

1 UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF TEXAS  
3 AUSTIN DIVISION  
4

5 \_\_\_\_\_ )  
6 Oscar Armando CALDERON Gavarrete )  
7 )  
8 Petitioner-Plaintiff, )  
9 )  
10 v. )  
11 PAM BONDI, )  
12 United States Attorney General; )  
13 )  
14 KRISTI LYNN NOEM, )  
15 Secretary of the United States )  
16 Department of Homeland Security; )  
17 )  
18 )  
19 TODD M. LYONS, )  
20 Director of United States )  
21 Immigration and Customs Enforcement; )  
22 )  
23 SYLVESTER ORTEGA )  
24 Field Office Director )  
25 for Detention and Removal, U.S. )  
26 Immigration and Customs Enforcement, )  
27 )  
28 Warden of the T. Don Hutto Detention )  
29 Center )  
30 Daren K. Margolin, Director of the )  
31 Executive Office for Immigration Review )  
32 Respondents-Defendants. )  
33 \_\_\_\_\_ )

Civ. No. 1:26-cv-79

DHS File Number: 

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF; PETITION  
FOR HABEAS CORPUS

34 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR  
35 WRIT OF HABEAS CORPUS  
36 (28 U.S.C. §§ 1331, 2201, 2241, 2243; U.S. Const. amend. V)

37 Petitioner-Plaintiff Oscar Armando Calderon-Gavarrete (“Mr. Calderon”), by and through  
38 undersigned counsel, files this Complaint for Declaratory and Injunctive Relief and Petition for  
39 Writ of Habeas Corpus to remedy his unlawful civil immigration detention and to prevent transfer  
40 or removal while this Court adjudicates this Petition, and respectfully states as follows:

41 I. INTRODUCTION

42 1. This is a habeas case challenging ongoing civil immigration detention that violates the  
43 Constitution and the Immigration and Nationality Act (“INA”) because the Government is  
44 detaining Mr. Calderon under an unlawful no-bond theory and/or without the procedures  
45 and individualized custody determination required by due process and the INA.

46 2. “Freedom from imprisonment—from government custody, detention, or other forms of  
47 physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”  
48 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

49 3. Mr. Calderon is a citizen and native of El Salvador. He has lived continuously in the United  
50 States since 2008. He has deep family and community ties, including U.S. citizen children  
51 and a spouse who is a DACA holder and is about to become a legal permanent resident. He  
52 has no criminal history beyond an alleged traffic-stop citation described below.

53 4. On January 5, 2026, Mr. Calderon was stopped by local police because his vehicle’s tag  
54 light supposedly was out. The police officer proceeded to call ICE and he was detained  
55 from there.

56 5. Mr. Calderon is currently detained at the T. Don Hutto Residential Center in Taylor, Texas,  
57 within the Western District of Texas and the Austin Division.

58 6. Mr. Calderon is in removal proceedings and intends to pursue relief, including non-LPR  
59 cancellation of removal (42B) and consular processing. He cannot meaningfully gather and  
60 present the required hardship and good-moral-character evidence while detained.

61 7. Even if an Immigration Judge were to deny relief, Mr. Calderon would still have the  
62 statutory right to appeal to the Board of Immigration Appeals (“BIA”), a process that  
63 commonly takes many months. Detaining him throughout the litigation and appeal process  
64 is not a permissible form of civil incarceration.

65 8. The Western District of Texas has repeatedly rejected the Government’s attempt to impose  
66 categorical no-bond detention on long-term interior residents in full removal proceedings,  
67 and it has granted habeas relief and ordered release or bond-process protections.

68 9. Mr. Calderon therefore seeks: (a) immediate release under appropriate conditions; or, at  
69 minimum, (b) an order compelling the Government to provide a prompt, meaningful  
70 custody determination before a neutral adjudicator with authority to release him, consistent  
71 with the INA and due process; and (c) an order preventing transfer or removal while this  
72 Court adjudicates this Petition. His continued detention is an unlawful violation of due  
73 process, incorrect interpretation of immigration law, and is *ultra vires*.

## 74 II. JURISDICTION AND VENUE

75 10. This action arises under the Constitution and laws of the United States, including 28 U.S.C.  
76 § 2241; 28 U.S.C. § 1331; the INA, 8 U.S.C. § 1101 et seq.; and, to the extent applicable, 5  
77 U.S.C. § 701 et seq.

78 11. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28  
79 U.S.C. § 1331 (federal question), and where applicable Article I § 9, cl. 2 of the United  
80 States Constitution (Suspension Clause). This Court may grant relief pursuant to 28 U.S.C.  
81 § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28  
82 U.S.C. § 1651.

83 12. This Court may issue declaratory relief under 28 U.S.C. § 2201 and injunctive relief under  
84 its equitable powers and the All Writs Act, 28 U.S.C. § 1651, including relief preventing  
85 transfer that would frustrate this Court's jurisdiction.

86 13. Venue is proper in the Western District of Texas under 28 U.S.C. § 1391 and 28 U.S.C. §  
87 2241 because Mr. Calderon is detained within this District at T. Don Hutto Residential  
88 Center, and his immediate custodian, who is one of the Respondents is within this District.

89 14. A substantial part of the events giving rise to the claims in this action took place in this  
90 District.

91 **III. REQUIREMENTS OF 28 U.S.C. § 2243, WRIT OF HABEAS CORPUS ISSUANCE,**  
92 **RETURN, HEARING, AND DECISION**

93 15. Under 28 U.S.C. § 2243, the Court must either grant the writ or issue an order directing  
94 Respondents to show cause why the writ should not be granted.

95 16. If an order to show cause issues, Respondents must make a return "within three days"  
96 unless the Court allows additional time for good cause, not exceeding twenty days. 28  
97 U.S.C. § 2243.

98 17. Habeas corpus is "perhaps the most important writ known to the constitutional law . . .  
99 affording as it does a *swift* and imperative remedy in all cases of illegal restraint or  
100 confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). The writ of habeas  
101 corpus, challenging illegality of detention, is reduced to a sham if the trial courts do not act  
102 within a reasonable time. *Rhueark v. Wade*, 540 F. 2d 1282, 1283 (5th Cir. 1976); *Jones v.*  
103 *Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978).

104 18. Due to the nature of this proceeding, Petitioner asks this Court to expedite proceedings in  
105 this case as necessary and practicable for justice.

106 **IV. PARTIES**

107 19. Petitioner Oscar Armando Calderon-Gavarrete () is currently detained at T.  
108 Don Hutto Residential Center in Taylor, Texas. He is a father of two U.S citizen children  
109 and a stepson, who is like a son to him. His wife is a DACA holder who is about to become  
110 a legal permanent resident. The Petitioner is eligible for cancellation of removal and  
111 consular processing. He is the subject of a removal proceeding based upon the charges of  
112 being present in the U.S. without being “admitted or paroled, or [having] arrived in the  
113 [U.S.] at any time or place other than as designated by the Attorney General” under INA §  
114 212(a)(6)(A)(i), codified at 8 U.S.C. § 1182(a)(6)(A)(i).

115 20. Respondent Pamela Bondi is sued in her official capacity as the United States Attorney  
116 General. She is responsible for the administration and policy of the immigration courts,  
117 which resulted in the inability of this noncitizen to seek a custody redetermination from the  
118 U.S. Department of Justice under 8 C.F.R. §1003.19.

119 21. Respondent Kristi Noem is sued in her official capacity as Secretary of the U.S.  
120 Department of Homeland Security (“DHS”). DHS is a department of the executive branch  
121 of the U.S. government that is tasked with, among other things, administering and  
122 enforcing the federal immigration laws. Secretary Noem is ultimately responsible for the  
123 actions of ICE; specifically, they are responsible for the administration of the immigration  
124 laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a). Secretary Noem is legally



125 responsible for the Office of the Principle Legal Advisor of ICE, and in any effort to detain  
126 and remove the Petitioner and as such is a legal custodian of Petitioner.

127 22. Respondent Todd M. Lyons is sued in his official capacity as Director of U.S. Immigration  
128 and Customs Enforcement ("ICE"). ICE is the agency within DHS that is specifically  
129 responsible for managing all aspects of the immigration enforcement process, including  
130 immigration detention. ICE is responsible for apprehension, incarceration, and removal of  
131 noncitizens from the United States and as such Acting Director Lyons is a legal custodian  
132 of Petitioner.

133 23. Respondent Sylvester Ortega is sued in their official capacity as the ICE Enforcement and  
134 Removal Operations Field Office Director with responsibility for detention and removal  
135 operations affecting Mr. Calderon. Director Ortega is a legal custodian of Petitioner.

136 24. The Warden of T. Don Hutto Residential Center is sued in his or her official capacity as Mr.  
137 Calderon's immediate custodian. They have immediate physical custody of Petitioner  
138 pursuant to an agreement with ICE to detain noncitizens and is a legal custodian of  
139 Petitioner.

140 24.1 Respondent **Daren K. Margolin** is the Director of the Executive Office for Immigration  
141 Review ("EOIR"), has the legal authority to order an Immigration Judge to provide  
142 Petitioner a bond hearing, and is sued in his official capacity.

#### 143 V. FACTUAL ALLEGATIONS

144 25. Mr. Calderon was born in El Salvador and is a citizen of El Salvador and entered the  
145 United States in approximately 2008 and has lived continuously in the United States since  
146 that time. He was never previously detained by ICE.

147 26. The Petitioner has been married since 2014 and is the father of two U.S. citizen children  
148 who are minors, currently ages  He also has a U.S. citizen stepson who is like a  
149 son to him.

150 27. Mr. Calderon works in the construction industry and provides estimates for mechanical  
151 companies on new construction projects, including HVAC-related work. He files tax  
152 returns and has long-standing ties to his community.

153 28. In addition, his children are embedded in the community, including school and  
154 extracurricular activities.

155 29. Mr. Calderon has no criminal history. His detention did not stem from a criminal  
156 conviction.

157 30. On January 5, 2026, Mr. Calderon was pulled over because supposedly a tag light was out.  
158 After the stop, immigration authorities were contacted, and Mr. Calderon was detained.

159 31. The Petitioner is currently detained at T. Don Hutto Residential Center in Taylor, Texas. He  
160 is now in removal proceedings and seeks the opportunity to pursue relief, including  
161 non-LPR cancellation of removal (42B) and consular processing, which requires extensive  
162 evidence, including proof of continuous physical presence, good moral character, and  
163 exceptional and extremely unusual hardship to qualifying U.S. citizen family members.

164 32. Detention severely impairs Mr. Calderon's ability to gather and present this evidence, to  
165 obtain witness declarations, school and medical records, financial records, and other  
166 documentation central to his defense.

167 33. Additionally, continued detention also imposes extreme hardship on Mr. Calderon's U.S.  
168 citizen children and spouse, depriving them of his parental care and financial support.  
169 Removal proceedings and any administrative appeal will take months. Even if relief is  
170 denied at the trial level, Mr. Calderon will have the right to appeal to the BIA, which  
171 commonly requires substantial time for adjudication.

172 34. Detaining Mr. Calderon throughout the pendency of his removal proceedings and appeal  
173 would create prolonged, potentially indefinite civil incarceration untethered from the  
174 limited purposes that can justify civil immigration detention.

175 35. Mr. Calderon is not a danger to the community and is not a flight risk. He has lived in the  
176 United States for approximately 18 years, has a stable family unit with U.S. citizen  
177 children, and has long-term employment and community ties.

178 36. Nevertheless, Respondents are detaining Mr. Calderon without a meaningful custody  
179 process and/or under a categorical no-bond approach that the Western District of Texas has  
180 repeatedly rejected.

181 37. It has been widely reported that ICE internally released "interim guidance" regarding a  
182 change in their longstanding interpretation of which noncitizens are eligible for release on  
183 bond; specifically, ICE is now arguing that only those already admitted to the U.S.  
184 (typically requiring lengthy legal efforts with representation of counsel, such as adjusting  
185 status to a legal permanent resident or refugee) are eligible to be released from custody  
186 during their removal proceedings, and that all others are subject to mandatory detention  
187 under 8 U.S.C. § 1225, instead of 8 U.S.C. § 1226, and will remain detained with only  
188 extremely limited parole options *at ICE's discretion*. This is a reversal of ICE's established



189 practice of releasing from custody the majority of noncitizens in removal proceedings, who  
190 are found not to pose a flight risk or a danger to the community, on bond.

191 38. This novel interpretation means that potentially millions noncitizens who entered the  
192 United States without inspection (who have not already been formally admitted or paroled)  
193 that are contacted by ICE in the interior of the U.S. will be treated as if they were an  
194 “arriving alien” at the border and subject to mandatory detention, regardless of how long  
195 they have been present in the United States or other equities (such as complete lack of  
196 criminal history or U.S. citizen family members including dependent children). ICE will  
197 now argue all of these noncitizens are not even entitled to a bond hearing by an IJ on the  
198 issue of release from custody during the pendency of removal proceedings.

199 39. The petitioner remains in detention and separated from his family and community. He is  
200 experiencing significant and deep emotional and mental trauma from this separation from  
201 all those he loves.

202 40. In addition, Petitioner is unable to support and provide for his family because he is detained  
203 and unable to continue as a breadwinner. His wife was suddenly stripped away from her  
204 main support.

205 41. Petitioner’s continued detention separates him from his family, prohibits his removal  
206 defense in many ways, including by making it difficult to communicate with witnesses,  
207 gather evidence, and afford legal representation, among other related harms.

208 42. Present counsel cannot meaningfully pursue a custody redetermination before the  
209 Immigration Judge because the immigration court continues to follow DHS’s revised  
210 “seeking admission” detention theory and the BIA’s precedential decision in *Matter of*

211 *Yajure Hurtado*, even though subsequent federal court decisions in the *Maldonado Bautista*  
 212 litigation rejected DHS’s policy and granted classwide relief that undermines ICE’s  
 213 position. See *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025); *Maldonado*  
 214 *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov.  
 215 25, 2025); and *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL  
 216 3713987 (C.D. Cal. Dec. 18, 2025).

217 43. In the meantime, the Petitioner remains detained over one hour away from his family, his  
 218 counsel, and support system and continues to be subjected to the aforementioned harms.

## 219 VI. LEGAL FRAMEWORK: DUE PROCESS

220 45. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law  
 221 in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*,  
 222 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody,  
 223 detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due  
 224 Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

225 46. Due Process requires that there be “adequate procedural protections” to ensure that the  
 226 government’s asserted justification for a noncitizen’s physical confinement “outweighs the  
 227 ‘individual’s constitutionally protected interest in avoiding physical restraint.’” *Id.* at 690  
 228 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). In the immigration context, the  
 229 Supreme Court only recognizes two purposes for civil detention: preventing flight and  
 230 mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S.  
 231 at 528. A noncitizen may only be detained based on these two justifications if they are  
 232 otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690.

233 47. “The fundamental requirement of due process is the opportunity be heard at a meaningful  
234 time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). To  
235 determine what process Petitioner is due, this Court should consider (1) the private interest  
236 affected by the government action; (2) the risk that current procedures will cause an erroneous  
237 deprivation of that private interest, and the extent to which that risk could be reduced by  
238 additional safeguards; and (3) the government’s interest in maintaining the current procedures,  
239 including the governmental function involved and the fiscal and administrative burdens that the  
240 substitute procedural requirement would entail. *Id.* at 335.

241 48. Mr. Calderon’s private interest is maximal: physical liberty and family integrity.

242 49. The risk of erroneous deprivation is severe where the Government uses a categorical  
243 no-bond approach and denies a meaningful custody determination.

244 50. The Government’s legitimate interests can be satisfied through release on conditions,  
245 supervision, or bond.

#### 246 **Immigration and Nationality Act**

247 51. Title 8 of the United States Code, Section 1221 *et seq.*, controls the United States  
248 Government’s authority to detain noncitizens during their removal proceedings.

249 52. The INA authorizes detention for noncitizens under four distinct provisions:

250 1) **Discretionary Detention.** 8 U.S.C. § 1226(a) generally allows for the detention of  
251 noncitizens who are in regular, non-expedited removal proceedings; however, permits those  
252 noncitizens who are not subject to mandatory detention to be released on bond or on their  
253 own recognizance.

254        **2) Mandatory Detention of “Criminal” Noncitizens.** 8 U.S.C. § 1226(c) generally  
255        requires the mandatory detention of noncitizens who are removable because of certain  
256        criminal or terrorist-related activity after they have been released from criminal  
257        incarceration.

258        **3) Mandatory Detention of “Applicants for Admission.”** 8 U.S.C. § 1225(b)  
259        generally requires detention for certain noncitizen applicants for admission, such as  
260        those noncitizens arriving in the U.S. at a port of entry or other noncitizens who have  
261        not been admitted or paroled into the U.S. and are apprehended soon after crossing the  
262        border.

263        **4) Detention Following Completion of Removal Proceedings.** 8 U.S.C. § 1231(a)  
264        generally requires the detention of certain noncitizens who are subject to a final  
265        removal order during the 90-day period after the completion of removal proceedings  
266        and permits the detention of certain noncitizens beyond that period. *Id.* at § 1231(a)(2),  
267        (6).

268        53. The instant case concerns the detention provisions at §§ 1226(a) and 1225(b). Both  
269        detention provisions, §§ 1226(a) and 1225(b), were enacted as part of the Illegal  
270        Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No.  
271        104—208, Div. C, §§ 302–03, 110 Stat. 3009– 546, 3009–582 to 3009–583, 3009–585.  
272        Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub.  
273        L. No.119-1, 139 Stat. 3 (2025).

274        54. Following enactment of the IIRIRA, the Executive Office for Immigration Review  
275        drafted new regulations explaining that, in general, people who entered the country without  
276        inspection were not considered detained under § 1225(b) and that they were instead



277 detained under § 1226(a) after an arrest warrant was issued by the Attorney General. *See*  
278 Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct  
279 of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)  
280 (“Despite being applicants for admission, aliens who are present without having been  
281 admitted or paroled (formerly referred to as aliens who entered without inspection) *will be*  
282 *eligible for bond and bond redetermination*”) (emphasis added).

283 55. For nearly thirty years, the practice of the government, specifically ICE and Executive  
284 Office for Immigration Review, which operate under DHS, was that most individual  
285 noncitizens that were apprehended in the interior of the United States after they had been  
286 living in the U.S. for more than two years (as opposed to “arriving” at a point of entry,  
287 border crossing, or being apprehended near the border and soon after entering without  
288 inspection) received a bond hearing. If determined to not be a danger to the community or a  
289 flight risk and, as a result, granted a change in custody status, the individuals were released  
290 from detention either on their own recognizance or after paying the bond amount set by the  
291 IJ in full. 8 U.S.C. § 1226(a)(2)(A).

292 56. Recently, ICE has—without warning and without any publicly stated  
293 rationale—reversed course and adopted a policy of attempting to treat all individual  
294 noncitizens that were not previously admitted to the U.S. that are contacted in the interior  
295 of the U.S. at any time after their entry as “arriving” and ineligible for bond regardless of  
296 the particularities of their case. As a result, ICE is now ignoring particularities that have  
297 historically been highly relevant to determinations whether a noncitizen such remain or  
298 custody or be released—such as: when, why, or how they entered the U.S.; whether they  
299 have criminal convictions; whether they present a danger to the community or flight risk;



300 whether they have serious medical conditions requiring ongoing care; whether U.S. citizen  
301 family members dependent upon them to provide necessary care; or, whether the  
302 noncitizen's detention is in the community's best interest. Though no public announcement  
303 of this sweeping new interpretation of these statutes was announced, ICE now reasons, and  
304 argued in front of the IJ at Petitioner's bond redetermination hearing, that the mandatory  
305 detention provision of § 1225(b)(2)(A) applies to all people who enter without inspection  
306 who are alleged to be subject to grounds of inadmissibility at § 1182.

307 57. As a result of ICE's interpretation and practice change, individual noncitizens,  
308 including long-time U.S. community members and even those who have had their  
309 particular circumstances reviewed and were ordered to be released upon posting bond by an  
310 IJ, continue to be detained by ICE. Here, Petitioner's circumstances were not reviewed  
311 because of ICE's and immigration judges' erroneous interpretation of the statutory scheme.

312 58. To be clear, other noncitizens are being held in continued ICE detention, even when IJs  
313 do not agree with ICE's interpretation of the statutes and regulations at hand. "The idea that  
314 a different detention scheme would apply to non-citizens 'already in the country,' as  
315 compared to those 'seeking admission into the country,' is consonant with the core logic of  
316 our immigration system." *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D.  
317 Mass. July 24, 2025) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)); *see also*  
318 *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2267803 (S.D.N.Y. Aug. 8,  
319 2025) ("the Court need not reach the outer limits of the scope of the phrase 'seeking  
320 admission' in § 1225(b)—it is sufficient here to conclude that it does not reach someone  
321 who has been residing in this country for more than two years, and that as someone  
322 'already in the country,' *Jennings*, 583 U.S. at 289, [Petitioner] may be subject to detention  
323 *only* as a matter of discretion under § 1226(a)") (emphasis added).

324 59. The government's erroneous interpretation of the INA defies the plain text of 8 U.S.C.  
325 § 1226. The government's assertion that Petitioner is detained under § 1225—even though  
326 he was arrested and detained under § 1226—is meritless. Petitioner came to be in  
327 immigration proceedings based on a DHS filing that clearly identified him as subject to  
328 detention “pursuant to the authority contained in section 236”; (section 236 of the INA is  
329 codified at 8 U.S.C. § 1226.). For decades, § 1225 has applied only to noncitizens “seeking  
330 admission into the country”—i.e., new arrivals. *Jennings*, 583 U.S. at 289. This contrasts  
331 with § 1226, which applies to noncitizens “already in the country.” *Id.* at 289. Petitioner has  
332 been in the United States for almost 20 years.

333 60. This new interpretation is now advanced by the government after decades of consistent  
334 use to the contrary. The government's position contravenes the plain language of the INA  
335 and its regulations and has been consistently rejected by courts. See, e.g., *Martinez*, 2025  
336 WL 2084238; *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July  
337 7, 2025); *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 1193850 (W.D. Wash.  
338 Apr. 24, 2025). See also *Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10312,  
339 10323 (Mar. 6, 1997) (explaining that “[d]espite being applicants for admission, aliens who  
340 are present without having been admitted or paroled (formerly referred to as aliens who  
341 entered without inspection) will be eligible for bond and bond redetermination”). See  
342 *Armando Calderon Vargas v. Pamela Bondi, et al.*, No. 5:25-cv-01023-FB-HJB (W.D. Tex.  
343 San Antonio Div.) and *Lenin Melendez-Morales v. Pamela Bondi, et al.*, No.  
344 5:25-cv-01740-JKP (W.D. Tex.). See also *Belsai D.S. v. Bondi*, No. 25-CV-3682  
345 (KMM/EMB), 2025 WL 2802947, at \*5 (D. Minn. Oct. 1, 2025) (collecting cases).

346 61. This new interpretation is inconsistent with the plain language of the INA. First, the  
 347 government disregards a key phrase in § 1225. “[I]n the case of an alien who is an  
 348 applicant for admission, if the examining immigration officer determines that an alien  
 349 *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall  
 350 be detained for a proceeding under section 1229a[.]” 8 U.S.C. § 1225(b)(2)(A) (emphasis  
 351 added). In other words, mandatory detention applies when “the individual is: (1) an  
 352 ‘applicant for admission’; (2) ‘seeking admission’; and (3) ‘not clearly and beyond a doubt  
 353 entitled to be admitted.’” *Martinez*, 2025 WL 2084238, at \*2.

354 62. The “seeking admission” language, “necessarily implies some sort of present tense  
 355 action.” *Martinez*, 2025 WL 2084238, at \*6; *see also Matter of MD-C-V-*, 28 I. & N. Dec.  
 356 18, 23 (B.I.A. 2020) (“The use of the present progressive tense ‘arriving,’ rather than the  
 357 past tense ‘arrived,’ implies some temporal or geographic limit . . . .”); *U.S. v. Wilson*, 503  
 358 U.S. 329, 333 (1992) (“Congress’ use of verb tense is significant in construing statutes.”).

359 63. In other words, the plain language of § 1225 applies to immigrants currently seeking  
 360 admission into the United States at the nation’s border or another point of entry. It does not  
 361 apply to noncitizens “already present in the United States”—only § 1226 applies in those  
 362 cases. *See Jennings*, 583 U.S. at 303.

363 64. When interpreting a statute, “every clause and word . . . should have meaning.” *United*  
 364 *States ex rel. Polansky, M.D. v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) (internal  
 365 quotation marks and citation omitted). And “the words of the statute must be read in their  
 366 context and with a view to their place in the overall statutory scheme.” *Gundy v. United*  
 367 *States*, 588 U.S. 128, 141 (2019) (quotation omitted). The government’s position requires  
 368 the Court to ignore critical provisions of the INA.

369 65. Second, the government's interpretation would render newly enacted portions of the  
370 INA superfluous. "When Congress amends legislation, courts must presume it intends its  
371 amendment to have real and substantial effect." *Van Buren v. United States*, 593 U.S. 374,  
372 393 (2021). Congress passed the Laken Riley Act (the "Act") in January 2025. The Act  
373 amended several provisions of the INA, including §§ 1225 and 1226. Laken Riley Act,  
374 Pub. L. No. 119-1, 139 Stat. 3 (2025). Relevant here, the Act added a new category of  
375 noncitizens subject to mandatory detention under § 1226(c)—those already present in the  
376 United States who have also been arrested, charged with, or convicted of certain crimes. 8  
377 U.S.C. § 1226(c)(1)(E); 8 U.S.C. § 1182(a)(6)(A). Of course, under the government's  
378 position, these individuals are already subject to mandatory detention under §  
379 1225—rendering the amendment redundant. Likewise, mandatory-detention exceptions  
380 under § 1226(c) are meaningful only if there is a default of discretionary detention—and  
381 there is, under § 1226(a). *See Rodriguez*, 2025 WL 1193850, at \*12.

382 66. Additionally, "[w]hen Congress adopts a new law against the backdrop of a  
383 longstanding administrative construction, the court generally presumes that the new  
384 provision works in harmony with what came before." *Monsalvo v. Bondi*, 604 U.S. \_\_\_,  
385 145 S. Ct. 1232, 1242 (2025). Congress adopted the Act against the backdrop of decades of  
386 agency practice applying § 1226(a) to immigrants like Petitioner, who are present in the  
387 United States but have not been admitted or paroled. *Rodriguez*, 2025 WL 1193850, at \*15;  
388 *Martinez*, 2025 WL 2084238, at \*4; 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite  
389 being applicants for admission, aliens who are present without having been admitted or  
390 paroled . . . will be eligible for bond and bond redetermination.").



391 67. Section 1226(a) applies by default to all persons “pending a decision on whether the  
392 [noncitizen] is to be removed from the United States.” Removal hearings for noncitizens  
393 under 1226(a) are held under § 1229a, which “decid[e] the inadmissibility or deportability  
394 of a[] [noncitizen].”

395 68. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently  
396 entered the United States. Accordingly, the mandatory detention provision of § 1225(b)(2)  
397 does not apply to Petitioner.

398 68. Petitioner’s case is ripe for review. His only option is to file a bond hearing, wait for the  
399 immigration judge to deny it alleging lack of jurisdiction, then appeal to the BIA and wait  
400 many months or years for the Board to issue a decision. However, the BIA’s appellate  
401 process does not offer a meaningful or timely opportunity to correct Respondent’s errors.

402 69. According to the agency’s own data, during fiscal year 2024, the BIA’s average  
403 processing time for a bond appeal was 204 days, approximately seven months. Meaning for  
404 an average case where bond was granted in July 2025 it would not be heard until February  
405 2026. *See Vazquez v. Bostock*, 3:25-CV-05240-TMC (D. W.D. Wash. May 2, 2025).

406 70. The 204 days is only for the average case. Cases can take longer or shorter, meaning  
407 that there is no definite timeline for resolution and release.

408 70. The months a person waits for appellate review deprives them of time with their  
409 children, spouses, family and community members, and liberty. Their family and  
410 community, who are often U.S. citizens or lawful permanent residents, are similarly  
411 deprived of the love, care, financial support, and meaningful contributions the detained  
412 person provides.



413 71. Detained individual noncitizens are often incarcerated in jail, or jail-like, settings. They  
414 are forced to sleep in communal spaces, receive inadequate medical care, and subjected to  
415 other degrading treatment.

416 72. While not all noncitizens succeed in their appeals, some do. The BIA's months-long  
417 appellate review means that for those individuals, they have spent months of unnecessary  
418 time in detention and suffered the harm outlined above.

419 73. Failing to provide timely appellate review of erroneous interpretations of the INA  
420 violates the Due Process Clause.

#### 421 **VII. STATUTORY FRAMEWORK AND RECENT WDTX AUTHORITY**

422 74. The INA provides distinct detention authorities depending on posture and  
423 circumstances; as relevant here, individuals in full removal proceedings have historically  
424 been afforded bond-process protections unless subject to a narrow mandatory-detention  
425 category.

426 75. Courts in the Western District of Texas have repeatedly granted habeas relief where the  
427 Government adopted a novel interpretation to impose categorical no-bond detention on  
428 long-term interior residents in full proceedings.

429 76. In *Hernandez Hervert v. Bondi*, the Austin Division rejected jurisdiction-stripping  
430 arguments and concluded that the Government could not apply the no-bond detention  
431 scheme to a noncitizen already present in the country, granting habeas relief.

432 77. In *Luna-Arriaga v. Thompson* (San Antonio Division), the Court likewise granted  
433 habeas relief, explaining that the "seeking admission" language in the detention statute

434 carries a present-tense limitation and does not reach a long-term interior resident already in  
435 the United States; the Court also cited *Cardona-Lozano v. Noem* (Austin Division) in  
436 rejecting jurisdictional barriers and confirming habeas review of detention claims.

437 78. In *Tovar v. Noem* (San Antonio Division), the Court similarly granted habeas relief and  
438 ordered release, prohibiting transfer or removal while relief was implemented and  
439 confirming that if re-detained, applicable bond-process procedures must be followed.

440 79. These WDTX decisions reflect that habeas is available to correct unlawful detention  
441 classifications and to require lawful custody procedures.

## 442 IX. CLAIMS FOR RELIEF

### 443 FIRST CAUSE OF ACTION

#### 444 Violation of the Due Process Clause of the Fifth Amendment of the 445 United States Constitution

446 80. Petitioner repeats and incorporates by reference all allegations above as though set forth  
447 fully herein.

448 81. The Due Process Clause asks whether the government's deprivation of a person's life,  
449 liberty, or property is justified by a sufficient purpose. Here, there is no question that the  
450 government has deprived Petitioner of his liberty.

451 82. Mr. Calderon's continued detention violates his right to substantive and procedural due  
452 process guaranteed by the Fifth Amendment to the U.S. Constitution.

453 83. The Due Process Clause of the Fifth Amendment to the U.S. Constitution provides that  
454 "[n]o person shall...be deprived of life, liberty, or property without due process of law." As

455 a noncitizen who shows well over “two years” physical presence in the United States  
456 (indeed he has almost 20 years). Petitioner is entitled to Due Process Clause protections  
457 against deprivation of liberty and property. *See Zadvydas*, 533 U.S. at 693 (“[T]he Due  
458 Process Clause applies to all ‘persons’ within the United States, including aliens, whether  
459 their presence here is lawful, unlawful, temporary, or permanent.”). Any deprivation of this  
460 fundamental liberty interest must be accompanied not only by adequate procedural  
461 protections, but also by a “sufficiently strong special justification” to outweigh the  
462 significant deprivation of liberty. *Id.* at 690.

463 84. Respondents have deprived Mr. Calderon of his liberty interest protected by the Fifth  
464 Amendment by detaining him without the right to a bond.

465 85. Mr. Calderon’s detention is improper because he has been deprived of a bond hearing.  
466 A hearing is if anything a right to be heard, and here the immigration judges in the area are  
467 considering it a foregone conclusion that he is ineligible for bond, without considering the  
468 law or entertaining his counsel’s arguments. Like the accused in criminal cases, habeas is  
469 proper. *See Moore v. Dempsey*, 261 U.S. 86 (1923); *Johnson v. Zerbst*, 304 U.S. 458  
470 (1938); *Burns v. Wilson*, 346 U.S. 137, 154 (1953).

471 86. Respondents’ actions in detaining Mr. Calderon without any legal justification violate  
472 the Fifth Amendment.

473 87. The government’s detention of Petitioner is unjustified. Respondents have not  
474 demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding  
475 immigration detention must further the twin goals of (1) ensuring the noncitizen’s  
476 appearance during removal proceedings and (2) preventing danger to the community).

477 There is no credible argument that Petitioner cannot be safely released back to his  
478 community and family.

479 88. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth  
480 Amendment.

481 **SECOND CAUSE OF ACTION**  
482 **Violation of Immigration and Nationality Act**  
483

484 89. Petitioner repeats and incorporates by reference all allegations in paragraphs 1-88 as  
485 though set forth fully herein.

486 90. Petitioner was detained pursuant to "authority contained in section 236" of the INA;  
487 section 236 is codified at 8 U.S.C. § 1226. Despite this, the IJ and the DHS now find that  
488 he is detained subject to 8 U.S.C. § 1225(b)(2).

489 91. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all  
490 noncitizens residing in the United States who are subject to the grounds of inadmissibility.  
491 Mandatory detention does not apply to those who previously entered the country and have  
492 been residing in the United States prior to being apprehended and placed in removal  
493 proceedings by Respondents. Such noncitizens are detained under § 1226(a) and are  
494 eligible for release on bond, unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

495 92. Respondents have wrongfully adopted a policy and practice of arguing all noncitizens,  
496 such as Petitioner, are subject to mandatory detention under § 1225(b)(2).

497 93. The unlawful application of § 1225(b)(2) to Petitioner violates the INA.

498 **THIRD CAUSE OF ACTION**



499

**Fifth Amendment – Due Process**

500

**Denial of Opportunity to Contest Mis-Inclusion in Mandatory Category of Detention**

501

502 94. Petitioner re-alleges and incorporates by reference the paragraphs above.

503 95. Mr. Calderon has a vested liberty interest in preventing his removal because he is  
504 eligible for Cancellation of Removal relief & consular processing and is entitled to pursue  
505 that relief outside of detention by showing he is neither a danger to the community nor a  
506 flight risk. He is separated now from his wife and three U.S. citizen children,  
507 notwithstanding the dictates of 8 U.S.C. §1226(a) that he may seek redetermination of his  
508 custody status with an IJ, and prove he is not a flight risk or danger.

509 96. For all of the above reasons, Respondents' attempts to detain Petitioner without a  
510 meaningful opportunity to be heard violate his Procedural Due Process rights under the  
511 Fifth Amendment.

512

**FOURTH CAUSE OF ACTION:**

513

**ADMINISTRATIVE PROCEDURE ACT**

514

515 97. Petitioner re-alleges and incorporates by reference the paragraphs above.

516 98. Respondents' continued efforts to deny him bond violate the INA, Administrative  
517 Procedures Act (APA), and the U.S. Constitution.

518 99. As set forth in Count Two and Three, federal regulations and case law provide the  
519 procedure for a respondent in removal proceedings like him to seek a bond  
520 redetermination by an IJ.

521 100. In being denied the opportunity to return to his family, and pursue Cancellation of

522 Removal and/or consular processing in a non-detained court setting where he is free to  
 523 gather the necessary hardship and good moral character evidence, Mr. Calderon would be  
 524 deprived of the right to freedom to lawfully pursue his rights in this civil matter. The  
 525 Government's "no-review" provisions are a violation of his procedural and substantive  
 526 due process and without any statutory authority. There is no time-frame or procedure for  
 527 requesting DHS to itself review its custody decision, and removal proceedings in this case  
 528 will proceed during that time while Petitioner remains in custody.

529 101. The actions by Respondents would improperly alter the substantive rules concerning  
 530 mandatory custody status without the required notice-and-comment period and would be  
 531 in violation of the INA and its regulations. These actions by Respondents violate the APA.  
 532 Under the APA, this Court may hold unlawful and set aside an agency action which is  
 533 "contrary to constitutional right, power, privilege or immunity." 5 U.S.C. § 706(2)(B). The  
 534 regulations at 8 C.F.R. §§ 1003.19(h)(1)(B) and 1003.19(h)(2)(B) providing no review of  
 535 DHS custody decision for arriving aliens in removal proceedings are in violation of  
 536 substantive and procedural due process as guaranteed by the Fifth Amendment to the  
 537 United States Constitution. It is *ultra vires* because it exceeds the authority granted ICE by  
 538 Congress at 8 U.S.C. § 1226(a). For these reasons, this Honorable Court should order the  
 539 immigration judge to conduct a Neryph hearing<sup>1</sup> to determine whether or not Petitioner is  
 540 properly designated an arriving alien subject to mandatory detention during the pendency  
 541 of his removal proceedings.

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<sup>1</sup> The Board of Immigration Appeals (BIA) decision in *Matter of Neryph* made clear that the Immigration Judge has  
 542 jurisdiction to determine whether the respondent is properly included in the category preventing re-determination of  
 543 custody status. See *Matter of Neryph*, 22 I&N Dec. 799 (BIA 1999). The regulations have codified this right to a  
 544 Neryph hearing challenge at 8 C.F.R. §§ 1003.19(h)(1)(ii) and 8 C.F.R. §§ 1003.19(h)(2)(ii), but these subsections  
 545 enumerate only three classes of aliens who can request Neryph hearings, specifically and nonsensically omitting two  
 546 other classes of detained aliens, namely, arriving aliens in exclusion or removal proceedings..

**FIFTH CAUSE OF ACTION:  
STAY OF REMOVAL CLAIM**

102. Petitioner re-alleges and incorporates by reference the paragraphs above.

103. The denial of a bond hearing, followed by removal of Mr. Calderon from the United States would cause him irreversible harm and injury because he is mis-classified by the Government as subject to mandatory detention.

104. The Court should grant the stay of Mr. Calderon's removal to protect his statutory rights under the INA and the APA. In attempting to assert his rights, the Government has railroaded him and deprived him of freedom and liberty to contest his removal while free on bond, or at the very least, of his ability to prove he is not subject to mandatory detention and that he merits release on bond.

**SIXTH CAUSE OF ACTION  
SUSPENSION CLAUSE CLAIM**

105. Petitioner re-alleges and incorporates by reference the paragraphs above.

106. If 8 U.S.C. § 1252 stripped the Court jurisdiction from this matter, it would be unconstitutional as applied because it would deny Mr. Calderon the opportunity for meaningful review of the unlawfulness of his detention and removal.

107. To invoke the Suspension Clause, a petitioner must satisfy a three-factor test: "(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner's

570 entitlement to the writ.” *Boumediene v. Bush*, 553 U.S. 723, 766 (2008). Mr. Calderon  
571 satisfies these three requirements and may invoke the Suspension Clause.

572 108. First, although Mr. Calderon is not a U.S. citizen or resident, he has lived here for 18  
573 years, and he qualifies under the INA to seek Cancellation of Removal, because he has no  
574 criminal convictions, because he has lived here longer than ten continuous years, because  
575 he can show ten years’ good moral character, and because he can show his U.S. citizen  
576 children will suffer exceptional and extremely unusual hardship if he were removed to El  
577 Salvador. In addition, his nearly 21-year-old child will file an immigrant petition on his  
578 behalf, and once his wife becomes a lawful permanent resident, he will also pursue a  
579 waiver through her and seek an immigrant visa. Accordingly, he has more than one viable  
580 path to lawful permanent residence. Mr. Calderon has significant family connections in  
581 the United States, which establishes a substantial legal relationship with this country.

582 109. Mr. Calderon satisfies the second factor because he was apprehended by DHS and  
583 remains detained in the United States.

584 110. Finally, there are no serious, practical obstacles to resolving this present matter. This  
585 Court is equipped to decide whether Mr. Calderon is entitled to the writ.

586 111. There is no adequate alternative to a habeas petition. The refusal of the immigration  
587 court to grant Mr. Calderon the right to show he is mis-classified and that he is not subject  
588 to mandatory detention, such that he may return to his family and pursue cancellation,  
589 without proper notice or due process, deprives him of his constitutional rights. The BIA  
590 cannot adequately and expeditiously review these issues.

591 **SEVENTH CAUSE OF ACTION:**



**INJUNCTIVE RELIEF**

112. Petitioner re-alleges and incorporates herein by reference each and every allegation contained in the above paragraphs of this Petition.

113. This Court has the discretion to enter a temporary restraining order and a preliminary injunction. *See Haitian Refugee Center v. Nelson*, 872 F.2d 1555, 1561-1562 (11th Cir. 1989). “To be entitled to a preliminary injunction, the applicants must show (1) a substantial likelihood that they will prevail on the merits, (2) a substantial threat that they will suffer irreparable injury if the injunction is not granted, (3) their substantial injury outweighs the threatened harm to the party whom they seek to enjoin, and (4) granting the preliminary injunction will not disserve the public interest.” *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570, 574 (5th Cir. 2012). All four elements must be demonstrated to obtain injunctive relief. *Id.*

114. Respondents’ actions have caused Petitioner harm that warrants immediate relief.

**X. RELIEF SOUGHT**

WHEREFORE, Petitioner respectfully requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Declare that ICE’s apprehension and detention of Mr. Calderon was an unlawful exercise of authority because the ICE officer provided no reason that he presents a danger to the community or is flight risk;

(3) Issue an order directing Respondents to show cause why the writ should not be

614 granted;

615 (4) Order Respondents to file with the Court a complete copy of the administrative file  
616 from the Department of Justice and the Department of Homeland Security;

617 (5) Enjoin ICE from transferring Mr. Calderon outside of the Western District of Texas  
618 while this matter is pending;

619 (6) Grant the writ of habeas corpus ordering Respondents to release Mr. Calderon on his  
620 own recognizance, parole, or reasonable conditions of supervision, or order the  
621 Respondents to conduct a bond hearing under which it correctly applies the statutes  
622 and no longer mis-classifies him as subject to mandatory detention, in the alternative  
623 order a hearing under *Matter of Neryph*;

624 (7) Award the Petitioner reasonable costs and attorneys' fees under the Equal Access to  
625 Justice Act, as amended, 28 U.S.C. §2412; undersigned counsel recognizes the Fifth  
626 Circuit's decision in *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023) ruling that fees are  
627 not available to be awarded in 28 U.S.C. § 2241. Nonetheless, the issue is ripe for  
628 redetermination at the Fifth Circuit. At least two Circuit Courts and two district  
629 courts have disagreed with *Barco*. See *Vacchio v. Ashcroft*, 404 F.3d 663, 670-72 (2d  
630 Cir. 2005); *In re Petition of Hill*, 775 F.2d 1037, 1040-41 (9th Cir. 1985); *Abioye v.*  
631 *Oddo*, 2024 U.S. Dist. LEXIS 174205 (W. D. Penn. 2024); *Arias v. Choate*, 2023  
632 U.S. Dist. LEXIS 119907 (Dist. Colo. 2023). Given ICE's recent actions in detaining  
633 individuals without substantial justification, EAJA fees are needed to ensure  
634 attorneys can confront detention that is unconstitutional.

635 (8) Grant any other relief that this Court deems just and proper.

636 Respectfully submitted on this 13th day of January 2026.

637 /s/ Georgia Santos Laurent  
638 Counsel for Petitioner  
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**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

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672

I represent Petitioner Oscar Armando Calderon-Gavarrete and submit this verification on his behalf.

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675

I verify that the factual statements made in the foregoing Petition are true and correct to the best of my knowledge, information, and belief, based on consultation notes, communications with the family & the Petitioner and available records.

676 Dated: 01/13/2026

677 /s/ Georgia Santos Laurent

678 Counsel for Petitioner

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