UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

CLAUDIO GUANGA DUTAN, Petitioner(s), v. HERIBERTO TELLEZ, Warden, Metropolitan Detention Center; TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement; PAMELA BONDI, U.S. Attorney General; and KRISTI NOEM, U.S. Secretary of Homeland Security, Respondents(s).	)	Case No. 1:26-cv-600

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

1. In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception. *U.S. v. Salerno*, 481 U.S. 739, 755 (1987).
2. For over a century, noncitizens whose presence in this country is unlawful have been recognized as "persons" guaranteed Due Process by the 5th Amendment. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001), *Plyer v. Doe*, 457 U.S. 202, 209 (1982), *Matthews v. Diaz*, 426 U.S. 67, 77 (1956), *and Yick Wo v. Hopkins*, 118 U.S. 356, 368 (1886).
3. In the United States Code, Title 8, four distinct clauses authorize detention of noncitizens during removal proceedings. *See generally* 8 U.S.C. §§ 1225, 1226.
4. Three of these clauses incorporate the verb "shall" *mandating* detention of the categories of the noncitizens described. *See* 8 U.S.C. §§ 1225(b)(1)(B)(IV), 1225(b)(2)(A), 1226(c)(1).

5. On the contrary, one clause incorporates "may" indicating judicial discretion, availability of bond hearings, and release on bond or parole. *See* 8 U.S.C. § 1226(a). ("[P]ending [a decision whether or not to remove a noncitizen from the United States], the Attorney general *may* continue to detain the arrested [noncitizen]; and *may* release the [noncitizen] on bond…or conditional parole") (emphasis added).

6. For the past three decades, 8 U.S.C. § 1226(a) has applied to noncriminal noncitizens that have been present in the United States for over two years without admission or parole. *See Rodriguez v. Bostock,* 779 F. Supp. 3d 1239, 1260-1 (W.D. Wash. 2025) (discussing legislative history and longstanding agency practice behind 8 U.S.C. § 1226(a)) *quoting* H.R. Rep. No. 104-469, pt. 1, at 229 *and* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997); *see also* 8 U.S.C. § 1225(b)(1)(B)(iii)(II) (noncitizens who have not been admitted or paroled and have not been physically present in the United States for two years are subject to mandatory detention).

7. On July 8, 2025, the Department of Homeland Security ("DHS") issued an internal memorandum entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission." In that memorandum, DHS concluded an "applicant for admission," i.e. any noncitizen present in the United States who has not been admitted or paroled, is subject to detention under 8 U.S.C. § 1225(b) and may not be released from ICE custody except through humanitarian parole.[1]

8. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a decision entitled *Matter of Yajure Hurtado.* In that decision, the BIA concluded any noncitizen present in the United States who has not been admitted or paroled, is subject to detention

[1] This memorandum was not circulated publicly. A photograph of the memorandum can be found at: https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission

under 8 U.S.C. § 1225(b) and may not be released from ICE custody except through humanitarian parole. *See Yajure Hurtado*, 29 I&N Dec. 216, 219-220 (BIA 2025) *quoting* 8 U.S.C § 1225(b)(2)(A).

9. In 2025 alone, over 350 cases decided by more than 160 different District Court judges across the United States have concluded this position from *Yajure Hurtado* is incorrect. *See Barco Mercado v. Francis*, No. 25-CV-6582 (LAK), 2025 WL 3295903 at *4 (S.D.N.Y. Nov. 26, 2025) (collecting cases).
10. The BIA's decision in *Yajure Hurtado* disregards basic tenets of statutory construction, legislative history, government practice, and Supreme Court precedent.
11. The BIA's decision in *Yajure Hurtado* violates constitutional law.
12. Petitioner's detention without a bond hearing constitutes a deprivation of his right to Due Process under the 5th Amendment.
13. Courts have broad discretion in conditioning a judgment for Habeas Corpus relief. *See* 28 U.S.C. § 2243 ("The court shall summarily hear and determine the facts, and dispose of [the application for a Writ of Habeas Corpus] as law and justice require").
14. Therefore, as law and justice require, the Court should order Petitioner's release pursuant to the Court's broad discretionary under 28 U.S.C. § 2243.

STATEMENT OF FACTS

15. Petitioner Claudio Guanga Dutan [redacted] is a male, native and citizen of Ecuador.
16. Petitioner entered the United States at or near Douglas, Arizona on or about June 13, 2002. Petitioner has continuously resided in the United States ever since.

17. On June 14, 2002, Petitioner was served a Notice to Appear in Immigration Court. Petitioner was charged under INA 212(a)(6)(A)(i) as noncitizen present in the United States without being admitted or paroled.

18. On November 26, 2002, Petitioner was ordered removed from the United States *in absentia*.

19. On September 26, 2025, Petitioner was detained by Immigration and Customs Enforcement pursuant to his 2002 removal order.

20. On January 20, 2026, Petitioner's order of removal was reopened. Petitioner is now in removal proceedings before Immigration Judge Dara Reid.

21. Upon information and belief, Petitioner is currently detained in Metropolitan Detention Center in Brooklyn, NY.

22. Petitioner is in removal proceedings. He is currently scheduled for a master hearing with Immigration Judge Dara Reid on February 12, 2026 at 9:30 AM.

PARTIES

23. Petitioner Claudio Guanga-Dutan  is a noncitizen from Ecuador who is currently detained by ICE. On information and belief, Petitioner is currently detained in Metropolitan Detention Center at 80 29th St., Brooklyn, NY 11232.

24. Respondent Heriberto Tellez is the warden of Metropolitan Detention Center in Brooklyn, NY. He is being sued in his official capacity. He is Petitioner's immediate custodian.

25. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement. He is being sued in his official capacity. He is Petitioner's legal custodian.

26. Respondent Pamela J. Bondi is the United States Attorney General. She is being sued in her official capacity. She oversees Immigration Judges and the Board of Immigration Appeals. She is Petitioner's legal custodian.

27. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security. She is being sued in her official capacity. She is Petitioner's legal custodian.

JURISDICTION

28. Officials and agencies of the United States have been named as defendants. The Court has personal jurisdiction over the defendants under 28 U.S.C. § 1346(a)(2).

29. The Court has subject matter jurisdiction to hear Petitioner's request for relief under 28 U.S.C. § 2241 and Article I, § 9 cl. 2 of the United States Constitution.

30. 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

31. Venue is proper in the Southern District of New York because, upon information and belief, Petitioner is confined in this district at Orange County Correctional Facility, 110 Wells Farm Rd, Goshen, NY 10924. 28 U.S.C. § 1391(b)(2); *see Rumsfield v. Padilla*, 542 U.S. 426, 442 (2004) (the Writ of Habeas Corpus is "issuable only in the district of confinement.")

REQUIREMENTS OF 28 U.S.C § 2243

32. The Writ of Habeas Corpus provides a "swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963)

33. The Court must grant this Petition for Writ of Habeas Corpus or issue and Order to Show Cause ("OSC") 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.*

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process
(Procedural Due Process)

1. The allegations in paragraph 1 through 33 are realleged and incorporated herein.
2. Procedural Due Process guarantees fair process. *See U.S. v. Salerno*, 481 U.S. 739, 746 (1987); *see also Mathews v. Eldridge,* 424 U.S. 319, 335 (1976) (articulating factors).
3. Petitioner is being deprived of his right to liberty, the risk of deprivation is high, and there would be great value in additional procedural safeguards.
4. The Government interest in Petitioner's detention without bond is minimal
5. Continued detention of Petitioner without a bond hearing is a violation of Procedural Due Process.

COUNT TWO
Violation of Fifth Amendment Right to Due Process
(Substantive Due Process)

1. The allegations in paragraph 1 through 33 are realleged and incorporated herein.
2. The Due Process Clause covers a substantive sphere "barring certain government actions regardless of the fairness of the procedures used to implement them." *See Matzell v. Annucci*, 64 F.4th 425, 436 (2d Cir. 2023)

3. ICE's decision to detain Petitioner is so arbitrary that it constitutes a gross abuse of government authority.
4. Even in the presence of procedural protections, the government's actions are without justification. *See Southerland v. City of New York*, 680 F.3d 127, 152 (2d Cir. 2012)
5. Continued detention of Petitioner without a bond hearing is a violation of Substantive Due Process.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Order that Petitioner shall not be transferred out of New York;

(3) Declare that Petitioner's detention is unlawful;

(4) Issue an Order to Show Cause ordering Defendants to show cause why this Petition should not be granted within three days;

(5) Order Petitioner's release pursuant to the Court's broad discretionary power under 28 U.S.C. § 2243;

(6) In the alternative, hold a bail hearing and order Petitioner's release through the Court's inherent authority under *Mapp v. Reno*, pending adjudication of this Petition;

(7) In the second alternative, order the immigration court to hold a bond hearing for Petitioner pursuant to 8 U.S.C. § 1226(a);

(8) Award attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law;

(9) Order any further relief this Court deems just and proper.

Respectfully submitted this 3rd day of February, 2026.

Respectfully submitted,
EDWARD J. CUCCIA, PC

/s/ Edward J. Cuccia

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

I represent Petitioner and submit this verification on 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 3rd day of February, 2026.

/s/ Edward J. Cuccia
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