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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 REPLY IN
SUPPORT OF PETITION FOR A
WRIT OF HABEAS CORPUS**

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

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

On October 30, 2025, Petitioner M-J-M-A- was unlawfully detained by Respondents. Respondents unlawfully stopped M-J-M-A- without any reasonable suspicion. Respondents then unlawfully subjected M-J-M-A- to warrantless arrest absent any probable cause of either flight risk or an immigration violation. Respondents then unlawfully continued to detain M-J-M-A- without an individualized custody determination – let alone notice or an opportunity to respond before such a determination was made – until they suddenly released her after she filed a Motion for Temporary Restraining Order.

Respondents’ latest filing again does not address the legality of M-J-M-A-’s stop or warrantless arrest through which they obtained her custody. *See* Respondents’ Response to Petitioner’s Reply in Support of Petition for Writ of Habeas Corpus (“Resp.”), ECF 33.¹ Instead, Respondents purport to justify M-J-M-A’s arrest and detention based on an egregious misconception of their custody authority. According to Respondents, if Respondents unilaterally decide that an individual could be removable from the United States, Respondents have the authority to deprive that individual of their liberty. Resp. at 4-7. This interpretation of Respondents’ custodial authority under 8 U.S.C. § 1226(a) is in blatant disregard of law, including the U.S. Constitution.

If Respondents are correct, the government has the blanket authority to detain any individual whom they declare is “not entitled to remain in the United States” at their whim. Resp. at 4. But the U.S. Constitution could not speak more clearly: “No person shall be . . . deprived of life, liberty, or property, without due process of law”. U.S. Const. amend. V.

Of the “two truths” Respondents assert, Resp. at 4, both are false. First, Petitioner properly challenges her unlawful custody, which began with her unlawful stop and arrest, through these habeas proceedings. Second, the “factual basis” that Respondents assert for M-J-M-A-’s custody

¹ Respondents’ Response mischaracterizes Petitioner’s November 10, 2025, filing as a Reply. Pursuant to this Court’s October 31 Order, Petitioner filed her Brief in support of her Petition for Writ of Habeas Corpus on that day. *See* ECF 13 ¶ 7. Petitioner hereby submits her Reply. *See id.*

is not conceded by Petitioner; to the contrary, it is Respondents who have submitted to this Court that they do not intend to even file charges of removability against Petitioner. *See* Declaration of Matthew Cantrell (“First Cantrell Decl.”), ECF 26 at ¶ 5. And crucially, even if this factual basis were established, it is not legally sufficient to justify the deprivation of Petitioner’s liberty – which is the entire heart of this case. Just as the courts in this District have held in many habeas petitions in recent months, in order for Respondents to be able to deprive an individual from their liberty, they must comply with the statutory provisions and procedures that delineate the limits of their discretionary power.

Every moment of M-J-M-A-’s custody was unlawful. Respondents have still presented no lawful custody authority to stop, arrest, or continue to detain her on October 30. To the contrary, documents Respondents have since produced in discovery further demonstrate that Respondents had no reasonable basis to stop her in Woodburn, no probable cause to conduct a warrantless arrest, and conducted no individualized custody determination to assert their custody authority under 8 U.S.C. § 1226(a). Instead, Respondents appear to have retroactively issued Petitioner an administrative warrant based on information derived from fingerprints that were unlawfully obtained as the fruit of her unlawful arrest. Despite these facts, Respondents now also argue that they need no basis to detain Petitioner beyond their unilateral declaration of her removability from the United States – while having already sworn to this Court that they do not intend to bring charges of removability against her.

Contrary to Respondents’ arguments, they remain bound by the U.S. Constitution. The Court should grant the writ and appropriate remedies to protect Petitioner, uphold her right to Due Process, and prevent the repetition of Respondents’ egregious unlawful conduct.

I. ADDITIONAL FACTUAL BACKGROUND

On November 15, 2025, Respondents produced 46 pages of discovery in response to Petitioner’s First Requests for Production. *See* Supplemental Declaration of Tess Hellgren (“Hellgren Decl.”), ¶ 3.

According to these documents, Respondents' agents Jeff Blevins and James Armstrong arrested Petitioner "At/Near: Woodburn, OR" and classified her as a "COLLATERAL" as opposed to "TARGETED" arrest. Hellgren Decl., Exhibit A, Scratch Form I-213, ICE-000008. Petitioner's stop and warrantless arrest is further described in Petitioner's Form I-213:

Subject was encountered by United States Immigration and Customs Enforcement, Enforcement and Removal Operations on October 30, 2025, in Woodburn, Oregon at 0535 as part of Operation Fortifying the Border. ICE officers walked up to the individual with clear markings and verbally identified themselves and did a consensual encounter. The subject proceeded to comply with commands and but would not give her ID or name. Subject was advised she was under arrest for immigration violations. After being fingerprinted subject was found to be a visa overstay.

Id., Exhibit B, Form I-213, ICE-000006 at 2. The Form I-213 is signed by both Deportation Officer Walker and "Examining Officer" K Kresser. *Id.* at 1-2.

Contrary to Respondents' bold assertion, the October 30 stop and arrest was not a consensual encounter. As she explains in her declaration to the Court:

The van had just left [to commute to work] when an SUV behind us turned on what looked like police lights. The driver pulled over. Almost immediately, many SUVs surrounded us and a large group of agents came out of the cars and approached the van, hitting the windows and yelling at us. I could understand they were yelling at the driver to lower the window. An officer broke the driver's side window because the driver did not lower the window fast enough and unlocked the doors. Then the officers opened all the doors and started screaming at us to get out.

I was so afraid I was paralyzed. I felt I could not move and did not understand what was happening. I did not hear the officers identify themselves or say they were ICE.

It was still dark outside so I could not see everything going on around me; I only saw the flashlights pointing at us. The officers grabbed and forced everyone out of the car. I was sitting in the back of the van and they grabbed my arm to pull me out of the car. I was holding my flip phone and as they were putting my hands behind my back, one of the officers folded it over my fingers and broke it.

As the officers were taking everyone out, they were yelling and asking people for their names. I kept telling everyone to try to stay calm and to not answer any questions because I knew we had the right to remain silent. An agent got angry and started to scream at me to shut up. I felt so powerless and anxious, like we could not do anything while we were being arrested and treated inhumanely. I did my best to remain calm and help my colleagues try to stay calm as well.

After they grabbed me out of the car, they handcuffed me and made me sit with the rest of the passengers against the wall of the back of the mall.

Declaration of Petitioner in Support of Petition for Writ of Habeas Corpus (“Pet. Decl.”), ECF 31 ¶¶ 6-10. Petitioner then “saw one of the agents punch my nephew” before they “grabbed me and put me in another car”, taking her to “a holding cell” in what she later understood to be the Portland ICE Field Office. *Id.* ¶¶ 11-13. Respondents did not allow her to make any phone calls. *Id.* ¶ 13.

Respondents’ documents indicate that while Petitioner was detained in Portland, her fingerprints and DNA were taken. *See* Form I-213, ICE 000005 (fingerprints redacted); Hellgren Decl., Exhibit C, Transaction Record, ICE-000012 at 2 (noting “*FEDERAL DEOXYRIBONUCLEIC ACID (DNA) INDICATOR* . . . * DNA NOT IN CODIS – COLLECT DNA*). At some point after she was fingerprinted, Petitioner was served with a Warrant for Arrest of Alien, signed by officers K Kresser and Walker. *Id.* Exhibit D, Warrant for Arrest of Alien, ICE-000001; *see* Pet. Decl. ¶ 14 (“When my turn came to step out of the cell, an agent fingerprinted me. It was not until that point that I was given documents.”).

After Respondents’ agents took Petitioner out of the holding cell, Respondents’ documents also indicate that Deportation Officer Walker “read to” Petitioner a waiver of her rights that she signed (before having any opportunity consult with counsel) at approximately 10:53am. Hellgren Decl., Exhibit E, Form I-286 (9/14), ICE-000002 at 1. This document appears to be the document that Petitioner described in her declaration. *See* Pet. Decl. ¶ 14 (“The ICE agent also forced me to a sign a document, but I do not know what that was.”). As translated into English, this document states that Petitioner agreed to the following:

I admit that I am illegally in the United States, and I do not believe that I would be in danger if I return to my country. I waive my right to a hearing before the immigration court. I wish to return to my country as soon as my departure can be arranged. I understand that I may remain detained until I leave.

Hellgren Decl., Ex. E at 2. Had Petitioner understood this document, she would not have signed it. *See* Pet. Decl. ¶ 3 (“I am afraid to return to Mexico and intend to apply for asylum.”).

As of this filing, Respondents have not produced any “Notice of Custody Determination” that is typically styled as “Form I-286 (1/14)”. *See* Hellgren Decl. ¶ 9. As Respondents’ own internal guidance explains:

A DHS official issues Form I-286 - Notice of Custody Determination pursuant to section 236 of the INA to notify the alien whether he or she will be detained in custody, released under an immigration bond, or released on his or her own recognizance while a removal proceeding is ongoing. This form is served on the [noncitizen], typically at the same time a Notice to Appear setting forth the reasons why the alien is subject to removal from the United States, is served on the [noncitizen].

U.S. ICE Enforcement and Removal Operations, *Bond Management Handbook*, ERO 11310.1 (08/19/2014) at 3, available at https://www.ice.gov/doclib/foia/dro_policy_memos/eroBondManagementHandbook2018-ICFO-31476.pdf.

On November 17, 2025, Respondents filed their Response to Petitioner’s Brief, ECF 33, along with a second Declaration of ICE Assistant Field Office Director Matthew Cantrell (“Cantrell Decl.”), ECF 34. Director Cantrell states that “Petitioner was previously detained pursuant to authority under INA § 236(a).” *Id.* ¶ 3. INA § 236(a) is the citation of the Immigration and Nationality Act also classified as 8 U.S.C. § 1226(a).

On November 18, 2025, Petitioner filed a Motion to Compel production of the remaining responsive discovery that Respondents have withheld, including explicitly requesting “[a]ny custody determination made pursuant to 8 U.S.C. § 1226(a).” ECF 35 at 8. At the time Petitioner’s motion was made, Respondents’ counsel represented that Respondents were “still engaged in the good faith meet and confer process about [Petitioner’s] concerns.” *Id.* at 1. Petitioner’s counsel has not heard further from Respondents’ counsel regarding Petitioner’s requests in the motion to compel. Hellgren Decl. ¶¶ 11-12. Petitioner continues to await any further production from Respondents.

II. RESPONDENTS DEPRIVED PETITIONER OF HER LIBERTY IN VIOLATION OF HER DUE PROCESS RIGHTS.

Respondents state that Petitioner “misunderstands why she was detained”, asserting that Respondents have authority to detain her under 8 U.S.C. § 1226(a) because she “is unlawfully present.” Resp. at 5; Cantrell Decl. ¶ 3. Respondents impermissibly conflate their authority to seek Petitioner’s removal from the United States with their authority to lawfully detain her.

As a threshold matter, Petitioner “does not contest that she is removable” in these habeas corpus proceedings, *see* Resp. at 4, 6, because that is not the legal question at issue here. *See Carafas v. LaVallee*, 391 US 234, 238 (1968) (clarifying that the *habeas* statute entails “judicial inquiry . . . into the legality of the detention of a person”); *cf. Jennings v. Rodriguez*, 583 U.S. 281, 294, (2018) (finding habeas jurisdiction when a petitioner is “not even challenging any part of the process by which their removability will be determined”). If Respondents allege that Petitioner is removable, they may initiate removal proceedings against her in immigration court (as they acknowledge, *see* Resp. at 5, *citing* 8 U.S.C. §§ 1229a(1)-(2)); in those proceedings, Petitioner could raise defenses to removability and/or apply for relief from removal.² Indeed, as Respondents are well aware, the Immigration and Nationality Act (“INA”) places jurisdictional limitations on Petitioner’s ability to even raise certain issues pertaining to her removability in federal district court. *See, e.g.*, 8 U.S.C. §§ 1252(a)(5), (b)(9); *see also Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (clarifying that INA’s jurisdictional bars do “not deprive [a non-citizen] of the right to rely on 28 U.S.C. § 2241 to challenge detention that is without statutory authority”). Moreover, Respondents have submitted a sworn statement to this Court that no such proceedings will be initiated against M-J-M-A. Cantrell Decl. ¶ 5 (“No Notice to Appear [in immigration court] was filed or will be filed as a result of her October 30, 2025, arrest.”); Respondents’ Return to Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (“Return”), ECF 25 at 2.

Regardless, as discussed in Petitioner’s Brief, Petitioner agrees that 8 U.S.C. § 1226(a) is the sole statutory authority that *could* be available to Respondents to justify her continuing custody

² Available relief could include but is not limited to an application for asylum, which Petitioner intends to submit. *See* Pet. Decl. ¶ 3 (“I am afraid to return to Mexico and intend to apply for asylum.”).

if they had lawfully arrested her. *See* Petitioner’s Brief In Support of Petition for Habeas Corpus (“Brief”), ECF 30 at 14-16. But as Petitioner previously explained, Respondents may not invoke 8 U.S.C. § 1226(a) without an individualized custody determination that justifies the deprivation of Petitioner’s liberty. *See id.*

The undisputed record demonstrates that Respondents violated Petitioner’s procedural due process rights on October 30, 2025. In the civil immigration context, a custody determination under 8 U.S.C. § 1226(a) must be based on either Petitioner’s flight risk or her danger to community; *see Matter of Guerra*, 13 I&N Dec. 37 (BIA 2006), here, neither condition was met. The procedural safeguards that Petitioner asserts are those to which she is entitled to by law, and which are designed to prevent the erroneous deprivation of her liberty: notice and an opportunity to be heard before an individualized custody determination, and the ability to complete a brief, active consultation with counsel at the time her custody determination should have been made. *See, e.g., Trump v. J.G.G.*, 604 U.S. 670, 673 (immigrants in detention are “entitled to notice and an opportunity to be heard ‘appropriate to the nature of the case’”) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)); *Torres v. United States Dep’t of Homeland Sec.*, 411 F. Supp. 3d. 1036, 1061-62 (the right to counsel “begins before any court proceeding, with notices from the agency to the immigrant and with the detention itself”); 8 C.F.R. § 292.5(b) (providing the right to representation “whenever an examination is provided for in this chapter”). Instead, the record as it stands shows that Respondents did not even *make* an individualized custody determination, let alone provide Petitioner with notice or an opportunity to be heard before they deprived her of her liberty. Respondents compounded these violations by significantly curtailing Petitioner’s access to counsel at a crucial moment when meaningful access could have prevented Petitioner’s continued unlawful custody, including her transfer hundreds of miles away to Tacoma, Washington. Additionally, Respondents’ documents reveal that their violation of Petitioner’s due process rights further prejudiced her by coercing her waiver of rights; absent these judicial proceedings, such unknowing and involuntary waiver would likely have led not only to her detention but her swift deportation.

A. Respondents’ statutory custody authority is bound by the Due Process Clause of the U.S. Constitution.

Respondents make the troubling assertion that their allegations of Petitioner’s removability give them general and sweeping “authority to . . . detain her” under 8 U.S.C. § 1226(a). Resp. at 5. The Constitution directs otherwise.

Respondents’ statutory custody authority under 8 U.S.C. § 1226(a) must be read against the backdrop of the U.S. Constitution. *United States v. Witkovich*, 353 U.S. 194, 202 (1957) (affirming “cardinal principle” that statutes must be read in accordance with Constitution); *United States v. Butler*, 297 U.S. 1, 62 (1936) (“The Constitution is the supreme law of the land . . . All legislation must confirm to the principles it lays down.”); *Zadvydas*, 533 U.S. at 689 (limiting statutory custody authority for post-removal order detention because it must be “read in light of the Constitution’s demands”). The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). “[T]he government’s discretion to incarcerate non-citizens is always constrained by the requirements of due process.” *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017).

The Supreme Court has long recognized that noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status. *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). The Supreme Court has also been clear that “government detention violates [the Due Process] Clause” in civil proceedings, including immigration proceedings, unless there is “a special justification, such as harm-threatening mental illness, [that] outweighs the ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Zadvydas*, 533 U.S. at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)); see also *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (“[D]ue process requires that the nature and

duration of commitment bear some reasonable relation to the purpose for which the individual is committed.”).

In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: to mitigate the risk of flight and to prevent danger to the community. *Hernandez*, 872 F.3d at 981 (noting that “the temporary detention of noncitizens may sometimes be justified by concerns about public safety or flight risk”); *Zadvydas*, 533 U.S. at 689 (the two goals of the INA’s custody authority are “ensuring the appearance of [noncitizens] at future immigration proceedings” and “[p]reventing danger to the community”); *see also* 8 C.F.R. § 236.1(c)(8) (requiring consideration of flight risk and dangerousness in custody determination under 8 U.S.C. § 1226(a)). Mere allegations of removability are clearly insufficient to meet this standard. Indeed, federal courts routinely grant release to noncitizens who are either actively in removal proceedings pursuant to 8 U.S.C. § 1229a. *See, e.g., Martinez v. Clark*, 124 F.4th 775, 779 (9th Cir. 2024) (on remand from the Supreme Court, acknowledging the district court’s habeas jurisdiction to review an immigration judge’s “dangerousness” finding in bond proceedings while removal proceedings are pending); *Jimenez v. Bostock*, 2025 WL 2430381, at *6 (D.Or. Aug. 22, 2025) (granting the writ for asylum-seeking petitioner in removal proceedings); *O-J-M- v. Bostock*, No. 3:25-cv-00944-AB at 1 (D.Or. July 14, 2025) (granting release to asylum seeker whose removal proceedings were dismissed but not administratively final), *Y-Z-L-H- v. Bostock*, 792 F. Supp. 3d 1123, 1147 (D.Or. 2025) (same). Indeed, habeas relief is properly available even for noncitizens who have received an administratively final removal order. *See, e.g., Zadvydas*, 533 U.S. at 688 (holding that the government cannot detain a person indefinitely after an order of deportation); *M-S-L v. Bostock*, No. 6:25-cv-01204 at 34-35 (D. Or. Aug. 21, 2025) (granting release on pre-existing conditions of supervision for petitioner subject to administratively final reinstated order of removal); *Cesay v. Kurzdorfer*, 2025 WL 1284720, at *15 (W.D.N.Y. May 2, 2025) (affirming that “[n]oncitizens subject to a removal order may be released pursuant to 8 C.F.R. § 241.4 or 8 C.F.R. § 241.13).

Here, neither purpose of detention was satisfied. Based on the facts of record, Petitioner is not a flight risk. When Respondents stopped her van on the way to the work in the dark pre-dawn hours of October 30, Petitioner did her “best to remain calm and help [her] colleagues try to stay calm” while officers broke the van’s window, screamed at the passengers to get out, forcibly grabbed her to pull her out of the car, broke her phone, screamed at her to “shut up”, handcuffed her, punched her nephew, and forced her into another car traveling to a then-unknown destination. *See* Pet. Decl. ¶¶ 7-13. Even Respondents’ account of the stop and arrest describes that Petitioner “proceeded to comply with commands.” Form I-213 at 2. In addition, there are no immigration proceedings from which Petitioner could even be considered a flight risk: per Respondents’ sworn statement to this Court, no such proceedings have been or will be initiated against M-J-M-A-. Cantrell Decl. ¶ 5; Return at 2.

Based on the facts of record, Petitioner is also not a danger to the community. Respondents’ documents reveal that Petitioner’s lack of criminal history was evident to them at every stage of her custody. *See* Hellgren Decl., Ex. A (“Criminal Record: N/A”); *id.*, Ex. B at 2 (“Criminal History: None”); *id.*, Ex. C at 2 (“A SEARCH OF THE FINGERPRINTS ON THE ABOVE INDIVIDUAL HAS REVEALED NO PRIOR ARREST DATA.”).

B. The procedural safeguards that Petitioner requested would have prevented her continuing unlawful custody.

Had Petitioner received notice and an opportunity to be heard before an individualized custody determination under 8 U.S.C. § 1226(a), these procedures would have prevented her unlawful custody.

When Respondents conduct a warrantless arrest, absent exigent circumstances, the individual must receive a prompt, individualized opportunity to be heard on whether detention is warranted. 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.3(d); *see generally* Pet. Brief at 14-16. For Respondents to transfer their warrantless arrest authority to ongoing custody under 8 U.S.C. § 1226(a), Respondents must conduct an individualized custody determination that considers individual’s flight risk and danger to the community. *See supra* § II.A; Pet. Brief at 14-16; 8 C.F.R.

§ 236.1(c)(8) (directing consideration of whether “the [noncitizen] is likely to appear for any future proceedings” and whether “such release would not pose a danger to property or persons”); *see also Matter of Guerra*, 24 I&N Dec. at 38 (stating that a custody determination in pending removal proceedings must look at whether a person poses a danger to persons or property, threatens national security, or is a flight risk).

There is no record evidence that Respondents made an individualized custody determination for Petitioner, as required by law. *See supra* § II.A.; *see also Bond Management Handbook*, ERO 11310.1 at 3 (describing issuance of “Form I-286 – *Notice of Custody Determination* pursuant to section 236 of the INA to notify the [noncitizen] whether he or she will be detained in custody . . .”). Instead, Respondents’ documents show that they issued an administrative warrant for Petitioner’s arrest hours after her warrantless arrest occurred, after transporting her to Portland and obtaining her biometric information through her fingerprints and DNA. *See* Hellgren Decl., Ex. D (serving warrant in Portland, Oregon); *id.* Ex. B at 2 (identifying Petitioner’s immigration history “[a]fter being fingerprinted”); *id.*, Ex. C at 2 (collecting DNA). Respondents have provided no evidence that they conducted an individualized custody determination as required to assert their statutory custody authority under 8 U.S.C. § 1226(a), as they purport to have done. *See* Cantrell Decl. ¶ 3.

Even if an individualized custody determination was made, Petitioner received neither notice or an opportunity to be heard before she was deprived of her liberty. The failure to provide notice in such circumstances violates the Due Process clause because it “deprive[d] [Petitioner] of any way to meaningfully contest the basis for [her] detention.” *See Martinez v. McAleenan*, 385 F. Supp. 3d 349, 359-60 (S.D.N.Y. 2019) (granting a habeas writ where the Petitioner was denied the proper notice in the context of reinstatement of removal). Indeed, the right to be heard “has little reality or worth unless one is informed that the matter is pending” and can then choose how to respond. *Mullane*, 339 U.S. at 314; *accord United States v. Rivera-Valdes*, No. 21-30177, 2025 WL 2672555, at *12 (9th Cir. Sept. 18, 2025) (en banc) (applying, to the immigration

context, *Mullane*'s requirement that notice must be "reasonably calculated" to provide a meaningful opportunity to appear and contest the charges).

C. Petitioner was further prejudiced by Respondents' due process violations of her right to counsel.

Petitioner's deprivation of access to counsel at the very moment that Respondents were making important decisions about her custody exacerbated the violation of her procedural due process rights. Respondents incorrectly limit Petitioner's legal right to counsel to "removal proceedings before an immigration judge." Resp. at 7, citing 8 U.S.C. § 1362. But the right to counsel is enshrined in immigration statute and regulations beyond the context of removal proceedings alone. *See, e.g.*, 8 U.S.C. §§ 1158(d)(4)(A) (right to notice of the right to legal representation at the time of filing asylum application); 1158(d)(4)(B) (right to access to a list of pro bono legal service providers maintained by the Executive Office for Immigration Review ("EOIR")); 8 C.F.R. §§ 103.2 ("An applicant or petitioner may be represented by an attorney" in proceedings before the DHS sub-agency U.S. Citizenship and Immigration Services.); 1292.11 (addressing access to immigration attorneys, accredited representatives, and nongovernmental organizations). Indeed, 8 C.F.R. § 287.3(c) explicitly addresses non-citizens "arrested without warrant", requiring Respondents to provide "a list of the available free legal services provided by organizations and attorneys qualified under 8 CFR part 1003."

A noncitizen's right to counsel begins at minimum, at the moment of detention. *See Torres*, 411 F. Supp. 3d at 1061–62 (the right to counsel "begins before any court proceeding, with notices from the agency to the immigrant and with the detention itself."). Indeed, where ICE officers first engage in questioning a noncitizen for purposes of immigration enforcement, the right to counsel begins even earlier. *See* 8 C.F.R. § 292.5(b) ("Whenever an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney.").³ Additionally,

³ 8 C.F.R. § 292.5(b) excludes from this right to counsel "any applicant for admission in either primary or secondary inspection...unless the applicant for admission has become the focus of a criminal investigation and has been taken into custody"; the regulation is inapplicable in this case.

under 5 U.S.C. § 555(b)(1), “[a] person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel...” and further, “is entitled to appear in person or by or with counsel . . . in an agency proceeding.” There is no question that an ICE arrest and the subsequent custody determination (which should have occurred in Petitioner’s case) is the compulsion of an appearance before the immigration agency under 5 U.S.C. § 555(b).

When Petitioner was detained by ICE and held at the Portland ICE Field Office, she thus had the right to access *pro bono* counsel before Respondents transferred her out of the state. As Petitioner’s documents show, while Respondents detained her in Portland, they were making decisions about her custody, *see* Hellgren Decl., Ex. D; conducting an examination that included taking biometric information, *see id.*, Ex. B at 2 (identifying Petitioner’s immigration history “[a]fter being fingerprinted”); *id.*, Ex. C at 2 (referencing DNA collection); and coercing Petitioner to waive important rights – including her right to seek asylum and her right to a hearing before an immigration judge, *see id.*, Ex. E at 1. Respondents’ intentional and egregious interference with her access to counsel after just a few minutes undeniably violated that right. *See* Declaration of Kelsey Provo, ECF 15 (“Provo Declaration”) ¶ 15; Declaration of Natalie Lerner, ECF 16 (“Lerner Decl.”) ¶¶ 4-5; Declaration of Petitioner, ECF 31 (“Pet. Decl.”) ¶ 15.

Respondents further argue that any obstruction of access to counsel was not “an injury that necessitates release” and attempt to show that even if they had not interrupted the meeting with counsel, M-J-M-A- would have been detained. Resp. at 7. They are wrong.

Though a showing of prejudice is generally required in order to prove a due process violation, *see Rodriguez-Jimenez v. Garland*, 20 F.4th 434, 440 (9th Cir. 2021), an immigrant need not show prejudice when wrongly denied access to counsel. *See, e.g., Usubakunov v. Garland*, 16 F.4th 1299, 1307 (9th Cir. 2021) (holding that a petitioner wrongly denied access to counsel due, in part, to barriers inherent to immigrant detention and language access issues, need not show prejudice); *Orozco-Lopez v. Garland*, 11 F.4th 764, 779 (9th Cir. 2021) (“[W]here a non-citizen’s

statutory right to counsel has been denied, as in [this] case, he need not show prejudice.”); *Montes-Lopez v. Holder*, 694 F.3d 1085, 1093-94 (9th Cir. 2012) (same).

Even so, Respondents’ obstruction of Petitioner’s access to counsel here irrefutably caused her harm. Had Petitioner been able to fully consult with counsel, her attorneys could have advocated for a formal custody determination with the ICE officers at the Portland ICE Field Office – a process which should have, as explained above, resulted in Petitioner’s release from custody as there were no facts to support a finding of flight risk or danger. *See supra* § II.A. As it was, the fact that Petitioner was pulled away from her counsel mere minutes into their consultation nearly deprived her of her ability to challenge her unlawful custody in this court by depriving the District of Oregon of jurisdiction. *See* Provo Declaration ¶ 15; Lerner Decl. ¶¶ 4-5; Pet. Decl. ¶ 15.

Respondents also coerced Petitioner into waiving important rights in the absence of counsel. The Due Process Clause of the Fifth Amendment to the U.S. Constitution forbids government officials from coercing signatures or a waiver of rights; in order to be valid, any waiver of rights must be both knowing and voluntary (and, thus, not coerced). *Rochin v. California*, 342 U.S. 165, 173, (1952) (“Coerced confessions offend the community's sense of fair play and decency.”). This requirement is also incorporated into Defendants’ policies at 8 C.F.R. § 287.8(c)(2)(vi), which prohibit “[t]he use of threats, coercion, or physical abuse by the designated immigration officer to induce a suspect to waive his or her rights or to make a statement.” Nevertheless, on October 30, Respondents “forced [Petitioner] to sign a document” that she did not understand or “know what that was.” Pet. Decl. ¶ 14. This waiver purports to forfeit Petitioner’s right to contest her removability (“I admit that I am illegally in the United States), *see* 8 U.S.C. § 1229a(b)(4)(B), *Matter of R-C-R-*, 28 I&N Dec. 74, 77 (BIA 2020); her right to seek asylum (“I do not consider that I would be in danger if I returned to my country.”) *see* 8 U.S.C. § 1101 (a) (42); 8 U.S.C. § 1229a (c)(4); her right to proceedings before an immigration judge (“I waive my right to a hearing before the immigration court.”), *see* 8 U.S.C. § 1229a (a), (b)(4)(B); and potentially her right to challenge her continued deprivation of liberty (“I understand that I could be detained until my departure.”), *see* 8 C.F.R. § 1003.19 (a). Had Petitioner understood this

document – or had its implications explained by her counsel – she would not have signed. *See* Pet. Decl. ¶ 3 (“I am afraid to return to Mexico and intend to apply for asylum.”), 14 (noting that Petitioner requested to speak with an attorney when forced to sign the document).⁴

Because Respondents’ obstruction of Petitioner’s right to counsel further violated her due process rights, preventing her from contesting the continuation of her unlawful custody and causing her to sign an involuntary and unknowing waiver of rights, this Court should grant further equitable relief.

III. RESPONDENTS CONTINUED TO DETAIN PETITIONER BASED SOLELY ON INFORMATION DERIVED FROM HER UNLAWFUL STOP AND ARREST.

Even if Petitioner’s custody under 8 U.S.C. § 1226(a) were lawful – it is clearly not, *supra* § II – the Court should still grant the writ because Respondents’ assertion of Petitioner’s immigration status is based solely on information derived from evidence that was the fruit of her unlawful stop and arrest.

A. Respondents’ stop and warrantless arrest of Petitioner were clearly unlawful.

Respondents do not contest that Petitioner’s stop and arrest were unlawful. *See* generally Resp. In addition to Petitioner’s arguments already made, *see* Pet. Brief at 9-13, the documents produced by Respondents are further evidence that they had neither reasonable suspicion to stop nor probable cause to arrest her.

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).

⁴ Such coercion for a waiver of rights is not an isolated occurrence; recent filings in the *CLEAR Clinic v. Noem* case before this Court demonstrate a disturbing pattern of Respondents pressuring noncitizens to waive their rights, even when individuals have requested to speak with counsel. *See CLEAR Clinic, Inc., et al v. Noem*, Case No. 6:25-cv-01906-AA (D. Or. filed Oct. 16, 2025), Dkt. 27, Gill Decl. ¶ 14; Dkt. 28, Pritchard Decl. ¶ 10, 14; Dkt. 30 Declaration of R-J-S-V- (“RJSV Decl.”) ¶ 8; Dkt. 32, Tupper Supp. Dec. ¶ 12, 35; Dkt. 53, Lerner Supp. Decl. Ex. B ¶ 10.

Respondents' Scratch Form I-213 indicates that Petitioner was a "COLLATERAL" rather than "TARGETED" arrest. Hellgren Decl., Ex. A. There was thus no reason for Respondents to target Petitioner when she was a passenger in the van – and yet they proceeded to violently force her out of the vehicle and take her into their custody in an unlawful stop. *See* Pet. Decl. ¶¶ 6-10 (describing how officers "grabbed my arm to pull me out of the car", breaking her phone in the process and proceeding to handcuff her).

Additionally, 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); *see also* 8 C.F.R. § 287.8(c)(2)(i) (requiring 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' Form I-213 makes clear that there was no evidence of Petitioner's flight risk or immigration violation when she was arrested in Woodburn – let alone probable cause. *See* Hellgren Decl., Ex. B at 2. Respondents admit that Petitioner "proceeded to comply with commands" and asserted her constitutional right to silence before they "advised she was under arrest for immigration violations." *Id.* An immigration officer may not establish probable cause on the basis of a non-citizen'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").

Respondents' additional documentation thus further clarifies the unlawful nature of Petitioner's stop and arrest.

B. Respondents may not rely on evidence that was the fruit of Petitioner's unlawful arrest to justify her ongoing custody.

Respondents relied on information that was solely the fruit of Petitioner's unlawful arrests to obtain her immigration records and to seek to justify her continued custody. Because Petitioner's

“arrest and detention were blatantly unlawful from the start, the only commensurate and appropriate equitable remedy to even partially restore [her] is to immediate[ly] release [her] and enjoy the Government from similar transgressions.” *See Martinez*, 385 F.Supp.3d at 373.

“Under [the exclusionary] rule, evidence obtained in violation of the Fourth Amendment cannot be used in a criminal proceeding against the victim of the illegal search and seizure”, nor may “the fruits of the illegally seized evidence” be considered. *United States v. Calandra*, 414 U.S. 338, 347 (1974). The exclusionary rule is intended “to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures”, *id.*, as well as to serve “the vital function of preserving judicial integrity”, *Adamson v. Comm’r*, 745 F.2d 541, 546 (9th Cir. 1984). The Ninth Circuit has explicitly applied the exclusionary rule in civil proceedings where, as here, “evidence is obtained by deliberate violations of the fourth amendment, or by conduct a reasonable officer should know is in violation of the Constitution”, *Adamson*, 745 F.2d at 545, including where an “egregious” violation of the Fourth Amendment occurs in an immigration arrest based on the subject’s race, *Gonzalez-Rivera v. I.N.S.*, 22 F.3d 1441, 1452 (9th Cir. 1994) (concluding that “the officers’ conduct in this case constituted a bad faith, egregious constitutional violation that warrants the application of the exclusionary rule”). *See also I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1050 (1984) (clarifying that its decision did not deal “with egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness”). Because Respondents’ stop and arrest of Petitioner was an egregious violation of her Fourth Amendment rights, the exclusionary rule prevents Respondents from using any evidence obtained solely from that arrest any subsequent custody determination.

In the present case, Respondents seek to justify *a posteriori* an unlawful stop, warrantless arrest and seizure by utilizing information and evidence obtained from their egregious arrest of Petitioner without reasonable suspicion or probable cause. Respondents’ documents make clear that they obtained Petitioners’ immigration records *solely* based on fingerprints taken as a result of Petitioners’ egregious unlawful arrests. *See* Form I-213 (noting that Petitioner “would not give

her ID or name”, was then “advised she was under arrest for immigration violations”, and only subsequently “[a]fter being fingerprinted . . . was found to be a visa overstay.”); Pet. Decl. ¶¶ 10, 14 (describing Petitioner’s exercise of her right to remain silent and subsequent fingerprinting in Portland). In such circumstances, Petitioner’s fingerprints and the subsequent records are properly suppressible under the exclusionary rule. *See United States v. Martinez-Rodriguez*, No. 1:25-CR-00200 (AMN), 2025 WL 2355630, at *10 (N.D.N.Y. July 23, 2025) (suppressing fingerprints derived from unlawful ICE traffic stop); *United States v. Cabrera*, No. 24-CR-02180-JAH, 2025 WL 1564872, at *4–5 (S.D. Cal. Mar. 28, 2025) (“Defendant's fingerprint which lead to the A-File are suppressible as fruit of the poisonous tree.”); *see also Taylor v. Alabama*, 457 U.S. 687, 692–93 (1982) (concluding confession was fruit of unlawful arrest when it followed “initial fingerprints, which were themselves the fruit of petitioner’s illegal arrest”).

Respondents contend that it does not matter how Petitioner was detained and how they obtained the information about her immigration status, as “identity is never suppressible.” Resp. at 5-6. But the cases they cite are all inapposite, as they address the application of the exclusionary rule in the context of deportation proceedings – not, as here, cases in which evidence obtained through unlawful stop and arrest directly led to the deprivation of Petitioner’s liberty. *See* Resp. at 6.⁵ And even in the specific context of immigration removal proceedings, although the person and identity of the respondent are not themselves suppressible, other evidence to prove unlawful stay or non-citizenship is inadmissible if it is the fruit of the unlawful arrest. *Lopez-Mendoza*, 468 U.S. at 1043. Importantly, where the only evidence leading to an individual’s immigration record is obtained through unlawful arrest, courts have found that the individual’s immigration record is suppressible as “fruit of impermissible government action”. *See Cabrera*, No. 24-CR-02180-JAH, 2025 WL 1564872, at *4–5 (suppressing immigration records because they were “derived from information gathered pursuant to Defendant's unlawful seizure and detail statements made by the

⁵ The cases Respondents cite are also factually distinguishable from the case at hand in material ways. *Compare Lopez-Mendoza*, 468 U.S. at 1040 (considering non-citizen who admitted unlawful entry to authorities) *with Flores-Torres v. Mukasey*, 548 F.3d 708, 710 (9th Cir. 2008) (involving non-citizen with serious criminal convictions subject to mandatory detention).

Defendant after his stop”); *Martinez*, 385 F. Supp. 3d at 367 (S.D.N.Y. 2019) (suppressing reinstatement order because “Defendants only produced and served that order by violating a host of Petitioner's Constitutional rights”). In other words, Respondents may not use the information gained through their unlawful seizure of Petitioner as the basis for their subsequent custody determination and call it lawful. *See Martinez*, 385 F. Supp. 3d at 359-60; *Lopez-Mendoza*, 468 U.S. at 1043; *Cabrera*, No. 24-CR-02180-JAH, 2025 WL 1564872, at *5.

Nor can the government cure the illegality of an arrest by producing retroactive documents. *Martinez*, 385 F. Supp. 3d at 359-60 (granting a writ of habeas corpus finding that Petitioner's detention was unconstitutional at the time he was taken into custody and such detention cannot be ‘fixed’ *post hoc*); Warrant of Arrest of Alien (purporting to retroactively justify Petitioner’s arrest after she was already arrested and transported in Respondents’ custody to Portland). The Supreme Court has a longstanding line of precedents finding that when a deprivation of liberty is achieved by methods that offend Due Process and conduct that shocks the conscience, that detention is unlawful. *Rochin*, 342 U.S. at 174 (reversing a judgment where a conviction was obtained by methods that offend the Due Process Clause and “conduct that shocks the conscience”). This is exactly the situation for Petitioner.

Respondents’ justification for Petitioner’s custody rests solely on facts of her immigration record, that “she overstayed her visa and remains in the United States without lawful status.” Resp. at 5. Even if this information were sufficient to justify arrest – it is not, *supra* § II – *none* of this information was obtained independently by Respondents. Instead, it was all obtained in the course of and as the fruit of Petitioner’s unlawful stop and arrest. Because Respondents accessed Petitioner’s immigration information solely through their forced use of her fingerprints following her unlawful stop and arrest, this information must be suppressed from their custody determination. *See United States v. Martinez-Rodriguez*, No. 1:25-CR-00200 (AMN), 2025 WL 2355630, at *10 (N.D.N.Y. July 23, 2025) (underlining that the government had not explained how any identity evidence was obtained independently from an unlawful seizure, and as such all evidence from the illegal stop – including agents observations, statements, fingerprints, photographs – would be

excluded). The Court should thus suppress Petitioner's biometric information, including her fingerprints and DNA, and her immigration files obtained as the fruit of their unlawful arrest, and further grant the writ on Count One.

IV. 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.

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Respectfully submitted,

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