

Molly E. Danahy
Andres Haladay
Rylee Sommers-Flanagan
Upper Seven Law
P.O. Box 31
Helena, MT 59624
(406) 998-6067
molly@uppersevenlaw.com
andres@uppersevenlaw.com
rylee@uppersevenlaw.com

Counsel for Petitioner

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA**

CHRISTOPHER MARTINEZ
MARVAN,

Petitioner,

v.

JESSE SLAUGHTER, *et al.*,

Respondents.

Civil Action No. 6:25-cv-00049-DLC

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

ADDITIONAL FACTUAL BACKGROUND

On July 1, 2025, Spas of Montana called Christopher about a part he had ordered for a hot tub he was repairing. Ex. 1, Martinez Decl. ¶ 4. Christopher drove to Spas of Montana in his family's red Dodge truck. *Id.* He parked, entered the store, obtained the part, returned to his vehicle, and drove away. *Id.* ¶ 5. Christopher did not observe law enforcement, City or federal, at or around his location. *Id.*

Unbeknownst to Christopher, Helena City Police Officers, acting in conjunction with federal immigration officials (ICE) were surveilling a nearby target residence. These officers observed Christopher engaging in legal activity: drive, park at Spas of Montana, exit his vehicle, return to his vehicle, and drive away. Dkt. 6, at 4. The officers observed that Christopher is Latino and decided he might be one of two Venezuelan nationals that ICE officers were looking for. *Id.*

An ICE officer requested that Helena Police stop Christopher. Ex. 2, 12:00:15.¹ About a minute later, Helena Police Officer Barton, on behalf of ICE, requested help from nearby Helena Police Department units. *Id.* 12:01:35. Helena Police Officer Montgomery offered to stop Christopher. *Id.* 12:02:55. Approximately six minutes later, Montgomery determined that Christopher's truck had expired

¹ Timestamps for Ex. 2, Dispatch Audio, and Ex. 3, Body-Worn Footage, refer to the time of day. Timestamps for Ex. 4, Dashcam Footage, refer to video time.

plates. *Id.* 12:08:51. Montgomery was informed that once he made the stop, ICE officers would approach. *Id.* 12:11:06.

Unaware of ICE's plans to detain him, Christopher was driving south on Montana Avenue when Montgomery startled him by pulling out of a parking lot so abruptly that Christopher was afraid Montgomery would hit him. Martinez Decl. ¶ 6. Montgomery pulled behind Christopher and activated the vehicle's lightbar. Ex. 3, 12:12:21; Ex. 4, 00:00–30.

Christopher stopped on a side street west of Montana Avenue and immediately called his wife Maria to inform her that he had been pulled over. Martinez Decl. ¶ 7; Ex. 3, 12:14:38. Officer Montgomery exited his vehicle but did not approach Christopher. Ex. 3, 2:12:48. He waited for HSI and federal task force officers to arrive. *Id.* 12:13:07. As these officers approached the vehicle on the passenger side, Montgomery approached on the driver's side. *Id.* 12:13:07. Montgomery informed Christopher that he had stopped him because of the truck's expired plates. *Id.* 12:13:21. Christopher provided his name, and birthdate. *Id.* 12:13:30–41. Montgomery stepped away to take notes. *Id.* 12:13:47. Had Montgomery promptly run Christopher's information, he would have confirmed Christopher's identity, vehicle information, and found a photo of Christopher, confirming that he was not one of the individuals sought. This is because a Lewis and Clark County Sheriff's deputy had stopped Christopher the day before. Martinez Decl. ¶ 2.

The June 30 traffic stop involved the same red Dodge truck. *Id.* ¶ 2, 4. The Sheriff's Deputy issued Christopher a citation under § 61-5-102, MCA, Drivers to be Licensed. The Sheriff's Deputy recorded Christopher's license plate, his vehicle make and model, his date of birth, his address and contact information. Ex. 5, Notice to Appear & Compl.

The County uploaded Christopher's June 30 stop information into its dispatch system. Ex. 2, 12:16:28. The system also contains a photo of Christopher. Ex. 3, 12:18:27. This system is available to both Helena and Lewis and Clark County. *Id.* After the June 30 stop, any dispatcher could immediately locate this record and provide an officer with Christopher's photo based on his name and birthdate. Ex. 2, 12:16:28; Ex. 3, 12:18:27.

Montgomery did not run Christopher's information. Instead, he stepped away from the truck and allowed HSI and ICE officers—including a masked ICE officer—to interrogate Christopher about his immigration status. Ex. 3, 12:13:53; Martinez Decl. ¶ 8–11. Once the ICE officers were done, Montgomery asked Christopher again if he had a driver's license and ID. Ex. 3, 12:14:14. Montgomery then ordered him to “step out of the car.” *Id.* 12:14:24. A second officer stood outside of Christopher's window, with his hand on his firearm. *Id.* 12:14:30; Ex. 4, 02:36.

Montgomery and the second police officer grabbed Christopher's arms and yanked him from the vehicle. Ex. 3, 12:14:25-30. The officers pulled Christopher's

arms behind his back, handcuffed him and stated, “you are going to be detained, okay?” *Id.* 12:14:30. Christopher tried to tell Montgomery that he was still on the phone with his wife, but Montgomery repeated “you’re just detained right now okay.” *Id.* 12:14:37-43. The way the officers grabbed and pulled Christopher’s arms aggravated his pre-existing back injury, a torn ligament. Martinez Decl. ¶ 12.

Montgomery moved Christopher towards three unidentified officers who began asking Christopher questions about “Andersen.” Ex. 3, 12:14:51. The officers sat Christopher on the bumper of Officer Montgomery’s vehicle and continued to ask him identifying questions. *Id.* 12:15:48. All the while, Christopher’s identifying information, including his photo, was immediately available to Montgomery. *Id.* 12:18:27.

An ICE officer showed Christopher his phone screen with pictures of two men. Martinez Decl. ¶ 14. The ICE officer told Christopher that identifying the men was “how you help yourself right now” and asked, “you sure you don’t know him?” *Id.*; Ex. 3, 12:16:38. Christopher did not recognize the men and told the ICE officers this. Martinez Decl. ¶ 14. The ICE officer told him that was too bad. *Id.*

Approximately four minutes after initiating the stop, Montgomery called dispatch said, “I don’t have a state or nationality,” and provided Christopher’s name and date of birth. Ex. 3, 12:16:18-28. Within seconds, dispatch confirmed Christopher’s identity. Ex. 2, 12:16:28. Although he could have immediately

accessed Christopher's photo, Montgomery delayed for almost two additional minutes before pulling it up. Ex. 3, 12:18:28. During this time, the ICE officers continued to interrogate Christopher. *Id.* 12:16:39-12:17:48.

Finally, Montgomery pulled up Christopher's photo on his vehicle's computer, immediately confirming Christopher's identity. *Id.* 12:18:28. But he delayed another minute before informing the ICE officers. *Id.* 12:19:17. Montgomery then informed the ICE officers he would delay processing the citation to give them additional time to question Christopher. *Id.* 12:20:42.

Fourteen minutes after purportedly pulling over Christopher for a traffic violation, Montgomery printed a citation. Ex. 3, 12:26:41. While Montgomery sat in his vehicle, the ICE officers took Christopher away. *Id.* 12:26:44. Barton walked over to Montgomery's window with a grin and laughed: "So he's like, he's being kidnapped right now." *Id.* 12:28:07. Montgomery responded, "okay. Good enough for me" and turned off his recording device without giving Christopher the citation. *Id.* 12:28:11.

An ICE officer walked Christopher to an unmarked vehicle. Martinez Decl. ¶ 15; Ex. 3, 12:26:44. The ICE officer told Christopher they'd try to "make it fast," by taking him to Washington where he could be processed and deported. Martinez Decl. ¶ 17. The ICE officer stated, "we thought you were the guy," referring to one

of the two Venezuelans, and “it’s not your day.” *Id.* The ICE officer complimented Christopher on remaining calm when he was picked up. *Id.*

The ICE officer took Christopher to the Lewis and Clark County Detention Center. *Id.* ¶ 18. Despite there being no criminal charges that would allow his placement in the detention center, Christopher was ordered to don an orange jumpsuit, and placed in a holding cell. *Id.* Christopher asked to call Maria, but detention officers told him ICE would not allow him any phone calls. *Id.*

Detention officers ordered Christopher to put on his personal clothes and took him to a parking lot where the ICE officer was waiting. Martinez Decl. ¶ 19. Christopher was put in leg shackles and placed in the ICE vehicle. *Id.* The ICE officer informed Christopher that they needed to move fast because of his wife and “the lawyers.” *Id.* ¶ 20. Christopher was unaware that Maria had secured legal counsel because Lewis and Clark County and ICE had prevented him from seeing his attorneys. Dkt. 1 ¶ 29–31. After being moved from location to location, Christopher was transported to the Cascade County Detention Center and remains there now. Martinez Decl. ¶ 19–27.

Christopher has no pending criminal charges and is not currently subject to removal proceedings.

ARGUMENT

I. The Court has jurisdiction

“The writ of habeas corpus has always been available to review the legality of Executive detention.” *I.N.S. v. St. Cyr*, 533 U.S. 289, 305 (2001); U.S. Const. art I, § 9 (“[T]he writ of habeas corpus shall not be suspended.”). Respondents nonetheless assert that individuals subject to civil detention by federal immigration officials are statutorily barred from bringing habeas claims to challenge unlawful detention.² Resp. at 8–9 (citing 28 U.S.C. § 1252(b)(9)); *cf. St. Cyr*, 533 U.S. at 301 (noting that historically, habeas applies to both civil and criminal detention). Courts overwhelmingly disagree. Habeas is the proper avenue for Christopher to challenge his unlawful detention. This Court therefore has jurisdiction under 28 U.S.C. §§ 1331 and 2241.

Numerous courts have rejected Respondents’ contention that §§ 1252(b)(9) and (a)(5) preclude immigration detainees from challenging their unconstitutional detention. *See, e.g., Hernandez v. Gonzales*, 424 F.3d 42 (1st Cir. 2005) (Section 1252(a)(5) did not bar detainee from challenging unlawful detention);

² The government recently took the opposite position. *See* Mot. to Dismiss at 5, *Abrego Garcia v. Noem*, No. 25-cv-00951 (D. Md. May 27, 2025) (“Because Plaintiffs seek Abrego Garcia’s release from allegedly unlawful detention on the grounds that it was effected illegally, they make a core habeas claim and must bring it exclusively in habeas.”).

Ozturk v. Hyde, 136 F.4th 382 (2d Cir. 2025) (Sections 1252(b)(9), and (a)(5) do not preclude detainees from challenging unlawful detention in habeas); *Mahdawi v. Trump*, 136 F.4th 443, 450–51 (2d Cir. 2025) (same); *Suri v. Trump*, No. 25-1560, 2025 WL 1806692 at *9–10, (4th Cir. July 1, 2025) (same); *Madu v. U.S. Atty. Gen.*, 470 F.3d 1362 (11th Cir. 2006) (Section 1252(b)(9) does not preclude plaintiff from challenging legal authority underlying a detention order); *Khalil v. Joyce*, No. 25-cv-01963, 2025 WL 1232369, at *6–56 (D.N.J. Apr. 29, 2025) (Section 1252(b)(9) does not remove courts’ jurisdiction over constitutional habeas claims); *Rashad Ahmad Refaat El Badrawi v. Dep’t of Homeland Sec.*, 579 F. Supp. 2d 249 (D. Conn. 2008) (false arrest and imprisonment claims not jurisdictionally barred under § 1252(b)(9)).

Moreover, the Supreme Court has expressly held that habeas is the appropriate avenue to challenge the “invalidity” of a person’s confinement in immigration contexts, even with respect to “[c]hallenges to removal under statutes that largely preclude judicial review.” *Trump v. J.G.G.*, 145 S. Ct. 1003, 1005 (2025) (claims that “‘necessarily imply the invalidity’ of [petitioners’] confinement . . . fall within the core of the writ of habeas corpus”). And several circuits, including the Ninth Circuit, have declined to apply a similar jurisdiction-stripping provision—§ 1252(g)³—

³ Section 1252(g) restricts judicial review over the Attorney General’s discretionary decisions and actions. Section 1252(g) does not apply here, but the First and Second

outside of challenges to a final order of removal. *See Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018); *Enriquez-Perdomo v. Newman*, 54 F.4th 855 (6th Cir. 2022) (holding that § 1252(g) did not bar review of Fourth Amendment challenge); *Kong v. United States*, 62 F.4th 608, 614 (1st Cir. 2023) (holding that “claims seeking review of the legality of a petitioner’s detention” are collateral to removal proceedings and thus not barred under § 1252(g)) (citing *Aguilar v. ICE*, 510 F.3d 1 (1st Cir. 2007) (holding that § 1252(b)(9) does not bar district courts from considering challenges to the legality of detention)). Consistent with the foregoing precedent, the Court should find that § 1252(b)(9) does not bar Christopher’s claim.

Respondents’ citations to the contrary are inapposite because they deal with challenges to removal orders and removal proceedings, not detention. *See, e.g., Singh v. Gonzales*, 499 F.3d 969 (9th Cir. 2007) (Section 1252(b)(9) barred habeas claim seeking to set aside final removal order for ineffective assistance of counsel during removal proceedings); *contra id.* (Section 1252(b)(9) did not bar habeas claim for ineffective assistance after final removal order issued, as claim challenged the order denying rehearing—which was unavailable during removal proceedings). Similarly, plaintiffs in *J.E.F.M. v. Lynch* sought to challenge immigration proceedings asserting that as minors, they had a right to representation at

Circuits advise that the same analysis applies to both § 1252(g) and § 1252(b)(9). *See Ozturk*, 135 F.4th at 399; *Kong v. United States*, 62 F.4th 608 (1st Cir. 2023).

government expense during immigration proceedings. 837 F.3d 1026, 1029–30 (9th Cir. 2016). The court held that challenges to the substance and procedure of immigration proceedings must be brought through petitions for appellate review rather than in habeas.⁴ *Id.* at 1032–33. No removal proceedings have been initiated against Christopher. He seeks to challenge his unlawful detention and to secure his release independent of any future removal proceeding. *See* Pet. at 12. This claim is not barred by § 1252(b)(9). *Cf. Singh*, 499 F.3d at 977 (9th Cir. 2007) (“[Section 12(b)(9)] would not preclude habeas review over challenges to detention that are independent of challenges to removal orders.”); *see Martinez v. Napolitano*, 704 F.3d 620, 622 (9th Cir. 2012) (“[T]he distinction between an independent claim and an indirect challenge [to a removal order] will turn on the substance of the relief that a plaintiff is seeking.”).

Respondents appear to assert that the government has civil authority to unlawfully and indefinitely detain any individual for alleged immigration violations, and that such detentions cannot be challenged unless or until immigration proceedings are not only initiated but ultimately resolved. Resp. at 8–13. Thus, Respondents contend that Christopher should challenge his detention during as-yet

⁴ Similarly, *J.E.F.M.* does not hold that “access to counsel claims must be raised by the petition for review,” Resp. at 13, but rather that a party to an immigration proceeding who brings an access to counsel claim related to that proceeding must do so in the proceeding rather than through collateral litigation. *J.E.F.M.*, 837 F.3d at 1033.

uninitiated removal proceedings. Resp. at 8. But the Constitution does not tolerate restricting access to habeas relief without providing an “adequate substitute.” *INS v. St. Cyr*, 533 U.S. 289, 305 (2001); U.S. Const. art. I, § 9 (“[T]he privilege of the writ of habeas corpus shall not be suspended.”); *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 233, 236 (2020) (rejecting government’s interpretation of § 1252 as “difficult to reconcile” with Congress’s clear intent to provide an “adequate substitute for habeas in view of *St. Cyr*’s guidance”). Appellate review of immigration proceedings is an inadequate substitute for habeas claims for unlawful detention. *Suri*, 2025 WL 1806692 at *8 (“Absent habeas relief, an immigration detainee can generally seek judicial review of a final order of removal—but the court would be powerless to remedy any unconstitutional detention that had already occurred. That is why we have habeas proceedings in the first place.”).⁵

This Court should reject Respondents’ interpretation of § 1252(b)(9).

⁵ Respondents cite several cases for the proposition that “claims relating to an immigrant’s detention are routinely raised in petitions for review.” Resp. at 12. But none of these involve claims to secure release from detention. Instead, they involve Fourth Amendment claims to suppress evidence from removal proceedings. *See Gamez-Reyes v. Bondi*, No. 22-2681, 2025 WL 501400, at *1 (9th Cir. Feb. 14, 2025) (considering exclusionary rule during removal proceedings); *Ramirez Santiago v. Garland*, No. 22-619, 2023 WL 6875282, at *1 (9th Cir. Oct. 18, 2023) (same); *B.R. v. Garland*, 26 F.4th 827, 840 (9th Cir. 2022) (same). That Christopher’s unlawful detention also requires suppression of unlawfully obtained evidence in any future removal proceedings, *Sanchez*, 904 F.3d at 651, does not render his petition for release “inextricably linked” to such proceedings, *see e.g., Flores-Torres v. Mukasey*, 548 F.3d 708 (9th Cir. 2008) (distinguishing between challenges to a final removal order and challenges to detention authority).

II. ICE’s detention of Christopher during the traffic stop constitutes an egregious violation of his Fourth Amendment rights.

“The Fourth Amendment guarantees that ‘[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures [] shall not be violated.’” *Sanchez v. Sessions*, 904 F.3d 643, 651 (9th Cir. 2018) (quoting U.S. Const. amend. IV). “A person is seized if . . . police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.” *United States v. Washington*, 490 F.3d 765, 769 (9th Cir. 2007). To justify a seizure in an immigration context, the government must “articulate objective facts providing them with a reasonable suspicion” that the person being detained is not in the country legally, *Benitez-Mendez v. INS*, 760 F.2d 907, 909 (9th Cir. 1983), or that criminal activity is afoot, *Sanchez*, 904 F.3d at 651 (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)). Those facts must form a “rational basis for separating out the illegal aliens from American citizens.” *Nicacio v. INS*, 797 F.2d 700, 705 (9th Cir. 1985). Moreover, the facts must be apparent to the officer ordering the seizure and detention at the time the order is given. *Benitez-Mendez*, 760 F.2d at 909–10 (Fourth Amendment violation where agent ordering detention lacked sufficient grounds that target was not legally present before ordering individual’s detention). “It is beyond question that detentions and interrogations based on racial or ethnic profiling and stereotyping egregiously violate” the Fourth Amendment. *Sanchez*, 904 F.3d at 656 n.15.

Sanchez confirms that without obtaining independent reasonable suspicion of a person's unlawful presence, immigration officials may not descend on individuals to interrogate them regarding their immigration status. 904 F.3d at 647, 650. In *Sanchez*, the Ninth Circuit held that Coast Guard officers responding to an ordinary SOS call unlawfully detained an individual based solely on his race when they called CBP to report suspected unlawful presence before determining the individual's identity and nationality. *Id.* *Sanchez* is clear: even where an initial encounter is lawful, law enforcement cannot transform encounters into immigration stops without independent reasonable suspicion of the individual's unlawful immigration status. *Id.*

Here, the record establishes that federal immigration officials and deputized local officers stopped Christopher based solely on racial or ethnic profiling; sought to stop Christopher before determining that his vehicle registration had expired; and effected a separate detention of Christopher for immigration purposes before determining his identity and nationality and without specific articulable facts showing unlawful presence. This is egregiously unlawful and violates both the Fourth Amendment and federal regulations.⁶ *See Sanchez*, 904 F.3d at 656 n.15

⁶ The constitutional violations established herein appear endemic to recent immigration enforcement actions. *See Russell Contreras, ICE accused of racial profiling in detentions of Latino U.S. citizens*, (Jul. 9, 2025), <https://www.axios.com/2025/07/09/ice-us-citizens-detention-racial-profiling>.

(government conceded racial profiling is an egregious violation of the Fourth Amendment, and because § 287.8(b)(2) is premised on Fourth Amendment standards, racial profiling also constitutes an egregious regulatory violation).

The record establishes that federal immigration officials immediately sought to stop Christopher, prior to determining his identity or nationality, because they believed he was one of two Venezuelan men they were searching for based on their immigration status. Resp. at 2; Ex. 4, 12:01:51–12:03:26 (describing Christopher as “possibly a wanted individual”). According to Respondents, the only evidence supporting this belief was that Christopher was driving a truck that did not belong to the wanted individuals, parked and exited his truck, and subsequently returned to his truck and drove away. Resp. at 4. Respondents attempt to twist these legal, innocuous actions into reasonable suspicion by asserting, without evidence, that Christopher “exited the truck, walked out of the parking lot, looked at one of the surveillance officers, and quickly returned to the truck” implying an attempt to evade law enforcement. Resp. at 4. Respondents omit crucial details—namely that Christopher parked at a business, exited his truck, entered the business, picked up a part he had ordered, exited the business, returned to his truck, and departed. Martinez Decl. ¶ 5.⁷

⁷ Contrary to Respondents’ unsupported assertion, Christopher testifies, via declaration, that he did not notice any law enforcement presence at Spas of Montana. Martinez Decl. ¶ 5.

Patronizing a local business in the middle of the day is neither suspicious nor evidence of intent to evade law enforcement.

Nonetheless, Respondents claim they reasonably suspected Christopher because their targets were known to use vehicles registered to others. Thousands of drivers in Lewis and Clark County drive vehicles that are not registered to the individuals Respondents were surveilling; that Christopher was driving a vehicle not registered to Respondents' targets does nothing to suggest unlawful activity. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 882 (1975) (driving near the border is not reasonable suspicion justifying an investigatory immigration stop given "large volume of legitimate traffic").

Absent specific, articulable facts, the only connection tying Christopher to the target individuals is their shared apparent Latino ethnicity. *See, e.g. Sanchez*, 904 F.3d at 650 (finding individual was detained solely on the basis of race where record established that immigration officials formed immediate suspicion of unlawful presence before determining his identity and nationality); *cf. Brignoni-Ponce*, 422 U.S. at 885–86 (finding apparent Mexican ancestry insufficient to justify an investigative stop). This sort of racial profiling is an egregious Fourth Amendment violation. *Sanchez*, 904 F.3d at 656 n.15; *Gonzalez-Rivera v. INS*, 22 F.3d 1441, 1446, 1452 (9th Cir. 1994) (finding an immigration "stop . . . based solely on . . . Hispanic appearance" an "egregious" Fourth Amendment violation); *see*

Millan-Hernandez v. Barr, 965 F.3d 140, 143 (2nd Cir. 2020) (“If the constitutional violation was based on race (or some other grossly improper consideration), it qualifies as egregious.”) (cleaned up); *United States v. Martinez-Fuerte*, 428 U.S. 543, 571 n.1 (1976) (to use racial or ethnic profiling as indicator of illegal conduct is “repugnant under any circumstances”); *Omni Behavioral Health v. Miller*, 285 F.3d 646, 652 (8th Cir. 2002) (finding that if detective “conducted his investigation in order to harass [people] because of their race, it is possible, if not likely, that such conduct would . . . ‘shock the conscience’”).

The record establishes that federal immigration officials requested a local patrol unit stop Christopher after racially profiling him but before ascertaining his identity or that his plates were expired. *See* Ex. 4, 12:00:15. Officer Montgomery agreed to make the stop approximately three minutes later, Ex. 4, 12:01:35–12:02:55, but another five minutes passed before he determined that the plates were expired, Ex. 4, 12:08:51. Respondents must show that objective, articulable facts giving rise to reasonable suspicion of unlawful presence justify the stop and the immediate presence of immigration officers, *Sanchez*, 904 F.3d at 650–51, or a legal violation beyond the expired registration, *Benitez-Mendez*, 760 F.2d at 909–910. They cannot.

Instead, the record stop confirms that the stop’s sole purpose was to allow federal officers to immediately seize, interrogate, and detain Christopher, based on

his race and ethnicity, in furtherance of an unrelated immigration investigation. Before Officer Montgomery stopped Christopher, he was informed that HSI would approach once the stop was made. Ex. 4, 12:11:06. When Christopher pulled over, Officer Montgomery waited for HSI to arrive and approach the vehicle. HSI's immediate presence and approach, while Officer Montgomery held back, objectively establishes that Christopher was detained by federal officers for immigration purposes, based on his race, rather than by local police related to a traffic stop. *See, e.g. Sanchez*, 904 F.3d at 650 (finding detention unlawful where, without specific articulable facts evidencing unlawful presence, federal immigration officials nonetheless immediately confronted, detained, and began interrogating individual regarding his immigration status). Officer Montgomery also unlawfully prolonged the stop to allow HSI to continue interrogating Christopher regarding their investigation and his immigration status. *Supra*, pp. 3-5; *United States v. Evans*, 786 F.3d 779, 784 (9th Cir. 2015) ("A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission."). Indeed, Officer Montgomery ultimately abandoned the citation entirely, stating that Christopher being "kidnapped" by ICE was "good enough for me." Ex. 2, 12:28:07–11.

Respondents appear to suggest that because Christopher's identity cannot be suppressed, it was inevitable that the officers would obtain evidence that he was in

the United States unlawfully, regardless of unlawful racial profiling. But both common sense and the record show that a traffic stop usually results in a traffic citation and does not inevitably lead to ICE detention. *See* Martinez Decl. ¶ 6–16 (describing traffic July 1 traffic stop by County Sheriff). And Respondents’ contention that Christopher’s “name alone demonstrated [he] was a Mexican national, and he was never legally admitted into the United States” Resp. at 14, only illustrates the pervasive racial stereotyping underlying these events, *see Orhorhaghe v. INS*, 38 F.3d 488, 497 (9th Cir. 1994) (“[O]ne cannot rationally or reliably predict whether an individual is an illegal alien based on the sound of his name.”); *see also* Ex. 6 at 60 (Expert Report of Dr. Eitan Hersh, *Mi Familia Vota v. Hobbs*, No. 22-cv-00509-SRB (D. Ariz. 2022) (finding names are not a reliable indicator of U.S. citizenship)).⁸ Even Christopher’s birth certificate is insufficient to establish that he is currently a Mexican national. Hundreds of thousands of people born outside of the United States become citizens every year. *See, e.g.,* U.S. Citizen & Immigration Servs., *Naturalization Statistics*, <https://www.uscis.gov/citizenship-resource-center/naturalization-statistics> (USCIS has welcomed more than 7.9 million

⁸ Dr. Hersh studied registered voters in Arizona as part of his expert testimony in a federal voting rights case related to what evidence election officials can reasonably rely on to determine whether a voter registration applicant is a U.S. citizen. Looking at common Hispanic names, he found, for example, that registered Arizona voters with the names “Maria Lopez” or “Maria Garcia,” were equally likely to be born in the U.S. as in Mexico. Ex. 6 at 60. As such, he determined names are not a sufficiently reliable way to determine nationality or citizenship.

naturalized citizens over the past decade, more than 2.6 million in the past three years, and over 800,000 in FY2024 alone). That millions of naturalized citizens are likely to have foreign birth certificates precludes forming a reasonable suspicion of unlawful presence on these grounds. *Cf. Brignoni-Ponce*, 422 U.S. at 882.

III. Respondents are precluded from relying on any evidence obtained during or after the stop to re-detain Christopher.

Beyond granting the petition for release, the Court should also prohibit Respondents from re-detaining Christopher based on any information obtained regarding his immigration status during and resulting from the unlawful stop. *See, e.g., United States v. Gorman*, 859 F.3d 706 (9th Cir. 2017) (finding that evidence obtained during and resulting from an unlawful traffic stop must be suppressed in subsequent proceedings); *Sanchez*, 904 F.3d at 649 (9th Cir. 2017) (applying exclusionary rule in civil immigration context and affirming that egregious violations entitle individuals to termination of removal proceedings).

As detailed above, ICE egregiously violated Christopher's Fourth Amendment rights by initiating an immigration stop based solely on race and should therefore be precluded from relying on information obtained via the unlawful stop to re-detain Christopher. *Cf. Sanchez*, 904 F.3d at 655 (finding petitioners entitled to termination of removal proceedings based on egregiously unlawful detentions). Because the violation precipitated the stop, all evidence the government obtained is tainted. This includes, *inter alia*, any admission that Christopher lacks a Montana

driver’s license, is a Mexican national, or was illegally present in the United States. It also includes the lack of returns in federal databases showing Christopher as lawfully admitted,⁹ the photo relied on to identify him, his tattoos and birth certificate, and any information divulged during subsequent interrogations, particularly that occurred after federal officials became aware Christopher was represented and that his lawyers were seeking to communicate with him. *See* Resp. at 4–7 (identifying evidence related to lawful presence obtained during or resulting from the stop); Martinez Decl. ¶¶ 22–24 (detailing subsequent interrogations by CBP); *see, e.g., Perez Cruz v. Barr.* 926 F.3d 1128, 1137, 1146 (9th Cir. 2019) (finding the government’s questioning of Perez Cruz without individualized reasonable suspicion was unlawful and all resulting evidence were “fruits of the . . . violation”).¹⁰ The Court should therefore preclude Respondents from relying on this evidence to re-detain Christopher once habeas is granted. *See id.* at 1136; *Sanchez*, 904 F.3d at 655.

⁹ Notably, the Ninth Circuit has found the failure of a federal database to return information identifying an individual as lawfully present does not provide reasonable suspicion of illegal presence. *Orhorhaghe*, 38 F.3d at 498–99.

¹⁰ Respondents assert that Christopher’s identity is not suppressible, Resp. at 13–14. Although the Ninth Circuit has yet to “plot out precisely what information about a person qualifies as his identity,” that information “does not include evidence pertaining to alienage,” *B.R. v. Garland*, 26 F.4th 827, 843 (9th Cir. 2022); *Perez Cruz*, 926 F.3d at 1136.

CONCLUSION

The Court should grant Christopher's petition for habeas corpus.

Dated: July 9, 2025

Respectfully Submitted,

/s/ Molly E. Danahy

Molly E. Danahy
Andres Haladay
Rylee Sommers-Flanagan
Upper Seven Law
P.O. Box 31
Helena, MT 59624
(406) 998-6067

Counsel for Petitioner

CERTIFICATE OF COMPLIANCE

The attached Reply in Support of Petition for Habeas Corpus complies with Local Rule 7.1 and the body contains 4,255 words, as calculated by the word count function of Microsoft Word, exclusive of the caption, certificate of compliance, table of contents and authorities, exhibit index, and any certificate of service.

/s/ Molly E. Danahy

Molly E. Danahy
Andres Haladay
Rylee Sommers-Flanagan
Upper Seven Law
P.O. Box 31
Helena, MT 59624
(406) 998-6067

Counsel for Petitioner