

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION
CIVIL No. 6:26-cv-116

JOSE MANUEL SANDOVAL VELAZQUEZ

Petitioner

V.

DEVERY MOONEYHAM, in his official capacity
as Assistant Warden of the Limestone County
Detention Center

MIGUEL VERGARA, in his official capacity as
Field Office Director of ICE Enforcement and
Removal Operations San Antonio Field Office;

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland Security;

PAM BONDI, in her official capacity as Attorney General of the United States

Respondents.

**PETITION FOR
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C § 2241**

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

Petitioner has been detained by Immigration and Customs Enforcement (ICE) for more than 5 months without any individualized determination that he presents a flight risk or danger to the community. He seeks immediate release or, at minimum, a hearing before a neutral decision-maker.

This case does not challenge the Fifth Circuit's recent decision in *Buenrostro-Mendez v. Bondi*, No. 25-20496 (5th Cir. Feb. 6, 2026), which held that certain noncitizens are subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A). Rather, it challenges the constitutional application of that statute to Petitioner's specific circumstances.

The Fifth Circuit recognized that constitutional questions about prolonged detention under §1225(b)(2)(A) were "wholly speculative" at the time of its decision. *Buenrostro-Mendez*, slip op. at 21. Petitioner's more than 5-month detention, following 20 years of perfect compliance with supervised release, makes these concerns concrete. The Constitution does not permit indefinite detention without individualized review, regardless of statutory classification.

II. JURISDICTION AND AUTHORITY

1. Jurisdiction lies under 28 U.S.C. §2241 and 28 U.S.C. §1331.
2. The Fifth Circuit recognizes habeas jurisdiction over challenges to the fact and legality of immigration detention, including constitutional claims. *See Zadvydas v. Davis*, 533 U.S. 678 (2001); *Pierre v. United States*, 525 F.2d 933 (5th Cir. 1976).
3. This Court has authority to issue a TRO to halt ongoing constitutional violations. *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012).

III. STATEMENT OF FACTS

1. Background and Family Ties

1. Petitioner is 40 years old and has resided in the United States for 20 years, since 2005.
2. Petitioner and his family live at [REDACTED]
3. Petitioner has no criminal record and no history of immigration violations other than unlawful entry in 2005.

2. Long Term Resident and Exemplary Compliance

1. Petitioner has resided continuously in the United States since 2005.
2. From 2005 to September 17, 2025 — a period of nearly 20 years — Petitioner has complied fully with all laws and community norms. Petitioner maintained continuous residence and employment and established deep ties within the community. Throughout this entire period, Petitioner has never been arrested, charged, or convicted of any criminal offense and has no criminal history whatsoever.
3. This extensive and consistent history of lawful living demonstrates beyond dispute that Petitioner presents neither a flight risk nor a danger to the community.

3. Arrest Under §1225(b)(2)(A)

1. On September 17, 2025, Petitioner was pulled over while driving. Because he did not have a driver's license, he was detained. Nevertheless, ICE placed a hold on Petitioner and took him into custody despite the absence of any criminal conviction.

2. ICE now asserts authority to detain Petitioner under 8 U.S.C. §1225(b)(2)(A), claiming he is an “applicant for admission” subject to mandatory detention.
3. Petitioner has been continuously detained at Limestone Detention Center since September 17, 2025—a total of more than 5 months to date. *See attached*, Exhibit A: ICE Locator.

4. Current Removal Proceedings and Likelihood of Relief

1. The Immigration Judge granted relief on January 16, 2026, and there are no future hearings scheduled. DHS filed an appeal to the Board of Immigration Appeals on February 5, 2026, and the appeal remains pending with no projected timeline for resolution. *See attached*, Exhibit B: EOIR Automated Case Information. proceedings. *See attached*, Exhibit B: EOIR Automated Case Information
2. Petitioner has five United States citizen children and sought relief through Cancellation of Removal under INA § 240A(b) (42B), which was granted.

5. Harm from Continued Detention

1. Petitioner's continued detention causes severe and irreparable harm:

Economic Harm:

- a. Loss of employment and income;
- b. Household unable to meet regular living expenses due to Petitioner's detention, placing financial strain on his wife;

c. Household unable to meet regular living expenses due to Petitioner's detention, particularly given the needs of five children;

Familial Harm:

d. Separation from spouse since Petitioner's detention;

e. Petitioner was the primary provider for the household and his absence has left the family without adequate financial support;

f. Petitioner's detention has disrupted the care and stability of the household, leaving the family struggling to manage daily responsibilities for the children without him.

Inability to Defend Against Removal:

k. Petitioner is unable to gather documentary evidence for relief application while in custody;

l. Petitioner has severely limited access to his attorney while in ICE custody. Because of the detention center's already heavy schedule of attorney calls, we are generally able to speak with him only once per week. This severely restricts Petitioner's ability to communicate with counsel, prepare for hearings, gather evidence, and meaningfully participate in his own defense, creating a substantial risk of prejudice to his case.

m. Petitioner cannot locate witnesses or obtain declarations needed to defend his case while in ICE custody;

6. Each day of continued detention exacerbates these harms.

IV. CLAIM FOR RELIEF

VIOLATION OF FIFTH AMENDMENT DUE PROCESS

1. Petitioner incorporates all preceding paragraphs.
2. The Fifth Amendment to the United States Constitution guarantees that no person shall be deprived of life, liberty, or property without due process of law.
3. This guarantee extends to all persons within the United States, including noncitizens in removal proceedings. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("Once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all persons within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent."); *Reno v. Flores*, 507 U.S. 292, 306 (1993).
4. Petitioner's detention violates both substantive and procedural due process in multiple, reinforcing ways.

A. Substantive Due Process: Indefinite Detention Without Individualized Determination

1. The Supreme Court has held that indefinite or prolonged civil detention raises "serious constitutional concerns." *Zadvydas*, 533 U.S. at 690.
2. To avoid these concerns, the Supreme Court has "read an implicit limitation" into immigration detention statutes requiring individualized determinations and temporal limits. *Id.* at 689.
3. The Supreme Court identified six months as a "presumptively reasonable period" for immigration detention. *Id.* at 701.
4. While Petitioner has been detained for more than 5 months, he faces indefinite detention with no end in sight:

- a. Section 1225(b)(2)(A) contains no temporal limitation whatsoever;
 - b. The statute provides for detention "pending a proceeding under section 1229a," which could last months or years;
 - c. Petitioner's removal proceedings have no definite conclusion date and could last months or over a year for the adjudication and appellate process to conclude;
 - d. Cases involving applications for relief and appeal to the Board of Immigration Appeals routinely take 9-24+ months to resolve;
 - e. ICE has provided no timeline for completion of proceedings or release from detention.
1. Petitioner has already been detained for more than five months, and the posture of his case makes clear that his detention will extend well beyond the six-month presumptively reasonable period absent intervention by this Court.
 2. Unlike the post deportation/removal order detention at issue in *Zadvydas*, Petitioner's detention is even more troubling because: a. He is detained during, not after, removal proceedings, when he is actively pursuing relief; b. The proceedings themselves could last indefinitely; c. He has had no hearing whatsoever to determine the necessity of detention; and d. He faces categorical detention based on a recently-changed legal classification, not individualized facts.
 3. Respondents have made no individualized determination that Petitioner's continued detention is necessary to prevent flight or danger to the community, which are the only constitutionally permissible bases for preventive civil detention. *United States v. Salerno*, 481 U.S. 739, 748 (1987).

4. To the contrary, all evidence demonstrates Petitioner poses neither risk: a. Petitioner has resided continuously in the United States for 20 years; b. Petitioner maintained stable employment and residence and established substantial ties within the community; c. Petitioner has never been arrested, charged, or convicted of any criminal offense and has no criminal history whatsoever; d. Petitioner was taken into custody after a trespassing accusation that was immediately dismissed; e. Petitioner lived openly and peacefully in the community for decades without incident; f. Petitioner cooperated with law enforcement and was taken into custody without any attempt to flee or obstruct authorities.
5. Petitioner's detention is purely categorical, based solely on his legal classification as an "applicant for admission"—not on any individualized finding that he personally requires detention.
6. This categorical, indefinite detention without individualized determination violates substantive due process.

B. Procedural Due Process: Complete Deprivation of Hearing

1. The Fifth Amendment requires meaningful procedural protections before deprivation of physical liberty—one of the most fundamental interests protected by the Constitution.
2. Under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), courts apply a three-part balancing test to determine what process is due: (1) the private interest affected by government action; (2) the risk of erroneous deprivation through procedures used and the probable value of additional safeguards; and (3) the government's interest, including the fiscal and administrative burdens of additional procedures.

3. Applying the Mathews balancing test here, the constitutional scales tip overwhelmingly in favor of providing Petitioner a hearing.
4. **First Factor: Private Interest.** Petitioner's private interest is among the most fundamental protected by the Constitution—physical liberty and the ability to remain with his family: a. Petitioner faces ongoing separation from his family; b. He has lost his livelihood and ability to support his family; c. He cannot care for his family who depends on him; d. His detention prevents him from effectively defending against removal; e. Each day of detention causes harms that cannot be remedied through monetary compensation.
5. **Second Factor: Risk of Erroneous Deprivation.** The risk of erroneous deprivation here is not merely substantial, it is 100%: a. Respondents have made zero individualized determination about Petitioner; b. The detention is purely categorical based on manner of entry 20 years ago; c. No decision-maker has considered Petitioner's individual circumstances, ties, compliance history, or lack of flight risk; d. Additional procedural safeguards, a hearing before a neutral decision-maker, would dramatically reduce this risk at minimal cost; e. Such hearings occur routinely under §1226(a) for similarly situated individuals and impose minimal burden on the system.
6. **Third Factor: Government Interest.** The government's interests are preventing flight and protecting public safety. However: a. These interests are not served by detaining someone who has proven through years of compliance that he will appear and poses no danger; b. Petitioner's perfect compliance history directly contradicts any claim that detention is necessary; c. The government has never conducted an individualized custody determination regarding Petitioner despite his decades of peaceful presence in the community—thus a hearing is necessary to make that assessment for the first time; d. A

hearing would impose minimal administrative burden, as ICE routinely conducts such hearings under §1226(a); e. The government's interest in uniform application of §1225(b)(2)(A) does not outweigh fundamental liberty interests.

7. The Mathews balancing test overwhelmingly favors providing Petitioner a hearing before a neutral decision-maker with authority to order release upon a showing that he is not a flight risk or danger.
8. At minimum, due process requires: a. Notice of the reasons for continued detention; b. An opportunity to present evidence that Petitioner is neither a flight risk nor a danger to the community; c. A hearing before a neutral decision-maker (not ICE, which is the prosecuting/detaining authority); and d. Authority in that decision-maker to order release on bond or conditions if Petitioner meets his burden.
9. Respondents have provided none of these procedural protections. Petitioner has received no hearing, no opportunity to present evidence of his ties and compliance, and no review by any neutral arbiter.
10. This complete deprivation of process violates the Fifth Amendment.

C. Equal Protection: Arbitrary Classification

1. The Fifth Amendment's due process clause incorporates equal protection principles applicable to federal government action. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).
2. Equal protection requires that the government treat similarly situated individuals alike, absent a rational basis for differential treatment.

3. Respondents treat Petitioner—who entered the United States without inspection 20 years ago—fundamentally differently from a noncitizen who entered lawfully but overstayed a visa for many years.
4. These two individuals are identically situated in all relevant respects: a. Both are present in the United States without lawful status; b. Both are subject to removal proceedings; c. Both have identical equities (length of presence, U.S. citizen family, employment, community ties); d. Both present identical levels of flight risk and danger (or lack thereof); e. Both may be eligible for the same forms of relief from removal.
5. Yet the government treats them completely differently: a. The visa overstay is detained under §1226(a) and receives a bond hearing before an immigration judge; b. At that hearing, the judge makes an individualized determination of flight risk and danger; c. If the noncitizen proves he is not a flight risk or danger, the judge may order release on bond; d. In contrast, Petitioner receives mandatory detention under §1225(b)(2)(A) with no hearing and no possibility of release on bond.
6. This differential treatment is based solely on the manner of entry many years ago—a factor that bears no rational relationship to the government's stated interests in preventing flight and protecting public safety.
7. Indeed, the manner of entry 20 years ago tells us nothing about current flight risk or danger, which is why ICE conducts individualized assessments when deciding whether to detain or release under §1226(a).
8. The irrationality of this classification is particularly stark in Petitioner's case: a. ICE itself previously determined that Petitioner fell under §1226(a) and warranted release; b. Petitioner then proved through 20 years of perfect compliance that he presents no flight

risk or danger; c. Thus, Petitioner demonstrably presents less risk than many individuals who receive bond hearings under §1226(a); d. Yet Petitioner alone receives categorical detention without any hearing.

9. The government's asserted interest in "equal treatment" of noncitizens at the border and in the interior cannot justify this arbitrary classification: a. First, that interest relates to uniformity in removal proceedings (covered by §1225(a)(1)'s definition of "applicant for admission"), not detention; b. Second, even if relevant to detention, it does not explain why long term residents should be treated identically to recent border crossers; c. Third, it does not explain why manner of entry years ago should control over current, proven lack of flight risk.
10. This classification violates equal protection because it treats identically situated individuals differently based on an arbitrary factor unrelated to any legitimate government interest.

D. Arbitrary and Capricious Government Action

1. The Due Process Clause prohibits arbitrary government action. *County of Sacramento v. Lewis*, 523 U.S. 833, 845-46 (1998) (due process protects against "the exercise of power without any reasonable justification in the service of a legitimate governmental objective").
2. Respondents' decision to arrest Petitioner under a different statutory authority, based solely on policy change rather than any change in his individual circumstances, constitutes arbitrary government action.

3. For 20 years prior to his arrest, Petitioner lived openly in the United States without incident: a. This was not a brief or transitory presence; b. It reflected long-term residence and integration into the community; c. It demonstrated sustained lawful conduct without any criminal history; d. Petitioner maintained stable employment and residence; e. Petitioner had no arrests, charges, or convictions during this entire period.
4. Petitioner reasonably relied on his ability to live peacefully in the community: a. He complied with all laws; b. He maintained continuous residence and employment; c. He developed significant family and community ties; d. He cooperated with law enforcement at the time of the September 2025 encounter; e. He did not attempt to flee or evade authorities; f. He organized his life and his family's life in reliance on his long-standing peaceful presence in the United States; g. His decades of lawful conduct demonstrate he poses neither a flight risk nor a danger to the community.
5. Now, despite Petitioner's decades of lawful presence and despite no change whatsoever in his individual circumstances, ICE has abruptly taken him into custody: a. ICE detained Petitioner following a trespassing accusation that was immediately dismissed, not because of any misconduct by Petitioner; b. ICE now seeks to classify him under §1225(b)(2)(A) despite his long-term residence inside the United States; c. ICE provides no explanation based on Petitioner's conduct or history; d. The detention results solely from an enforcement decision rather than any individualized determination concerning Petitioner. e. The sole reason is a policy change following *Buenrostro-Mendez*.
6. Allowing agencies to switch legal theories mid-proceeding, after a person's good-faith reliance and compliance, is the epitome of arbitrary action: a. It penalizes compliance rather than rewarding it; b. It punishes someone for the government's own change of

- mind; c. It makes a mockery of supervised release programs if compliance provides no protection; d. It defeats reasonable reliance on government representations; e. It fails to serve any legitimate government interest, as Petitioner's circumstances have not changed.
7. While the government generally cannot be estopped, courts recognize an exception for "affirmative misconduct." *Heckler v. Community Health Servs.*, 467 U.S. 51, 60 (1984).
 8. Affirmative misconduct includes situations where: a. The government makes an affirmative representation; b. The party reasonably relies on that representation to his detriment; and c. Allowing the government to reverse course would be a manifest injustice.
 9. All three elements are met here: a. The government, through its decades-long acquiescence to Petitioner's open residence and peaceful presence in the United States, affirmatively represented that he could live in the community absent changed circumstances such as criminal conduct, flight, or violations; b. Petitioner reasonably relied on that representation by establishing his life in the United States for 20 years, maintaining stable residence and employment, and living openly without incident; c. Allowing sudden detention under a mandatory detention theory despite unchanged circumstances and a complete absence of misconduct works a manifest injustice.
 10. This arbitrary reversal violates fundamental due process principles of fairness and reasonable reliance on government action.

E. As-Applied Constitutional Challenge

1. Even if §1225(b)(2)(A) could be constitutionally applied to some individuals in some circumstances, its application to Petitioner violates the Constitution.

2. Petitioner presents the precise scenario where mandatory detention without a hearing cannot be constitutionally sustained: a. Long-term U.S. resident (20 years) with deep ties; b. Government previously determined he warranted release; c. Proven track record of compliance eliminating any flight risk or danger concern; d. Indefinite detention with no timeline for proceedings; e. Strong case for relief from removal; f. Severe irreparable harm from continued detention; g. Detention based solely on policy change, not individual facts.
3. The Fifth Circuit in Buenrostro-Mendez acknowledged that constitutional concerns about §1225(b)(2)(A) were "wholly speculative" at the time. Slip op. at 21.
4. Petitioner's case makes these concerns concrete, not speculative. This is precisely the type of as-applied challenge the Fifth Circuit did not address and could not foreclose.
5. 100. For all these reasons, Petitioner's continued detention violates the Fifth Amendment's guarantee of due process and equal protection.

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Declare that Petitioner's continued detention violates the Fifth Amendment to the United States Constitution;
- b. Issue a Writ of Habeas Corpus ordering Petitioner's immediate release from custody, subject to reasonable conditions of supervision including GPS monitoring, regular ICE check-ins, surrender of travel documents, and/or reasonable bond;
- c. Alternatively, order Respondents to provide Petitioner with an individualized hearing before a neutral decision-maker within seven (7) days, at which Petitioner may demonstrate he is neither

a flight risk nor a danger to the community, and at which the decision-maker has authority to order release on bond or conditions of supervision;

d. Enjoin Respondents from continuing to detain Petitioner in violation of his constitutional rights;

e. Order a stay of removal proceedings pending resolution of this petition;

f. Award costs and attorney's fees pursuant to 28 U.S.C. § 2412 and other applicable law;

g. Grant such other and further relief as the Court deems just and proper.

VII. VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

/s/ Matthew Mendez

Matthew Mendez

Attorney for Petitioner

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CERTIFICATE OF SERVICE

On February 23, 2026, Counsel for Plaintiff served a copy of the attached Petition via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the Respondent, Devery Mooneyham in his Official Capacity as Warden of the Limestone County Detention Center, located at 910 North Tyus Street, Groesbeck, Texas 76642.

/s/ Matthew Mendez

Matthew Mendez

February 23, 2026

Date

CERTIFICATE OF SERVICE

On February 23, 2026, Counsel for Plaintiff served a copy of the attached Petition via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the Respondent, Miguel Vergara, in his Official Capacity as Field Office Director, of ICE Enforcement and Removal Operations San Antonio Field Office, at (1) Office of the Field Office Director, Enforcement and Removal Operations, Houston Field Office, 1777 NE Loop 410 Floor 15, San Antonio, Texas, 78217.

/s/ Matthew Mendez

Matthew Mendez

February 23, 2026

Date

CERTIFICATE OF SERVICE

On February 23, 2026, Counsel for Plaintiff served a copy of the attached Petition via USPS Mail, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the Respondent, Kristi Noem, in her Official Capacity as Director of U.S. Department of Homeland Security, at (1) Office of General Counsel, U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0485, Washington, D.C. 20530.

/s/ Matthew Mendez

Matthew Mendez

February 23, 2026

Date

CERTIFICATE OF SERVICE

On February 23, 2026, Counsel for Plaintiff served a copy of the attached Petition via email, in compliance with Rule 4 of Federal Rules of Civil Procedure, upon the Respondent, Pam Bondi, in her Official Capacity as Attorney General of the United States, at usatxw.civil.immigration.notices@usdoj.gov

/s/ Matthew Mendez

Matthew Mendez

February 23, 2026

Date