

SCOTT E. BRADFORD, OSB #062824

United States Attorney

District of Oregon

ARIANA N. GAROUSI, CSB #347758

Ariana.Garousi@usdoj.gov

NICHOLAS D. MEYERS, OSB #222743

Nicholas.Meyers@usdoj.gov

Assistant United States Attorneys

1000 SW Third Ave., Suite 600

Portland, Oregon 97204-2936

Telephone: (503) 727-1000

Attorneys for Respondents

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

M-J-M-A-,

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

Petitioner,

v.

**RESPONDENTS' REPLY IN
SUPPORT OF MOTION TO
DISMISS COUNTS 1-6**

**JULIO HERNANDEZ; TODD
LYONS; U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT;
MARKWAYNE MULLIN; U.S.
DEPARTMENT OF HOMELAND
SECURITY; TODD BLANCHE,**

Respondents.

INTRODUCTION

Almost nine months after MJMA was released from custody, her habeas petition is still pending before the Court. In those nine months, the parties have presented two days' worth of testimony and conducted extensive documentary discovery. Despite the countless hours spent developing a factual record in this case, the truth remains that the Court never needed a factual record to resolve MJMA's habeas petition. A truth that Respondents repeatedly emphasized to this Court. *See* Respondents' Return to Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241, Dkt. 25 (arguing stop and arrest claims are not cognizable in habeas); Respondents' Response to Petitioner's Reply in support of Petition for Writ of Habeas Corpus, Dkt. 33 (characterizing Respondents' return as raising "a crucial threshold issue that must be resolved as to whether the petition is even cognizable in habeas"); Respondents' Objection to Evidentiary Hearing, Dkt. 47 (objecting to the evidentiary hearing because development of a factual record is unnecessary for cases that present purely legal questions, like whether stop and arrest claims are cognizable in habeas).¹ And that truth is apparent by Petitioner's underwhelming attempt to contend with decisions from other district courts, the Ninth Circuit, and even the Supreme Court have held that stop and arrest claims do not sound in habeas.

¹ The Court overruled Respondents' objection to the evidentiary hearing based on timeliness. The Court also overruled the objection for the following reason: "The issues associated with the petition and the claims made there are -- are intertwined. And so the idea of separating this -- the specific sequence of incidents out may be difficult at this stage for me to fully comprehend and appreciate, particularly in the context of any legal arguments." Tr. 26:18–22 (Dec. 2, 2025).

But even if Petitioner's claims were appropriate in habeas, her opposition to the motion to dismiss confirms the other narrow issue presented by Respondents' motion to dismiss: no live habeas controversy remains. Petitioner does not dispute that ICE released her from custody without conditions shortly after she filed this habeas petition. She does not dispute that she is not subject to supervision, reporting requirements, or any other continuing restraint on her liberty. And she does not dispute that ICE has represented it will not commence removal proceedings against her based on the October 30, 2025, arrest.

Unable to identify any present restraint that the writ could remedy, Petitioner attempts to recast her individual habeas petition as a broader action seeking retrospective and prospective equitable relief. However, she is entitled to no further retrospective relief in habeas beyond what she already has been afforded—release from custody. Indeed, habeas relief is meant to be targeted. It is meant to remedy unlawful detention. It is not meant to provide a freestanding remedy for any desired relief, nor is it supposed to allow for an unabated fishing expedition into the inner workings of a law enforcement agency, as Petitioner attempts to do here. Tr. 13:1–15:21 (June 25, 2026) (requesting the Court allow Petitioner to conduct a 30(b)(6) deposition, depose three officers who previously testified, and forensically inspect Officer J.B.'s phone and computer). Whatever controversy may remain as to the

supplemental claims does not preserve an individual habeas petition after the custody it challenged has ended.

Petitioner's procedural objections likewise provide no basis to delay resolution on issues that should have been resolved shortly after her petition was filed. Mootness is jurisdictional and must be addressed whenever it arises. And Respondents' motion does not require the Court to decide whether the October 30 stop or arrest was lawful, resolve disputed facts concerning that encounter, or await additional merits discovery. Because Petitioner has already received the only relief habeas could provide—release from custody—and identifies no continuing restraint that a favorable habeas judgment could redress, Counts 1 through 6 should be dismissed.

ARGUMENT

I. Petitioner's claims were never appropriate in habeas.

When Petitioner filed her habeas petition on October 30, 2025, the Court had everything it needed to dismiss the petition. All six of Petitioner's claims challenge a stop and arrest using the vehicle of habeas. Dkt. 1 ¶¶ 50–85. The overwhelming majority of courts to confront this issue, including courts whose decisions are binding on this Court and other courts in this district, consistently deny petitions asserting the same claims asserted here. *See* Dkt. 100 at 18–21.

As recently as last week, the Court in *L-A-R-A- v. Hermosillo*, No. 3:25-cv-01994-AB, Dkt. 1 (D. Or. October 28, 2025), considered identical claims for relief that Petitioner presents here. There, the court emphasized that it would “not consider [L-

A-R-A's] request for relief stemming from the arrest because challenges to an arrest are generally not cognizable in habeas.” *L-A-R-A*-, Dkt. 29 at 3–5 (D. Or. July 15, 2026) (granting habeas on alternative grounds and citing *Marroquin Salazar v. Noem*, No. 5:25-cv-02367, ECF No. 10, at 19–24 (C.D. Cal. Oct. 24, 2025), *report and recommendation adopted*, 2025 WL 3535050 (C.D. Cal. Dec. 8, 2025)). Therefore, the Court did “not consider Petitioner’s challenges to the information obtained by Respondents during the arrest.” *Id.*

L-A-R-A- joins the habeas authority that distinguishes a challenge to an arrest from a challenge to detention—a distinction Petitioner asserts is arbitrary but is actually the brightline for habeas relief. *See, e.g., Trega v. Bondi*, 821 F. Supp. 3d 84, 92 (D. Me. 2026) (“Illegal arrest cannot serve as a basis for habeas relief.”); *Portillo v. Gualtieri*, No. 8:26-cv-1718, 2026 WL 2069943, *3 (M.D. Fla. July 17, 2026) (“Habeas is not a vehicle to redress defects in an initial arrest; its function is to determine whether the petitioner may lawfully remain in custody.” (citations omitted)); *Hernandez v. Scott*, No. C26-cv-0759, 2026 WL 933361, *4 (W.D. Wash. Apr. 7, 2026) (“A petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 is the proper mechanism to challenge the legality of Petitioner’s detention pending removal. 28 U.S.C. § 2241(c)(3). It is not, however, the appropriate mechanism to challenge the legality of his arrest.”).

Petitioner does nothing to afford this Court habeas jurisdiction over her stop and arrest. First, she attempts to characterize 8 U.S.C. § 1357(a)(2) as a detention authority. Dkt. 106 at 19 n. 3. A plain language reading of both the statute and its

title dispel of Petitioner’s argument. Section 1357 is entitled “Powers of immigration officers and employees,” and subsection (a) is entitled “Powers without warrant.” *See* 8 U.S.C. § 1357(a). The operative verb in the provision at issue, § 1357(a)(2), is “to arrest.” There is no mention of “detention.” *Id.* Rather, detention authorities are housed in Part IV of Chapter 12 in Title 8. *Catholic Soc. Servs., Inc. v. I.N.S.*, 182 F.3d 1053, 1061 (9th Cir. 1999) (“Part IV is entitled ‘Inspection, Apprehension, Examination, Exclusion, and Removal,’ and governs detention and deportation of aliens. *See* 8 U.S.C. § 1221 *et seq.*”), *on reh’g en banc*, 232 F.3d 1139 (9th Cir. 2000). And as Respondents have stated before, Petitioner was detained pursuant to 8 U.S.C. § 1226(a). Dkt. 34 ¶ 3.

Second, Petitioner wrongly argues that the authority Respondents rely upon only applies to the extent she seeks to enforce the exclusionary rule. *I.N.S. v. Lopez-Mendoza* states that “[t]he ‘body’ or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred.” 468 U.S. 1032, 1039 (1984). As the Ninth Circuit described in *United States v. Garcia-Beltran*, 443 F.3d 1126, 1131–32 (9th Cir. 2006):

[T]he [*Lopez-Mendoza*] Court declined to hold that the consequences of an illegal arrest, search, or interrogation is to let the defendant go free because of the unlawfulness of the arrest, search, or interrogation. Instead, *Lopez-Mendoza* established that a defendant, including his identity, is properly before a court in a criminal or civil proceeding despite the initial illegal police action.

Because identity cannot be suppressed, a petitioner cannot be released from detention because of an unlawful arrest. No matter how Petitioner frames her claims,

this Court does not have jurisdiction to consider these claims through a habeas petition.

II. The Motion to Dismiss is procedurally proper and ripe for adjudication.

Petitioner's procedural argument rests on conflating two distinct grounds for dismissal. Respondents have repeatedly presented the jurisdictional argument that stop and arrest claims are not cognizable in habeas. To the extent the Court construes those arguments as a failure-to-state-a-claim defense, Rule 12(h)(2)(B) expressly preserves a failure-to-state-a-claim defense after an answer and permits it to be raised by a motion under Rule 12(c). The Ninth Circuit accordingly treats a post-answer Rule 12(b)(6) motion as a motion for judgment on the pleadings. *Aldabe v. Aldabe*, 616 F.2d 1089, 1093 (9th Cir. 1980). Because the same standard governs both motions, the proper designation of Respondents' argument as arising under Rule 12(c) provides no basis to deny or defer it. *See Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989).

Respondents alternatively contend that Counts 1 through 6 became moot when Petitioner was released without conditions and no habeas-remediable restraint remained. Mootness is a jurisdictional issue that may be raised at any stage, and the Court must dismiss an action whenever it determines that subject matter jurisdiction is lacking. Fed. R. Civ. P. 12(h)(3); *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 506 (2006).

Respondents' earlier filing of a return therefore neither waived nor postponed the Court's obligation to address mootness.

Nor does Rule 12(d) require conversion to summary judgment. Whether Petitioner's remaining requests for retrospective declarations and other equitable relief are cognizable in habeas is a legal question that turns on the petition and the nature of the relief requested—not on evidence outside the pleadings. Mootness, meanwhile, arises under Rule 12(b)(1), and the Court may consider evidence outside the pleadings in resolving a factual jurisdictional challenge without converting the motion. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). The relevant jurisdictional facts are not disputed: Petitioner was released, identifies no condition imposed on that release, and is not presently detained or supervised by ICE.

Finally, the jurisdictional question is not intertwined with the merits of the October 30 arrest. The Court need not decide whether officers had reasonable suspicion, probable cause, or statutory authority to determine whether Petitioner remains subject to a restraint that habeas can remedy. Although Respondents preserved their merits defenses, dismissal does not depend on them. The additional discovery Petitioner identifies may bear on whether the completed encounter was lawful. It cannot recreate custody that has ended or transform the retention of agency records into a habeas restraint. The motion is therefore ripe for decision now.

III. Petitioner's release mooted the only cognizable habeas relief.

If the Court finds Petitioner's habeas claims are cognizable, the question for the Court to resolve is not whether Petitioner can sustain her claim based on fear of

every future encounter with immigration authorities. The question is whether the same challenged custody will recur. Petitioner has not demonstrated that it will.

First, Petitioner’s mootness standard is wrong. Petitioner claims Respondents must show “repudiation” to show that her claim is truly moot. Dkt. 106 at 11. That is not true and plainly contradicted by binding Supreme Court case law:

Yes, a party’s repudiation of its past conduct may sometimes help demonstrate that conduct is unlikely to recur. *See, e.g., County of Los Angeles v. Davis*, 440 U.S. 625, 632–633 (1979). But often a case will become moot even when a defendant “vehemently” insists on the propriety of “the conduct that precipitated the lawsuit.” *Already*, 568 U.S., at 91. What matters is not whether a defendant repudiates its past actions, but what repudiation can prove about its future conduct. It is on that consideration alone—the potential for a defendant’s future conduct—that we rest our judgment.

Fed. Bureau of Investigation v. Fikre, 601 U.S. 234, 244 (2024). Additionally, Petitioner relies on a footnote in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 457 n.1 (2017), to fashion the second half of her mootness standard: that there must be a clearly effective barrier to the conduct’s recurrence. However, a “clearly effective barrier” was merely the *Trinity Lutheran* parties’ interpretation of *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 189 (2000).

No matter how Petitioner attempts to characterize the mootness standard, Respondents have met their burden. Petitioner has been unconditionally released from immigration custody. She has no conditions of release, nor is she in immigration proceedings. Further protecting her from any future detention based on the allegedly unlawful arrest are ICE’s assurances that she will never be placed into removal

proceedings based on the events of October 30, 2025. Dkt. 26 ¶ 5. This promise demonstrates that complained of conduct is not likely to recur. Petitioner's criticism does not undermine this.

Moreover, any future arrests Petitioner purports will occur is speculative at best. The same events and circumstances that gave rise to her October 30, 2025, arrest and detention would have to be likely to recur to defeat mootness. It is not plausible that they are likely to recur. Accordingly, Counts 1–6 must be dismissed because they are moot. Neither the voluntary cessation exception nor the capable of repetition exception applies.

IV. Petitioner has not identified a collateral consequence remediable in habeas.

Petitioner claims the collateral consequences she suffers are “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.” Dkt. 106 at 14–15. None of these are collateral consequences that justify her petition or further discovery. And even if they did, the Court cannot order the habeas relief she asks for.

The “collateral consequences” Petitioner insists she will suffer would result from any immigration arrest, lawful or not. That is because Petitioner does not have lawful status and could be subject to immigration arrest unless she receives lawful status. The consequences she fears are the result of her being here unlawfully, not

the result of her being arrested. The fact remains that Petitioner has overstayed her visa, and that fact is tied to her identity.

But more importantly, the list of “collateral consequences” Petitioner asserts are not restraints on her liberty. And only collateral consequences that constitute a restraint on liberty can defeat mootness. *See Lane v. Williams*, 455 U.S. 624, 632–33 (1982) (declining to find a live controversy remained where discretionary decisions made by third-parties about employment prospects or future criminal sentencing were posited as collateral consequences); *Spencer v. Kemna*, 523 U.S. 1, 7 (1998); *Abdala v. INS*, 488 F.3d 1061, 1064–65 (9th Cir. 2007). The collateral consequences Petitioner asserts do not create a live controversy, nor are they remediable in habeas.

V. The remaining declaratory and equitable relief is not available through habeas.

Petitioner repeatedly asks this Court to order an assortment of remedies that are not available in habeas. That habeas is a flexible remedy does not mean that it is all-consuming. The relief Petitioner seeks must be related to a challenge to unlawful detention. *Accord Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (“[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody.”). Habeas corpus does not authorize relief that “neither terminates custody, accelerates the future date of release from custody, nor reduces the level of custody.” *Wilkinson v. Dotson*, 544 U.S. 74, 86 (2005) (Scalia, J., concurring).

It follows that declaratory relief about a past stop and arrest is not an appropriate habeas remedy. *See Bayer v. Neiman Marcus Grp., Inc.*, 861 F.3d 853,

868 (9th Cir. 2017) (“[A] declaratory judgment merely adjudicating past violations of federal law—as opposed to continuing or future violations of federal law—is not an appropriate exercise of federal jurisdiction.”); *Kamboj v. Warden, Adelanto ICE Processing Ctr.*, No. 5:26-cv-00225, 2026 WL 567473, *3 (C.D. Cal. Feb. 25, 2026) (declining to issue declaratory relief for a completed detention where the petitioner had been released on bond); *Hardney v. Turner*, No. 214-cv-2962, 2017 WL 342469, *4 (E.D. Cal. Jan. 23, 2017). Petitioner also continues to pursue prospective relief through her classwide supplemental claims. However, as discussed above and at length in Respondents’ motion to dismiss, Petitioner’s basis for prospective relief relies on a speculative chain of events. The Court should not rely on speculation to fashion the sweeping relief Petitioner asks this Court to order. *See Qazi v. Albarran*, No. 2:25-cv-2791, 2026 WL 2043185, *6–7 (E.D. Cal. July 15, 2026) (declining to grant prospective relief because the threat of future injury was speculative where, in part, the respondents did not state that they intend to re-detain the petitioner in the future). Accordingly, there is no remedy the Court can provide Petitioner.

CONCLUSION

Petitioner’s claims were never appropriate in habeas, but even still, she has been released without conditions and identifies no continuing restraint that habeas can remedy. The speculative consequences and new forms of equitable relief raised in opposition do not preserve Counts 1 through 6, and no further discovery or merits

determination is necessary to resolve that threshold defect. The Court should therefore dismiss Counts 1 through 6.

Respectfully submitted this 20th day of July, 2026.

SCOTT E. BRADFORD
United States Attorney
District of Oregon

/s/ Ariana N. Garousi
ARIANA N. GAROUSI
Assistant United States
Attorney
Attorneys for Respondents