

STEPHEN W. MANNING, OSB # 013373

stephen@innovationlawlab.org

smanning@ilgrp.com

TESS HELLGREN, OSB #191622

tess@innovationlawlab.org

JORDAN CUNNINGS, OSB # 182928

jordan@innovationlawlab.org

NELLY GARCIA ORJUELA, OSB # 223308

nelly@innovationlawlab.org

INNOVATION LAW LAB

333 SW 5th Ave., Suite 200

Portland, OR 97204-1748

Telephone: +1 503-922-3042

Attorneys for Petitioner

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Eugene Division

M-J-M-A-, an adult,
Petitioner,

v.

CAMILLA WAMSLEY, Seattle Field Office
Director, Immigration and Customs Enforcement
and Removal Operations (“ICE/ERO”); TODD
LYONS, Acting Director of Immigration Customs
Enforcement (“ICE”); U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT; KRISTI NOEM,
Secretary of the Department of Homeland Security
(“DHS”); U.S. DEPARTMENT OF HOMELAND
SECURITY; and PAMELA BONDI, Attorney
General of the United States,
Respondents.

Case No. 6:25-cv-02011-MTK

Agency No. XXX-XXX-902

**PETITIONER’S BRIEF IN
SUPPORT OF PETITION FOR A
WRIT OF HABEAS CORPUS**

Evidentiary Hearing:
December 2, 2025 at 1:30 PM

**PETITIONER’S BRIEF IN SUPPORT OF
PETITION FOR A WRIT OF HABEAS CORPUS**

Petitioner M-J-M-A- was simply heading into work on the morning of October 30, 2025, when she was swept up in Respondents’ dragnet of immigration enforcement in Woodburn—one of Oregon’s most heavily Latino cities comprised of mostly farmworkers.¹ This dragnet was meant to achieve a quota of immigrant arrests², regardless of what the law requires U.S. Immigrations and Customs Enforcement (“ICE”) to do when taking away someone’s liberty. ICE had no basis to stop M-J-M-A-, had no warrant or probable cause to arrest her, and made no individualized custody determination before transferring her hundreds of miles away from her community and legal representation. To compound this illegality, when M-J-M-A- was mere minutes into her discussion with a *pro bono* lawyer discussing the illegality of her arrest and detention, and her options for obtaining liberty and fighting her immigration case, ICE terminated the conversation and whisked her away, blocking her access to her lawyer for over 48 hours – and nearly depriving this Court over jurisdiction, had her habeas petition not been filed only eight minutes later.

M-J-M-A-’s detention was unlawful at every moment. Respondent ICE unlawfully stopped, without reasonable suspicion, the vehicle in which she was a passenger; unlawfully arrested her without a warrant and without probable cause or reason to believe she had committed an immigration violation, and that she would flee before a warrant could be obtained; and denied her a meaningful opportunity to be heard in violation of her constitutional right to due process and Respondents’ own regulations, including by egregiously interfering with her right to counsel.

Respondents’ Return does not offer *any* explanation or authority for the “true cause” of her detention, as required by 28 U.S.C. § 2243. *See* Respondents’ Return to Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (hereinafter, “Return”), ECF 25. Respondents do not seek to

¹ FOX 12 Oregon, *More than 30 immigrants were detained by ICE in Woodburn, an immigrant justice group claims* (Oct. 31, 2025), available at <https://www.kptv.com/2025/10/31/30-arrested-by-ice-woodburn-local-organizers-say/> (last visited Nov. 1, 2025).

² *See Oregon v. Trump*, No. 3:25-cv-01756-IM, ECF 146 at 52 (Nov. 7, 2025) (“Director Wamsley testified that she set a field office-wide ‘goal of 30 arrests a day’ and that there are days when the office ‘meet[s] or exceed[s] that goal’.”)

justify her stop, her arrest, her detention, or her denial of access to counsel. Instead, Respondents raise a single legal argument: that Petitioner may not challenge her unlawful stop and arrest in habeas proceedings. ECF 25 at 3-5. Respondents are incorrect. Because Respondents can provide no lawful authority for her detention at any moment – nor do they even attempt to do – and the Respondents have continued in their widespread unlawful conduct that resulted in M-J-M-A-’s unlawful executive detention, this Court should “dispose of the matter as law and justice require” by granting the writ with appropriate remedies. 28 U.S.C. § 2243.

I. FACTUAL BACKGROUND

On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including “Protecting the American People Against Invasion,” an executive order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The “Protecting the American People Against Invasion” EO instructs the DHS Secretary “to take all appropriate action to enable” ICE, U.S. Customs and Border Protection (“CBP”), and U.S. Citizenship and Immigration Services (“USCIS”) to prioritize civil immigration enforcement procedures, including through mass detention. At the same time, President Trump has indicated that noncitizens like M-J-M-A- are not entitled to due process, the Fifth Amendment notwithstanding.³

In late May, Respondent Secretary Noem and White House Deputy Chief of Staff Stephen Miller met with ICE leadership, setting a new arrest quota of 3,000 arrests per day and reportedly

³ See, e.g., NBC News, Meet the Press interview of President Donald Trump (May 4, 2025), <https://www.nbcnews.com/politics/trump-administration/read-full-transcript-president-donald-trump-interviewed-meet-press-mod-rcna203514>, <https://perma.cc/9HHY-35JC> (last visited Sept. 18, 2025) (in response to a question about whether noncitizens deserve due process under the Fifth Amendment, President Trump replied “I don’t know. It seems—it might say that, but if you’re talking about that, then we’d have to have a million or 2 million or 3 million trials.”).

threatening job consequences if officials failed to meet arrest quotas.⁴ On May 28, Miller confirmed that “[u]nder President Trump’s leadership, we are looking to set a goal of a minimum of 3,000 arrests for ICE every day, and President Trump is going to keep pushing to get that number up higher each and every single day.”⁵ Following the directive from Noem and Miller, ICE agents were instructed in an e-mail to “turn the creativity knob up to 11” and aggressively “push the envelope” in arrests, including by pursuing “collaterals”—individuals for whom the agency by definition would not have arrest warrants.⁶ As another e-mail put it: “If it involves handcuffs on wrists, it’s probably worth pursuing.”⁷ Respondent and ICE Seattle Field Office Director Cammilla Wamsley recently testified that her office, which includes Oregon, has set a goal to detain at least fifty immigrants a day. *See Oregon v. Trump*, No. 3:25-cv-01756-IM, ECF 146 at 52 (Nov. 7, 2025)

The overriding message, communicated by and to Respondents, is that agents and officers carrying out immigration operations on the ground must prioritize arrest numbers, regardless of detainees’ individual circumstances and the law.

DHS Dragnet of Woodburn, Oregon

Early in the morning of October 30, 2025, starting about 5 a.m., DHS launched an immigration dragnet of Woodburn, Oregon and its environs. *See Sami Edge, ICE detains 35 people in Woodburn, immigrant rights coalition says, Oregonlive* (Oct. 30, 2025), <https://www.oregonlive.com/crime/2025/10/ice-detains-29-people-in-woodburn-immigrant->

⁴ Elizabeth Findell, et al., *The White House Marching Orders That Sparked the L.A. Migrant Crackdown*, *The Wall Street Journal* (June 9, 2025), <https://www.wsj.com/us-news/protests-los-angeles-immigrants-trump-f5089877>; Julia Ainsley, et al., *A sweeping new ICE operation shows how Trump’s focus on immigration is reshaping federal law enforcement*, *NBC News* (June 4, 2025), <https://www.nbcnews.com/politics/justicedepartment/ice-operation-trump-focus-immigration-reshape-federal-lawenforcement-rcna193494>; Brittany Gibson & Stef W. Kight, *Scoop: Stephen Miller, Noem tell ICE to supercharge immigration arrests*, *Axios* (May 28, 2025), <https://www.axios.com/2025/05/28/immigration-ice-deportations-stephen-miller>.

⁵ Hannity, *Stephen Miller says the admin wants to create the strongest immigration system in US History*, *FOX NEWS* (May 28, 2025), <https://www.foxnews.com/video/6373591405112>.

⁶ José Olivares, *US immigration officers ordered to arrest more people even without warrants*, *The Guardian* (June 4, 2025), <https://www.theguardian.com/us-news/2025/jun/04/immigration-officials-increased-detentions-collateral-arrests>, <https://perma.cc/54HH-SNSN>.

⁷ *Id.*

rights-coalition-says.html, <https://perma.cc/43EQ-TE64>. Individuals with information about the arrests and tactics described it as “the largest raid or action like this we’ve seen so far in this administration”. *Id.* DHS’s actions caused school officials to alert staff and individuals who responded in the community described the scene as “traumatic.” *Id.* It appears that the dragnet took place predominantly around apartment complexes during the morning hours of 5:00 AM to 7:30 AM, when many Woodburn farmworkers were heading to work. *See* Sophia Cossette, *Arresting ‘Oregon’s economic engine’: Woodburn-area leaders speak out against arrest of 31 immigrants, farmworkers in Thursday ICE raids*, The Newberg Graphic (Oct. 31, 2025), <https://newberggraphic.com/2025/10/31/arresting-oregons-economic-engine-woodburn-area-leaders-speak-out-against-arrest-of-31-immigrants-farmworkers-in-thursday-ice-raids/>, <https://perma.cc/89YJ-SW2U>.

Petitioner’s Unlawful Detention

Petitioner M-J-M-A- is an Oregon farmworker. ECF 16, Declaration of Natalie Lerner (hereinafter, “Lerner Decl.”) ¶ 4. On the morning of October 30, 2025, around 5:30 am, ICE agents stopped a van in which M-J-M-A- was a passenger; she was on her way to work. Lerner Decl. ¶ 4.; Pet. Decl. ¶¶ 5-6. An unmarked SUV got behind the van and signaled the driver to stop. Pet. Decl. ¶ 6. Shortly after, several SUVs and numerous agents surrounded the van and started yelling at the passengers and knocking on the windows. *Id.* When the driver was not quick enough to roll down the window, an agent smashed the glass and unlocked the car doors. *Id.* As Petitioner was paralyzed in fear of the aggression, an agent opened the door, forcibly pulled her out of the vehicle, and broke her phone by folding it over her hands as he restrained her. *Id.* ¶ 8. As other agents were doing the same with the rest of the passengers and demanding the passengers’ names, Petitioner reminded her colleagues of their rights to remain silent and indicated that they should remain calm; this was met with reprimands from the ICE agents who angrily yelled at her to shut up. *Id.* ¶ 9. ICE agents then violently detained everyone in the car. *Id.* ICE agents did not identify M-J-M-A- by name before detaining and arresting her; nor did they identify themselves to her as ICE officers during the apprehension. *Id.* ¶¶ 7, 10. ICE agents did not provide M-J-M-A- with a warrant or

other paperwork upon her arrest. *Id.* ¶ 10. M-J-M-A- did not attempt to flee after ICE stopped the car. *Id.* It was not until Petitioner was taken to the ICE processing center in Portland that the agents identified her after taking her fingerprints. *Id.* ¶ 14. During this interaction, she was forced to sign something and threatened with a prolonged detention if she did not agree to be deported voluntarily. *Id.*

On the same morning of M-J-M-A-'s detention, *pro bono* attorneys from Innovation Law Lab and the CLEAR Clinic attempted to provide legal services and legal advice to M-J-M-A- and the other twenty-eight individuals known, at the time, to have been detained that same morning. ECF 15, Declaration of Kelsey Provo (hereinafter, "Provo Decl.") ¶¶ 2-4. ICE officers did not allow the *pro bono* attorneys from Innovation Law Lab into the building to begin meeting with detainees until approximately one hour after they arrived; ICE denied CLEAR Clinic attorneys access to prospective clients in the facility until almost 3:00 PM. *Id.* ¶¶ 14, 21.

ICE limited *pro bono* attorneys Kelsey Provo and Natalie Lerner's meeting with M-J-M-A- to only about ten minutes. *Id.* ¶ 15.⁸ A few minutes into their meeting, an ICE officer interrupted to tell them that the meeting would be cut short because they were going to transfer Petitioner out of the facility. *Id.* Ms. Provo requested an additional ten minutes to meet with M-J-M-A- so she could complete an abbreviated legal screening about the arrest and the circumstances and legality of the immediate detention; the ICE officer denied that request, told her she could have only sixty more seconds, and then terminated the attorney-client conversation. *Id.*

Immediately after leaving the room, ICE chained the Petitioner and put her on a bus to the Northwest ICE Processing Center in Tacoma, WA. Pet. Decl. ¶ 16. It was not until she arrived at that detention center that she was allowed to call her family to notify them of her detention; she was not provided with any information on how to access to her counsel or reach any *pro bono* legal

⁸ Ms. Provo, Ms. Lerner, and the CLEAR Clinic attorneys are affiliated with Equity Corps of Oregon, Oregon's universal representation program. Equity Corps of Oregon is a recognized *pro bono* provider under the Immigration and Nationality Act. *See* 8 C.F.R. § 1003.61(2) (defining *pro bono* legal services); List of Pro Bono Legal Service Providers, EOIR, at 110 (October 2025), <https://www.justice.gov/eoir/file/probonofulllist/dl> (listing Equity Corps of Oregon).

assistance. *Id.* ¶17. After a night in detention, Petitioner was released, without explanation, from the detention center into the streets of Tacoma, WA, a city she does not know and hundreds of miles away from her community, without money or her phone. *Id.* ¶ 20. Even after this Court’s intervention, the trauma of the detention has instilled a constant fear on M-J-M-A- who is afraid that ICE will unlawfully detain her again. *Id.* ¶ 21.

II. RESPONDENTS’ RETURN AND ACCOMPANYING DECLARATION

On November 5, 2025, Respondents filed papers captioned “Respondents’ Return to Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241,” ECF 25. But the filing fails to meet the statutory standard for a return because it does not, in any way, certify “the true cause of the detention.” 8 U.S.C. § 2243. Respondents’ Return should thus be rejected by the Court. Even if accepted, Respondents’ filing contains no arguments relevant to this Court’s consideration of Petitioner’s habeas claims.

First, Respondents’ filing is not a “return” within the meaning of 28 U.S.C. § 2243. A return, for habeas purposes, requires by statute that “[t]he person to whom the writ or order is directed shall make a return certifying the true cause of the detention.” 28 U.S.C. § 2243. But Respondents’ filing styled as a “Return” does not assert a *single* lawful basis for the detention of Petitioner, from the stop, warrantless arrest, and subsequent custody of Petitioner. Nor is there any certification as to the basis for her stop, arrest, or continued custody in the accompanying declaration. *See Cantrell Decl.* The purpose of the true certification required by 8 U.S.C. § 2243 is so that the Court may have a record on which to assess the lawfulness of the executive detention. The failure to comply with the statutory terms or the directive of the Court to file the return, ECF 23, should result in the documents being stricken from the docket and the arguments contained therein disregarded. The Court could also deem Respondents’ failure to certify the true cause of detention as a concession of the illegality of Petitioner’s detention and default to grant the writ.

Second, even if Respondents’ arguments and declaration are considered, they are inapposite because they misconstrue the remedy that Petitioner is properly seeking through her

habeas proceedings. Respondents’ sole argument – that “Petitioner’s claim for unlawful arrest does not sound in habeas”, Return at 3 – misses the entire basis of Petitioner’s habeas petition: that from the moment of her initial stop, 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 M-J-M-A-’s arrest and subsequent detention as a result of that arrest was unlawful, does habeas provide a remedy for her unlawful executive detention?⁹ The answer is yes because the unlawful stop and arrest are the only basis by which Respondents asserted their custody authority over M-J-M-A-. 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”).

Respondents’ argument that “the appropriate remedy for an unlawful immigration arrest would be suppression of evidence in removal proceedings” entirely misses the point of Petitioner’s habeas proceedings. Respondents are of course correct that information gained through an unlawful arrest may be properly suppressed in removal proceedings before the immigration court. *See I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1050-51 (1984) (describing suppression doctrine in administrative deportation proceedings).¹⁰ But Petitioner is before this Court to contest not her removability, but her unlawful executive custody. Respondents took M-J-M-A- into custody

⁹ There is another obvious question: if a petitioner’s arrest and subsequent detention were unlawful, but Respondents provide a later ground for a purportedly lawful basis of executive detention, would habeas provide a remedy? Here, Respondents do not pose this question – as they fail to assert any basis for her continued detention other than the unlawful arrest.

¹⁰ Indeed, Respondents have disavowed that they would use the information they obtained from Petitioner by means of the illegal arrest and subsequent detention for purposes of removing her from the United States. *See Cantrell Decl.* ¶ 5. Respondents thus appear to concede that any such information should be suppressed in removal proceedings.

through an unlawful stop without reasonable suspicion; they then extended this unlawful detention through a subsequent warrantless arrest without probable cause; and they then continued her unlawful detention, including her rushed transfer out of the District of Oregon, without conducting any individualized custody determination or giving her the opportunity to be heard before such a determination was made. M-J-M-A- thus properly asks this Court to grant the appropriate equitable relief that will ensure her continued freedom from unlawful custody.

III. RESPONDENTS' DETENTION OF PETITIONER WAS UNLAWFUL AT EVERY MOMENT OF HER STOP, ARREST, AND CONTINUING CUSTODY

Respondents' Return offers no justification for any moment of Petitioner's custody that began on October 30, 2025. The uncontroverted facts of record establish that Respondents' agents stopped the vehicle in which Petitioner was traveling and seized her without any reasonable suspicion; conducted a warrantless arrest without any probable cause; and continued her detention without affording her the opportunity to be heard before an individualized determination of her custody, including intentional and egregious interference with her access to counsel. The Court should grant the writ and issue appropriate remedial relief on all Counts.

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

Under the Fourth Amendment and their own regulations, Respondents may not conduct a detentive 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, Two, and Five.

Pursuant to 8 U.S.C. §§ 1357(a)(1) and (3), immigration officers are authorized to conduct vehicle 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).¹¹ 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).

Respondents’ detentive stop of the vehicle in which Petitioner was traveling further violates their binding nationwide policy on vehicle stops. In deciding to stop a vehicle for civil immigration enforcement purposes, Respondent ICE must comply with the settlement agreement in *Castañon Nava et al. v. Dep’t of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.) (hereafter, “*Nava Broadcast Policy*”). Pursuant to a October 7, 2025, order, ICE reissued the *Nava Broadcast Policy* to all ICE officers nationwide on October 22, 2025, with the instruction that it remain in effect through February 2, 2026. *See id.* at Dkt. 224, 224-1 at ¶ 5. Under this policy, ICE officers “may stop a vehicle to enforce civil immigration laws only if they are aware of specific, articulable facts that reasonably warrant suspicion that the vehicle contains [a noncitizen] who may be illegally in the country.” *See Settlement Agreement, id.*, available at <https://perma.cc/54EX-YGM7> (last visited Nov. 1, 2025).¹² Petitioner’s stop without compliance with the *Nava Broadcast Policy* is a violation of the *Accardi* doctrine, which requires the agency to follow its own policies, and the APA. *See Accardi v. Shaughnessy*, 347 U.S. 260, 266-268 (1954); 5 U.S.C. § 706(2)(A).

¹¹ The petition mistakenly cites 8 C.F.R. § 287.8(c) instead of § 287.8(b). *See* ECF 1 at ¶¶ 60-61.

¹² 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).

Respondents' Return offers no justification for Respondents' stop of the vehicle carrying Petitioner and their further stop and seizure of Petitioner herself, let alone any "specific, articulable facts" sufficient to meet the lawful standard for reasonable suspicion. Respondents stopped the vehicle in which Petitioner was traveling to work, broke the window, began "screaming" at the passengers, and then forcibly pulled Petitioner out of the car. Pet. Decl. ¶¶ 6-8. At no point during this stop and seizure did Respondents provide any explanation for the arrest, nor did they apparently even identify Petitioner. *Id.* ¶¶ 6-11. The record thus shows that Respondents conducted a detentive stop and seizure of Petitioner despite having *no* reasonable suspicion that she was unlawfully in the United States. The Court should grant the writ on Counts One, Two, and Five.

B. Respondents conducted a warrantless arrest of Petitioner without probable cause.

Petitioner has a constitutional, statutory, and regulatory right to be free from warrantless immigration arrest without probable cause. Because Respondents conducted a warrantless arrest of Petitioner without any probable cause, the Court should grant the Petition on Counts One, Three, Four, and Five.

Respondents' warrantless arrest of Petitioner without probable cause of an immigration violation is in violation of their statutory and regulatory authority. 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."

Respondents' Return offers no justification for Petitioner's warrantless arrest. The record thus shows that Respondents conducted a warrantless arrest of Petitioner despite having *no* reasonable suspicion – let alone probable cause – that she 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]”). Respondents arrested Petitioner following a vehicle stop without showing her any documents. Pet. Decl. ¶¶ 5-10. Based on the facts in the record, the only conclusion is that Petitioner’s warrantless arrest, which was part of widespread sweeps of arrests of farmworkers on their way to work in Marion County, was unlawfully based solely on her apparent race and ethnicity. 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. Nor may an immigration officer establish probable cause on the basis of a noncitizen’s silence pursuant to her Fifth Amendment rights. *See Hurd v. Terhune*, 619 F.3d 1080, 1088 (9th Cir. 2010) (affirming “the fundamental principle that a suspect’s silence in the face of questioning cannot be used as evidence against him”). Because Respondents arrested Petitioner without probable cause to believe that she was unlawfully in the United States, the Court should grant the writ on Counts One and Three.

Petitioner’s warrantless arrest was independently illegal because Respondents had no probable cause that she 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 she was on her way to work in a van with other people; she did not flee the scene when they stopped the vehicle; and she did her “best to remain calm” while asserting her lawful right to remain silent. Pet. Decl. ¶¶ 5-10. Because 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 Four.

The Court should additionally grant the writ under Count Five, 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.).¹³ In conducting Petitioner’s arrest, the record shows that Respondents’ agents had *no* evidence weighing toward flight risk. To the contrary, the circumstances heavily weighed against a risk of flight: Petitioner was on her way to work and did not attempt to flee when stopped by immigration agents. Pet. Decl. ¶¶ 5-10. 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).

C. Respondents continued to detain Petitioner in violation of her Due Process rights.

The Court should independently grant the writ on Count Six, because Respondents deprived M-J-M-A- of a meaningful opportunity to be heard prior to her detention under the Due Process Clause of the U.S. Constitution. The Due Process Clause required Respondents to provide a meaningful opportunity for Petitioner to be heard on her detention prior to making any individualized custody determination. Their failure to do so violated her constitutional Due Process rights.

¹³ 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).

“No person shall be . . . deprived of life, liberty, or property without due process of law.” U.S. Const. amend V. It is well-established that the Due Process Clause of the Fifth Amendment applies to “all ‘persons’ within the United States,” irrespective of their immigration status. *J. G. G.*, 145 S. Ct. 1003, 1005 (2025) (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). Due process also requires notice and “the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)); *Jimenez v. Bostock*, 2025 WL 2430381, at *6 (D.Or. Aug. 22, 2025).

Following her warrantless arrest, Respondents continued to detain Petitioner without giving her a meaningful opportunity to be heard before making an individualized custody determination. After a warrantless arrest, 8 U.S.C. § 1357(a)(2) requires that the individual arrested “be taken without unnecessary delay” for further consideration of “their right to enter or remain in the United States.” Under 8 U.S.C. § 1226(a), immigration officers may choose to either extend detention or to release an individual from custody; this decision is based on an individualized determination of their danger and flight risk. *See* 8 U.S.C. § 1226(a); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). Unless there is an emergency—here, there was none—the regulations require an individualized opportunity to be heard on whether detention is warranted. The regulation at 8 C.F.R. § 287.3(d) requires that, within 48 hours of a warrantless immigration arrest, an immigration officer make an individualized custody determination as to whether the noncitizen should remain in custody or be released. Likewise, the regulation at 8 C.F.R. § 236.1(c)(8) requires an opportunity for the noncitizen to be heard on flight risk and dangerousness.

Where the government seeks to deprive an individual of a protected interest, the Supreme Court has directed that courts balance three factors to determine what process is due:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the

probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. at 335. In applying this balancing test, it is clear that Respondents provided inadequate process when they deprived Petitioner of her right to be heard before receiving an individualized custody determination. The three-factor test established in *Mathews* is the controlling framework for determining what process M-J-M-A- is due. *See Jimenez*, 2025 WL 2430381, at *6-7 (applying *Mathews* factors to uphold immigration petitioner's right to an individualized custody determination).; *see also E.A. T-B. v. Wamsley*, 2025 WL 2402130, at *3-6 (W.D. Wa. Aug. 19, 2025) (applying *Mathews* factors to assess right to pre-deprivation hearing). Here, all three factors strongly favor Petitioner.

First, M-J-M-A- has an exceptionally strong interest in freedom from physical confinement and in an opportunity to be heard prior to any restraint of her liberty. "Freedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690; *see also Jimenez*, 2025 WL 243038 *6-7. Thus, "[d]etention, including that of a non-citizen, violates due process if there are not 'adequate procedural protections' or 'special justification[s]' sufficient to outweigh one's 'constitutionally protected interest in avoiding physical restraint.'" *Perera v. Jennings*, 598 F. Supp. 3d 736, 742 (N.D. Cal. 2022) (second alteration in original) (quoting *Zadvydas*, 533 U.S. at 690). Similarly, the Ninth Circuit has held that "[i]n the context of immigration detention, it is well-settled that 'due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)). The Supreme Court has long underscored this point. *See, e.g., Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." (citation omitted)). Petitioner's liberty interest is particularly weighty given the civil context of immigration

detention. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (explaining that “[g]iven the civil context, [a noncitizen’s] liberty interest is arguably greater” that the interest of parolees in the criminal context).

Second, “the risk of erroneous deprivation of [Petitioner’s] liberty interest in the absence of a pre-detention hearing is high.” *E.A. T-B.*, 2025 WL 2402130, at *4. The procedural safeguard that Petitioner seeks is the opportunity to be heard in the custody determination process that Respondents are legally required to engage in pursuant to statute and regulation, as well as her Due Process rights. *See Jimenez*, 2025 WL 2430381 at *7 (finding *Mathews* factors favor Petitioner where “Petitioner only asks for Respondents to follow the procedural safeguards already in place in applicable statutes and regulations.”). These authorities require that Petitioner be given an opportunity to be heard before Respondents conduct an individualized assessment to determine whether her individual facts and circumstances make her a flight risk or a danger to the community. *See* 8 U.S.C. §§ 1226(a), 1357(a)(2); 8 C.F.R. §§ 236.1(c)(8), 287.3(d); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. at 38. Had Respondents conducted such an assessment, they would have been compelled to conclude that M-J-M-A-’s facts and circumstances did not support detention. Indeed, Respondents have not asserted *any* lawful interest in detaining Petitioner. *See generally* *Return*; *Addington v. Texas*, 441 U.S. 418, 426 (1979). (“The [government] has no interest in confining individuals involuntarily if they . . . do not pose some danger.”).

Finally, Respondents have no interest in depriving Petitioner of her procedural rights. As it stands, the record shows that Respondents never conducted an individualized custody determination purporting to justify Petitioner’s continued custody, as explicitly required by 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.3(d) – nor, necessarily, did they give the opportunity to be heard before such a decision was made.

Respondents further violated Petitioner’s Due Process rights by intentionally and egregiously obstructing Petitioner’s access to counsel – with whom she was actively meeting – before making the decision to transfer her hundreds of miles away and in advance of making this critical custody determination. *See* Pet. Decl. ¶ 15. Individuals detained in immigration operations

have a right to counsel that is rooted in the Due Process Clause of the Fifth Amendment. *Innovation Law Lab v. Nielsen*, 310 F. Supp. 3d 1150, 1162 (D.Or. 2018); *Usubakunov v. Garland*, 16 F.4th 1299, 1303 (9th Cir. 2021) (“As we have stressed, the importance of the right to counsel ... cannot be overstated.” (cleaned up)); *Arrey v. Barr*, 916 F.3d 1149, 1157 (9th Cir. 2019) (“Both Congress and [the Ninth Circuit] have recognized the right to retained counsel as being among the rights that due process guarantees to petitioners in immigration proceedings.”); *Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005) (The right to counsel in immigration proceedings is rooted in the [Fifth Amendment] Due Process Clause[.]”); *see also* 5 U.S.C. § 555(b) (“A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding.”). The right to counsel for individuals detained in civil immigration enforcement actions “begins before any court proceeding, with notices from the agency to the immigrant and with the detention itself.” *Torres*, 411 F. Supp. 3d at 1061–62; *see* 8 C.F.R. § 287.3(c) (providing that an immigrant arrested without a warrant must be notified of her “right to be represented at no expense to the Government”).

Instead of taking heed of the “warning” to “not treat [the right to counsel] casually,” ICE did exactly that. *See Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 554 (9th Cir. 1990). Petitioner, after being forced to sign a document she could not read and pressured to accept removal, was exercising her right to access her counsel at the Portland ICE Field Office when Respondents terminated the conversation and extinguished her exercise of that right even though it was *at that moment* that Respondents were making important decisions about her case, including her ongoing custody determination, to transfer her hundreds of miles away from her counsel, family, community, and nearly this Court’s jurisdiction. *See* Pet. Decl. ¶¶ 14-17; Provo Decl. ¶ 15; *Vasquez Perdomo v. Noem*, 790 F.Supp.3d. 850, 876-77 (C.D. Cal. July 11, 2025) (granting injunctive relief where individuals had “reasonable fear of imminent detention without access to counsel” at temporary holding facilities), *stay of injunctive relief granted by Noem v. Vasquez Perdomo*, 2025 WL 2585637 (S.Ct. Sept. 8, 2025). The government may not impose restrictions that undermine a detained person’s opportunity to obtain or communicate with counsel. *See*

Orantes-Hernandez, 919 F.2d 549 at 565. Impediments to communication, including through detention in a difficult-to-access facility, can constitute a “constitutional deprivation” where they obstruct an “established on-going attorney-client relationship.” *Comm. of Cent. Am. Refugees v. INS*, 795 F.2d 1434, 1439 (9th Cir. 1986).

Because Respondents intentionally and egregiously interfered with Petitioner’s ability to meaningfully communicate with counsel before her transfer out of the district, they exacerbated her inability to be heard on any individualized determination of her continuing custody. *Jimenez*, 2025 WL 2430381, at *7 (granting writ of habeas corpus where government had revoked an individual’s prior release without procedural due process). Applying the *Mathews v. Eldridge* balancing test, the additional procedural protection Petitioner requested was miniscule: her counsel, with whom she was actively meeting, asked for ten more minutes. *See* Provo Decl. ¶ 15. The Constitution requires more, but even this small amount of additional time was refused for no obvious reason other than to intentionally prevent her from discussing with a lawyer the facts of her case and the illegality of the arrest. As a factual matter, Respondents made at least two more transfers of individuals from Portland to Tacoma later in the day; either transfer would have allowed Petitioner to finish her consultation for counsel and could have afforded her the opportunity to be heard before Respondents made a custody and transfer determination. *See M-L-G-G- et al v. Wamsley*, No. 6:25-cv-02012-AA (D.Or. Oct. 30, 2025), Dkt. 4 (asserting that petitioners in a separate habeas case were transferred out of Oregon to the Tacoma detention center at approximately 3:04 PM); *A-B-D- et al v. Wamsley*, No. 6:25-cv-02014-AA (D.Or. Oct. 30, 2025), Dkt. 3 (asserting that petitioners in a separate habeas case were transferred out of Oregon to the Tacoma detention center at approximately 4:39 PM). The deprivation of counsel here was particularly egregious because counsel continued to be unable to speak with Petitioner after her transfer, despite diligent efforts, until she was released after filing a motion for emergency relief from this Court. *See* Lerner Decl. ¶¶ 8-10; ECF 18.

To remedy Respondents’ violations of Petitioner’s Due Process rights, including their intentional and egregious interference with her right to counsel, the Court should grant the Writ and issue additional equitable relief on Count Six.

IV. THIS COURT RETAINS AUTHORITY TO ENSURE PETITIONER’S ONGOING FREEDOM FROM UNLAWFUL CUSTODY

On October 30, 2025, Petitioner challenged the validity of her executive detention itself and brought a “core” habeas claim for which relief is clearly available. *See Trump v. J.G.G.*, 604 U.S. 670, 672 (2025); *Nance v. Ward*, 597 U.S. 159, 167 (2022) (confirming that a petitioner “must proceed in habeas when the relief he seeks would necessarily imply the invalidity of his conviction or sentence”) (internal quotations omitted). In filing her *habeas corpus* petition, M-J-M-A- sought freedom from unlawful executive detention, requesting (1) a return to the status quo of her freedom from detention, and (2) a remedy ensuring that the Respondents would not engage in similar unlawful executive activity against her in the future. The Court retains authority to grant the requested relief and should do so. *See* 28 U.S.C. § 2241 et. seq.; 28 U.S.C. § 2201 et. seq., 28 U.S.C. § 1651(a).

A. Petitioner’s Case is Not Moot.

Respondents’ release of M-J-M-A-, after she filed her petition and motion for temporary restraining order, does not moot her claims. Where Respondents voluntarily cease allegedly unlawful conduct, they bear a “formidable burden” of proving mootness because “a defendant’s voluntary cessation of a challenged practice will moot a case only if the defendant can show that the practice cannot reasonably be expected to recur.” *Federal Bureau of Investigations v. Fikre*, 601 U.S. 234, 241 (2024); *see also A. A. R. P. v. Trump*, 605 U.S. 91, 96-98 (2025) (applying the voluntary cessation doctrine and finding the government’s agreement not to remove petitioners while their habeas petitions were pending did not moot the case); *E-M- v. Bostock, et al.*, Case No. 3:25-cv-1083-SI, ECF 28 at 7 (D.Or. Aug. 12, 2025) at 6 (“[S]imply voluntarily releasing Petitioner after he filed his Petition fails to moot his claims.”). To meet this formidable burden, the Supreme Court has required either (1) evidence that the party has repudiated its past conduct, *Los*

Angeles County v. Davis, 440 U.S. 625, 628, 632-33 (1979), or (2) a “clearly effective barrier” to the conduct’s recurrence, *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 457 n.1 (2017). Neither is present here.

First, Respondents have in no way admitted let alone repudiated their unlawful conduct. Nowhere in their papers do Respondents provide *any* justification for their stop, arrest, and continued detention of M-J-M-A-, including her rapid transfer in egregious violation of her right to access counsel. *See generally* Response; Cantrell Decl. Second, Respondents have made no assurances that any of their unlawful conduct will not reoccur. *Id.* Their assurance that “[n]o Notice to Appear . . . will be filed as a result of her October 30, 2025, arrest” refers to the initiation of removal proceedings in immigration court – not in any way to a future decision to stop, arrest, or detain. *See* Cantrell Decl. ¶ 5. And even this assurance is empty, as its plain terms leave open the possibility that Respondents could merely initiate removal proceedings following a future unlawful arrest. Respondents have thus neither repudiated their past unlawful actions nor given Petitioner any certainty that her liberty and rights will be protected in the future without an order from this Court.

B. This Court Should Grant Petitioner Equitable Relief.

Notwithstanding Petitioner’s release, this Court retains the authority to grant the relief that M-J-M-A- seeks: declaratory and injunctive relief that would ensure her continued freedom from unlawful detention and protection from a sudden, no-notice transfer outside the district of Oregon away from her counsel and community without the ability to meaningfully communicate with them. Absent Court intervention, M-J-M-A- will once again be subject to detention based on Respondents’ whims—not the rule of law.

This Court can order relief to sufficiently protect M-J-M-A- from Respondents’ future unlawful conduct, as it has done before. *See, e.g., Jimenez*, No. 3:25-cv-00570-MTK, 2025 WL 2430381, at *2 (D. Or. Aug. 22, 2025) (granting habeas relief after petitioner was released from detention). Importantly, “immediate physical release [is not] the only remedy under the federal writ of habeas corpus.” *J. G. G.*, 604 U.S. at 672 (alteration in original); *see also Carafas*, 391

U.S. at 239 (clarifying that the federal habeas statute “does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted.”). Federal courts retain the “power to fashion appropriate relief other than immediate release,” and the habeas statute directs the courts “to determine the facts and dispose of the case summarily, ‘as law and justice require.’” *Peyton v. Rowe*, 391 U.S. 54, 66–67 (1968), quoting Rev. Stat. § 761 (1874), *superseded by* 28 U.S.C. § 2243. Here, further relief is additionally appropriate given the risk of a repeated denial of Petitioner’s access to counsel following another unlawful detention, particularly given ICE’s recent practice of pressuring detainees to renounce their legal rights and agree to removal. *See* Lerner Decl. ¶ 12; Kate Morrissey, *ICE Is Pressuring People in Custody to Self-Deport. Many Are Giving Up.*, Capital & Main (Aug. 6, 2025), available at <https://capitalandmain.com/ice-is-pressuring-people-in-custody-to-self-deport-many-are-giving-up>; Ximena Bustillo, *Trump offers \$1,000 incentive to migrants who leave the country voluntarily*, NPR (May 6, 2025), available at <https://www.npr.org/2025/05/06/g-s1-64513/trump-self-deportation-monetary>.

The Court should grant the writ of habeas corpus, including the declaratory and equitable relief it deems necessary to ensure that Respondents do not again deprive M-J-M-A- of her liberty and her right to counsel in violation of statute, regulation, or the U.S. Constitution.

V. 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 her liberty and her fundamental rights. *See* 8 U.S.C. § 2243; ECF 1 at 18-19.

Dated: November 10, 2025.

Respectfully submitted,

/s/ Jordan Cummings

JORDAN CUNNINGS, OSB No. 182928

jordan@innovationlawlab.org

STEPHEN W MANNING, OSB No. 013373

stephen@innovationlawlab.org,

smanning@ilgrp.com

TESS HELLGREN, OSB No. 191622

tess@innovationlawlab.org

NELLY GARCIA ORJUELA, OSB No. 223308

nelly@innovationlawlab.org

INNOVATION LAW LAB

333 SW 5th Ave., Suite 200

Portland, OR 97204-1748

Telephone: +1 503-922-3042

Attorneys for Plaintiffs