

Magistrate Judge Brian A. Tsuchida

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LUIS CALDERON,

Petitioner,

v.

KRISTI NOEM, *et al.*,

Respondents.

Case No. 2:26-cv-00352-BAT

FEDERAL RESPONDENTS'¹
RETURN

Noted for Consideration:
February 23, 2026

I. INTRODUCTION

Petitioner Luis Calderon improperly seeks to relitigate the legality of his re-detention without a pre-deprivation hearing. Pet., ¶¶ 74-79. On December 29, 2025, the Honorable Lauren King held that Petitioner's due process rights were not violated by the lack of a pre-detention hearing. *Calderon v. Noem*, No. 2:25-cv-2136-LK-TLF, 2025 WL 3754042, at *8 (W.D. Wash. Dec. 29, 2025). To determine the lawfulness of his re-detention, the Court analyzed the application of the Laken Riley Act ("LRA"), 8 U.S.C. § 1226(c)(1)(E), to Petitioner at the time of his re-detention and in the context of due process. *See id.*, at *4-8. The Court did not issue a decision

¹ Respondent Bruce Scott is not a Federal Respondent and is not represented by undersigned counsel.

on whether the LRA continues to require Petitioner's detention once his criminal charges were dismissed, as Petitioner did not raise that issue in his habeas petition. *Id.*, at 8. Accordingly, the decision provided that "[t]o the extent [Petitioner] wishes to challenge his current detention, he is free to file a new habeas petition pursuant to Section 2241." *Id.*

Instead of challenging his current detention after his criminal charges have been dismissed, Petitioner mistakenly interprets the prior decision as an invitation to relitigate whether a pre-deprivation hearing was required prior to his April arrest with new constitutional framing. Pet., ¶ 1. This issue has been litigated and decided – or should have been raised.² Accordingly, this Court should deny the Petition.

II. BACKGROUND

A. Petitioner Calderon

The relevant underlying facts in this case are not in dispute. Petitioner is a native and citizen of Peru, who entered the United States without inspection or parole in or about March 2002. Pet., ¶¶ 13-14. In 2008, the Department of Homeland Security ("DHS") commenced removal proceedings by issuing a notice to appear. Pet., ¶ 15. DHS released Petitioner on \$3,000 bond. Pet., ¶ 16. DHS subsequently re-detained Petitioner in 2012. In September 2012, an immigration judge granted Calderon release from custody on \$10,000 bond. Pet., ¶ 17.

Petitioner's removal proceedings have not been completed because a decision by the immigration judge is pending review by the Board of Immigration Appeals after having been remanded by the Ninth Circuit on July 1, 2025. Pet., ¶ 18; *Luis Alberto Calderon v. Bondi*, No. 24-2619, Dkt. No. 40.1 (9th Cir. Jul. 1, 2025).

² If Petitioner wishes to challenge his current detention, Petitioner should not be allowed to raise that claim for the first time in his upcoming traverse. *Calderon*, 2025 WL 3754042, at *4 (collecting cases).

DHS re-detained Petitioner in April 2025 after he was arrested for theft in California. Pet., ¶ 19. Calderon's criminal case was dismissed by the Superior Court of California, County of Los Angeles, on July 30, 2025. Pet., ¶ 19. He is in detention at the Northwest ICE Processing Center.

B. *Calderon v. Noem*, No. 2:25-cv-2136-LK-TLF ("*Calderon I*")

On October 29, 2025, Petitioner filed the habeas petition in *Calderon I*. Lambert Decl., Ex. A. In the Petition, Petitioner argued that due process required the government to have provided him with a hearing prior to his re-detention. *Id.*, ¶¶ 45-48. On November 10, 2025, the government filed a return explaining that his re-detention was triggered by an LRA-qualifying arrest and that due process did not require a pre-deprivation hearing. Lambert Decl., Ex. B. Petitioner responded with two arguments. Lambert Decl., Ex. C. First, he argued that he was no longer subject to detention under the LRA. *Id.*, at 1-4. However, the Court did not entertain this argument as it had not been raised in the Petition. *Calderon*, 2025 WL 3754042, at *8. Second, Petitioner argued due process required a pre-deprivation hearing to determine his dangerousness or risk of flight. Ex. C, at 4-9.

As described above, the district court denied the habeas petition in *Calderon I* on December 29, 2025. *Calderon*, 2025 WL 3754042. But the decision explicitly left open the question of the lawfulness of his current detention. *Id.*, at *8.

C. *Calderon v. Noem*, No. 2:26-cv-00352-BAT ("*Calderon II*")

On January 30, 2026, Petitioner filed the instant habeas matter. Instead of challenging the lawfulness of his current detention, Petitioner again claims that his re-detention in April was unconstitutional. *See generally* Pet.³ He raises the same issue of the requirement of a pre-

³ To illustrate that Petitioner is not challenging his current detention and only seeks to relitigate the lawfulness of his re-detention, Petitioner asserts that he "understands that he could seek a bond hearing now that he is no longer subject to mandatory detention under the LRA. But his re-detention was initiated by an unconstitutional deprivation of due process." Pet., ¶ 84.

1 deprivation hearing. Pet., ¶¶ 74-79. He also asserts a Sixth Amendment claim. Pet., ¶¶ 80-81.
2 However, Petitioner should have raised these claims in *Calderon I*.

3 III. ARGUMENT

4 The instant Petition should be dismissed under the abuse of the writ doctrine because it is
5 an improperly filed successive petition. The doctrine “generally forbids the reconsideration of
6 claims that were or could have been raised in a prior habeas petition.” *Alaimalo v. United States*,
7 645 F.3d 1042, 1049 (9th Cir. 2011) (quotations and citations omitted). Petitioner, through the
8 same counsel, previously raised the claims and/or facts at issue here in *Calderon I*.

9 The application of the abuse of the writ doctrine is especially necessary here. If this
10 Petitioner were allowed to move forward, Petitioner would be sidestepping the appellate process
11 and instead be allowed to relitigate the lawfulness of his re-detention before this Court. The district
12 court in *Calderon I* analyzed whether due process required a pre-deprivation hearing at the time
13 of Petitioner’s re-detention, with an emphasis on the re-detention being the result of his LRA-
14 qualifying arrest. Petitioner should not be allowed to now have a second bite at the apple before
15 this Court. If Petitioner disagrees with the outcome of *Calderon I*, Petitioner should appeal that
16 decision.

17 Furthermore, *Calderon II* does not qualify for the exception to the abuse of the writ
18 doctrine. *Brown v. Muniz*, 889 F.3d 661, 667 (9th Cir. 2018). His current arguments do not rely
19 on a new rule of constitutional law that was previously unavailable. To wit, the most recent
20 caselaw cited in the Petition is the decision for *Calderon I*. Nor can he argue that he could not
21 have previously discovered the factual predicate for the claims in *Calderon II* through the exercise
22 of due diligence. *Calderon I* and *Calderon II* are based on the exact same set of facts.

23 Petitioner has received a “full and fair opportunity to raise the claim in the prior [petition].”
24 *Brown*, 889 F.3d at 674. “[A] petitioner had no fair opportunity to raise the claim in the prior

1 application if the claim was not yet ripe at the time of the first petition, or where the alleged
2 violation occurred only after the denial of the first petition.” *Id.* (internal quotation and citation
3 omitted). While the abuse of writ doctrine would not preclude Petitioner from challenging his
4 current detention, like in *Calderon I*, Petitioner has not done that here. He instead seeks to
5 relitigate the lawfulness of his re-detention in April 2025. *Calderon*, No. 2025 WL 3754042, at
6 *4 (“The petition does not raise a challenge relating to his right to a hearing *after* the charges
7 against him were dropped in late July 2025.”). Both of his claims presented in this habeas
8 petitioner, either could have been or were litigated in *Calderon I*.

9 Accordingly, the Petition should be denied as it violates the abuse of the writ doctrine.

10 IV. CONCLUSION

11 For the foregoing reasons, this Court should deny the Petition.

12 DATED this 17th day of February, 2026.

13 Respectfully submitted,

14 s/ Michelle R. Lambert

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*I certify that this memorandum contains 1,246
words, in compliance with the Local Civil Rules.*