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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Eugene Division

M-J-M-A-, 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 RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS**

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INTRODUCTION

Sometime around 5.30am on October 30, 2025 in Woodburn, Oregon, ICE officers stopped a white passenger van in which Petitioner, M-J-M-A-, was riding. ECF 88 at 8-9; Exh. 1. The ICE officers stopped the van because they were racially targeting *everyone* in the whole geographic area of Woodburn, Oregon on instructions they received from a database and commands they had to arbitrarily fill detention beds. ECF 88 at 4-11. According to their database, Woodburn was a "target rich" area, full of farmworkers and people with "immigration nexus", which means any person who appears in any DHS database, including citizens, people who cross the border, and those who have filed applications for immigration benefits. ECF 88 at 7. So, in essence, just about anyone and everyone that particular morning was a target, which is to say, it was an illegal racialized dragnet—a programmatic effort by ICE to deprive everyone in the area (or at least everyone of a particular race and ethnicity) of their liberty, without individualized suspicion, so they could fill arrest quotas. *See, e.g., United States v. Korematsu*, 323 U.S. 214, 219 (1944) (racial dragnet and detention of thousands of people, citizens and immigrant), *overruled by, Trump v. Hawaii*, 585 U.S. 667, 710 (2018) ("*Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—has no place in law under the Constitution.") (cleaned up).

After seizing the van, shattering the window, and seizing all the passengers inside, ICE agents arrested M-J-M-A- without knowing anything at all about her—other than her race and ethnicity. ECF 88 at 9-11; ECF 1 ¶ 47. They handcuffed her, forcibly photographed her for their biometric databases, transferred her to different sites in locked vans, fingerprinted her, interrogated her, and locked her up in a small cell. ECF 88; ECF 4 at 1-2. At 12.46pm, only hours after the unlawful seizure began and while she was confined in this District in violation of the laws of the United States, M-J-M-A- sued for her immediate release. ECF 1. After she sued, ICE agents transported her hundreds of miles away in a prison van to another detention center where she was locked up once again. ECF 15 at ¶¶ 15, 19; ECF 16 at ¶¶ 6-10.

Respondents have moved to dismiss her petition for habeas corpus because a day after she sued, ICE voluntarily released her. ECF 100 at 8-9. Specifically, they move to dismiss Petitioner's counts one through six, which account for the entirety of her petition, under the Federal Rules of Civil Procedure 12(b)(1) and (b)(6). ECF 100 at 2. Respondents make three arguments on the merits. ECF 100. First, they assert that M-J-M-A-'s petition—all of the counts—are moot. ECF 100 at 8. Second, they gloss over their mootness argument to assert that Counts One through Six are not "cognizable in habeas" because "unlawful arrest does not *by itself* entitle a person to habeas relief." ECF 100 at 18 (italics added). Third, they argue (yet again) that the jurisdictional preclusion provisions of the Immigration and Nationality Act channel Petitioner's "remaining arrest-based theories" into removal proceedings and therefore they must be dismissed. *Id.* at 23-31.

LEGAL STANDARD

A motion to dismiss under Rule 12(b)(1) for lack of subject matter jurisdiction may be either "facial" or "factual." *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). A facial attack on subject matter jurisdiction is based on the assertion that the allegations contained in the complaint are insufficient to invoke federal jurisdiction. *Id*. "A jurisdictional challenge is factual where 'the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction.'" *Pride v. Correa*, 719 F.3d 1130, 1133 n.6 (9th Cir. 2013) (quoting *Safe Air for Everyone*, 373 F.3d at 1039). When a party factually challenges the assertion of jurisdiction, a court does not presume the truthfulness of the petitioner's allegations and may consider evidence extrinsic to the complaint. *See Terenkian v. Republic of Iraq*, 694 F.3d 1122, 1131 (9th Cir. 2012); *Safe Air for Everyone*, 373 F.3d at 1039. A factual challenge "can attack the substance of a complaint's jurisdictional allegations despite their formal sufficiency." *Dreier v. United States*, 106 F.3d 844, 847 (9th Cir. 1996) (quotation marks omitted).

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the sufficiency of the claims. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). When evaluating the sufficiency of a complaint's factual allegations, the court must accept all material facts alleged in the complaint as true and construe them in the light most favorable to the non-moving party. *Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136, 1140 (9th Cir. 2012).

ARGUMENT

The Court should deny the motion to dismiss. The motion is procedurally improper and, on the merits, is unpersuasive and meritless. First, their motion itself is procedurally improper and should be denied (or deferred) on this basis alone. Their motion to dismiss is barred in part because they have already filed an answering pleading which precludes any later 12(b)(6) motion. It is premature in part because their motion relies on facts outside the pleadings—facts that are still under development—to make their case. Second, their mootness arguments fail on the merits. Respondents have failed to meet their heavy burden to demonstrate mootness. Even so, Petitioner continues to suffer collateral consequences that can be remedied by a favorable judicial decision. Third, their "cognizability in habeas" argument is meritless. To the extent it is not a mootness attack, they have misstated the law and applied it inaptly to the facts and posture of this case. The writ of habeas corpus reaches all manner of unlawful executive restraint, including unlawful custody incident to arrest, and the remedies in habeas that could address that illegality are flexible. Third, their jurisdictional arguments are inapposite to the challenge brought by M-J-M-A-.

I. The motion to dismiss should be denied because it is procedurally improper.

The Court should deny Respondents' motion to dismiss as premature. Respondents appear to assert two bases for dismissal – that M-J-M-A-'s habeas petition is moot and therefore should be dismissed under Rule 12(b)(1) and that M-J-M-A- has failed to state a claim upon which relief can be granted under Rule 12(b)(6). *See* ECF 100 at 14-15. Respondent's motion to dismiss under Rule 12(b)(6) is untimely and should be denied. Alternatively, because Respondents rely on evidence beyond the pleadings to support their 12(b)(6) argument, the Court should defer ruling on the motion and permit the parties a reasonable opportunity to present material relevant to a Rule 56 motion. *See* Fed. R. Civ. P. 12(d) (a motion to dismiss under 12(b)(6) must be treated as a motion for summary judgment where matters outside of the pleadings are presented and not excluded by the court). Similarly, Respondents' mootness challenge under Rule 12(b)(1) should be denied as premature, as Respondents' arguments rely primarily on facts that are still being developed and those facts go to the heart of the matter.

A. The motion to dismiss is untimely.

Respondents' motion to dismiss under Rule 12(b)(6) should be denied at this stage in the case because it is untimely. Rule 12 provides wide discretion to the trial court to determine the timing of adjudication of defenses. Fed. R. Civ. P. 12(i). Likewise, Rule 12(b) provides that a motion making any of several enumerated defenses "shall be made before a pleading if a further pleading is permitted." *Id.* 12(b). The instant motion to dismiss under Rule 12(b)(6) for failure to state a claim upon which relief can be granted falls within Rule 12(b)'s provision requiring such a defense to be presented before an answer is filed. *Aldabe v. Aldabe*, 616 F.2d 1089, 1093 (9th Cir. 1980). There is no question that Respondents have already filed a responsive pleading. ECF 25. In their responsive pleading, the Respondents assert similar defenses as in their motion; in essence, they are using the instant motion to short-circuit the merits adjudication. *Cf.* ECF 100 *with* ECF 25. Therefore the (b)(6) motion should be denied or deferred until the petition itself is ripe for adjudication. *Cf.* Fed. R. Civ. P. 12(i) (granting wide discretion for timing of disposition) *with* 28 U.S.C. § 2243 (same).

B. The Rule 12(b)(6) motion is premature.

Respondents' motion to dismiss should be denied or deferred because it is premature and the factual record in this case is not yet closed. The Respondents' inapt timing and reliance on facts outside the pleadings effectively converts their motion to dismiss into a motion for summary judgment. This circuit's approach to 12(b)(6) motions filed after a responsive pleading is to treat the motion as a motion for judgment on the pleadings. *Aldabe*, 616 F.2d at 1093 ("Because it is only after the pleadings are closed that the motion for judgment on the pleadings is authorized (Rule 12(c)), Rule 12(h)(2) should be read as allowing a motion for judgment on the pleadings, raising the defense of failure to state a claim, even after an answer has been filed."). The federal rules convert a Rule 12(c) motion to one for summary judgment under Rule 56 when "matters outside the pleadings are presented to" the court. Fed. R. Civ. P. 12(d). The rules are clear that "[a]ll parties must be given a reasonable opportunity to present all the material that is pertinent to the motion." *Id.*

Here, Respondents filed their motion to dismiss after their pleading and present matters outside of the pleadings to the Court. Their argument for dismissal under Rule 12(b)(6) presents matters outside the pleadings: namely, Petitioner's release from detention (following this Court's intervention) and a declaration from an ICE agent with a "representation" that ICE will not initiate removal proceedings against the Petitioner based on her unlawful arrest and detention. *See* ECF 100 at 24 (arguing in support of dismissal under 12(b)(6) that Petitioner M-J-M-A- is no longer detained, is not subject to conditions of release or supervision, and that ICE has represented that it will not place her in removal proceedings based on her October 30 arrest, and therefore this Court cannot provide further relief). Accordingly, the motion to dismiss converts to a motion for summary judgment.

Deemed as a motion for summary judgment, the court should deny it as it is premature because it is not yet ripe for adjudication. Although Federal Rule of Civil Procedure 56 "allows a motion for summary judgment to be filed at the commencement of an action, in many cases the motion will be premature until the nonmovant has had time to file a responsive pleading or other pretrial proceedings have been had." Fed. R. Civ. P. 56, Advisory Committee's Notes (2010 Amendments, Note to Subdivision (b)); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (limiting timing for summary judgment until "after adequate time for discovery"). Accordingly, the court should defer ruling on the motion to dismiss and permit discovery to proceed such that the parties have a reasonable opportunity to present material evidence.

True, a court may properly resolve a 12(b)(6) motion to dismiss without converting it to Rule 56 motion where the court limits review beyond the complaint to taking judicial notice of facts outside of the pleadings, such as records and reports of administrative bodies or matters of public record. *Mack v. S. Bay Beer Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986), *abrogated on other grounds by Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 111 (1991). But those rulings do not apply here. First, the Respondents have not requested that type of relief. Second, the materials which Respondents present to the Court go far beyond asking to take judicial notice of administrative reports and records or matters of public record. Indeed, Respondents ask the Court to unilaterally give dispositive weight to an ICE agent's unsupported, untested declaration and the statement that the agency will not initiate removal proceedings against M-J-M-A- based on her October 30 arrest, and further, ask the court to determine whether M-J-M-A- is entitled to the relief she seeks. *See* ECF 100 at 24. These are factual questions that go beyond what Rule 12 permits the court to consider on a 12(b)(6) motion and are only proper at summary judgment. As such, the court should, at minimum, convert Respondents' 12(b)(6) motion to dismiss into a motion for summary judgment and permit discovery to continue, thereby providing the parties with an opportunity to present material evidence. *See Erlich v. Glasner*, 374 F.2d 681, 683 (9th Cir. 1967) (concluding it was reversible error for the district court to grant a motion to dismiss that had been converted to a motion for summary judgment without providing all parties a reasonable opportunity to present material relevant to a Rule 56 motion).

C. The Rule 12(b)(1) motion is premature.

Respondents' motion for dismissal under Rule 12(b)(1) should similarly be denied (or deferred) as premature. Respondents assert a factual challenge to this Court's subject matter jurisdiction under Rule 12(b)(1), arguing the Court lacks jurisdiction over Claims One through Six of M-J-M-A-'s original habeas petition because she has failed to show continuing post-release restraints or continued collateral consequences from her unlawful arrest and detention, and further, that there is no remedy habeas can provide. *See* ECF 100 at 15-18. Those are factual questions going to the heart of the matter and dismissal under 12(b)(1) is therefore inappropriate.

Because Respondents present a factual challenge to jurisdiction under Rule 12(b)(1), the court may review evidence beyond the complaint in resolving the motion without converting the motion into one for summary judgment. *Safe Air r*, 373 F.3d at 1039. However, the Ninth Circuit has held that a "jurisdictional finding of genuinely disputed facts is inappropriate when the jurisdictional issue and substantive issues are so intertwined that the question of jurisdiction is dependent on the resolution of factual issues going to the merits of an action." *Safe Air*, 373 F.3d at 1039 (quoting *Sun Valley Gas., Inc. v. Ernst Enters.*, 711, F.2d 138, 139 (9th Cir. 1983) and *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1983)). And further, where "the attack on jurisdiction requires the court to consider the merits of the case, the court has jurisdiction to proceed to a decision on the merits." *Thornhill Pub. Co. v. Gen. Tel. & Elecs. Corp*, 594 F.2d 730, 733-34 (9th Cir. 1979). In such cases, the court must treat the motion to dismiss as a Rule 56 motion. *See id.*; *see also Safe Air*, 373 F.3d at 1040 (reviewing the district court's order as a grant of summary judgment on the merits rather than a dismissal for lack of subject matter jurisdiction).

Here, Respondents' attack on the court's subject matter jurisdiction requires the court to consider the merits of the case – indeed, Respondents' jurisdictional attack goes to the heart of the matter. Thus, the court should deny Respondents' motion to dismiss under 12(b)(1) and should permit the parties to present evidence pursuant to a Rule 56 motion.

Importantly, Respondents' arguments rest on facts that are still being developed. Indeed, discovery on M-J-M-A-'s original claims is ongoing because Respondents have failed to produce key documents within the scope of this Court's discovery order. *See* ECF 69. This includes, among other documents, the target package that led directly to M-J-M-A-'s arrest and detention, the intelligence Respondents' witnesses testified was passed down from the Portland Field Office that led officers to the apartment complex in Woodburn, *see* Tr. 123-27, and documents responsive to Respondents' witness testimony regarding ICE's issuance of post-hoc warrants, Tr. 306; *see also* ECF 88 at 39 (finding Respondents had a pattern and practice of fabricating warrants after arrests were made). These facts go directly to M-J-M-A-'s requested remedies, namely, whether she is entitled to a declaratory judgment that Respondents violated the Respondents' own polices and regulations, the law, and the Constitution.

Moreover, M-J-M-A-'s remedy for Respondents' unlawful conduct is a question of fact that rests, in part, on what information Respondents obtained from M-J-M-A- in violation of her Fourth and Fifth Amendment rights; how Respondents have documented and characterized the encounter, including any analyses or conclusions Respondents made regarding the encounter or about M-J-M-A- individually; and where and to what extent that information has been preserved. These facts necessarily implicate M-J-M-A-'s remedies. Importantly, Respondents have yet to produce information or documentation regarding the destruction of the target package, disclosed during the December 2025 evidentiary hearing by Agent J-B-, and Petitioner is entitled to seek a remedy for the spoilage of evidence. Indeed, the full extent of the destruction of evidence is still unknown. *See* Tr. 232-33.

Further, Respondents' claim that M-J-M-A- cannot carry her burden to prove there is a reasonable expectation that she will again be stopped, arrested without a warrant and detained, *see* ECF 100 at 22, depends on facts that are still being developed. Whether M-J-M-A- can meet this burden depends on what information Respondents have preserved from M-J-M-A-'s unlawful arrest and detention, and discovery remains ongoing as to this fact. Similarly, whether M-J-M-A- can establish continuing post-release restraints and collateral consequences is a factual inquiry, as is whether ICE will abide by its "representation" that it will not use the information obtained from her unlawful arrest to initiate removal proceedings against her in the future, *see* ECF 26 at ¶ 5. As such, the court should permit discovery to conclude before issuing findings on this issue.

Finally, Respondents also argue that on the merits, the evidentiary record does not support M-J-M-A-'s allegation that officers lacked reasonable suspicion to stop her and lacked probable cause to arrest her, ECF 100 at 38-41. That too is a factual challenge about which discovery is ongoing.

II. The motion to dismiss should be denied with prejudice because it is meritless.

The Respondents seek to dismiss Counts One to Six—the entirety of her habeas petition—because MJMA was released and, as such, her challenge is moot and any other requests are not habeas relief. The motion should be denied because Respondents have failed to meet their heavy burden to demonstrate their voluntary cessation moots the petition. But even then, the petition is not moot because Petitioner continues to suffer collateral consequences that can be remedied by a favorable judicial decision. The "cognizability in habeas" argument is merely a glossed-up version of their mootness argument, which not only fails but is also wrong as a statement of law.

A. The claims are not moot because the wrongful conduct can reasonably recur.

Respondents' motion to dismiss should be denied because they have failed to meet their heavy burden to demonstrate that Petitioner's claims are moot. Respondents assert that because Petitioner M-J-M-A- was released from immigration detention, she has already received "the favorable habeas remedy" and her case is now moot. ECF 100 at 16. 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).

Respondents' voluntary release of M-J-M-A-, *after* she filed her petition and *after* she filed her motion for a temporary restraining order, does not moot any of 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-*, Case No. 3:25-cv-1083-SI, ECF 28 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.

1. Respondents have not repudiated their past conduct.

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* ECF 25; ECF 26. If anything, the Respondents continue to assert their allegedly sweeping powers to detain and deport at will. ECF 88 at 5-6 (describing DHS detention and deportation policies). All of the same policies in place when Respondents arrested and detained M-J-M-A- on October 30, 2025 are still in effect. *Cf.* ECF 1 at ¶¶ 35-39 with ECF 88 at 5-6 (describing same). Respondents have not repudiated any of those policies or practices in any of their filings in this case. *See generally* ECF 25, ECF 33, ECF 100. In their motion, the *only* thing they cite to meet their burden to show their voluntary conduct is sufficient to moot the entire petition is the declaration of a single ICE agent. ECF 100 at 14. But that declaration is empty and irrelevant, as its plain terms do not address the illegality of the arrest and detention. ECF 26. And while the agent represents that Respondents will not initiate removal proceedings against M-J-M-A- based on her October 30 arrest, the agent does not make any representations about whether Respondents will re-detain her. *See id.* Indeed, the agent's representation leaves the Respondents free to repeat their unlawful arrest and detention of M-J-M-A-. Respondents have made *no* assurances that any of their unlawful conduct resulting in her detention will not reoccur. *Id.* Notably, the ICE agent merely states that "[n]o Notice to Appear . . . will be filed as a result of her October 30, 2025, arrest" but says nothing about arrests and detention—the basis of her petition. *See* ECF 26 at 2. Nowhere in the declaration does it say that the alleged wrong will not occur again. *Id*. The ICE agent declaration not a repudiation of Respondents' conduct.[1]

Respondents' reliance on *Picrin-Peron* is misguided. In that case, the petitioner's only request for relief on his habeas petition was to be released from custody, the government granted

[1] At a minimum, it is a question of fact that requires development. The assurances in the declaration are questions of fact. It is also a question of fact whether this particular ICE agent, who attests to be only an "assistant" field office director, can bind the Department of Homeland Security now or in perpetuity. The motion to dismiss can be denied on this basis alone to permit the necessary factual development.

him parole for another year, and the court was satisfied that the government would not re-detain the petitioner absent specific circumstances. *Picrin-Peron v. Rison*, 930 F.2d 773, 776 (9th Cir. 1991). This is distinguishable from the present case where petitioner requested release from confinement *and* relief to ensure she will not be unlawfully detained again in the future, and the latter is not addressed at all by Respondents' statements. *Cf.* ECF 26. Respondents concede this point. ECF 100 at 14. In asserting *Picrin-Peron*'s applicability, Respondents explain that the "same reasoning applies with greater force here: Petitioner has been released without conditions, and *ICE has represented that it will not pursue removal proceedings* against her based on the arrest she challenges in Counts 1 through 6." ECF 100 at 14 (italics added). But the Petitioner is not, and never has, challenged the initiation or commencement of removal proceedings against her. ECF 1 That an ICE agent has represented that DHS will not commence removal proceedings against her is entirely irrelevant to whether DHS will re-arrest and detain her.

2. Respondents have not imposed any clearly effective barrier to repeating the unlawful conduct.

Respondents have not imposed any barrier—let alone any clearly effective barrier—to avoid repetition of their unlawful conduct. *Trinity Lutheran*, 582 U.S. at n.1. The Respondents must show that "subsequent events make it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Id.* First, their argument regarding detention and custody lacks support. ECF 100 at 14-15. Respondents assert, without evidence, that Petitioner will not be "detained" and "held in custody based on the October 30 arrest or the same asserted defects." ECF 100 at 15. But the only subsequent event since the litigation began that they point to is the ICE agent's declaration about removal proceedings. ECF 100 at 14. The ICE agent declaration says nothing about detention or custody or "the same asserted defects," and is thus, irrelevant. *See supra*. Respondents point to no evidence that even remotely suggests a change in policies, new practices, or additional trainings that would interpose a clearly effective barrier to DHS subjecting Petitioner to unlawful detention yet again. ECF 100 at 14.

Second, their "chain of contingencies" argument lacks support. ECF 100 at 9, 15. They present no evidence at all to show that any of the conduct challenged in M-J-M-A-'s petition has changed and, of course, they do not even suggest through evidence that they won't immediately re-detain M-J-M-A. As this court has previously recognized in its February 27 Opinion and Order on the Supplemental Complaint for this habeas petition, "Plaintiffs are in danger the moment they open their doors" and they are vulnerable to an unlawful arrest "simply by their presence in the United States." ECF 88 at 30-31 (explaining how Plaintiffs, including M-J-M-A- are at a significantly higher risk of being unlawfully arrested by Respondents).

A "formidable burden" means just that: it is purposefully a high bar to overcome so that wrongdoers cannot just stop doing something when sued, and then immediately do it again later. *Fikre*, 601 U.S. at 241; *A. A. R. P.*, 605 U.S. at 96-98; *E-M- v. Hermosillo*, Case No. 3:25-cv-1083-SI, ECF 28 at 6 (D.Or. Aug. 12, 2025). 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. The claims are not moot because there are remediable collateral consequences.

M-J-M-A- faces collateral consequences, including an ongoing invasion of her privacy due to Respondents' retention of the information they collected from her unlawful arrest, potential future re-arrest by Respondents based on that information, and ongoing financial, personal, and professional repercussions due to having to report her unlawful arrest and detention on applications for employment, housing, and professional licensing. "For a habeas petition to continue to present a live controversy after the petitioner's release or deportation, ... there must be some remaining 'collateral consequence' that may be redressed by success on the petition." *Abdala v. I.N.S.*, 488 F.3d 1061, 1064 (9th Cir. 2007). A qualifying collateral consequence must be a "concrete and continuing injury" flowing from the basis of the habeas challenge. *Spencer v. Kemna*, 523 U.S. 1, 7 (1998). M-J-M-A-'s collateral consequences are concrete legal disadvantages that the court may redress by expunging all records collected and maintained about M-J-M-A- from her unlawful arrest, including any derivative information.

M-J-M-A- must report the arrest on any future application for immigration relief, employment, housing, and other similar documents. Her arrest record has an inherently negative connotation and concrete effects. The Ninth Circuit has recognized that negative information is sufficiently harmful to support a collateral consequence. *See e.g., Flint v. Dennison*, 488 F.3d 816, 824 (9th Cir. 2007) ("When a student's record contains negative information derived from allegedly unconstitutional school regulations ... that information may jeopardize the student's future employment or college career"); *Wilson v. Webster*, 467 F.2d 1282, 1283-84 (9th Cir. 1972) (the "continued existence" of arrest records of individuals whose criminal charges had been dismissed "may seriously and unjustifiably serve to impair fundamental rights of the persons to whom they relate"); *Mayfield v. U.S.*, 599 F.3d 964, 971 (2010) (holding that Mayfield had standing because he continued to suffer a present, on-going injury due to the government's continued retention of derivative material from the government's seizure). The Court could fashion equitable relief that would redress these collateral consequences.

The cases that Respondents cite to as support for their mootness argument are inapposite. *See Abdala*, 488 F.3d at 1064 (petitioner did not identify a collateral consequence that habeas could redress); *Jauregui-Garcia* v. Garland, 850 F. App'x 536, 537 (9th Cir. 2021) (petitioner challenged his confinement conditions in habeas, not the government's authority to confine him); *Alam v. Carter,* 843 F. App'x 953, 954 (9th Cir. 2021) (petitioner's collateral consequence regarding his risk of re-detention was speculative and hypothetical as he was released under court order and there was thus a legal impediment to his re-detention); *Corral v. Barr*, 776 F. App'x 953, 954 (9th Cir. 2019) (petitioner's asserted collateral consequence was that his prior bond determination (the challenged action in his petition) might be erroneously utilized in his removal proceedings if he were detained in the future).

C. The Petitioner's unlawful arrest claims violations are cognizable in habeas.

The Respondents' argument that the completed stop and arrest claims in this case are not cognizable in habeas is meritless. *See* ECF 100 at 16. As explained below, Respondents merely make a differently-stated attack on mootness, which fails. Petitioner brought a core challenge through her habeas petition seeking release from her then-present physical confinement by DHS. Declaratory and injunctive relief are inherently part of the remedies available in habeas. Respondents' arguments to the contrary are unavailing.

1. The challenge to her custody incident to her unlawful arrest is cognizable.

Petitioner's statutory and constitutional claims challenging the custody incident to her unlawful arrest are cognizable. ECF 1; ECF 37 at 2-3. The habeas form of action historically extended to challenge all aspects of unlawful executive imprisonment, including custody incident to arrest, and it is therefore capable of remedying ICE's illegal detention of the Petitioner.

The statutory and constitutional unlawful arrest claims originate from the historical core of habeas. There are two separate sources of habeas power that the Court may exercise, and the

Petitioner draws on both. ECF 1 at ¶¶ 10-12. First, "at the absolute minimum, the Suspension Clause protects the writ as it existed in 1789." *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (cleaned up); *Boumediene v. Bush*, 553 U.S. 723, 746 (2008) ("The Court has been careful not to foreclose the possibility that the protections of the Suspension Clause have expanded along with post-1789 developments that define the present scope of the writ."). The Suspension Clause provides the Court with power to issue the writ and afford a remedy.

Second, Congress enacted 28 U.S.C. 2241, which provides a statutory power to grant the writ as "law and justice require." 28 U.S.C. § 2243. The historical core of habeas is "the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." *Harris v. Nelson*, 394 U.S. 286, 290-91 (1969). The writ's "capacity to reach all manner of illegal detention—its ability to cut through barriers of form and procedural mazes—have always been emphasized and jealously guarded by courts and lawmakers." *Id.* at 291. The writ provides "a prompt and efficacious remedy for whatever society deems to be intolerable restraints." *Peyton v. Rowe*, 391 U.S. 54, 65 (1968).

The essential remedy at the historical core of habeas is release from those intolerable restraints. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Historically, "habeas corpus was the proper means of challenging [illegal] confinement and seeking release." *Id.* The rule is simple: if an individual is challenging their present physical confinement, the form of action is to seek a writ of habeas corpus. *Id.* at 489; *see also Pinson v. Carvajal*, 69 F.4th 1059, 1069-70 (9th Cir. 2023). But release is not the only or exclusive remedy, at law or equity, that can be addressed through a habeas form of action. *Nelson*, 394 U.S. at 292. "The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected." *Id.* Indeed, Congress has vested the Court with power to dispose of the claims as "law and justice require." 28 U.S.C. § 2243.

Petitioner's claims challenging her detention arising from her unlawful arrest are cognizable in the habeas form of action. Custody incident to arrest is an intolerable restraint if it is against the laws of the United States. *Gerstein v. Pugh*, 420 U.S. 103, 111-113 (1975) (finding unconstitutional practice of holding a person in custody incident to arrest for 30 days or more). The Fourth Amendment protects against unreasonable seizures, including custody incident to arrest. *Id.* The INA protects against unlawful arrests: it requires a warrant in almost all cases and, in those limited cases where an arrest is authorized without a warrant, custody incident to arrest may not exceed 48 hours. 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.3(d); *accord County of Riverside v. McLaughlin*, 500 U.S. 44, 54-55 (1991) (limiting constitutional periods of custody incident to arrest to no more than 48 hours). When an individual's custody arises from an arrest that is unlawfully made because (a) it is an unreasonable seizure under the Fourth Amendment; (b) a warrantless arrest without the statutory factual predicates; or, (c) a mix of both, there is no doubt that the Court can order the jailer—here DHS—to end the unlawful restraint and order a habeas petitioner freed. *Pugh*, 420 U.S. at 115 (legality of arrests historically reviewed in habeas); *Riverside*, 500 U.S. at 55 (government has no interest in detaining individuals pursuant to an unlawful arrest). This has been true since at least the seventeenth century, when the writ reached to remedy custody arising from unlawful arrests. Paul D. Halliday, *Habeas Corpus: From England to Empire* 49-51 (2010).[2] "The difference between arrest and detention was one of the central

[2] The author explains that "when we write legal history, we typically listen to what judges said—especially a famed one like Coke—rather than watch what they did." *Id.* 57. In his legal treatise, the author looked at what judges actually did to provide a history of habeas as it existed in 1789.

issues under discussion in one of the most politically charged habeas corpus cases of any age, the November 1627 case of the Five Knights[.]" *Id.* at 50. Most likely based on the courtroom arguments of 1627, "[s]uddenly, 'arrest' (captionis) began to appear next to 'detention' (detentionis) in some of the writs filed" in 1628. *Id.* at 51. "In addition, all writs henceforth would request the day of arrest." *Id.* This was all the more so because for arrests "defined by statute, were controlled by processes that limited the amount of time a person might be held." *Id.* In this manner "[b]y demanding the day of the arrest as well as the cause" the court could know "precisely whether all limitations on powers of arrest and detention had been observed." *Id.*

Here, DHS has asserted no other basis for M-J-M-A's custody other than its authority under 8 U.S.C. § 1357. *See* Transcript of December 3, 2025 Evidentiary Hearing at 296; ECF 37 at 12-14 (collecting evidence).[3] The factual allegations (which must be taken as true) and the factual findings of the Court drawn from an evidentiary hearing on Petitioner's arrest demonstrate that the arrest was unlawful. ECF 1 at ¶¶ 40-48. The arrest and ensuing custody violated the Fourth Amendment and the INA. *Id.* The seizure was unreasonable because there was no probable cause

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The author surveyed all uses of the writ of habeas corpus issuing from the court of King's Bench, every fourth year from 1502 to 1798, inclusive. *Id.* 319. The survey yields information on 2,757 individual prisoners. *Id.* More than 11,000 prisoners or detainees of other kinds used habeas corpus between 1500 and 1800 and across three centuries; 53 percent of all those who used the writ were released. *Id.* 323. "[I]f lawyers and judges want to act on claims about history, we must first make a fully contextualized reclamation of those past principles. Only then might history serve law: not as a grab bag of poor analogies, but as an otherwise unseen position from which to think anew about the questions that law must answer[.]" *Id.* at 4.

[3] In a separate, stand-alone declaration filed on the docket, but not with the Return, an ICE agent asserts for the first time and in contradiction of the contemporaneous evidence, that "Petitioner was previously detained pursuant to authority under INA § 236(a)." ECF 34 at ¶ 3. But that assertion lacks support in the evidence admitted in this case, including the documents and the sworn testimony. Even if this unsupported, contradictory (and self-serving) statement were true (and there are ample reasons to doubt it), it is beside the point because at the time Petitioner sued for release, the authority under which she was held was the custody incident to arrest under 8 U.S.C. § 1357 and her petition would have still been a core challenge.

for an arrest (or reasonable suspicion for a stop). *Id.* The arrest failed to conform with the statutory requirements for a warrantless arrest, thus making it inherently unlawful under the INA. *Id.*; 8 U.S.C. § 1357(a)(2). Here, then, the habeas statute allows the court to grant the writ to any person imprisoned "in violation of the Constitution or law or treaties of the United States," 28 U.S.C. 2241(c)(1), and "summarily hear and determine the facts, and dispose of the matter as law and justice require," 28 U.S.C. § 2243. DHS's imprisonment of the Petitioner at the time of the petition was filed was "in violation of the Constitution or law…of the United States" and, accordingly, could be remedied by the Court by ordering her release.

2. Respondents' voluntary cessation is inapposite to the Court's power to afford declaratory or injunctive relief.

The Court can order declaratory and injunctive relief relating to the unlawful arrest, even if the Petitioner was voluntarily released by the Respondents. "[I]mmediate physical release [is not] the only remedy under the federal writ of habeas corpus." *J.G.G.*, 604 U.S. at 672. The habeas statute under which the Petitioner filed her petition gives the Court power to create a range of flexible options to do what "law and justice" require. 28 U.S.C. § 2243. "[T]he notion that immediate physical release [is] the only remedy under the federal writ of habeas corpus, [] finds no support in the statute and has been rejected by [Supreme] Court [.]" *Peyton*, 391 U.S. at 67. Indeed, "[i]f a district court has habeas corpus jurisdiction and venue is proper under sections 1391 and 2241 of title 28, it also is competent to issue a declaratory judgment." *Mojica v. Reno*, 970 F.Supp. 130, 156 (E.D.N.Y. 1997).

Here, in addition to her core challenge to her then-physical confinement, the Petitioner also seeks declaratory and injunctive relief. She seeks a declaration that her arrest is unlawful under the Fourth Amendment and the INA. ECF 1 at 18-19. Based on that declaration, she would ask that the court "grant further relief" as necessary to effectuate and protect her Fourth and Fifth Amendment Rights as well as her statutory rights. ECF 1 at 19; ECF 30 at 20-21 (seeking equitable relief "to sufficiently protect M-J-M-A- from Respondents' future unlawful conduct.").

There is little merit overall to the Respondents' motion to dismiss. Indeed, they repeatedly concede in their papers that their "cognizability" challenge is just a mootness argument, which for the reasons above fails. Their entire argument is premised on their own voluntary cessation of the challenged conduct. Respondents posit that "*[o]nce custody has ended*, the habeas petition cannot be maintained merely to obtain retrospective declarations about the legality of a completed immigration arrest[.]" ECF 100 at 17 (italics added). They make no attempt to assert that the Petitioner's unlawful arrest claims were not cognizable when she filed her petition (and thus waive that challenge); for example, they argue an "allegedly unlawful arrest does not *by itself* entitle a person to habeas release." ECF 100 at 18 (italics added). In their mind, there is an imaginary line between permissible and impermissible relief authorized under 28 U.S.C. 2243. ECF 100 at 18. They argue that on the "non-habeas side of that line" the Court can have nothing to say "about the legality of a completed enforcement action *after the custody* from that action has ended." ECF 100 at 18 (italics added). That argument is incoherent because it not only contravenes the law on mootness, *see supra*, but also contravenes the plain text of the habeas statute. *Cf.* 28 U.S.C. 2243 (providing that the court "shall" dispose of the matter "as law and justice require"); *Preiser*, 411 U.S. at 487 (broadly defining "as law and justice require" to hold that "federal courts [have] power to fashion appropriate relief other than immediate release."). Indeed, the "test of determining the scope of the [habeas power] must not be subject to manipulation by those whose power it is designed to restrain[.]" *Boumediene*, 533 U.S. at 765-66. Declaratory and injunctive relief are part and parcel of the statutory remedies available. *Mojica*, 970 F.Supp. at 156.

None of the cases Respondents rely on support their position. *Preiser, Thuraissigiam*, *Wilkinson*, and *Skinner* say the same thing: challenges that, if successful, would require release from present physical confinement must be brought in the habeas form of action. *Preiser*, 411 U.S. at 489; *U.S. Dep't of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 118-119 (2020); *Wilkinson v. Dotson*, 544 U.S.74, 79-80 (2005); *Skinner v. Switzer*, 562 U.S. 521, 535 (2020). These cases do not say anywhere that a federal court cannot provide declaratory or injunctive relief after a voluntary release, and Respondents cite nothing to that effect. *See* ECF 100 at 17-18.

Lopez-Mendoza, *Stone*, *Garcia-Beltran*, and *Cardwell* are entirely inapposite to any issue in the present petition.[4] Each of those cases addressed the exclusionary rule: a rule by which the courts suppress illegally-obtained evidence from a fact-finder. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1039, 1045-47 (1984); *Stone v. Powell*, 428 U.S. 465, 493 (1976); *U.S. v. Garcia-Beltran*, 443 F.3d 1126, 1132-33 (9th Cir. 2006); *Corley v. Cardwell*, 544 F.2d 349, 351 (9th Cir. 1976). But the Petitioner is not seeking the application of the exclusionary rule. ECF 1. An exhaustive search of her petition reveals that never once does the exclusionary rule—or any combination of concepts that could be reasonably described as the exclusionary rule—appear. *Id.* The Petitioner has not called for such a remedy and it is simply not before the Court. Likewise, the district court cases in *Medina, Amezcua-Gonzalez, Nyuwa, Marroquin-Salazar, Rodrigues De Oliveira, Alonso-Portillo, Marvan, H.N*, and *Reyes* are inapposite because they all are premised on the question of whether the exclusionary rule applies in habeas proceedings. *Medina v. U.S. Dep't of Homeland Security*, 2017 WL 1101370, *1-2 (W.D. Wa. 2017); *Amezcua-Gonzalez v. Lobato*, 2016 WL 6892934, *2 (W.D. Wa. 2016); *Nyuwa v. Gurule*, 2014 WL 12984435, *1 (D. Ariz. 2014); *Marroquin Salazar*

[4] In their Return, Respondents also cite to *Street v. Craven*, 418 F.2d 273 (9th Cir. 1969) which likewise holds that the exclusionary rule is not a remedy available in the habeas form of action.

v. Noem, 2025 WL 3535050, *1 (C.D. Cal. 2025); *Rodrigues De Oliveira v. Joyce*, 2025 WL 1826118, *5 (D. Maine 2025); *Alonso-Portillo v. Bondi*, 2025 WL 2483393, *11 (S.D. Ohio 2025); *Marvan v. Slaughter*, 2025 WL 1940043, *3 (D. Mont. 2025); *H.N. v. Warden, Stewart Detention Center*, 2021 WL 4203232, *5 (M.D. Ga. 2021); *Reyes v. Hermosilla*, 2026 WL 528692, *2-3 (W.D. Wa. 2026). The Respondents' argument is a distraction; they spent several pages citing cases that bear on nothing relevant here.

Respondents' best case, *United States ex rel. Bilokumsky v Tod*, 263 U.S. 149 (1923), is not even a case they cite; rather, it is a case relied on by *Medina*. 2017 WL 1101370 at *1-2.[5] But it does not support their argument either. In *Bilokumsky*, the Supreme Court explained that "[i]rregularities on the part of the government official prior to, or in connection with, the arrest would not necessarily invalidate later proceedings in all respects conformable to law." 263 U.S. at 158. Citing to an earlier immigration case, the court explained that:

> A writ of habeas corpus is not like an action to recover damages for an unlawful arrest or commitment, but its object is to ascertain whether the prisoner can lawfully be detained in custody; and if sufficient ground for his detention by the government is shown, he is not to be discharged for defects in the original arrest or commitment.

Id.. Applied here, *Bilokumsky* completely forecloses the Respondents' argument. For M-J-M-A-, the only ground for her detention was custody incident to arrest provided by 8 U.S.C. § 1357. But that was not a "sufficient ground" and no other ground has ever been asserted by DHS. *See* ECF 25 (return asserting no lawful basis for custody); ECF 26 at ¶ 5 (declaration of ICE agent describing only custody incident to arrest). The Respondents have *only* asserted custody incident to arrest, having never made a custody determination or asserting any other "sufficient ground" for her

[5] Respondents cite to *Bilokumsky* in their Return, ECF 25 at 3.

detention. Accordingly, *Bilokumsky* means that the Petitioner must be discharged (and the petition granted) for the defect in her arrest.

D. The INA does not bar review.

Respondents argue that this Court should dismiss M-J-M-A-'s habeas petition because various provisions of the INA strip it of jurisdiction. But their arguments are unpersuasive.

Respondents argue that 8 U.S.C. §§ 1252(a)(5), (b)(9), and (g) restrict the federal courts from hearing these claims unless they have been channeled through immigration proceedings first and then heard via a petition for review to the circuit court. ECF 100 at 31-32. Not so. First, 1252(a)(5) limits federal court review of orders of removal to the petition for review process. 8 U.S.C. § 1252(a)(5). But Petitioner has not been ordered removed and raises no challenge to an order of removal, making this provision entirely irrelevant to the Court's jurisdiction over her habeas case. *See Ibarra-Perez v. United States*, 154 F.4th 989, 1000 (9th Cir. 2025) ("Section 1252(a)(5) does not apply because Ibarra-Perez does not seek review of his removal order.").

Section 1252(b)(9) also does not limit the Court's jurisdiction here. This provision channels "[j]udicial review of all questions of law and fact . . . arising from any action taken or proceeding brought to remove a[] [noncitizen] from the United States" to petitions for review challenging final orders of removal. 8 U.S.C. § 1252(b)(9). Respondents cite *J.E.F.M. v. Lynch* to paint a shockingly broad view of this section's reach. ECF 100 at 32, *citing* 837 F.3d 1026, 1031-34 (9th Cir. 2016). But the Supreme Court has characterized (b)(9) as a "targeted" and "narrow" provision that "is certain not a bar where . . . the parties are not challenging any removal proceedings." *Dep't of Homeland Sec. v. Regents of Univ. of Cal.*, 140 S. Ct. 1891, 1907 (2020).

And *J.E.F.M.* itself expressly acknowledges what § 1252(b)(9) does not encompass. The statute does not "foreclose *all* judicial review of agency actions," but only "channel[s] judicial review over *final orders of removal* to the courts of appeals." 837 F.3d at 1031 (second emphasis added). It excludes from its reach "any claim that does not arise from removal proceedings", *id.* at 1032, including "federal habeas corpus provisions that do not involve final orders of removal," *id.* (quoting *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075 (9th Cir. 2006)). It also excludes claims that "could not have been raised before the agency" because, otherwise, a party would have "no legal avenue to obtain judicial review" of their claim. *Id.*, *citing Singh v. Gonzales*, 499 F.3d 969, 979 (9th Cir. 2007).

Thus, section 1252(b)(9) clearly does not foreclose judicial review of Petitioner's claims here. Like in *Nadarajah,* she brings a habeas case that does not involve a final order of removal; and, like in *Singh*, she cannot raise this claim before the agency (since she is not in removal proceedings) and therefore has no other avenue in which to obtain judicial review.[6] Moreover, "claims challenging the legality of detention" fall outside of (b)(9)'s reach. *Gonzalez v. U.S. Immigration and Customs Enforcement*, 975 F.3d 788, 810 (9th Cir. 2010) (quoting *Regents of Univ. of Cal.*, 140 S. Ct. at 1907); *accord Ozturk v. Hyde*, 136 F.4th 382, 401 (2d Cir. 2025) (holding that (b)(9) did not foreclose review of an immigration habeas petition raising constitutional claims). The cases Respondents cite do not hold differently. *See Aguilar v. U.S. Immigr. & Customs Enf't Div. of Dep't of Homeland Sec.*, 510 F.3d 1, 11 (1st Cir. 2007) (noting that "district courts retain jurisdiction over challenges to the legality of detention in the immigration context" in spite of 1252(b)(9)); *Gicharu v. Carr*, 983 F.3d 13, 16 (1st Cir. 2020) (finding that (b)(9) barred jurisdiction over an attempt to "compel the BIA to 'rescind' [a] final order of removal", a question

[6] Respondents point out that the Ninth Circuit "regularly reviews" Fourth Amendment claims when adjudicating petitions for review of final removal orders. While this is true, it is beside the point: the Petitioner here does not challenge a final order of removal and is not in removal proceedings, meaning she lacks any forum in which she could vindicate the claims asserted here.

not at issue in this case); *Cheng Fan Kwok v. INS*, 392 U.S. 206, 207 (1968), *superseded in part by* amendments to 8 U.S.C. § 1252(b)(9) (holding that courts of appeals lacked jurisdiction to review a district director's denial of a stay of deportation, which is not at issue here)

Finally, section 1252(g) also does not bar this Court's jurisdiction. This case challenges actions that are not among those enumerated in § 1252(g), which bars review when DHS exercises its *discretion* to "commence proceedings, adjudicate cases, or executive removal orders." *See Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482-83 (1999). This provision is "narrow" and applies "only to [these] three discrete actions"- and *not* to the "many other decisions or actions that may be part of the deportation process." *Id.* at 482. Detention decisions decidedly fall outside the three discretionary actions rendered unreviewable. *See Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) (finding that section 1252(g) did not bar judicial review of challenges to unlawful detention). Moreover, "§ 1252(g) does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Ibarra-Perez*, 154 F.4th at 997 (9th Cir. 2025). Nor does it bar constitutional claims or challenges to the government's authority to act in the first place. *See, e.g, Walters v. Reno*, 145 F.3d 1032 (9th Cir. 1998) (permitting due process claims against a legacy INS practice of obtaining removal orders) *and Arce v. United States*, 899 F.3d 796 (9th Cir. 2018) (permitting claim based on the Attorney General's lack of authority to execute a removal order in violation of a court order). This is precisely the type of challenge brought here, since Petitioner argues that ICE altogether lacked the authority to arrest and detain her in violation of the INA, the Fourth Amendment, and their own agency policy.

The cases cited by Respondents do not hold otherwise. *Cortez-Felipe* affirms that the Attorney General "has discretion regarding when and whether to initiate removal proceedings"- a proposition that the Petitioner does not challenge. *See* ECF 100 at 36, *citing* 245 F.3d 1054, 1057 (9th Cir. 2001). *Jimenez-Angeles* holds that 1252(g) bars jurisdiction over a challenge to when the government exercises its discretion to initiate proceedings- again, a conclusion not at issue here where Petitioner does not challenge any decision to initiate removal proceedings against her. *See* ECF 100 at 36, *citing* 291 F.3d 594, 599 (9th Cir. 2002).[7] Nor does the fact that Petitioner's habeas filing mentioned ICE's "attempts to detain, transfer, and deport" her trigger this jurisdictional bar. *See* ECF at 36-37, *citing* ECF 1 ¶ 9. This language does not come from any of Petitioner's *claims*, which squarely challenges ICE's unlawful arrest and detention of her person, not any effort to initiate removal proceedings or remove her from the United States. *See* ECF 1, ¶ 50-85. *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").

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court deny the motion to dismiss.

Dated: July 6, 2026.

Respectfully submitted,

/s/ Jordan Cunnings

[7] Respondents attempt to characterize Petitioner as challenging review of ICE's decision not to initiate removal proceedings against her, and (purported) promise not to do so in the future. ECF 100 at 36. They do not point to any language in any of her claims that does so, however.

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