warrant, the authorizing officer attested that probable cause
24

1 for this warrant was based on: “statements made voluntarily by the subject to an immigration
2 officer.”

3 This attestation is inconsistent with respondents’ own Record of Sworn Statement
4 (RETURN EX. F) which states that when Officer Meneses attempted to question Petitioner on the
5 same date, petitioner answered “NO” to Question 1 (“Are you willing to answer my
6 questions?”). The remainder of the sworn statement is crossed out.

7 The only way that both Exhibits E and F can be true would have been for Officer
8 Meneses to first attempt to question petitioner, and then complete Exhibit F showing petitioner
9 refused to give any statement. Then Officer Hardy would have had to interrogated respondent
10 further so as to complete Exhibit E, the I-213 to include the statements petitioner is supposed to
11 have made.
12

13 If the statements recorded on Exhibit E were made after the petitioner invoked his right to
14 remain silent as for the purpose of establishing probable cause, then the violation of petitioner’s
15 rights was egregious because officers interrogated Petitioner after he explicitly invoked his right
16 to silence (or before informing him of his rights), and then used those coerced admissions to
17 support the I-200 warrant.

18 Under either scenario, the I-200 warrant—and the detention flowing from it—is the fruit
19 of government misconduct that “shocks the conscience.” *Rochin v. California*, 342 U.S. 165
20 (1952) (detention based on materially false warrant violates the core of substantive due process).

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22 **C. The Stop Was an “Egregious” Roving Patrol Seizure.**

23 The Ninth Circuit holds that a Fourth Amendment violation is “egregious” if it is based
24 on race or lacks any articulable suspicion. *Gonzalez-Rivera*, 22 F.3d at 1452. The I-213 Record
25

1 of Deportable Alien (Return Ex. D) admits that ICE officers did not identify Petitioner before the
2 stop. The narrative states only that officers “observed a Ford F150... which [Petitioner] is known
3 to be associated with.”

4 It does not allege a traffic violation, nor does it allege officers positively identified the
5 driver as Petitioner prior to the stop as the individual with whom the F150 was “associated.”
6 Stopping a vehicle solely because it is “associated” with an individual, without verifying the
7 driver, constitutes an unlawful “roving patrol” stop. *United States v. Brignoni-Ponce*, 422 U.S.
8 873 (1975).

9 Where, as here, the stop appears motivated by the driver’s race rather than specific
10 identification, it constitutes an egregious violation warranting suppression of all fruits of the
11 seizure—including the fingerprints.
12

13 Because Respondents accessed Petitioner’s immigration information solely through their
14 forced use of his fingerprints following his unlawful stop and arrest, this information must be
15 suppressed from their custody determination. *See United States v. Martinez-Rodriguez*, No. 1:25-
16 CR-00200 (AMN), 2025 WL 2355630, at *10 (N.D.N.Y. July 23, 2025) (underlining that the
17 government had not explained how any identity evidence was obtained independently from an
18 unlawful seizure, and as such all evidence from the illegal stop – including agents’ observations,
19 statements, fingerprints, photographs – would be excluded).

20 This Court should thus suppress Petitioner’s biometric information, including his
21 fingerprints and DNA, and his immigration files obtained as the fruit of their unlawful arrest, and
22 further grant the writ on Count One.
23

24 DATED this 20th day of January 2026

25 /s/ Michael T. Purcell

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