UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

SALMERON, Wilber Alexander Petitioner, v. **JUAN BALTASAR,** Warden, Aurora Immigration and Customs Enforcement Processing Center, **ROBERT GUADIAN,** Denver Field Office Director of Enforcement and Removal Operations, Immigration and Customs Enforcement; **TODD LYONS**, Acting Director U.S. Immigration and Customs Enforcement, **Kristi NOEM,** Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; **Pamela BONDI**, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Respondents.	Case No. **PETITION FOR WRIT OF HABEAS CORPUS**

PETITION FOR WRIT OF HABEAS CORPUS

(28 U.S.C. § 2241)

Petitioner Wilber Alexander Salmeron, by counsel, respectfully petitions this Court for a writ of habeas corpus and states as follows:

INTRODUCTION

1. This case challenges the unlawful detention of Petitioner by U.S. Immigration and Customs Enforcement ("ICE") following the Immigration Judge's termination of his removal proceedings on January 17, 2026.

2. Petitioner is currently detained at the Aurora ICE Processing Center in Aurora, Colorado.
3. There is no administratively final order of removal against him.

4. The Immigration Judge terminated proceedings. DHS has filed an appeal, reportedly one day late, and ICE continues to detain Petitioner solely "pending appeal." The Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond.

5. The Court should expeditiously grant this petition.

6. The Court should order Petitioner's released immediately

PRELIMINARY STATEMENT

7. Petitioner, Wilber Alexander Salmeron, is a native and citizen of El Salvador. ("Wilber" or "Petitioner") who entered the United States as an unaccompanied minor ("UAC") without inspection or parole on or about April 10, 2016. He was placed in removal proceedings by the service of a Notice to Appear dated April 10, 2016. Petitioner's asylum application was initially filed with USCIS and later referred to the Executive Office for Immigration Review ("EOIR"). His mother, Maria C. Salmeron, is the lead respondent in the original family case. Respondent is the father of two U.S. citizen children: [redacted] (DOB: [redacted]) and [redacted]. (DOB: [redacted]).

8. His stepfather Ismael Mendoza Esquivel was a victim of a crime and filed an U Visa application for himself, his wife and Wilber is a derivative of that application.

9. In light of the pending U-visa process, this Court previously administratively closed Respondent's removal proceedings on March 6, 2023, under Judge Christian M.Pressman. The Court recognized at that time that collateral relief with USCIS warranted pausing EOIR proceedings.

10. Petitioner is a derivative U-visa applicant based on his inclusion as a qualifying family member on his principal relative's Form I-918 and Form I-918 Supplement A. USCIS has issued a Bona Fide Determination ("BFD")notice for Respondent's U-visa derivative petition and has granted deferred action in connection with that petition, rendering him eligible to apply for employment authorization under the BFD process. He has a current valid Employment Authorization document due to his Deferred action that is valid until May 14, 2029.

11. Petitioner was initially detained in Florida on November 15, 2025 and sent to Krome (Miami, Florida) after being taken into ICE custody while en route to work, notwithstanding his valid EAD based on the pending U-visa and deferred action. His detention is thus the product of being in the "wrong place at the wrong time," rather than any new adverse conduct. He was subsequently transferred to Denver, Colorado.

12. Petitioner's removal proceedings were administratively closed by Immigration Judge in March 2023, in light of Petitioner's pending U visa, and Petitioner has since received a USCIS **bona fide determination** with **deferred action**, reflecting that DHS has already exercised favorable discretion recognizing that Petitioner's continued presence in the United States should not be treated as an enforcement priority absent specific exceptions.

13. On January 17, 2026 at the Denver Immigration Court, Immigration Judge ("IJ") granted the Petitioner's motion to terminate removal proceedings against the Petitioner, based on the Petitioner's pending I-918 U nonimmigrant visa application pending before U.S. Citizenship and Immigration Services ("USCIS") and his grant of deferred action and work authorization.

14. Despite the above, the Petitioner is still being detained by ICE on the basis that the Department of Homeland Security ("DHS"), *will appeal.*

15. DHS filed an untimely appeal on February 18, 2026 that is currently pending.

16. At the time of this Petition has been detained at the Aurora ICE Processing Center in Aurora Colorado, in the custody of Immigration and Customs Enforcement ("ICE") .

JURISDICTION

17. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Aurora ICE Processing Center located at 3130 North Oakland Street, Aurora, CO 80010.

18. This Court has subject matter jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), and 28 U.S.C. §§ 2201–2202 and Rule 65 of the Federal Rules of Civil Procedure., and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

19. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All-Writs Act, 28 U.S.C. § 1651.

VENUE

20. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the District of Colorado in which Petitioner currently is detained.

21. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the district of Colorado.

REQUIREMENTS OF 28 U.S.C. § 2243

22. The Court should grant the petition for writ of habeas corpus "forthwith," as the legal issues have already been resolved and the Petitioner is no longer in removal proceedings.

23. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or

confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

24. Petitioner is a citizen of El Salvador who has been in immigration detention since November 2025. After Petitioner was detained, ICE did not set bond. Petitioner has resided in the United States since 2016.

25. Respondent, Juan Baltasar, is the Warden for the Aurora ICE Processing Center. As such, he is the Petitioner's immediate custodian and responsible for the Petitioner's detention. He is named in his official capacity.

26. Respondent, Robert Gaudian, is the Director of the Denver Field Office of ICE's Enforcement and Removal Operations division. As such, he is responsible for Petitioner's detention and removal. He is named in his official capacity.

27. Respondent Todd Lyons is sued in his official capacity as the Acting Director of ICE. In this capacity, Respondent Lyons is responsible for the implementation and enforcement of the "INA," and oversees ICE. Respondent Lyons is a legal custodian of Petitioner.

28. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

29. Respondent, Department of Homeland Security (DHS), is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

30. Respondent, Pamela Bondi, is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

31. Respondent, Executive Office for Immigration Review, is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

CLAIM FOR RELIEF

CLAIM I

I. Lack of Statutory Authority to detain:

32. Immigration detention "is governed by statute." *Jennings v. Rodriguez*, 138 S. Ct. 830, 838 (2018). The Executive's authority to detain a noncitizen "must be grounded in an express grant of congressional authorization." *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001). As the Supreme Court has repeatedly emphasized, "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem." *Id.* at 690.

33. Where no statute authorizes detention, habeas relief is appropriate. See *Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (recognizing that immigration detention authority arises from specific statutory provisions); *Jennings*, 138 S. Ct. at 838 ("The authority to detain aliens during the pendency of removal proceedings is governed by 8 U.S.C. § 1226.").

A. Section 1231 Does Not Apply Because There Is No Administratively Final Order of Removal

34. Post-removal-order detention is governed by 8 U.S.C. § 1231(a). That statute applies only "when an alien is ordered removed." 8 U.S.C. § 1231(a)(1)(A). The "removal period" begins on the latest of:

> "(i) T*he date the order of removal becomes administratively final*." 8 U.S.C. § 1231(a)(1)(B)(i).

An order becomes administratively final only upon completion of administrative review. 8 U.S.C. § 1101(a)(47)(B) ("The order becomes final upon the earlier of, (i) a determination by the Board of Immigration Appeals affirming such order; or (ii) the expiration of the period in which the alien is permitted to seek review of such order.

35. Here, there is **no administratively final order of removal**. On January 17, 2026, the Immigration Judge terminated removal proceedings. A termination order is not an order of removal. See 8 C.F.R. § 1241.1 (defining when a removal order becomes final). Because proceedings were terminated, there is no operative removal order capable of becoming "administratively final" under § 1101(a)(47)(B).

36. Accordingly, § 1231(a) does not apply. Courts have made clear that § 1231 governs only after a final removal order exists. See *Zadvydas*, 533 U.S. at 682 (addressing detention of "aliens who have been ordered removed"); *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) ("Section 1231 governs the detention of aliens subject to a final order of removal."). Because Petitioner is not subject to a final order, detention cannot be justified under § 1231.

B. If DHS's Appeal Was Untimely, Termination Is Final and Detention Is Ultra Vires

37. Under EOIR regulations, DHS must file a notice of appeal within 30 calendar days of the Immigration Judge's decision. 8 C.F.R. § 1003.38(b). An untimely appeal does not

automatically confer jurisdiction on the Board. See *Matter of Liadov*, 23 I&N Dec. 990, 993 (BIA 2006) (Board lacks authority to extend the time for filing a notice of appeal except in limited circumstances); see also 8 C.F.R. § 1003.38(c) (notice of appeal must be received within the prescribed time).

38. If DHS's appeal was filed one day late and the Immigration Judge's termination order became final upon expiration of the appeal period. See 8 U.S.C. § 1101(a)(47)(B)(ii).

39. In that circumstance, there would be no pending removal proceedings and no final removal order. ICE would therefore lack statutory authority under either § 1226 or § 1231 to detain Petitioner. Detention in the absence of statutory authorization is unlawful and subject to habeas relief. See *Zadvydas*, 533 U.S. at 699 (construing statute to avoid "serious constitutional concerns" arising from detention without clear authorization).

C. Even If the Appeal Is Pending, Detention Must Rest on § 1226(a)

40. Even if DHS's appeal was timely or has been accepted, proceedings would remain pending before the BIA. In that case, detention authority, if any, must arise under 8 U.S.C. § 1226, which governs detention "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a).

41. The Supreme Court has confirmed that § 1226, not § 1231, governs detention during ongoing removal proceedings. *Jennings*, 138 S. Ct. at 838; see also *Demore*, 538 U.S. at 523 (addressing detention "pending removal proceedings").

42. Section 1226(a) permits discretionary detention but also authorizes release on bond or conditional parole. 8 U.S.C. § 1226(a)(2). It does not authorize mandatory, indefinite detention in the absence of statutory triggers not present here.

CLAIM II

II. Detention Violates the Fifth Amendment (Arbitrary and Unreasonable Detention)

43. The Due Process Clause of the Fifth Amendment limits the government's authority to civilly detain noncitizens. Although immigration detention is civil in nature, it is still subject to constitutional constraints. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("The Fifth Amendment's Due Process Clause applies to all 'persons' within the United States, including aliens."). Fifth Amendment's Due Process Clause applies to all 'persons' within the United States, including aliens.").

A. Civil Immigration Detention Must Bear a Reasonable Relation to Its Purpose

44. The Supreme Court has long held that civil detention is permissible only where it bears a reasonable relation to a legitimate governmental purpose. In *Zadvydas*, the Court explained:

> "*[A] statute permitting indefinite detention of an alien would raise a serious constitutional problem*." 533 U.S. at 690.

45. The Court further emphasized that civil detention must be limited to what is reasonably necessary to accomplish its purpose:

> "*[G]overnment detention violates [due process] unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and*

narrow nonpunitive circumstances... where a special justification outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* at 690 (internal citations omitted).

46. Most importantly, the Court held:

"*[T]he detention's validity depends on the relation between the detention and its purpose.*" *Id.* at 690.

47. The purposes of immigration detention are limited: ensuring appearance at proceedings and effectuating removal. See *Demore v. Kim*, 538 U.S. 510, 528 (2003) (detention during proceedings justified to prevent flight and protect the community); *Zadvydas*, 533 U.S. at 699 (post-order detention valid only while removal is reasonably foreseeable).

48. The Tenth Circuit has likewise recognized that immigration detention is constitutionally constrained. In *Soberanes v. Comfort*, the court acknowledged that detention authority must operate within constitutional limits, and that habeas review is available where detention exceeds those limits. 388 F.3d 1305, 1310–11 (10th Cir. 2004).

B. Removal Is Not Reasonably Foreseeable

49. Even in the post-final-order context—where detention authority is at its apex, the Supreme Court held that detention becomes unconstitutional once removal is no longer reasonably foreseeable. *Zadvydas*, 533 U.S. at 699–700.

50. Here, Petitioner is not even subject to a final removal order. Removal is not imminent. Indeed: Proceedings were terminated by the Immigration Judge. DHS's appeal remains pending. Petitioner has received a **Bona Fide Determination** on a U-visa petition. USCIS has granted **deferred action**.

51. Deferred action reflects DHS's formal exercise of prosecutorial discretion. It is an acknowledgment that removal will not be pursued during the pendency of the underlying relief.

Detaining an individual whom DHS has affirmatively determined should receive deferred action undermines the asserted purpose of removal-based detention. Petitioner possesses valid employment authorization.

52. Where removal is speculative or remote, continued detention ceases to serve its statutory purpose and becomes arbitrary. See *Zadvydas*, 533 U.S. at 699 ("[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized.").

C. Detention Is Arbitrary Given the Totality of Circumstances

53. Petitioner is being detained despite: Termination of removal proceedings; No administratively final order of removal; A pending U-visa derivative petition; A USCIS Bona Fide Determination; A grant of deferred action; Valid employment authorization; No new criminal conduct.

54. The Supreme Court has repeatedly warned that civil detention may not become punitive in effect. See *Zadvydas*, 533 U.S. at 690 (civil detention must remain nonpunitive and narrowly tailored). Where detention no longer meaningfully advances its stated purpose, it becomes excessive in relation to that purpose and violates substantive due process.

55. District courts within the Tenth Circuit have recognized that prolonged or unjustified detention may violate due process even where statutory authority technically exists. See, e.g., *Reid v. Donelan*–type reasoning adopted in multiple district courts post-*Jennings* (recognizing as-applied constitutional challenges); see also *Hemans v. Searls* (D. Colo.) (acknowledging due process limits on immigration detention).

D. Continued Detention Serves No Legitimate Government Purpose

56. The government cannot justify detention solely on the basis that it has chosen to appeal a termination order, particularly where: The appeal may be untimely; USCIS has granted

deferred action; Removal is not imminent; Petitioner is not alleged to be dangerous; Petitioner has significant family ties and U.S. citizen children.

57. Civil detention that does not meaningfully advance removal or protect the public becomes arbitrary confinement. As the Supreme Court explained:

> "*Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.*"
>
> *Zadvydas*, 533 U.S. at 690.

58. Here, detention is not tied to removal, is not tied to danger, and is not tied to flight risk findings supported by individualized process. It is instead a byproduct of bureaucratic posture, "awaiting appeal", despite DHS's own grant of deferred action.

59. Under these circumstances, continued detention is excessive in relation to its purpose and violates substantive due process.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Issue a writ of habeas corpus requiring that within one day, Respondents release Petitioner;

c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

d. Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment and order the immediate release of Petitioner

e. Issue an Order prohibiting the Respondents from transferring WILBER ALEXANDER SALMERON from the district without the court's approval;

f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

g. Grant any other and further relief that this Court deems just and proper.

DATED this 2nd day of March 2026

Respectively Submitted

S/ Claudia Phaneuf

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Wilber Salmeron, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED this 2nd day of March 2026

S/ Claudia Phaneuf

_____

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