



County, Georgia.<sup>1</sup> That charge remains pending, and to date, criminal charges have not been filed with the appropriate court. Mr. Foster has no other criminal history.

4. On February 17, 2026, Mr. Foster was taken into custody by the Department of Homeland Security (“DHS”). He is currently detained by Immigration and Customs Enforcement (“ICE”) at the Stewart Detention Center in Lumpkin, Georgia.

5. On February 19, 2026, Mr. Foster was served with a Notice to Appear (“NTA”) dated February 17, 2026. The NTA alleges that he is removable under Section 237(a)(1)(b) of the Immigration and Nationality Act (“INA”) for remaining in the United States longer than permitted after admission as a nonimmigrant.

6. DHS has classified Mr. Foster as subject to mandatory detention under U.S.C. § 1226(c), as amended by the Laken Riley Act.<sup>2</sup> Based on that classification, the Immigration Judge (“IJ”) concluded that she lacked jurisdiction to conduct a bond hearing and denied Mr. Foster the opportunity for release pending removal proceedings. Mr. Foster, through counsel, filed a request for custody redetermination before the Stewart IJ.<sup>3</sup> On March 17, 2026, the IJ once again declined to exercise jurisdiction over the request, stating that Mr. Foster was subject to mandatory detention under the Laken Riley Act.

7. Mr. Foster maintains that the IJ misinterpreted the Laken Riley Act and that he is not subject to mandatory detention under section 1226(c). Because the IJ has declined to consider his request for bond, Mr. Foster now seeks habeas relief under 28 U.S.C. § 2241 to prevent the continued violation of his rights under the Immigration and Nationality Act (INA) and the Fifth Amendment.

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<sup>1</sup> See **Exhibit A**, Misdemeanor Warrant Documents.

<sup>2</sup> See **Exhibit B**, EOIR guidance on Laken Riley Act.

<sup>3</sup> See **Exhibit C**, Request for Custody Redetermination.

8. Mr. Foster requests that the Court order him immediately released and require the Respondents to hold a bond hearing before an IJ if they wish to re-detain him.

### **JURISDICTION**

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

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

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

### **VENUE**

12. Venue is proper because Mr. Foster is in Respondents' custody in Lumpkin, Georgia which is within the jurisdiction of this District. Venue is further proper in this District because Respondents are officers, employees, or agencies of the United States and a substantial part of the events or omissions giving rise to Mr. Foster's claims occurred in this District. 28 U.S.C. § 1391(e).

### **REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**

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

*Id.* (emphasis added).

14. 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 illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

15. Mr. Foster is “in custody” for the purpose of § 2241 because he is arrested and detained by Respondents.

### **PARTIES**

16. Petitioner N. Kwame Foster is a 43-year-old citizen of Jamaica. He is currently detained at the Stewart Detention Center. He is in the custody, and under the direct control, of Respondents and their agents.

17. Respondent Jason Streeval is the Warden of the Stewart Detention Center, and he has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner.

18. Respondent Kristen Sullivan is sued in her official capacity as the Acting Director of the Atlanta Field Office of U.S. Immigration and Customs Enforcement. Respondent Sullivan is a legal custodian of Petitioner and has authority to release him.

19. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of Petitioner and has authority to release him.

20. Respondent Markwayne Mullin is sued in his official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Mullin is

responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Mullin is a legal custodian of Petitioner and is charged with faithfully administering the immigration laws of the United States.


21. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has authority over the DOJ and is charged with faithfully administering the immigration laws of the United States.

22. Respondent U.S. Immigration Customs Enforcement (ICE) is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.

23. Respondent U.S. Department of Homeland Security (DHS) is the federal agency that has authority over the actions of ICE and all other DHS Respondents.

24. This action is commenced against all Respondents in their official capacities.

#### **STATEMENT OF FACTS**

25. Mr. Foster is a 43-year-old native and citizen of Jamaica. He is married and the father of four children. Mr. Foster fled his home country after being attacked and threatened by  and he believed his life was in danger.

26. Mr. Foster entered the United States in nonimmigrant B-2 status on December 18, 2016.

27. On October 19, 2017, Mr. Foster filed an Affirmative I-589, Application for Asylum and for Withholding of Removal with USCIS. Mr. Foster currently maintains valid employment authorization based on his pending asylum application.

28. On February 15, 2026, Mr. Foster was arrested by the Henry County Sheriff's Office while attempting to pay a bond on a misdemeanor shoplifting warrant in Henry County, Georgia. This charge remains pending. The affidavit accompanying the application for a warrant alleges that on January 17, 2025, Mr. Foster was observed at Home Depot in McDonough, Georgia, removing two Water Pressure Valves without paying for them. The total value of the property was \$173.63. Mr. Foster has no other criminal record.

29. On or about February 17, 2026, Mr. Foster was taken into custody by the DHS. He is currently detained by ICE at the Stewart Detention Center in Lumpkin, Georgia.

30. On February 19, 2026, Mr. Foster was served with a NTA dated February 17, 2026. The NTA alleges that he is removable under INA Section 237(a)(1)(b) for remaining in the United States longer than permitted after admission as a nonimmigrant.

31. DHS has classified Mr. Foster as subject to mandatory detention under U.S.C. § 1226(c), as amended by the Laken Riley Act. Based on that classification, the IJ concluded that she lacked jurisdiction to conduct a bond hearing and denied Mr. Foster the opportunity for release pending removal proceedings. Mr. Foster's counsel filed a request for custody redetermination before the IJ. On March 17, 2026, the IJ once again declined to exercise jurisdiction over the request, stating that Mr. Foster was subject to mandatory detention under the Laken Riley Act.

32. Mr. Foster has not been convicted of a crime of violence, he is not a danger to other persons or property in the United States, and he is not a threat to national security.

33. Mr. Foster is not a flight risk. Mr. Foster lives with his wife and three children, who are all derivatives of his asylum application. Furthermore, he has a U.S. citizen sister named Tracyann Foster and a lawful permanent resident daughter named R [REDACTED] both of whom reside in Boston, Massachusetts.

34. Mr. Foster and his family have resided in Atlanta, Georgia since 2018. He and his wife purchased a condominium unit there on October 21, 2025. For the past year, Mr. Foster has been gainfully employed at [REDACTED] in Tucker, Georgia. Prior to that, he was employed by [REDACTED] for six years. Mr. Foster maintains work authorization due to his pending asylum application with USCIS.

35. In January 2026, Mr. Foster's nine-year-old daughter underwent brain surgery due to an intraparenchymal hemorrhage of the brain.<sup>4</sup> (bleeding in the brain and diffuse cerebral edema, which may lead to neurological dysfunction). Mr. Foster's absence has exacerbated the challenges faced by his daughter, who requires consistent supervision and routine physician consultations.

36. Mr. Foster is willing and prepared to comply with any conditions of release that this Court deems appropriate.

37. This habeas petition is therefore filed to secure for Mr. Foster the statutory and constitutional protections owed to all individuals in the United States, including noncitizens, and to ensure that his continued detention does not subject him to unnecessary harm and deprivation.

### **LEGAL FRAMEWORK**

38. 28 U.S.C. § 2241 empowers this Court to grant habeas relief, including immediate or conditional release, where a noncitizen's continued immigration detention violates the Constitution or exceeds statutory authority.

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<sup>4</sup> See **Exhibit D**, Letter from Daughter's Pediatric Neurologist.

39. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993). Immigration detention is a form of civil confinement that “constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 425 (1979).

40. Federal courts retain habeas jurisdiction to determine whether a noncitizen’s detention is authorized by statute. See *Zadvydas v. Davis*, 533 U.S. 678, 687–90 (2001); *Demore v. Kim*, 538 U.S. 510, 514–517 (2003).

41. The INA governs the detention of noncitizens during removal proceedings. See 8 U.S.C. § 1226. Section 1226 establishes two distinct detention regimes: discretionary detention under 1226(a) and mandatory detention under 1226(c).

42. Under § 1226(a), the Secretary of DHS may detain a noncitizen pending removal proceedings but must provide an opportunity for release on bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1(d).

43. 8 U.S.C. § 1226(c), by contrast, creates a narrow category of noncitizens who must be detained without bond during removal proceedings. Mandatory detention under § 1226(c) applies only where the Government establishes that noncitizen falls within one of the specific statutory categories identified by Congress.

44. As amended by the Laken Riley Act, § 1226(c)(1)(E) requires mandatory detention only where a noncitizen (1) is *inadmissible* under INA §212(a)(6)(A), (6)(C), or (7) *and* (2) has been charged with, arrested for, convicted of, or admits committing certain enumerated offenses, including theft or shoplifting.

45. Because mandatory detention under § 1226(c) forecloses the possibility of release on bond, courts must ensure that a noncitizen is properly included within one of the statute’s

mandatory detention categories before denying an individualized custody determination. *See Demore v. Kim*, 538 U.S. 510, 514 (2003) (noting that detainees may seek a *Joseph* hearing to demonstrate that they were not convicted of the predicate crime or that the Government is substantially unlikely to establish that they are subject to § 1226(c)); 8 C.F.R. § 3.19(h)(2)(ii) (providing for such a determination before an immigration judge).

46. When the government detains a noncitizen without statutory authority or without adequate procedural safeguards, the detention violates the Due Process Clause of the Fifth Amendment. *See Zadvydas*, 533 U.S. at 690.

47. Habeas relief is appropriate where the government's detention of a noncitizen is not authorized by statute or is imposed in violation of constitutional protections. *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 514–17.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE**

##### **Erroneous Application of Mandatory Detention Under 8 U.S.C. § 1226(c)**

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

49. Mr. Foster is currently detained by the DHS at the Stewart Detention Center during the pendency of his removal proceedings.

50. DHS has classified him as subject to mandatory detention under U.S.C. § 1226(c), as amended by the Laken Riley Act.

51. Based on that classification, the IJ concluded that she lacked jurisdiction to conduct a bond hearing and denied Mr. Foster the opportunity for release pending removal proceedings.

52. DHS's application of mandatory detention is erroneous as a matter of statutory law.

53. Mr. Foster was lawfully admitted to the United States on a B-2 nonimmigrant visa and is charged in his NTA solely under INA § 237(a)(1)(B), 8 U.S.C. § 1227(a)(1)(B), as a visa

overstay.

54. Because Mr. Foster was admitted to the United States and is charged only as *deportable*, he is *not* inadmissible under the provisions of INA § 212(a) that trigger mandatory detention under 8 U.S.C. § 1226(c)(1)(E). Accordingly, the mandatory detention provision invoked by DHS does not apply to Mr. Foster.

55. Federal courts retain habeas jurisdiction to determine whether the government has statutory authority to detain a noncitizen. *Jennings v. Rodriguez*, 583 U.S. 281, 295–96 (recognizing that federal courts retain habeas jurisdiction to assess statutory authority for immigration detention); *Zadvydas v. Davis*, 533 U.S. 678, 687–90 (2001); *Demore v. Kim*, 538 U.S. 510, 514–517 (2003).

56. Because Mr. Foster does not fall within any category of mandatory detention, DHS lacks statutory authority to detain him without the possibility of release. He is therefore entitled to an individualized custody determination under 8 U.S.C. § 1226(a).

57. Mr. Foster's continued detention without such a hearing exceeds DHS's statutory authority and is unlawful.

**COUNT TWO**  
**Violation of the Fifth Amendment Right to Due Process**  
**Lack of Meaningful Custody Review**

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

59. Petitioner fled Jamaica in December of 2016 due to political persecution and gang violence. He entered the United States legally with a B2 Visa on December 18, 2016. He further pursued legal pathways to staying in the United States by filing an Affirmative Asylum application on October 19, 2017. He received work authorization based on his application and has remained gainfully employed until being taken into custody by ICE on February 15, 2026. He is currently

detained without a bond hearing, thus denying any opportunity for him to continue to work and maintain his reputation as a loving father, husband, and productive member of his community.

60. Petitioner argues that his detention under 8 U.S.C. § 1226(c) violates due process because no determination has been made that he poses either a danger to society or a flight risk. *Demore v. Kim*, 538 U.S. 510, 514 (2003). In *Demore*, the Court found the provision to be constitutional. Justice Kennedy joined the majority opinion but wrote separately to identify the ground for bringing an as-applied challenge to the constitutionality of the provision in an individual case. He reasoned that a detainee “could be entitled to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified. Were there to be an unreasonable delay by the [Government] in pursuing and completing deportation proceedings, it could become necessary then to inquire whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons.” *Demore*, 538 U.S. at 532-33.

61. Moreover, *Demore* should be understood as limited to the specific circumstances before the Court. The decision relied heavily on Congress’s findings at the time § 1226(c) was enacted, which focused on noncitizens convicted of serious criminal offenses and the perceived flight risks and recidivism of those associated with those categories of crimes. The Court repeatedly emphasized those congressional determinations in concluding that mandatory detention during removal proceedings was constitutionally permissible. *See Demore*, 538 U.S. at 518-21. Where Congress has not made comparable findings demonstrating that a category of offenses presents similar risks; the Constitutional justification for mandatory detention is significantly weaker.

62. Critically, *Black v. Decker* found that *Demore* leaves unresolved whether

“detention under section 1226(c) without a bond hearing will *at some point* violate an individual detainee’s due process rights.” *Black v. Decker*, 103 F.4th 133, 142. In recognizing this unresolved constitutional boundary, the Second Circuit acknowledged that the categorical detention regime upheld in *Demore* cannot be read as unlimited in scope or duration. *Id.* at 143. Other courts have likewise emphasized the practical difficulty detainees face when attempting to rebut generalized assumptions about dangerousness. As the First Circuit observed, “proving a negative (especially a lack of danger) can be more difficult than proving a cause for concern.” *Elkins v. United States*, 364 U.S. 206, 218. Where the government relies on broad statutory presumptions rather than individualized evidence, detainees are often placed in the untenable position of disproving speculative risks rather than responding to concrete allegations. *See Black*, 103 F.4th 133, 143.

63. Here, Petitioner’s history of hard work and commitment to bettering himself and his community stands on its own and illustrates precisely why individualized assessment is necessary. His record reflects stability, responsibility, and ties to his community; factors that directly undermine any assumption that he presents a flight risk or danger. His detention stems from the expansion of § 1226(c) to cover far less serious offenses, including minor shoplifting charges. Unlike the original statute considered in *Demore*, Congress did not develop a comparable factual record demonstrating that individuals detained for such minor offenses categorically pose heightened risks of flight or danger to the community. Extending mandatory, no-bond detention to individuals accused of minor property crimes without individualized findings of dangerousness or flight risk raises serious due process concerns. Interpreting the decision as broadly authorizing detention without bond for minor offenses would expand it far beyond the facts and congressional findings on which it relied and would permit incarceration without the individualized process that due process ordinarily requires.

64. Petitioner has continuously pursued the correct legal pathways to enter and work in the United States and was permitted to do so for many years. He graciously accepted the opportunity afforded him to work and better himself and his community. A minor shoplifting charge, among the multitude of ways he has served as a productive member of society, provides no indication that Petitioner now, or ever, presents any flight risk. Under these circumstances, Petitioner's detention lacks a lawful basis and is not supportive of the statutory aims for detention under § 1226(c).

65. For these reasons, Petitioner's detention violates his substantive due process rights. He should be released from custody for completion of the administrative removal and asylum process, or, alternatively, he should be granted a bond hearing.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three (3) days;
- (3) Declare that Mr. Foster's continued detention violates the INA and the Due Process Clause of the Fifth Amendment;
- (4) Issue a Writ of Habeas Corpus ordering Respondents to afford Mr. Foster a prompt, individualized bond hearing at which Respondents bear the burden of justifying continued detention and at which Mr. Foster is afforded a meaningful opportunity for release subject to reasonable conditions of supervision;
- (5) Award Mr. Foster attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (6) Grant any further relief this Court deems just and proper.

Dated: March 29, 2026

Respectfully submitted,

*s/ Sarah Wilson*  
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**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner, N Kwame Hessian Foster, 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 29th day of March 2026.

/s/ Sarah Wilson  
SARAH WILSON  
Supervising Attorney