

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION**

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**ROBERTO CALDARAS,**

*Petitioner,*

**v.**

**PETITION FOR WRIT OF  
HABEAS CORPUS**

Case No. 2:26-cv-752

**WARDEN**, Florida Soft Side South, in his/her official capacity as Warden, Florida Soft Side South (Alligator Alcatraz);

**GARRETT RIPA**, in his official capacity as Field Office Director, Miami Field Office, U.S. Immigration and Customs Enforcement;

**TODD LYONS**, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement;

**KRISTI NOEM**; in her official capacity as Secretary of the U.S. Department of Homeland Security,

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

**DAREN MARGOLIN**, in his official capacity, Acting Director for Executive Office for Immigration Review;

**EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW;**

*Respondents.*

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## INTRODUCTION

1. This case challenges the unlawful detention of ROBERTO CALDARA (“Petitioner” or “Mr. Caldaras,” who is currently in the custody of Immigration and Customs Enforcement (“ICE”) at the Florida Soft Side South (“aka Alligator Alcatraz”), located in Collier County, Florida.

2. Petitioner, born in France, but a citizen of Romania, entered the United States without inspection and without entry documents in approximately August 2020 and he has not left the United States since that time.

3. Petitioner challenges his unlawful detention under 8 U.S.C. §1225(b)(2).

## PARTIES

4. Petitioner, ROBERTO CALDARAS, has lived in the United States for approximately six years. Prior to Petitioner’s detention, he was residing in Prince George’s County, Maryland. Petitioner is currently detained at the Florida Soft Side South detention center.

5. Respondent, WARDEN, warden of the Florida Soft Side South detention center, is sued in his official capacity as Warden of the Florida Soft Side South, where Petitioner is currently detained.

6. Respondent GARRETT RIPA is sued in his official capacity as the ICE Field Office Director for Miami, which includes the Baker Correctional Institution.

7. Respondent, TODD LYONS, is sued in his official capacity as the Acting Director of Immigration and Customs Enforcement ("ICE").

8. Respondent, KRISTI NOEM is sued in her official capacity as the Secretary of the Department of Homeland Security.

9. Respondent PAM BONDI, is sued in her official capacity as the Attorney General of the United States.

10. Respondent, DAREN MARGOLIN, is sued in his official capacity, Acting Director for Executive Office for Immigration Review;

11. Respondent, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR) is a federal agency responsible for overseeing immigration bond hearings in the United States.

### **JURISDICTION AND VENUE**

12. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 and the Suspension Clause of the United States Constitution because this action is a habeas corpus petition and under 28 U.S.C. § 1331 because this action arises under federal law, including the Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq.*

13. Venue is proper in this district because Respondent Warden of Florida Soft Side South and Garrett Ripa are Petitioner's immediate custodians and under 28 U.S.C. § 1391(e)(1) because Respondents are officers of United States agencies, Petitioner is currently detained within this District, and there is no real property involved in this action.

### **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

14. Petitioner, a citizen of Romania<sup>1</sup>, entered the United States without inspection approximately six years ago in 2020. Petitioner has not left the United States since that time. Petitioner is married to a United States citizen and has four United States citizen children, with the ages of five, three, one and 6 months old. The Petitioner is married to a United States citizen and is the father of four United States citizen children, whose ages are five, three, one, and six months old.

15. On July 8, 2025, the Department of Homeland Security (“DHS”) issued a notice to all ICE employees stating that 8 U.S.C. §1225(b)(2) applied to any alien present in the United States, “who has not been admitted...whether or not at a designated port of arrival.” *See ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, AILA Doc. No. 25071607 (July 8, 2025). The notice states, “it is the position of DHS that such aliens are subject to detention under INA §235(b) [8 U.S.C. §1225(b)] and may not be released from ICE custody except by INA §212(d)(5) parole.” *Id.* The notice also states “[t]hese aliens are also ineligible for a custody redetermination hearing (bond hearing) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that ‘arriving aliens’ have historically been treated.” *Id.*

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<sup>1</sup> Petitioner was born in France, but is not a citizen of France.



16. On September 5, 2025, the Board of Immigration Appeals decided *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In *Yajure Hurtado*, the BIA held that an immigration judge lacks authority to hear a noncitizen's bond request if that noncitizen entered the United States without inspection, even if that noncitizen has resided within the United States for more than 2 years. *Id.* *Matter of Yajure Hurtado* is a published and precedential decision that is binding on immigration judges. 8 C.F.R. §1003.1(g)(2).

17. Based on the new DHS policy that any noncitizen who entered the U.S. without inspection is subject to mandatory detention under 8 U.S.C. §1225(b)(2), Petitioner was arrested and detained by ICE.

18. On February 12th, 2026, Petitioner was detained at the Osceola County jail based on a listed warrant out of Maryland for Aggravated Assault. Maryland officials did not extradite Petitioner and on March 4, 2026, Petitioner was subsequently transferred into Immigration and Customs Enforcement custody, detained under 8 U.S.C. §1225(b)(2) and given no bond.

19. Petitioner was transferred to the Florida Soft Side South, located at 54515 Tamiami Trail E., Ochopee, FL 34141, where he is currently being detained by Respondents.

20. Petitioner does not have lawful status in the United States, entered the United States without inspection approximately six years ago, was not apprehended upon arrival and is currently detained under 8 U.S.C. §1225(b)(2), .

### LEGAL FRAMEWORK

21. This petition concerns the legal interpretation and interplay between two statutory provisions, 8 U.S.C. §1225 and 8 U.S.C. §1226, governing detention of noncitizens placed in removal proceedings.

22. Respondents have detained Petitioner under 8 U.S.C. §1225(b)(2), which applies to the inspection, detention and removal of applicants for admission. An “applicant for admission” is defined as “[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters.” 8 U.S.C. §1225(a)(1).

23. “Applicants for admission” who are “seeking admission” must remain in custody throughout immigration proceedings. 8 U.S.C. §1225(b)(2); see also *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018).

24. 8 U.S.C. §1225(b)(2)(A) requires detention “...in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted...” [emphasis added].

25. However, 8 U.S.C. §1225 does not apply to Petitioner because he has remained continuously inside the United States for approximately 30 years and is

not “seeking admission”, which is required for that provision to apply. Rather, Petitioner is entitled to a bond hearing under 8 U.S.C. §1226(a).

26. 8 U.S.C. §1226(a) is the general detention statute that provides the framework for arrest, detention and release of noncitizens in removal proceedings. A person arrested and detained under 8 U.S.C. §1226(a) may be released on a bond of at least \$1,500 or on conditional parole. 8 U.S.C. §1226(a)(2).

27. 8 C.F.R. §236.1(d)(1) provides the regulatory framework for immigration judges to consider motions for bond reconsideration when DHS makes an initial determination that the noncitizen should be detained.

28. As opposed to a noncitizen arriving at the border, a noncitizen already present inside the United States “has a constitutional liberty interest to remain in the U.S.” *Knauff v. Shaughnessy*, 338 U.S. 537 (1950).

29. Respondents’ own agencies have historically applied §1226(a) to noncitizens who have entered the United States without inspection and have since resided inside the United States, while applying §1225(b)(2) only to those encountered at the border. *Maldonado v. Feely et al.*, Case No. 25-cv-01542-RFB-EJY (D.Nev. Sept. 17, 2025).

30. Respondents’ interpretation of §1225(b)(2) is in contradiction to the plain meaning of the statutes, the legislative history of each statute, and the interpretation of each statute by courts in multiple jurisdictions.



31. Although the Fifth Circuit has recently issued the first circuit court decision on the issue in *Buenrostro-Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899 (5th Cir. February 6, 2026), supporting the government's position, the three member panel was not unanimous and the vast majority of district courts within the United States have all held that 8 U.S.C. §1225(b)(2) does not apply to noncitizens who are detained inside the United States. See *Lobovillalobos v. Hardin*, 2026 U.S. Dist. LEXIS 45140 (M.D.Fla. March 5, 2026); *Ariza-Mancio v. Mordant*, 2026 U.S. Dist. LEXIS 41632 (M.D. Fla March 2, 2026); *Bautista v. Noem*, 2025 U.S. Dist. LEXIS 227222 (M.D.Fla. November 19, 2025); *J.A.M. v. Streeval*, 2025 U.S. Dist. LEXIS 215437 (M.D. Fla. November 1, 2025); *Merino v. Ripa et al.*, Case No. 25-23845-CIV-MARTINEZ (S.D. Fla. October 15, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486 (E.D. Mich. Aug. 29, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK (D. Mass. July 7, 2025); *Martinez v. Hyde*, 1:25-cv-11613-BEM (D. Mass. July 24, 2025); *Rosado v. Figueroa et al.*, No. 2:25-cv-02157-DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Lopez Benitez v. Francis et al.*, No. 1:25-cv-05937-DEH, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Gonzalez et al. v. Noem et al.*, No. 5:25-cv-02054-ODW-BFM (C.D. Cal. Aug. 13, 2025); *Santos v. Noem*, No. 1 :25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Romero v. Hyde, et al.*, No. 1:25-cv-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Benitez et al. v. Noem et al.*, No.



5:25-cv-02190-RGK-AS (C.D. Cal. Aug. 26, 2025); *Kostak v. Trump et al.*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025). The Eleventh Circuit is currently considering the issue in *Hernandez Alvarez v. Warden*, No. 25-14065 (11th Cir.), with oral arguments scheduled for March 26, 2026.

### **CLAIMS FOR RELIEF**

#### **Count One**

#### **Violation of the Immigration and Nationality Act 8 U.S.C. §1226(a) and Regulations**

32. Petitioner realleges all paragraphs above as if fully set forth here.

33. 8 U.S.C. §1226(a) provides Petitioner with statutory right to a bond redetermination hearing.

34. Respondents have unlawfully detained Petitioner under 8 U.S.C. §1225(b)(2), which applies only to “applicants for admission” who are “seeking admission.”

35. Respondents have also detained Petitioner in violation of the regulatory procedures outlined in 8 C.F.R. §236.1, §1236.1. and §1003.19.

#### **Count Two**

#### **Violation of the Fifth Amendment of the U.S. Constitution Substantive Due Process**

36. Petitioner realleges all paragraphs above as if fully set forth here.

37. Petitioner’s detention is in violation of Petitioner’s Fifth Amendment right to liberty with due process.

38. The Due Process Clause of the Fifth Amendment applies to all persons within the United States, which includes noncitizens “whether their presence is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).

**Count Three**  
**Violation of the Fifth Amendment of the U.S. Constitution**  
**Procedural Due Process**

39. Plaintiff realleges all paragraphs above as if fully set forth here.

40. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), instructs courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and, (3) the government’s interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail.

41. The first factor, the private interest at issue, favors Petitioner. “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 [of the Fifth Amendment] protects.” *Zadvydas*, 533 U.S. at 690 (2001).

42. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Petitioner. To safeguard against erroneous deprivations of liberty, statutory provisions and regulations

specify the circumstances when a noncitizen shall be detained and when a noncitizen is eligible for release and what procedures the noncitizen is afforded in seeking release. Respondents violated those statutes and regulations here, leaving the risk of erroneous deprivation of liberty not just high, but certain.

43. The third factor, the government's interest, also favors Petitioner. When the government misinterprets the law, it is more likely to waste limited financial and administrative resources on unnecessary detention of people who are neither flight risks nor dangerous. The government must also spend resources defending against a habeas corpus petition in federal court to compel Respondents to comply with law.

44. For these reasons, detaining Petitioner under §1225, as opposed to §1226 has failed to provide Petitioner with the procedural due process he is entitled to under §1226.

#### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Exercise jurisdiction over this matter;
- b. Issue a writ of habeas corpus requiring that within one day,  
Respondents release Petitioner;
- c. Alternatively, issue a writ of habeas corpus requiring Respondents to  
release Petitioner unless they provide a bond hearing under 8 U.S.C.  
§1226(a) within seven days;



- d. Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;
- e. Award Petitioner costs and reasonable attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. §504 ; and
- f. Order such other relief as this Court may deem just and proper.

Respectfully submitted,

DATED: March 16, 2026

By:

  
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**28 U.S.C. § 2242 VERIFICATION STATEMENT**

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney and Petitioner lacks adequate access to the courts. I have discussed with the Petitioner the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in this Petition are true and correct to the best of my knowledge. This verification is not made by Petitioner because Petitioner is in custody in a different county than undersigned counsel and the need to file this petition is urgent. Petitioner has limited access

to legal materials at the Florida Soft Side South Detention Facility and would be unable to draft and file a petition on his own in an urgent manner. Undersigned counsel is unable to obtain Petitioner's signature and written verification within a reasonable time due to Petitioner's distance from undersigned counsel, undersigned counsel's ability to get to the detention facility in a timely manner, and the urgent nature of the filing based on Respondent's ability to transfer Petitioner at any time out of the Court's jurisdiction and because Petitioner is scheduled for an immigration hearing on March 24th.

Respondents can transfer Petitioner out of this Court's jurisdiction at any moment, which would then further delay Petitioner's right to challenge his unlawful detention and would vest jurisdiction in a court away from Petitioner's home, family and undersigned counsel which would further impede his access to the courts.

DATED: March 16, 2026

By:



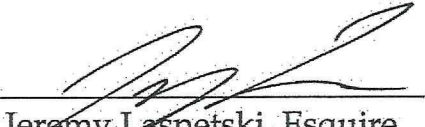
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**NOTICE OF LEAD COUNSEL DESIGNATION**

Pursuant to Local Rule 2.02(a), undersigned counsel, Jeremy Lasnetski, is designated as lead counsel for Petitioner in this matter.

DATED: March 16, 2026

Respectfully submitted,

By: 

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