UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

David Enrique, LOAYZA-TUNOQUE **Petitioner** **v.** **Todd M. LYONS, Director of U.S. ICE; George STERLING, Field Office Director of Enforcement and Removal Operations, Atlanta Field Office, 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; Jason STREEVAL, Warden of Stewart Detention Center,** **Respondents**	**Case No.** **PETITTION FOR WRIT OF HABEAS CORPUS** **Under 28 U.S.C. § 2241**

INTRODUCTION

1. Petitioner David Enroque Loayza-Tunoque is an asylum seeker from Peru who has been detained by Respondents since December 17, 2025. His arrest and continued confinement were executed without a warrant and without the procedural protections required by law. His detention violates the Immigration and Nationality Act, including 8 U.S.C. § 1226(a), and the Due Process Clause of the Fifth Amendment. Absent intervention by this Court, Petitioner faces prolonged and potentially indefinite detention. Respondents have deemed him categorically ineligible for bond under recent Board of Immigration Appeals precedent, leaving him without any meaningful administrative avenue for release.

2. Petitioner is charged, inter alia, as an individual present in the United States without admission or inspection pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). (See TAB A.) He has been placed in removal proceedings under INA § 240, which means his detention is governed by 8 U.S.C. § 1226(a). Respondents' contrary position rests on a novel interpretation that departs from the statutory framework and longstanding practice governing detention under § 1226(a).

3. Petitioner's continued detention rests on the improper application of a mandatory detention provision, a warrantless arrest, and the categorical denial of access to a neutral adjudicator capable of determining whether his confinement reasonably relates to legitimate governmental objectives. Under these circumstances, only this Court can restore the procedural safeguards required by statute and the Constitution. Because no adequate alternative remedy exists within the administrative system, Petitioner respectfully requests that this Court grant appropriate and effective relief, specifically ordering his immediate release from custody.

JURISDICTION

1. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.

2. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

3. This Court may grant relief pursuant to 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

1. Venue is proper in this District because the Petitioner is detained at the Stewart Detention Center, located in 146 CCA Road, Lumpkin, Georgia 31815, which is within the

jurisdiction of this District. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973).

2. 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 Middle District of Georgia.

REQUIREMENTS OF 28 U.S.C. § 2243

1. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

2. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of int or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

1. Petitioner is an applicant for asylum from Peru who is being detained at Stewart Detention Center. He was assigned alien number [redacted] and is under the direct control and in the custody of Respondents and their agents since December 17, 2025.

2. Respondent Todd M. Lyons is the Acting Director of US ICE. Respondent is the legal custodian of Petitioner and has the direct authority to release Petitioner. He is named in his official capacity.

3. Respondent George Sterling is the Director of the Atlanta Field Office of ICE's Enforcement and Removal Operations division. As such, George Sterling is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

4. 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 the Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

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

6. 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.

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

8. Respondent Jason Streeval is named in his official capacity as the Warden of the Stewart Detention center, where Petitioner is detained. As Warden, he is responsible for the operations of the Stewart Detention Center, including overseeing the people in the facility's custody, and as such he is a custodian of the Petitioner. Respondent Warden's address is 146 CCA Road, Lumpkin, GA 31815. He is sued in his official capacity.

STATEMENT OF FACTS

1. Petitioner entered the United States seeking asylum on May 10, 2023 and was assigned alien number [redacted] *See TAB A.*

2. Upon entry, Petitioner was apprehended by U.S. Customs and Border Protection officers because he had entered without inspection or admission. He was detained briefly and, three days later, released on his own recognizance. Respondents represented that his release was pursuant to 8 U.S.C. § 1226(a).

3. Rather than being placed in expedited removal proceedings, Petitioner was issued a Notice to Appear and placed into full removal proceedings under Section 240 of the Immigration and Nationality Act, 8 U.S.C. § 1229a. (See Exhibit A.) As a result, Petitioner is entitled to pursue applications for relief, including asylum, before the Immigration Court.

4. Petitioner timely applied for asylum and has been permitted to remain in the United States pending a final determination on his application. His proceedings are administered by the Executive Office for Immigration Review ("EOIR").

5. Despite his pending application for relief and prior release on his own recognizance, Petitioner was detained by U.S. Immigration and Customs Enforcement ("ICE") officers on or about December 17, 2025, following a minor incident in which he was, in fact, the primary victim.

6. Petitioner was arrested without a warrant pursuant to 8 U.S.C. § 1226(a). Respondents did not revoke or formally modify the prior release determination, nor did they provide any meaningful process before re-detaining him.

7. The specific basis for the arrest remains unclear, as the Department of Homeland Security has not produced a Form I-213 or otherwise identified the charges underlying the arrest or any further criminal charges.

8. Following his arrest and transfer to Stewart Immigration Court, the Respondents have deemed Petitioner ineligible for a bond hearing pursuant to a novel interpretation of the detention statutes, relying on *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and an expansive reading of 8 U.S.C. § 1225(b). Under this recent construction, individuals who entered without inspection are treated as subject to mandatory detention under § 1225(b), notwithstanding their placement in full removal proceedings under INA § 240 and their prior release under § 1226(a). As a result of this novel reading, Petitioner has been categorically denied access to an individualized bond determination.

9. As a result, Petitioner remains detained. Without intervention from this Court, he **faces prolonged detention in immigration custody while his asylum proceedings remain pending**.

10. Petitioner remains separated from his U.S. citizen wife, family, and community as a result of detention that is unlawful under the Immigration and Nationality Act and violative of the Fifth Amendment. Because Respondents have applied an inapplicable mandatory detention provision and denied him the procedural safeguards guaranteed by statute, immediate release is the appropriate remedy. In the alternative, and at a minimum, Petitioner is entitled under 8 U.S.C. § 1226(a) to an individualized bond hearing with full procedural protections. **Continued detention without release—or without the bond hearing mandated by statute— is arbitrary, unreasonable, and contrary to both the INA and the Constitution.**

LEGAL FRAMEWORK

A. Legal Framework for Immigration-Related Detention

Although Petitioner requests, in the alternative, an individualized bond hearing under 8 U.S.C. § 1226(a), he respectfully submits that such relief would not provide a meaningful remedy under

the current circumstances. The immigration courts, operating under recent precedential directives and institutional constraints, have declined to exercise bond jurisdiction in cases materially identical to Petitioner's. As explained in the following section, the structural limitations imposed by recent agency interpretations prevent the provision of a genuinely neutral and effective custody determination. Nevertheless, to preserve alternative relief, Petitioner sets forth below the legal foundations supporting his entitlement to a bond hearing under § 1226(a) and its implementing regulations. **Accordingly, while Petitioner seeks a bond hearing in the alternative, he respectfully maintains that immediate release is the only remedy capable of fully addressing the statutory and constitutional violations at issue.**

- **The INA Establishes Two Distinct Detention Frameworks**

1. The Immigration and Nationality Act ("INA") provides two separate detention schemes for noncitizens in removal proceedings: mandatory detention under 8 U.S.C. § 1225(b), and discretionary detention under 8 U.S.C. § 1226(a).

2. Section 1225(b) governs certain individuals who are "seeking admission" to the United States—typically those encountered at or near the border. Noncitizens detained under § 1225(b) are subject to mandatory detention and may be released only through the Secretary's limited parole authority. See *Jennings v. Rodriguez*, 583 U.S. 281, 297–300 (2018).

3. By contrast, § 1226(a) **applies to noncitizens already present in the United States who are detained "pending a decision on whether the alien is to be removed**." *Id.* at 303. Individuals detained under § 1226(a) are entitled to an individualized custody redetermination before an Immigration Judge. See 8 C.F.R. §§ 1003.19(a), 1236.1(d).

4. For nearly three decades, the Government consistently applied § 1226(a) to noncitizens present in the United States without admission or parole who were placed in full removal proceedings under § 1229a.

- **Respondents' Novel Expansion of § 1225(b) Is Contrary to the Statute**

5. In 2025, Respondents adopted a new interpretation asserting that all noncitizens who entered without inspection are subject to mandatory detention under § 1225(b)(2), even if apprehended years after entry and placed in full removal proceedings. The BIA adopted this position in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

6. Courts across the country have rejected this expansive interpretation because it conflicts with the statutory text, structure, and longstanding practice.

- **Section 1225(b)(1) Does Not Apply**

7. Section 1225(b)(1) applies only to noncitizens subject to expedited removal for fraud under § 1182(a)(6)(C) or lack of proper documentation under § 1182(a)(7), and only when encountered at a port of entry or within the expedited-removal designation period. See 8 U.S.C. § 1225(b)(1)(A)(i).

8. In this case, the Petitioner is charged solely under 8 U.S.C. § 1182(a)(6)(A)(i) for presence without admission. That ground does not trigger expedited removal under § 1225(b)(1). See *Pineda*, 2025 WL 3471418, at *6. Accordingly, § 1225(b)(1) does not govern his detention.

9. In fact the Respondents themselves validated the propriety of placing Petitioner in full removal proceedings under INA § 240, as reflected in the Notice to Appear issued in this case and by their decision to release him shortly after his apprehension at the border nearly three years ago. By issuing an NTA and initiating regular removal proceedings—rather than placing him in expedited removal—Respondents confirmed that his case falls outside the scope of § 1225(b).

- **B. Section 1225(b)(2) Does Not Apply**

10. Section 1225(b)(2) applies exclusively to noncitizens who are "applicants for admission" and who are actively "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). The INA defines "admission" as the lawful entry of a noncitizen after inspection and authorization by an immigration officer. 8 U.S.C. § 1101(a)(13)(A). The statutory text is clear: § 1225 governs individuals at the threshold of entry—those presenting themselves for inspection—not individuals who have long since entered and are residing within the interior of the country.

11. A noncitizen who entered without inspection and was later arrested years afterward inside the United States is not "seeking admission" at the time of detention. See *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018); *Granados*, 2025 WL 3296314, at *6. Petitioner had been living in the United States for years when he was apprehended. He was not at a port of entry, was not requesting inspection, and was not attempting lawful entry.

12. To apply § 1225(b)(2) under these circumstances would require rewriting the statute to eliminate its admission-based limitation altogether. It would collapse the carefully structured distinction Congress drew between border detention under § 1225 and interior detention under § 1226. Such an interpretation not only disregards the plain text of the statute but also nullifies the statutory framework Congress enacted. Accordingly, § 1225(b)(2) cannot lawfully govern Petitioner's detention.

- **Section 1226(a) Governs by Default**

13. Because neither subsection of § 1225(b) applies to Petitioner, his detention must be analyzed under 8 U.S.C. § 1226(a). Section 1226(a) governs individuals detained "pending a decision on whether the alien is to be removed from the United States." Removal proceedings under § 1229a determine inadmissibility or deportability, and the text of § 1226 expressly

contemplates custody determinations for individuals charged as inadmissible—including those present without admission.

14. The structure of the statute confirms this conclusion. Congress created specific mandatory detention categories in § 1226(c), including for certain inadmissible individuals. See 8 U.S.C. § 1226(c)(1)(E). By carving out those limited mandatory categories within § 1226 itself, Congress demonstrated that § 1226(a) is the default detention authority for individuals in removal proceedings. As courts have explained, when Congress creates specific exceptions within a statutory framework, it confirms that the general rule otherwise applies. See *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257.

15. If individuals like Petitioner—who were arrested in the interior after years of residence—were already subject to mandatory detention under § 1225(b)(2), Congress would not have needed to enact additional mandatory-detention provisions in § 1226(c). **Respondents' interpretation collapses the statutory distinction between border detention and interior detention and renders § 1226's structure superfluous.**

16. District courts within Georgia and the Eleventh Circuit have adopted this reasoning, holding that § 1226(a)—not § 1225(b)—governs detention of noncitizens arrested in the interior after residing in the United States. See *Aguirre Villa*, 2025 WL 3095969; *Patel v. Parra*, No. 2:25-cv-00870 (M.D. Fla. Dec. 1, 2025). These courts have recognized that § 1225(b) is a border-focused statute and does not extend to individuals long present within the country.

17. Courts confronting materially identical facts, including *Granados* and *Pineda*, have likewise concluded that detention under § 1225(b) in such circumstances is unlawful. Accordingly, because § 1225(b) does not apply, Petitioner is being detained under an inapplicable mandatory detention provision. His detention lacks statutory authority. Habeas relief is therefore proper.

Absent intervention by this Court, Petitioner will remain confined without lawful authorization and without the individualized custody review Congress expressly provided under § 1226(a).

18. For these reasons, Petitioner's detention is not only contrary to the statutory scheme—it is unconstitutional. Respondents have invoked an inapplicable mandatory detention provision and, in doing so, have deprived Petitioner of the individualized custody determination Congress required and the Constitution demands. When detention lacks lawful statutory authority and is imposed without the procedural safeguards guaranteed by the Fifth Amendment, continued confinement cannot be justified. Under these circumstances, release is not merely appropriate—it is constitutionally compelled. This Court should therefore grant the writ and order Petitioner's immediate release from custody.

B. Bond not an Adequate Remedy; Due process requires that an Impartial; Adjudicator Decide if Petitioner's Continued Detention Bears Reasonable Relation of flight risk and danger to Community

11. As relevant here, due process requires that immigration detention "'bear[] a reasonable relation to the purpose for which the individual was committed.'" *Demore v. Kim*, 538 U.S. 510, 527 (2003) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)).

12. Specifically, immigration detention must be reasonably related to the government's goals of preventing flight and protecting the community from harm and be accompanied by adequate procedural protections to ensure that those goals are being served. See *Zadvydas*, 533 U.S. at 690-91.

13. Chief among these procedural protections is "the guarantee of an impartial and disinterested tribunal," which the Due Process Clause requires "in both civil and criminal cases." *Marshall v. Jerrico*, Inc., 446 U.S. 238, 242 (1980).

14. The immigration court system has been transformed into a body that is structurally incapable of upholding Petitioner's statutory and constitutional rights. The immigration court system is not an independent adjudicative body. It operates under the Department of justice ("DOJ"). In the last year the DOJ and its sub-agencies, the Executive Office for Immigration Review ("EOIR") and the Board of Immigration Appeals ("BIA"), in apparent coordination with the Department of Homeland Security ("DHS") **have systematically dismantled the integrity of the immigration court system to turn it into an extension of DHS' deportation and detention operations.**

15. The evidence of EOIR's institutional capture falls into five categories, each independently sufficient to establish bias, but together demonstrating systematic destruction of judicial independence: (1) the ongoing **mass-scale purge of immigration judges** perceived as obstacles to DHS' enforcement agenda; (2) **the parallel purge and reconstitution of the BIA**, resulting in a 97% pro-government decision rate; (3) the recruitment and installation of two **explicitly enforcement-aligned "deportation judges" with dramatically reduced qualifications**; (4) EOIR policy directives establishing **expectations that adjudications favor the government over noncitizens**; and (5) explicit instructions to **defy district court rulings that impede DHS's enforcement goals.**

16. As of September 26, 2025, the administration has terminated 128 immigration judges ("IJs"). Former New York IJ David K.S. Kim explained the targeting criteria: "I do not know the exact reason for my termination, but most of those dismissed, including myself, were **judges with high asylum approval rates.**"[1] This is not the complaint of disgruntled employees—

[1] Woo-Sun Lim, Former judge highlights legal failures in U.S. worker detentions, The Dong-A Ilbo (Sept. 20, 2025), https://www.donga.com/en/article/all/20250920/5859412/1.

these are career jurists with decades of combined experience who felt compelled to speak out publicly.

17. The terminated and resigned judges report three consistent themes. **First, explicit pressure to serve as instruments of mass deportation rather than neutral adjudicators.** Former Baltimore IJ Emmett Soper stated: "I think the current administration of the immigration courts does not fundamentally see the immigration courts as neutral decision-makers. I think that **they see the immigration courts as a tool for this administration to advance its policy objectives.**"[2] Former San Francisco IJ George Pappas was even more direct: "**We were told to facilitate deportation… Due process is dead in immigration courts.**"[3]

18. **Second, a pervasive climate of fear designed to ensure compliance.** Former Baltimore IJ David C. Koelsch described it as "an atmosphere of paranoia and fear, which is exactly what they want."[4] Former Annandale IJ Anam Petit observed: "There's a climate of fear…Judges feel like, if they step a toe out of line right now…or they're one [asylum] grant away from being fired because of the arbitrary nature of the firings."[5] Former New York IJ Carmen Maria Rey Caldas similarly described judges working "**under 'constant threat' of getting fired if they don't follow certain rules from leadership.**"[6]

19. **Third, the inevitable compromise of judicial independence when self-preservation requires favoring the government.** Former San Francisco IJ Elizabeth Young

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[2] Geoff Bennett & Ali Schmitz, Ousted Immigration Judge Describes Deepening Court Backlog, PBS NewsHour (Nov. 12, 2025), https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog.
[3] Marco Poggio, Judges See an Immigration Court Gutted from Inside, Law360 (Oct. 31, 2025), https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside.
[4] Poggio, supra note 8.
[5] Eric Katz, 'Climate of Fear': Immigration Judges Say Functioning of Their Court System Is in Jeopardy Due to Trump's Firings, Gov't Executive (Nov. 14, 2025),
[6] Isabela Dias, "Fired for No Reason": Former Immigration Judges Speak Out Against Trump's Assault on the Courts, Mother Jones (Oct. 9, 2025),

explained: "I've talked to many of [the judges still serving], and they're like, 'When I go into court, I am concerned about applying the law, but I'm also concerned that I should deny more, because if I don't, then I'll get fired.'"[7] Former Boston IJ Sarah Cade reached her breaking point: "I felt I might have to compromise my ethics and might be put in a place **where I felt like I was going to be asked to violate due process.** So, I left and I went to private practice."[8]

20. The message to remaining immigration judges is unmistakable: neutrality is a terminable offense. **No adjudicator can remain impartial when faced with the choice between upholding due process and keeping their position. Any immigration judge assigned to Petitioner's bond hearing now operates under the understanding that granting bond may cost them their livelihood.**

21. Beyond that, the clearest evidence that EOIR has abandoned its role as a neutral tribunal comes from its response to federal court orders protecting bond hearing rights. In *Maldonado Bautista v. Santacruz*, the Central District of California issued both declaratory and injunctive relief holding that noncitizens who entered without inspection but were not apprehended at the border are detained under § 1226(a), not § 1225(b)(2), and are therefore entitled to bond hearings. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025); *Maldonado Bautista v Santacruz*, No. 5:25-CV-01873, SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). Judge Sunshine Sykes certified a nationwide class and entered final judgment. *Id.* Rather than comply with the order, EOIR leadership directed all immigration judges to ignore the order. On January 13, 2026, Chief Immigration Judge Teresa L. Riley sent an email to all immigration judges instructing:

[7] Poggio, supra note 8.
[8] Poggio, supra note 8.

> "Please provide the following guidance to all immigration judges forthwith: Maldonado Bautista is not a nationwide injunction and does not purport to vacate, stay, or enjoin Yajure Hurtado. Therefore Yajure Hurtado remains binding precedent on agency adjudications. For clarification, declaratory judgments differ from injunctions in that the former clarifies parties' legal rights and relationships without ordering specific action, while the latter is a court order compelling a party to do or stop doing a specific act. A declaratory judgment is not an equitable remedy and does not, by itself, have the effect of compelling specific action by a party. Thank you for your attention to this matter."[9]

22. The effect was immediate: ACLU lawyers reported that immigration judges who had begun granting bond hearings in compliance with Judge Sykes' ruling reversed course after receiving Chief Judge Riley's directive. Immigration judges were placed in an impossible position—comply with a federal district court order and risk termination, or defy the federal court and retain their positions.

23. On January 16, 2026, Judge Sykes issued a scathing order directly addressing the government's systematic defiance:

> "This matter is yet another in a slew of habeas petitions following the Court's ruling in *Bautista v. Santacruz* that has unfortunately become routine in this Court. ... But individuals filing these habeas petitions are not to blame; rather, the current volume of habeas petitions and temporary restraining orders being filed can **be attributed to Respondents' deliberate choice to continue defying the final judgment entered in Bautista**. ...
>
> Despite the clarity of the Court's previous orders and legal doctrines that preclude Respondents from relitigating issues at the heart of these requests, Respondents continue to manufacture arguments for sake of opposition. At this point in time, **the Court can no longer confer Respondents with the benefit of the doubt as to the intent of their filings**.
>
> Despite the final judgment in Bautista, **it appears that immigration judges continue to rely on legal interpretations that were expressly found unlawful**. ... Respondents are collaterally estopped from relitigating the issue as to whether Bond Eligible Class members are entitled to the exact relief as provided in the Bautista final judgment. Accordingly, Respondents are collaterally estopped from relitigating this issue against all members of the Bond Eligible Class."

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[9] Am. Immigr. Laws. Ass'n, Practice Alert: EOIR Issues Nationwide Guidance on Maldonado Bautista, AILA Doc. No. 26011404 (Jan. 16, 2026), https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista.

> Palomera Baltazar v. Janecka, No. 5:26-cv-00019-SSS-BFM at *2-3 (C.D. Cal. Jan. 16, 2026). (emphasis added)

24. Judge Sykes' findings are devastating: the government is not merely disagreeing with her legal conclusions—**it is engaged in "deliberate" defiance, "manufacturing arguments," and instructing immigration judges to rely on "interpretations that were expressly found unlawful.**" This is not a case of good-faith disagreement over statutory interpretation. It is systematic institutional defiance of federal court orders, orchestrated by EOIR leadership and enforced through the threat of termination.

25. No clearer evidence of institutional capture could exist: when presented with a federal court order protecting noncitizens' rights, EOIR's response was to order judges to violate it. **The ultimate victim is the detained noncitizen, who like Petitioner, remains detained in violation of the due process and is denied their fundamental right to have an impartial adjudicator determine whether their continued detention serves any legitimate purpose related to flight risk or community safety**.

26. Under these circumstances, ordering a bond hearing would not cure the constitutional violation. A custody determination conducted within a structurally compromised system—one operating under binding precedent that forecloses jurisdiction, directives that prioritize enforcement over neutrality, and leadership that has openly resisted federal court rulings—cannot provide the meaningful process the Constitution requires. **Due process guarantees not the mere formality of a hearing, but a fair and impartial adjudication.** Where the adjudicatory mechanism itself has been rendered incapable of delivering that protection, additional process becomes illusory. **Accordingly, because Petitioner's detention lacks lawful statutory authority and because no neutral forum presently exists to review its necessity,**

immediate release is the only remedy capable of fully vindicating his statutory and constitutional rights.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment- Unlawful Detention and Denial of Due Process

1. The above paragraphs are realleged and incorporated herein.

2. Respondents have unlawfully detained Petitioner under the purported authority of 8 U.S.C. § 1225, the "mandatory detention" provision applicable to certain individuals who are in the process of entering the United States.

3. Section 1225 applies to arriving aliens and those apprehended at or near the border. Petitioner was not arriving in the United States at the time of his arrest. Rather, he had been physically present in the United States for more than two years prior to his detention. Accordingly, his custody is not governed by § 1225 but by 8 U.S.C. § 1226(a), which provides for discretionary detention pending removal proceedings.

4. Petitioner's detention further violates the Immigration and Nationality Act because he was arrested and detained without a warrant issued by the Attorney General or an authorized officer, as required under § 1226(a). Respondents neither revoked his prior release determination nor afforded him any meaningful procedural safeguards prior to re-detaining him.

5. Having been unlawfully detained under an inapplicable statutory provision and without the procedural protections required by law, Petitioner seeks the only appropriate relief available in habeas: release from unlawful custody. See *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020).

6. There is no logical alternative avenue for release. Respondents have categorically deemed individuals in Petitioner's position ineligible for bond. Moreover, pursuant to precedential decisions such as *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), immigration judges have been stripped of jurisdiction to conduct bond hearings in circumstances materially indistinguishable from Petitioner's.

7. As a result, Petitioner is deprived of access to any neutral adjudicator capable of assessing whether his continued detention serves a legitimate governmental purpose.

8. Due process requires that civil immigration detention bear a reasonable relation to its purposes—namely, preventing flight and protecting the community—and that those purposes be evaluated through adequate procedural safeguards, including an impartial and disinterested decision-maker.

9. By detaining Petitioner under an inapplicable mandatory detention statute, denying him access to a bond hearing, and foreclosing review before a neutral adjudicator, Respondents have rendered his detention arbitrary, unreasonable, and constitutionally infirm.

10. Petitioner's warrantless arrest, continued detention without statutory authority, and categorical denial of access to an impartial adjudicator violate the Due Process Clause of the Fifth Amendment.

11. An adjudication by a decision-maker operating under credible threats of termination, enforcement-driven policy directives, and instructions to disregard binding federal court rulings cannot satisfy the fundamental constitutional requirement of impartiality

12. . Because Petitioner has been denied a fair and neutral determination of whether his continued detention serves any legitimate governmental objective, his ongoing confinement is arbitrary and constitutes a violation of procedural due process.

COUNT TWO

Violation of Petitioner's Order of Release

1. The allegations in the above paragraphs are realleged and incorporated herein.

2. Regulations at 8 CFR § 236.1(c)(9) and (g) require specific procedures to release or revoke the release of an individual. This regulation also limits the authority to make these decisions to specific enumerated officers.

3. At the time Petitioner was detained, Petitioner's release on his own recognizance had not been lawfully revoked.

4. Respondents violated the provisions at 8 CFR § 236.1(c)(9) because they did not make individualized findings specific to Petitioner's circumstances.

5. Respondents violated the provisions at 8 CFR § 236.1(c)(9) because Petitioner's custody determination was not rendered by one of the specified officers.

6. Petitioner's detention is unlawful because the Department of Homeland Security violated the regulations and procedures at 8 CFR § 236.1(c)(9).

7. This unlawful detention and violation of existing regulations also violate the Administrative Procedure Act. See 5 U.S.C. § 706(2).

8. Petitioner requests release from detention because he has a valid order of release on his own recognizance which has not been revoked.

COUNT THREE

Violation of INA

1. Petitioner incorporates by reference the allegations of fact outlined in the preceding paragraphs.

2. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States before being apprehended and placed in removal proceedings by the Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

3. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

PRAYER FOR RELIEF

The "equitable and flexible nature of habeas relief" affords district courts significant discretion over the appropriate remedies for violations of law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020); see also *Schlup v. Delo*, 513 U.S. 298, 319 (1995) (**"[H]abeas corpus is, at its core, an equitable remedy**"). This Court should order a remedy that fully addresses the statutory and constitutional violations in this case and is efficient to administer. *Carafas v. LaVallee,* 391 U.S. 234, 238 (1968) (the habeas statute "does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted").

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

a. **Assume jurisdiction over this matter**;

b. Order that Petitioner **shall not be transferred** outside the Middle District of Georgia while this habeas petition is pending;

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 is unlawful;

e. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately. Immediate release is the most appropriate remedy given the Government's repeated use of unlawful detention policies across the country, which have caused petitioners to remain incarcerated while awaiting judicial intervention. Under these circumstances, ordering a bond hearing would only prolong the constitutional violation and impose additional delay;

f. In the alternative, at a minimum, the Court should order a bond hearing under 8 U.S.C. § 1226(a) with constitutionally required safeguards. Specifically, the Court should require that the Department of Homeland Security bear the burden of proving, by clear and convincing evidence, that continued detention is necessary to prevent flight or protect the community. This allocation of the burden reflects the fundamental due process principle that, because the deprivation of liberty is severe, the detainee should not share the risk of error equally with the Government. See *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 688 (W.D. Tex. 2025);

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

Respectfully submitted,

William Matos, Esq. (GA Bar: 477054)
Immigration Solution
848 Jesse Jewell Pkwy
Gainesville, GA 30501
Phone: (787) 205-7564
Lawofficewmatos@gmail.com
Attorney for Petitioner

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

I represent Petitioner, Name, and submit this verification on his/her/their 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 18 day of February, 2025.

S/ William Matos
William Matos Esq.

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

David Enrique, LOAYZA-TUNOQUE **Petitioner** **v.** **Todd M. LYONS, Director of U.S. ICE; George STERLING, Field Office Director of Enforcement and Removal Operations, Atlanta Field Office, 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; Jason STREEVAL, Warden of Stewart Detention Center,** **Respondents**	**Case No.** **PETITTION FOR WRIT OF HABEAS CORPUS** **Under 28 U.S.C. § 2241**

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TAB A

DEPARTMENT OF HOMELAND SECURITY

NOTICE TO APPEAR

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

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

DOB: [redacted] Event No: [redacted]

In the Matter of:

Respondent: DAVID ENRIQUE LOAYZA-TUNOQUE currently residing at:

[redacted]

(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 arrived in the United States at or near EAGLE PASS, TX , on or about May 10, 2023 ;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

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:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

☐ 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:

401 W PEACHTREE ST, STE 2600 ATLANTA GA 30308

(Complete Address of Immigration Court, including Room Number, if any)

on August 04, 2023 *(Date)* at 08:30 AM *(Time)* to show why you should not be removed from the United States based on the charge(s) set forth above.

ROHAN GODSON
Acting/Patrol Agent in Charge RG

(Signature and Title of Issuing Officer) (Sign in ink)

Date: May 11, 2023 Eagle Pass, Texas

(City and State)

EOIR - 1 of 3

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) (Sign in ink)

Border Patrol Agent

(Signature and Title of Immigration Officer) (Sign in ink)

Date: 05/11/2023

Certificate of Service

This Notice To Appear was served on the respondent by me on May 11, 2023, in the following manner and in compliance with section 239(a)(1) of the Act.

☒ in person ☐ by certified mail, returned receipt # _____ requested ☐ by regular mail

☐ Attached is a credible fear worksheet.

☒ 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.

(Signature of Respondent if Personally Served) (Sign in ink)

MICHAEL HOEHN, Border Patrol Agent

(Signature and Title of officer) (Sign in ink)

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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 290 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-sorns. 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/opcl/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.

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