IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Teofilo Armendariz Gonzalez, Petitioner, v. **Juan Baltasar**, Warden, Aurora ICE Processing Center; **Robert G. Hagan,** Field Office Director, U.S. Immigration & Customs Enforcement, U.S. Department of Homeland Security; **Todd M. Lyons,** Acting Director, U.S. Immigration & Customs Enforcement, U.S. Department of Homeland Security; **Kristi Noem,** Secretary, U.S. Department of Homeland Security; and **Pamela Bondi,** Attorney General of the United States, in their official capacities, Respondents.	)	Case No. 1:26-cv-00228-RMR

PETITIONER'S REPLY TO RESPONDENT'S "CONSOLIDATED RESPONSE TO ORDER TO SHOW CAUSE (ECF No. 9) AND TO PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER (ECF No. 6)"

UPDATE ON PETITIONER'S CUSTODY STATUS

Temporary Immigration Judge Whitko – a Colonel in the National Guard with no background in immigration law, detailed temporarily to the immigration court on February 5, 2026 – set bond in Mr. Armendariz's case at $20,000, an excessively high amount for a person with no criminal history and who is eligible for relief in removal proceedings. (Pet'r Reply Br. App'x at 1-4 – EOIR Announcement and Bond Order dated February 17, 2026); see also 8 U.S.C. § 1226(a)(2)(A) (setting minimum bond at $1,500). The Immigration Judge did not impose additional conditions on Mr. Armendariz's release; however, ICE unilaterally imposed reporting requirements and required Mr. Armendariz to wear a GPS ankle monitor. *Id.* at 3-13.

Note: Undersigned counsel anticipates filing unopposed motions to withdraw as moot Mr. Armendariz's motion for a TRO (Dkt. 6) and to supplement his Verified Petition for a Writ of Habeas Corpus (Dkt. 1). He anticipates his supplement will discuss why this Court's jurisdiction continues following release on bond and why the case continues to present a live controversy.

STATUS OF PENDING REMOVAL PROCEEDINGS

The Executive Officer for Immigration Review (EOIR) has moved proceedings from the Aurora Immigration Court to the downtown Denver Immigration Court.

REPLY

The Petitioner, Mr. Teofilo Armendariz Gonzalez, respectfully replies to the Government Respondents as follows:

I. This Court Has Jurisdiction Over Petitioner's Challenge to His Unlawful Detention, Because He Does Not Challenge the Validity of the Removal Proceedings or a Removal Order.

Mr. Armendariz does not challenge his removal order — he challenges the legality of his detention and custody. The REAL ID Act stripped habeas jurisdiction over the former; it expressly preserved it over the latter. *Nken v. Holder*, 556 U.S. 418, 424 (2009) (noting that the REAL ID Act consolidated review of challenges to removal orders in the petition for review); *Boumediene v. Bush*, 553 U.S. 723, 771 (2008) (where Congress strips habeas jurisdiction, it must provide an effective alternative remedy).

The Government Respondents ("the Government") argue that this Court lacks jurisdiction over Mr. Armendariz's petition, because, they say, it amounts to an unexhausted challenge to a removal order. (Dkt. 12 at 4-7).

But the Supreme Court's holding in *Demore v. Kim* clarifies that *habeas* jurisdiction over detention exists where removal proceedings are still pending. 538 U.S. 510, 514-517 (2003). Justice Souter's concurring opinion makes the procedural posture in that case explicit: "The Immigration Judge had not yet held an initial hearing on the substantive issue of removability when Kim filed his habeas petition in the District Court . . ." *Demore*, 538 U.S. at 542 (J. Souter, concurring in part and dissenting in part). Separately, the Seventh Circuit, reviewing a preliminary class injunction arising from the *Castañon Nava* litigation, expressly states that individual *habeas corpus* petitions are

the proper vehicle for challenging unlawful immigration detentions under the auspices of defective administrative warrants. *Castañon Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1059 n.10 (7th Cir. Dec. 2, 2025) ("Of course, an individual arrested pursuant to a field-issued I-200 warrant can challenge the validity of the warrant in federal court on an individual basis (for example, in a habeas proceeding), but he cannot do so in this class action").

The First Circuit has also held that "district courts retain jurisdiction over challenges to the legality of detention in the immigration context" following the REAL ID Act. *Aguilar*, 510 F.3d at 11. The First Circuit's reading of the REAL ID jurisdiction stripping provisions accords with that of the Tenth Circuit. *Mukantagara v. U.S. DHS*, 67 F.4th 1113, 1116 (10th Cir. 2023). Moreover, Judge Campbell of the Utah District Court recently remarked in a case involving pending removal proceedings, "[Petitioner's] claims would . . . be effectively unreviewable if that review could only occur after a final order of removal, given that it would be too late for a court to order relief." *Tanchez v. Noem*, 2026 U.S. Dist. LEXIS 9334 at *12 (Jan. 16, 2026).

The cases the Government cites to argue against jurisdiction and exhaustion concern a range of challenges, mainly to removal or legacy deportation proceedings, some prior to the REAL ID ACT, but not unlawful detention itself post REAL ID. One of these cases, *Soberanes v. Comfort*, actually cuts against the government's jurisdictional and exhaustion arguments. 388 F.3d 1305 (10th Cir. 2004). In *Soberanes*, a panel of the Tenth Circuit held that exhaustion was required to the Board of Immigration Appeals before further appeal <u>of a removal order</u> and that *habeas corpus* review is generally not

available as an alternative to exhaustion. 388 F.3d 1305, 1308-09 (10th Cir. 2004).

Soberanes predates the REAL ID Act, and the panel addressed habeas review of removal orders only because the Act's jurisdiction-stripping provisions had not yet taken effect. *See id.* at 1309. In contrast, the *Soberanes* panel stated, "Challenges to immigration detention are properly brought directly through habeas. And the exhaustion deficiencies we have noted in other respects do not affect habeas jurisdiction over such claims." *Id.* at 1310 (internal citations omitted). Thus, *Soberanes* supports Mr. Armendariz's position that this court has jurisdiction over his challenge to his detention.

The Government also cites to *Garza v. Davis*, which is not an immigration case at all, but rather a *pro se* challenge by a prisoner to procedures governing certain inmate transfer requests. 596 F.3d 1198, 1203 (10th Cir. 2010). The ground of denial was simple: The petitioner had not exhausted dispute procedures directly applicable to the aforesaid inmate transfer procedures. *Id.* at 1204. Indeed, the petitioner apparently did not even dispute that exhaustion was required, only that it would have been futile. *Id.* As such, the case is not relevant to Mr. Armendariz's situation, in which he challenges only the legality of his detention, not the conduct of his administrative removal proceedings.

The case the government relies on most heavily, *Min Shey Hung v. U.S.*, 617 F.2d 201 (10th Cir. 1980), is a product of procedures that Congress abolished wholesale in 1996 with the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). *Id.* Under these historical procedures, which the court characterized as similar in fashion to a criminal proceeding, the noncitizen's warrantless arrest was promptly

followed by a preliminary hearing in the same proceeding before an INS officer to determine probable cause, by which time the noncitizen had been released from custody. *Id.* At or following that hearing, the noncitizen was served with an Order to Show Cause (OSC) following a probable cause finding.

IIRIRA abolished these procedures wholesale — including both the probable cause hearing and the OSC. That abolition matters, because it was the probable cause finding embedded in those procedures that the noncitizen challenged in *Min-Shey Hung*. *Id.* at 201-02. And it was in this context that the *Min-Shey Hung* panel stated that deportation proceedings were already "well along," apparently treating the custody and deportation prongs as a single proceeding. *Id.* at 202. Moreover, it is not entirely clear what *Min-Shey* was challenging – the detention or the proceeding (or both) – in part because *habeas* jurisdiction was then available to challenge removal orders. *INS v. St. Cyr*, 533 U.S. 289, 313-14 (2001).

Subsequently, the Tenth Circuit has never, to Mr. Armendariz's knowledge, adopted *Min-Shey Hung*'s holding in the context of a post-IIRIRA and post-REAL ID, detention-specific *habeas* challenge, and its reasoning has not withstood scrutiny even within its own procedural context: Despite it being a 1980 decision, only five courts have subsequently cited *Min-Shey Hung*, according to a LexisNexis Shepard's analysis, and in one of those cases, the Ninth Circuit panel severely criticized the decision, stating, "We are unpersuaded by several cases [including *Min-Shey Hung*] that have either

assumed, without analysis, that *Gerstein* [*v. Pugh*][1] applies to INS probable cause determinations, or have drawn analogies between INS officers on the one hand and committing magistrates in a criminal context on the other." *Flores v. Meese*, 934 F.2d 991, 1013 (9th Cir. 1990). The *Min-Shey Hung* decision lacks analytical clarity, as the *Flores* panel recognized, and Mr. Armendariz respectfully suggests it is best viewed as arising from the unique context of now-extinct procedures with no bearing on a post-IIRIRA and post-REAL ID *habeas* challenge.

Another case the government cites, *Arias v. Roger*, 676 F.2d 1139 (7th Cir. 1982), is also a relic of the same or similar defunct procedures and, as the Ninth Circuit notes in a parenthetical in *Flores v. Meese*, The *Arias* panel "erroneously conclude[s]" that the examining officer mentioned in 8 U.S.C. § 1357(a)(2) is an immigration judge, as opposed to an "INS official." 934 F.2d at 1013. Moreover, the real objective of the petitioners in *Arias v. Rogers*, as characterized by the majority, was suppression of evidence in removal proceedings, an issue not presented in Mr. Armendariz's petition. *Arias*, 676 F.2d at 1142. Finally, as the Arias majority itself notes, "[D]eportation proceedings could not retroactively validate unlawful arrests." *Id.* at 1144.

Habeas jurisdiction is secure in a case like Mr. Armendariz's, where removal proceedings are ongoing and the petitioner challenges only the legality of detention.

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[1] In *Gerstein v. Pugh*, the Supreme Court required that a probable cause determination be made by a "neutral and detached magistrate" and not a prosecutor. 420 U.S. 103, 118-19 (1975).

II. The Government Incorrectly Analyzes the Legality of Mr. Armendariz's Detention under the Law Relevant to Evidence Suppression Instead of Addressing the Legality of His Detention.

The Government turns to the law applicable to the exclusionary rule in removal proceedings to argue "that in the immigration context, the Fourth Amendment does not demand voiding removal proceedings that follow from an improper arrest as a suppressive remedy." (Dkt. 12 at 10-11). The government likewise includes a copy of the Immigration Judge's order denying Mr. Armendariz's motion to suppress in removal proceedings. (Dkt. 12-1, Resp't Appx. at 7-19).

But Mr. Armendariz's *habeas corpus* petition is not about removal proceedings or the suppression of evidence therein. While he strongly disagrees with the Immigration Judge's reasoning in her denial of suppression, he is not seeking review of that decision before this Court. Instead, he will, if necessary, challenge the Immigration Judge's decision in a consolidated appeal via a Petition for Review (PFR), should he ultimately receive a final removal order.

Importantly, the exclusionary rule in administrative removal proceedings generally applies only to egregious violations by immigration officers. *United States v. Olivares-Rangel*, 458 F.3d 1104, 1116 n.9 (10th Cir. 2006), citing the Supreme Court's holding in *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1050 (1984) (suppression is warranted in removal proceedings when Fourth Amendment violations are "egregious"). Moreover, the noncitizen bears the initial burden of making out a *prima facie* case of an egregious or otherwise exceptional Fourth Amendment violation. *Zuniga-Perez v. Sessions*, 897 F.3d 114, 125 (2d Cir. 2018) ("Once a petitioner makes out a prima facie

case, the burden shifts to the Government to show why the evidence should be admitted") (internal punctuation omitted); *Matter of Barcenas*, 19 I&N Dec. 609, 611 (BIA 1988); *Matter of Burgos*, 15 I&N Dec. 278 (BIA 1957). If ultimately successful in establishing such a violation, the noncitizen may be entitled to have the removal proceedings terminated. *Id.* Thus, a search and seizure can be unconstitutional, rendering any ensuing detention unlawful, without justifying the suppression of evidence in removal proceedings.

"Egregious conduct" and its accompanying burden-shifting framework are not part of the analysis of an unlawful detention for purposes of *habeas corpus* proceedings. Nevertheless, a number of the government's citations arise from this framework, including *Aguayo v. Garland*, 78 F.4th 1210 (10th Cir. 2023) and *United States v. Garcia-Beltran*, 443 F.3d 1126 (9th Cir. 2006). Instead, the question before this Court is whether Mr. Armendariz's detention was lawful, which depends in turn on whether the government had probable cause and a valid administrative warrant pursuant to 8 U.S.C. 1226(a), or, alternatively, probable cause for a warrantless arrest coupled with a completed flight-risk assessment pursuant to 8 U.S.C. § 1357(a)(2). *See, e.g.*, (Dkt. 1-1, Exh. to Verified Pet. for Writ of Habeas Corpus, p. 39-40, 62-63 – *Ramirez Ovando v. Noem*, 1:25-cv-03183-RBJ, Dkt. 49 at 4-5, 27-28 (D. Colo. Nov. 25, 2025)). Mr. Armendariz has already discussed this legal framework in his petition (Dkt. 1) and motion for a TRO (Dkt. 6) and will not do so further here.

III. ICE Officer Guzman's Declaration Is Further Evidence of an Unlawful Search and Seizure.

Officer Guzman's written declaration is further evidence that ICE officers violated the Fourth Amendment, in addition to statutes and regulations addressing warrants and warrantless arrests, only two weeks after Judge Jackson's provisional order in *Ramirez Ovando*. (Dkt. 12-1, Resp't App'x – Exh. 1).

Officer Guzman concedes that he did not "physically encounter" Mr. Armendariz on December 5, 2025, and that he was looking for somebody else on that day. *Id.* at ¶¶ 5, 8. But he fails to explain why the Form I-213, signed by him, says that "Officer Guzman *encountered* ARMENDARIZ Gonzalez, Teofilo". (Dkt. 1-1, Pet'r Exh. 7 at 23 (Emphasis added)).

The Form I-213 states that on December 5, 2025, officers were "conducting surveillance at 200 W 20th St, Trailer D23, Rifle, CO" for one "Villegas-Flores, Gamaliel." *Id.* But it goes on to state that Guzman encountered Mr. Armendariz at Trailer B1. *Id.* Trailers D23 and B1 are nowhere near each other, being at opposite ends of the King's Crown Mobile Home Park, separated by five cross streets and 800 feet of distance. (Pet'r Reply Br. App'x at 14-24 – Nevarez Declaration and Google Map printout with distance). By no stretch of the imagination was Trailer B1, belonging to Mr. Armendariz and his spouse, in the "immediate vicinity" of Guzman or his surveillance team, and it likely would not have been visible to them from that vantage point. *Id.* The Form I-213 is specific: Guzman "encountered" Mr. Armendariz at "Trailer B1," not at his stated target location, Trailer D23. (Dkt. 1-1, Pet'r Exh. 7 at 23).

Moreover, Guzman admits he "ran records checks of license plates . . . in the immediate area, including that of [Mr. Armendariz's] vehicle." (Dkt. 12-1, Resp't App'x – Exh. 1 at ¶ 5). Guzman writes that "ICE" determined there was probable cause based on the "evidence of... alienage and unauthorized presence." *Id.* at ¶ 6. But at this point, the only thing Guzman (or ICE) really had to go on was a name.

Narrowly tailored database searches are not always Fourth Amendment violations, but they come with strict limitations. For example, in *Kansas v. Glover*, the Supreme Court upheld a traffic stop based on a plate check showing the registered owner had a revoked license, but only because there was a close nexus between the purpose – traffic enforcement – and the suspected violation – driving on a revoked license. 589 U.S. 376, 381 (2020). Even so, the facts at hand in that case, namely, that the registered owner's license was revoked, that the vehicle was a match to the registered description, combined with the absence of countervailing evidence, sufficed only to give the officer "reasonable suspicion," a standard the Supreme Court stated "falls considerably short of 51% accuracy." *Id.* Even so, the case was close enough to draw a dissent. *Id.* at 391-98 (J. Sotomayor, dissenting).

Here, Officer Guzman, even under a charitable reading of the facts, had at most a name, albeit one gleaned from a suspicionless search of motor vehicle records. Notably, *Glover* presupposed both that "States have a vital interest" in traffic enforcement and that the officer was authorized to enforce traffic laws, an authority ICE officers do not possess. *Id.* at 381; 8 U.S.C. § 1357(a) (limiting ICE arrest authority to immigration violations). Guzman says he used the name he obtained from his license

plate search to query immigration databases, presumably for individuals with the same or similar names. (Dkt. 12-1, Resp't App'x – Exh. 1 at ¶ 5). Guzman's process – running a plate without individualized suspicion, extracting a registered owner's name, and then using that name to query immigration databases – involves two inferential steps that the *Glover* court never sanctioned, performed without the traffic enforcement authority *Glover* assumed, and producing only a name rather than the specific, documented violation at issue in *Glover*. Put simply, on December 5th, Guzman likely didn't have reasonable suspicion to support even a brief detention, and he definitely didn't have probable cause to seek a warrant pursuant to 8 U.S.C. § 1226(a).

Guzman's declaration also does nothing to bolster the Government's argument that ICE followed the correct procedures before issuing the warrant. He states, using the passive voice, "[A] Form I-200, Warrant for Arrest was completed." *Id.* at ¶ 7. He doesn't say who wrote or authorized the warrant, a significant oversight, because only supervisory officers have that authority under 8 C.F.R. § 287.5. *Id.* Guzman never mentions the supervisory officer whose name appears on the undated electronic signature line of the warrant, "A. Cabuag, SDDO." *See*, *generally*, *id.* Nor did SDDO Cabuag provide a written declaration along with Officer Guzman.

Guzman's failure to explain how or when he or other officers obtained the warrant, including who issued it, should be a red flag, because Guzman prepared his declaration in answer to Mr. Armendariz's petition, in which Mr. Armendariz points out that: (1) The supervisory officer's signature is an undated digital signature block; (2) the warrant is otherwise handwritten by Guzman; (3) the probable cause boxes have been

left blank; (4) the Form I-213 states that all immigration records checks were completed on December 8th, three days after the putative date on the warrant; (5) the I-213 provides almost no detail about the "encounter" on December 5th; and, (6) ICE has a well-documented history of issuing *post hoc* warrants in the field to justify warrantless arrests. (Dkt. 1, Verified Pet. for Writ of Habeas Corpus, at 9-12, 13-15, 16-21). Guzman's declaration is not meaningfully responsive to these allegations.

Furthermore, Guzman chalks up the omission of any probable cause finding on the warrant to "administrative error" and, again using the passive voice, says that "probable cause in support of the Form I-200 was developed on December 5, 2025, and the warrant was approved and drafted on the same date." (Dkt. 12-1, Resp't App'x – Exh. 1 at ¶ 12). The Form I-213, he says, contains "the facts in support of . . . probable cause," without accounting for the conflict between it and his declaration. *Id.* Finally, he opines that Mr. Armendariz is "detained pursuant to 8 U.S.C. § 1226(a)," in other words, on a warrant and not pursuant to a warrantless arrest. *Id.* at ¶ 13.

Through these statements, Guzman effectively concedes that officers lacked cause to arrest Mr. Armendariz without a warrant. Notably, the Government, in its brief, does not discuss or distinguish the *Ramirez Ovando* and *Castañon-Nava* litigation, in which two district court judges disapproved of ICE's practice of issuing *post hoc* warrants to justify collateral arrests of individuals they would otherwise lack authority to arrest without a warrant. (Dkt. 1-1, Exh. to Verified Pet. for Writ of Habeas Corpus, p. 39-40, 62-65 – *Ramirez Ovando v. Noem*, 1:25-cv-03183-RBJ, Dkt. 49 at 4-5, 27-30 (D. Colo. Nov. 25, 2025)). Therefore, it seems clear that officers violated the Fourth

Amendment by stopping Mr. Armendariz without reasonable suspicion and detaining him without probable cause, and, furthermore, violated 8 U.S.C. § 1226(a) by obtaining a warrant without probable cause and without following the mandatory procedures under 8 C.F.R. § 287.5.

IV. The All Writs Act Authorizes Courts to Fashion Situation-Specific Relief, Including Declaratory and Injunctive Relief.

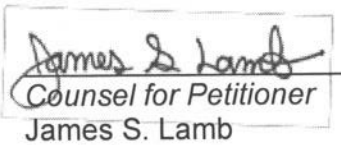
The government's arguments against declaratory and injunctive relief fail on examination of the actual authorities it invokes.

First, *Rooney v. Sec'y of the Army*, 405 F.3d 1029 (D.C. Cir. 2005), does not stand for a general bar on declaratory relief in *habeas* proceedings. The *Rooney* panel held only that a petitioner cannot use a declaratory judgment action as a *substitute* for *habeas* in a different district to circumvent the rule that *habeas* must be brought where the petitioner is confined. *Id.* at 1031. Here, Mr. Armendariz brings his *habeas* claim, seeking declaratory relief in this district, where he was detained until recently and remains in custody for purposes of *habeas* jurisdiction.

Second, the government's reliance on 8 U.S.C. § 1231(g) is misplaced. That provision – requiring the Attorney General to arrange appropriate detention facilities – applies to post-removal order detention. *See Johnson v. Guzman Chavez*, 594 U.S. 523, 533 (2021). In contrast, 8 U.S.C. § 1226 governs custody during proceedings. *Id.* Moreover, the statute is narrowly drawn, addressing "appropriate places of detention," including procurement and construction. Nowhere does it confer exclusive authority over the location of confinement; nor does it include provisions limiting federal court jurisdiction. Finally, the All Writs Act, 28 U.S.C. § 1651, independently empowers this

Court to enjoin transfers of persons in custody to protect its ability to grant meaningful relief.

Respectfully submitted,



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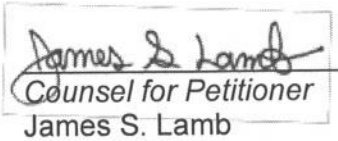
CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2026, I electronically filed this document with the Clerk of Court using the CM/ECF system, which will notify and serve counsel for the parties.



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