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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

CESAR ANGEL SUYO APAZA,

Plaintiff,

v.

TODD M. LYONS, in his official capacity as
Acting Director of Immigration & Customs
Enforcement, et al.,

Defendants.

**RESPONSE TO ORDER TO SHOW
CAUSE**

Case No. 2:25-cv-1066-TC

Judge Tena Campbell

INTRODUCTION

Plaintiff Cesar Angel Suyo Apaza filed a Petition for Writ of Habeas Corpus alleging unlawful detention by Immigration and Customs Enforcement (“ICE”).¹ Because Suyo Apaza is charged in immigration court with overstaying his non-immigrant visa, he is not subject to the mandatory custody provisions of the Immigration and Nationality Act (“Act”) and his petition is moot.²

¹ Dkt. 4 (Petition for Writ of Habeas Corpus).

² Ex. 1 (Notice to Appear).

FACTUAL BACKGROUND

The Notice to Appear (“NTA”) charges Suyo Apaza with being a citizen of Peru and overstaying his non-immigrant visa.³ In his petition, Suyo Apaza alleges that he is charged in immigration court with 8 U.S.C. § 1182(a)(6)(A)(I) for entering the United States without inspection.⁴ However, Suyo-Apaza was charged under 8 U.S.C. § 1227(a)(1)(B) (section 237(a)(1)(B) of the Immigration and Nationality Act (Act)) for overstaying his non-immigrant visa.⁵ Suyo Apaza was initially detained by immigration authorities in West Valley City, Utah, on November 18, 2025. On November 23, 2025, Suyo-Apaza was transferred to El Paso, Texas. As of November 25, 2026, Suyo Apaza was detained in ICE custody in Florence, Arizona.⁶

ARGUMENT

Plaintiff is currently detained pursuant to discretionary detention provisions of 8 U.S.C. § 1226.

Plaintiff is currently not subject to mandatory detention. The Notice to Appear (“NTA”) states that Suyo Apaza is in ICE custody and charged in immigration court with overstaying his non-immigrant visa.⁷ The NTA charges Suyo-Apaza as being a citizen of Peru and being removable under:

“[s]ection 237(a)(1)(B) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of

³ Ex. 1 (NTA).

⁴ Dkt 4 at 4.

⁵ Ex. 1 (NTA).

⁶ Statement by Counsel for Plaintiff during the emergency order to show cause hearing held by the Court on November 26, 2025.

⁷ Ex. 1. (NTA).

the Act, you have remained in the United States for a time longer than permitted, in violation of this Act or any other law of the United States.”⁸

As stated during the initial hearing on this matter, two separate ICE Assistant Chief Counsels have represented to counsel for the United States that Suyo Apaza is detained under 8 U.S.C. §1226(a) of the INA, and because of this, he is eligible for a bond hearing. As further proof of this, his counsel represented in that initial hearing that Suyo Apaza is currently scheduled for a bond hearing on December 2, 2025.

ICE’s authority to detain Suyo Apaza, as he is currently charged, is discretionary under the Act. This is because Suyo Apaza is charged with overstaying his visa under 8 U.S.C. § 1227(a)(1)(B), which makes him eligible for bond under 8 U.S.C. §1226(a). Section § 1226 is a separate authority addressing the arrest, detention, and release of aliens generally (versus applicants for admission specifically).⁹ This provision governs the detention of aliens who were admitted to the country but later become removable—for example, admitted aliens who overstay or otherwise violate the terms of their visas, engage in conduct that renders them removable despite having permanent resident status, or are later determined to have been improperly admitted.¹⁰ 8 U.S.C. § 1226(a) provides that “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.”¹¹ Under 8 U.S.C. § 1226(a)(1)-(2), the Attorney General “may” either “continue to detain the arrested alien” at their discretion, or release the alien on bond or

⁸ Ex. 1 (NTA).

⁹ See 8 U.S.C. § 1226.

¹⁰ See 8 U.S.C. §§ 1226(a), 1227(a).

¹¹ 8 U.S.C. § 1226(a).

conditional parole.¹² In practice, DHS makes the initial custody determination.¹³ The alien may then seek a custody redetermination (a bond hearing) before an immigration judge and can appeal an immigration judge's custody determination to the Board of Immigration Appeals.¹⁴

Because Suyo Apaza has been granted a bond hearing, his prayers for relief have been answered because (1) he is currently not detained subject to mandatory custody provisions of the INA, and (2) he has been granted a bond hearing within 14 days.¹⁵ In the event his custody is redetermined by an immigration judge, it will be redetermined in Arizona and in accordance with the law of the Ninth Circuit Court of Appeals.

CONCLUSION

For the foregoing reasons, the United States requests the Court dismiss the Order to Show Cause as moot under the circumstances of this case.

Dated this 1st day of December, 2025.

MELISSA HOLYOAK
United States Attorney

/s/ Andy Choate
ANDY CHOATE
Assistant United States Attorney

¹² *Id.* § 1226(a)(1)-(2).

¹³ 8 C.F.R. § 236.1(d)(1).

¹⁴ 8 C.F.R. §§ 236.1(c)(8)(d), 1236.1(d)(1), 1003.19.

¹⁵ Dkt. 4 at 6, 19.

Exhibit 1

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

DOB: [Redacted]
Event: [Redacted]

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [Redacted] FINS: [Redacted] File No: [Redacted]

In the Matter of:
Respondent: CESAR SUYO APAZA currently residing at:

See Continuation Page Made a Part Hereof
(Number, street, city, state and ZIP code) (Area code and phone number)

- You are an arriving alien.
- You are an alien present in the United States who has not been admitted or paroled.
- You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of PERU and a citizen of PERU;
3. You were admitted to the United States at ATLANTA, GA on or about November 23, 2006 as a nonimmigrant Temp Non with authorization to remain in the United States for a temporary period not to exceed 10/09/2007;
4. You remained in the United States beyond 10/09/2007 without authorization from the Immigration and Naturalization Service or its successor the Department of Homeland Security.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 237(a)(1)(B) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, you have remained in the United States for a time longer than permitted, in violation of this Act or any other law of the United States.

- This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- Section 235(b)(1) order was vacated pursuant to: 8CFR 208.30 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge, of the United States Department of Justice at:

110 N CITY PKWY, STE 400 LAS VEGAS, NEVADA 89106. PAHRUMP
(Complete Address of Immigration Court, including Room Number, if any)

on December 29, 2025 at 8:00 am to show why you should not be removed from the United States based on the

charge(s) set forth above. R NEAL - SDDO
(Signature and Title of Issuing Officer)

Date: November 18, 2025 WEST VALLEY, UT
(City and State)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at http://www.ice.gov/contact/ero, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before:

(Signature of Respondent)

Date:

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on November 18, 2025, in the following manner and in compliance with section 239(a)(1) of the Act.

[X] in person [] by certified mail, returned receipt # _____ requested [] by regular mail

[] Attached is a credible fear worksheet.

[X] Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

RETURNED TO SENDER (Signature of Respondent if Personally Served)

DE11332 HOLLANI - Deportation Officer (Signature and Title of officer)

Privacy Act Statement

Authority:

The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 280 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:

You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:

For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at <https://www.dhs.gov/system-records-notices-sorn>. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at <https://www.justice.gov/nccl/doj-systems-records>. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.


For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure:

Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

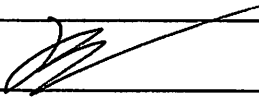
U.S. Department of Homeland Security

Continuation Page for Form I-862

Alien's Name SUYO APAZA, CESAR	File Number  1	Date 11/18/2025
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CURRENTLY RESIDING AT:

IN ICE CUSTODY 2190 E MESQUITE AVE PAHRUMP, NEVADA 89060

Signature R 7105 NEAL 	Title SDDO
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