

Magistrate Judge Michelle L. Peterson

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

JOSE ALVES BATISTA,

Petitioner,

v.

TODD BLANCHE, *et al.*,

Respondents.

Case No. 2:26-cv-00986-MLP

FEDERAL RESPONDENTS'¹
RETURN

Noted for Consideration:
April 13, 2026

I. INTRODUCTION

Petitioner Jose Alves Batista incorrectly asserts that his continued immigration detention violates the Immigration and Nationality Act ("INA") and due process because he was detained without a warrant and without probable cause. Dkt. No. 1, Pet. ¶ 2. U.S. Immigration and Customs Enforcement lawfully detains Petitioner pursuant to 8 U.S.C. § 1226(a). First, Petitioner's claims concerning his arrest are not cognizable in this habeas action. Second, Petitioner's due process claim fails because Section 1226(a) provides him with "substantial procedural protections." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1214 (9th Cir. 2022).

¹ Respondent Bruce Scott is not a federal official and is not represented by undersigned counsel.

Accordingly, Federal Respondents respectfully request that this Court deny the Petition.

II. FACTUAL BACKGROUND

Petitioner is a native and citizen of Brazil who entered the United States with a temporary visa in 2018. Ingram Decl., ¶¶ 3-4. He overstayed his visa by failing to depart the United States by January 31, 2019. Ingram Decl., ¶ 4.

On January 5, 2026, ICE arrested Petitioner. Ingram Decl., ¶ 5; Lambert Decl., Ex. A, Form I-213; Ex. B, Warrant for Arrest. ICE served Petitioner with a notice to appear charging him with removability pursuant to 8 U.S.C. § 1227(a)(1)(B) and placed him in removal proceedings. Ingram Decl., ¶ 6; Lambert Decl., Ex. C, Notice to Appear. ICE determined that Coke would be detained pending a final administrative determination. Lambert Decl., Ex. D, Notice of Custody Determination. Petitioner remains in ICE detention since his arrest. *See* Pet., ¶ 1.

On February 18, 2026, the immigration court held a bond redetermination hearing at Petitioner's request. Ingram Decl., ¶¶ 7-8. The immigration judge denied Petitioner's request after finding that Petitioner had not established that he is not a flight risk, denied conditional release, and considered his ability to pay. Ingram Decl., ¶ 8; Lambert Decl., Ex. E, Order.

On March 25, 2026, an immigration judge granted Petitioner's application for voluntary departure. Ingram Decl., ¶ 8; Lambert Decl., Ex. F, Order. Petitioner has until April 24, 2026 to leave the United States; if he does not leave, the order will convert to an order of removal. Ingram Decl., ¶ 8. Petitioner reserved appeal, which is due no later than April 24, 2026. Ingram Decl., ¶ 8. If no appeal is filed and Petitioner does not leave, Petitioner's detention will shift to mandatory detention under 8 U.S.C. § 1231(a).

Voluntary departure may be granted prior to the completion of immigration proceedings. 8 U.S.C. § 1229c(a)(1). An immigration judge may "impose such conditions as he or she deems

necessary to ensure the alien's timely departure from the United States . . .” 8 C.F.R. § 1240.26(b)(3)(i). If an individual agrees to voluntary departure but then fails to comply or attempts to challenge through a motion to reconsider, the order automatically converts into an alternate order of removal. 8 C.F.R. § 1240.26(b)(3)(B)(ii)-(iii). This carries legal consequences should a noncitizen wish to return to the United States. *See e.g.* 8 U.S.C. §§ 1182(a)(9)(A); 1326(a).

III. LEGAL STANDARD

It is axiomatic that “[t]he district courts of the United States . . . are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute.” *Exxon Mobil Corp. v. Allopah Servs., Inc.*, 545 U.S. 546, 552 (2005) (internal quotations omitted). “[T]he scope of habeas has been tightly regulated by statute, from the Judiciary Act of 1789 to the present day.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 125 n.20 (2020). Title 28 U.S.C. § 2241 provides district courts with jurisdiction to hear federal habeas petitions.

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

IV. ARGUMENT

A. ICE lawfully detains Petitioner pursuant to 8 U.S.C. § 1226(a).

Because Petitioner is not subject to a final order of removal, his detention is governed by, 8 U.S.C. § 1226(a). The Ninth Circuit has found that the Section 1226(a) and its implementing regulations satisfy due process. *Rodriguez Diaz*, 53 F.4th at 1209-10.

Congress enacted a multi-layered statute that provides for the continued civil detention of noncitizens pending removal. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1059 (9th Cir. 2008).

Where an individual falls within this scheme affects whether his detention is discretionary or

1 mandatory, as well as the kind of review process available. *Id.*, at 1057. This case concerns the
 2 Government's responsibilities under 8 U.S.C. § 1226(a), which "authorizes the Attorney General
 3 to arrest and detain an alien pending a decision on whether the alien is to be removed from the
 4 United States." *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (quoting 8 U.S.C. § 1226(a)).
 5 The Supreme Court has recognized that "there is little question that the civil detention of aliens
 6 during removal proceedings can serve a legitimate government purpose, which is 'preventing
 7 deportable . . . aliens from fleeing prior to or during their removal proceedings, thus increasing
 8 the chance that, if ordered removed, the aliens will be successfully removed.'" *Prieto-Romero*,
 9 534 F.3d at 1065 (citing *Demore v. Kim*, 538 U.S. 510, 528 (2003)).

10 Section 1226(a) provides, in part, as follows:

11 On a Warrant issued by the Attorney General, an alien may be arrested and
 12 detained pending a decision on whether the alien is to be removed from the United
 13 States. Except as provided in subsection (c) of this section and pending such
 14 decision, the Attorney General -

- 15 (1) may continue to detain the arrested alien; and
- 16 (2) may release the alien on -
 - 17 (A) bond of at least \$1,500 with security approved by, and
 - 18 containing conditions prescribed by, the Attorney General; or
 - 19 (B) conditional parole

20 8 U.S.C. § 1226(a).

21 "Section 1226(a) and its implementing regulations provide extensive procedural
 22 protections that are unavailable under other detention provisions." *Rodriguez Diaz*, 53 F.4th at
 23 1202. Every noncitizen apprehended under Section 1226(a) is individually considered for release
 24 on bond. 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(c)(8). An ICE officer initially assesses whether
 the noncitizen has "demonstrate[d]" that "release would not pose a danger to property or persons,
 and that the alien is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). If the
 ICE officer denies bond, the noncitizen may ask an immigration judge for a redetermination of

the custody decision. 8 C.F.R. § 236.1(d)(1). Thus, the initial bond hearing held before an immigration judge for a noncitizen detained under Section 1226(a) is also called a “redetermination hearing.” At this hearing, the noncitizen bears the burden of establishing “that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight.” *Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006). Bond hearings are separate and apart from, and form no part of, a noncitizen’s removal hearings. 8 C.F.R. § 1003.19(d).

The noncitizen may appeal the immigration judge’s custody redetermination to the Board of Immigration Appeals (“BIA”). 8 C.F.R. §§ 236.1(d)(3)(i), 1236.1(d)(3)(i); *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). Further, a noncitizen who remains detained pursuant to Section 1226(a) after the initial custody redetermination hearing may request that the IJ conduct another custody redetermination whenever “circumstances have changed materially since the prior bond redetermination.” 8 C.F.R. § 1003.19(e).

Here, ICE determined that Petitioner would remain in detention. Lambert Decl., Ex. D; 8 C.F.R. § 236.1(c)(8). An immigration judge held a custody redetermination hearing, where Petitioner’s request for release was denied. Lambert Decl., Ex. D; 8 C.F.R. § 236.1(d)(1). Petitioner has not appealed to the BIA. 8 C.F.R. §§ 236.1(d)(3)(i), 1236.1(d)(3)(i). To the extent this Court interprets the Petition as a challenge to the bond order, this Court should require Petitioner to avail himself of the substantial procedural protections of Section 1226(a) and exhaust his administrative remedies before seeking habeas relief in a federal district court. *Francisco Cortez v. Nielsen*, No. 19-CV-00754-PJH, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019).

B. Petitioner’s claims concerning his arrest are not cognizable in this habeas action.

Petitioner raises a statutory and constitutional claim concerning his purported “warrantless” arrest by immigration officers. Pet. ¶¶ 41-49. These claims are not cognizable

1 here. *Labrador Abadin v. Noem*, No. 25-cv-2411, 2026 WL 217148 (W.D. Wash. Jan. 28, 2026)
2 (stating that a habeas petitioner brought pursuant to 28 U.S.C. § 2241 “is not the appropriate
3 mechanism to challenge the legality of [an] arrest”); *Marroquin Salazar v. Noem*, No. 5:25-cv-
4 02367, 2025 WL 3535050, at *1 (C.D. Cal. Dec. 8, 2025) (adopting and quoting the Report &
5 Recommendation (unpublished), attached hereto as Exhibit G). But even if he could establish his
6 unlawful arrest claims – which Federal Respondents do not concede as Petitioner was arrested
7 pursuant to a warrant (Ex. B) and due to the undisputed fact that he overstayed his visa, this claim
8 should not be brought via habeas and release would not be an appropriate form of relief.

9 Since removal proceedings are underway, Petitioner’s current custody flows not from his
10 arrest and initial post-arrest detention, but from the authority of INA. *See, e.g.*, 8 U.S.C. §
11 1226(a). The legality of Petitioner’s arrest is not presently relevant and thus cannot be the basis
12 for habeas relief. The habeas statute allows a petitioner who is “in custody” to challenge that
13 custody on various grounds, 28 U.S.C. § 2241(c), including that “[h]e is in custody in violation
14 of the Constitution or laws or treaties of the United States.” 28 U.S.C. §2241(c)(3). The statute
15 is written in the present tense, making clear that Section 2241 only allows a petitioner to challenge
16 his current custody, not his past custody. *See Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)
17 (“the essence of habeas corpus is an attack by a person *in custody* upon the legality of *that*
18 *custody*” (emphasis added)).

19 While Petitioner is free to challenge his current custody based on that statutory authority,
20 any habeas claim basis on his arrest is now moot, since the arrest is not the source of his present
21 custody. *See Barker v. Estelle*, 913 F.2d 1433, 1440 (9th Cir. 1990) (habeas petition challenging
22 pretrial detention was moot once petitioner was incarcerated pursuant to a judgment of
23 conviction); *James v. Reese*, 546 F.2d 325, 328 (9th Cir. 1976) (same).

1 The INA, 8 U.S.C. § 1101 *et seq.*, entrusts the Executive branch to remove inadmissible
 2 and deportable noncitizens and to ensure that noncitizens who are removable are in fact removed
 3 from the United States. “[D]etention necessarily serves the purpose of preventing deportable []
 4 aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that
 5 if ordered removed, the aliens will be successfully removed.” *Demore v. Kim*, 538 U.S. 510, 528
 6 (2003). The Supreme Court has long held that deportation proceedings “would be in vain if those
 7 accused could not be held in custody pending the inquiry” of their immigration status. *Wong*
 8 *Wing v. United States*, 163 U.S. 228, 235 (1896).

9 Finally, the remedy for an unlawful arrest is the suppression of evidence obtained
 10 therefrom, not release from custody. *See INS v. Lopez-Mendoza*, 468 U.S. 1032, 1040-41 (1984);
 11 *United States v. Garcia-Beltran*, 443 F.3d 1126, 1131-32 (9th Cir.), cert. denied, 549 U.S. 935
 12 (2006); *see also Martinez-Medina v. Holder*, 673 F.3d 1029, 1033-34 (9th Cir. 2011)
 13 (exclusionary rule applies in civil removal proceedings only when the Fourth Amendment
 14 violation is egregious). “The ‘body’ or identity of a defendant or respondent in a criminal or civil
 15 proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that
 16 an unlawful arrest, search, or interrogation occurred.” *Lopez-Mendoza*, 468 U.S. at 1039; *see*
 17 *also Stone v. Powell*, 428 U.S. 465, 485 (1976) (noting that “judicial proceedings need not abate
 18 when the defendant’s person is unconstitutionally seized” (*citing Gerstein v. Pugh*, 420 U.S. 103,
 19 119 (1975); *Frisbie v. Collins*, 342 U.S. 519 (1952))); *Garcia-Beltran*, 443 F.3d at 1132 (“[T]here
 20 is no sanction to be applied when an illegal arrest only leads to discovery of the man’s identity.”
 21 (quotation omitted)).

22 Accordingly, because Petitioner seeks his release from custody based on an allegedly
 23 unlawful arrest, there is no basis for the Court to grant such relief. *See, e.g., Rodrigues De*
 24 *Oliveira v. Joyce*, 2025 WL 1826118, at *5 (D. Me. July 2, 2025) (“Petitioner’s argument that an

1 illegal arrest automatically results in an illegal detention is misguided. . . . [E]ven if Petitioner's
2 initial arrest was unlawful, her detention pending removal may stand.”); *Alonso-Portillo v. Bondi*,
3 2025 WL 2483393, at *11 (S.D. Ohio Aug. 28, 2025) (“Traditional application of the
4 exclusionary rule results in the suppression of evidence, as ‘fruits of the poisonous tree,’ obtained
5 in violation of the Fourth Amendment. But the rule does not, as Alonso-Portillo asserts here,
6 dictate his immediate release from detention.”); *Marvan v. Slaughter*, 2025 WL 1940043, at *3-
7 4 (D. Mont. July 15, 2025) (petitioner could not obtain habeas relief on Fourth Amendment
8 violation where administrative removal proceedings had commenced); *H.N. v. Warden*, Stewart
9 Det. Ctr., 2021 WL 4203232, at *5 (M.D. Ga. Sept. 15, 2021) (“even if the Court accepted
10 Petitioner’s argument that his initial detention was somehow unlawful, he is still not entitled to
11 habeas relief.”); *Medina v. U.S. Dep’t of Homeland Sec.*, 2017 WL 1101370, at *1-2 (W.D. Wash.
12 Mar. 24, 2017) (immigration detainee was not entitled to habeas relief because “the remedy for
13 an unlawful arrest in violation of the Fourth Amendment is suppression of evidence,” so if he
14 “desire[d] release from his current detention, his avenue for seeking such release should occur in
15 the context of his removal proceedings” (citations omitted)); *Amezcu-Gonzalez v. Lobato*, 2016
16 WL 6892934, at *2 (W.D. Wash. Oct. 6, 2016) (dismissing petition challenging immigration
17 detainee’s arrest on Fourth Amendment grounds where detainee did not dispute that he was
18 subject to final order of removal, and his “only assertion [was] that he should be released because
19 his arrest violated the Fourth Amendment”; “even if petitioner’s arrest amounts to an egregious
20 Fourth Amendment violation, he is not entitled to habeas relief”), report and recommendation
21 adopted, 2016 WL 6892547 (W.D. Wash. Nov. 22, 2016); *Nyirwa v. Gurule*, 2014 WL 12984435,
22 at *1 (D. Ariz. June 13, 2014) (“It is doubtful that Petitioner’s arrest was unlawful. But even if it
23 was, his allegedly unlawful arrest does not invalidate his current immigration detention because
24 ‘the “body” or identity of a defendant in a criminal or civil proceeding is never itself suppressible

1 as the fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or
 2 interrogation occurred.” (quoting *Lopez-Mendoza*, 468 U.S. at 1039)).

3 Therefore, this Court should deny Petitioner’s unlawful arrest claims.

4 **C. Petitioner is not entitled to release.**

5 This Court should deny Petitioner’s request for immediate release from immigration
 6 detention. Pet., Prayer for Relief. A noncitizen is entitled to release if he can show that his
 7 immigration detention is indefinite as defined in *Zadvydas v. Hong*, 533 U.S. 481, No. 2:20-cv-
 8 1784, 2021 WL 8016749, at *6 (W.D. Wash. June 8, 2021), *report and recommendation adopted*,
 9 2022 WL 1078627 (W.D. Wash. Apr. 11, 2022). Petitioner cannot reasonably allege that his
 10 detention has become indefinite. Petitioner has presented no evidence that ICE will be unable to
 11 remove him if his removal order ultimately becomes final. Nor has Petitioner provided any legal
 12 basis for his immediate release from detention while detained pursuant to 8 U.S.C. § 1226(a).

13 Accordingly, this Court should not grant Petitioner’s request for immediate release.

14 **D. Even if this Court were to grant habeas relief, this Court should deny Petitioner’s**
 15 **request for a permanent injunction.**

16
 17 Petitioner further requests that this Court enjoin Federal Respondents “from re-detaining
 18 Petitioner absent advance authorization from this Court.” Pet., Prayer for Relief, ¶ g. This Court
 19 should deny this request for a permanent injunction preventing a speculative future re-detention.
 20 Petitioner fails to allege that re-detention is likely to occur if she were to be released by this Court.
 21 Furthermore, such an assertion would be speculative at best, and certainly could not encompass
 22 every circumstance leading to re-detention, including if re-detention would occur for the purposes
 23 of removal or due to criminal conduct. Accordingly, this Court should deny Petitioner’s request
 24

1 for permanent injunctive relief. *Torres v. Hermosillo*, No. 2:25-cv-02687-LK, 2026 WL 145715,
2 at *8 (W.D. Wash. Jan. 20, 2026).

3 **V. CONCLUSION**

4 For the foregoing reasons, this Court should deny the Petition in its entirety.

5 DATED this 8th day of April, 2026.

6 Respectfully submitted,

7 *s/ Michelle R. Lambert*

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13 *I certify that this memorandum contains 2,727*
14 *words, in compliance with the Local Civil Rules.*