

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

David Fernando Ayavaca Tenemea,

Petitioner,

v.

Kristi Noemi, in her Official Capacity as the
Secretary of the U.S. Department of
Homeland Security;

Pamela Bondi, in her Official Capacity as the
Attorney General of the United States

Kenneth Genalo, in his Official Capacity as
New York Field Office Director for
Enforcement and Removal Operations, U.S.
Immigration and Customs Enforcement

Joseph B. Edlow, in his Official Capacity as
the Director of U.S. Citizenship and
Immigration Services;

Sheriff Paul Arteta, in his Official Capacity as
the Sheriff of Orange County, NY,

Respondents.

Case No.

Judge:
Magistrate Judge:

No request for jury trial

**VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS AND COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

ORAL ARGUMENT REQUESTED

COMES NOW, Petitioner, David Fernando Ayavaca Tenemea (“Mr. Ayavaca Tenemea”), brings this Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief pursuant to 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; the Immigration and Nationality Act (“INA”) and regulations thereunder; the Administrative Procedure Act; and the Suspension Clause of the Constitution, U.S. Const. Art. I § 9, cl. 2.. The efforts to remove Petitioner constitute a “severe restraint” on his individual liberty such that Petitioner is “in custody” of the Respondents in violation of the . . . laws of the United States. *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241, including the

Immigration Nationality Act, 8 U.S.C. § 1101 et seq.; the Administrative Procedure Act, 5 U.S.C. § 701 et seq.; and the Due Process Clause of the Fifth Amendment of the United States Constitution.

Petitioner has also been physically detained since November of 2024, a period totaling nearly a year. He is not eligible to file a motion in Immigration Court to secure release due to the recent decision issued by the Board of Immigration Appeals in *Matter of Yajure*, 28 I&N Dec. 216 (BIA 2025), wherein the Board held that Immigration Judges lack jurisdiction to redetermine custody for noncitizens charged as removable under section 236(a)(1) of the Immigration and Nationality Act.

Pursuant to this Court's inherent powers in habeas corpus proceedings, Mr. Ayavaca Tenemea respectfully requests this Court to enjoin Respondents from removing him from the United States and to order Respondents to release him from detention. Petitioner has been subjected to prolonged detention that goes far beyond a brief period necessary to effect an imminent removable. Moreover, Petitioner has a pending T visa application before USCIS that has been deemed bona fide and with that, has been granted Deferral of Removal. There is no legitimate reason for the government to keep Mr. Ayavaca Tenemea detained.

Notably, the Immigration Court and the Board of Immigration Appeals have expressly disclaimed jurisdiction to review or redetermine custody in light of *Matter of Yajure*, 28 I&N Dec. 216 (BIA 2025), which held that Immigration Judges lack authority to conduct bond hearings for individuals charged removable under certain provisions of the Immigration and Nationality Act. As a result, Petitioner is left without an adequate or available administrative remedy, and only this Honorable Court possesses jurisdiction under 28 U.S.C. § 2241 to review the legality of his continued detention and to grant appropriate relief. See *INS v. St. Cyr*, 533 U.S.

289, 314 (2001) (recognizing federal habeas jurisdiction where no other judicial forum is available to test the legality of executive detention).

I. PARTIES

- A. David Fernando Ayavaca Tenemea is a 30-year-old native and citizen of Ecuador who fled his country to escape from threats by [REDACTED] After being subjected to human trafficking and forced labor on his journey, Petitioner, Ayavaca Tenemea, entered the United States on or about May 22, 2024. He is currently detained at the Orange County Jail, 110 Wells Farm Rd., Goshen, New York 10924. He suffers from ongoing mental and physical trauma as a result of the violent human trafficking and forced labor that he suffered.
- B. Respondent, Kristi Noem, is the Secretary of the U.S. Department of Homeland Security (“DHS”), the federal agency responsible for enforcing Petitioner’s arrest, detention and removal. Respondent Noem’s address is 2707 Martin Luther King Jr. Ave, SE Washington, DC 20528-0485.
- C. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review, pursuant to section 103(g) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1103(g). She routinely transacts business in the Southern District of New York, is legally responsible for administering Petitioner’s removal proceedings and the standards used in those proceedings, and as such, is the legal custodian of Petitioner. Respondent Bondi’s address is U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.
- D. Respondent, Kenneth Genalo, is the New York Field Office Director for Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement. He is the local ICE

official who has immediate authority over the Petitioner. Respondent Genalo's address is 26 Federal Plaza, 9th Floor, Suite 9-110, New York, NY 10278.

- E. Respondent, Joseph B. Edlow, is the Senior Official Performing the Duties of the Director of U.S. Citizenship and Immigration Services, the federal agency responsible for adjudicating Petitioner's T visa application. His address is 5900 Capital Gateway Drive, Mail Stop 2120, Camp Springs, MD 20588-0009
- F. Respondent Sheriff Paul Arteta is the Sheriff of Orange County, NY and is the ranking officer of the Orange County Jail, where Petitioner is being held. He is the custodian of Petitioner and is named in his official capacity.

II. JURISDICTION & VENUE

The Court has jurisdiction under the Suspension Clause. The Suspension Clause provides, "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. Art. I § 9, cl. 2. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. §§ 2241 *et seq.*, as protected under Art. I § 9, cl. 2 of the United States Constitution (Suspension Clause), and federal question jurisdiction under 28 U.S.C. § 1331. This case arises under the United States Constitution; the INA, 8 U.S.C. §§ 1101 *et seq.*; the APA, 5 U.S.C §§ 701 *et seq.*; the Due Process Clause of the Fifth Amendment and the Fourth Amendment. Petitioner's current removal order as enforced by Respondents constitutes a "severe restraint[] on [Petitioner's] individual liberty," such that Petitioner is "in custody in violation of the . . . laws . . . of the United States." *See Hensley*, 411 U.S. at 351 (1973); 28 U.S.C. § 2241(c)(3). Petitioner is also subject to prolonged physical detention.

While the courts of appeals have jurisdiction to review removal orders directly through petitions for review, *see* 8 U.S.C. § 1252, federal district courts have jurisdiction under 28

U.S.C. § 2241(d) to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of Respondents' conduct. *See Demore v. Kim*, 538 U.S. 510, 516–517 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). No Supreme Court or Second Circuit precedent applicable to immigration detainees, nor the habeas statute, indicate that venue is not proper in the Southern District of New York. *See* 28 U.S.C. § 2241. Venue is proper in the Southern District of New York because a substantial part of the events and omissions giving rise to this action occurred in the District. 28 U.S.C. § 1391(b)(2). Petitioner is currently being held at the Orange County Jail, located in Orange County, New York, which is within the Southern District of New York.

III. FACTS GIVING RISE TO THE HABEAS PETITION

The Petitioner, Mr. Ayavaca Tenemea, was born in Cuenca, Ecuador on [REDACTED]

[REDACTED] Petitioner fled Ecuador in April of 2024 to escape from violent threats from [REDACTED]

[REDACTED] During his travel from Ecuador to the United States, Petitioner became a victim of human trafficking and forced labor, which was enforced through violent beatings. Petitioner reported the trafficking to [REDACTED] and has expressed his willingness to cooperate with any investigation of the traffickers.

Petitioner's proceedings in the Immigration Court were conducted by Immigration Judge Jesse Christensen at the New York - Broadway Immigration Court. While Petitioner was unrepresented by counsel before the Immigration Court, the Immigration Judge set a deadline to submit an asylum application by September 30, 2024. Petitioner retained counsel, who entered a notice of appearance on or about October 2, 2024. The next day, on October 3, 2024, the Immigration Judge issued an order of removal based on the Petitioner's failure to file the asylum application pursuant to the court's deadline. *See Exhibit A.*

On December 31, 2024, Petitioner, through counsel, filed a motion to reopen before the Immigration Court. *See Exhibit B*. The motion argued that Petitioner did not understand the scheduling order. Petitioner submitted a copy of his T visa application, which was filed with USCIS on November 15, 2024. Petitioner argued that his failure to understand the Scheduling Order was due to the trauma that he suffered as a victim of human trafficking. The motion to reopen included a completed asylum application. Petitioner requested that the proceedings be reopened to allow for the asylum application to be adjudicated with the assistance of counsel and to allow USCIS to adjudicate the T visa application.

On January 13, 2025, the Immigration Judge denied the motion to reopen. *See Exhibit C*, citing that Petitioner's argument that he did not understand the scheduling order was "not persuasive." The Immigration Judge found that there were no "indicia of incompetency" and noted that Petitioner asked pertinent questions during the hearing. The Immigration Judge also declined to reopen the proceedings based on the pending T visa application. The Immigration Judge also denied the motion to reopen as a matter of discretion based on the conclusion that Petitioner's forced labor for the traffickers was "a serious adverse factor."

Petitioner subsequently appealed the denial of the motion to reopen to the Board of Immigration Appeals on January 28, 2025. *See Exhibit D*. Petitioner file a motion for a stay of removal with the BIA on February 15, 2025. *See Exhibit E*. The petitioner submitted two requests to ICE for a stay of removal, which were subsequently denied. *See Exhibit F*. On or about February 3, 2025, the United States Citizenship and Immigration Services ("USCIS") issued a notice indicating that it had determined that Petitioner's Application seeking T Nonimmigrant Status has been deemed bona fide. *See Exhibit G*. This determination included language that "any final order

of removal, deportation, or exclusion is automatically stayed because [the] application [was] determined to be bona fide.” *Id.*

Petitioner is currently in ICE custody at the Orange County Jail at 110 Wells Farm Road in Goshen, New York. Petitioner has been detained for almost twelve months. Petitioner suffers from significant post-traumatic stress disorder as well as long-term physical injury from his experience or being subjected to violent human trafficking and forced labor and should not remain detained given his condition as well the prior determination issued by the USCIS regarding his removal.

IV. APPLICABLE LAW

The Due Process Clause applies to all persons in the United States, “whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. at 693; *see also Yick Wo v. Hopkins*, 118 U.S. 356 (1886). The Supreme Court declared “that the Due Process Clause protects individuals against two types of government action” giving rise to distinct claims of substantive and procedural due process violations. *United States v. Salerno*, 481 U.S. 739, 746 (1987). Thus, “the touchstone of due process is protection of the individual against arbitrary action of government ... whether the fault lies in the denial of fundamental due process fairness [procedural due process] ... or in the exercise of power without any reasonable justification in the service of a legitimate government objective [substantive due process]...” *City of Sacramento v. Lewis*, 523 U.S. 833 (1998) (citations and internal quotations omitted).

Procedural due process constrains governmental decisions that deprive individuals of property or liberty interests within the meaning of the Due Process Clause of the Fifth Amendment. *See Matthews v. Eldridge*, 424 U.S. 319, 332 (1976); *see also Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972) (reliance on informal policies and practices may establish a

legitimate claim of entitlement to a constitutionally-protected interest). Infringing upon a protected interest triggers a right to a hearing before that right is deprived, and a right to meaningful process afforded at a meaningful time. *See Bd. of Regents v. Roth*, 408 U.S. 564, 569–70 (1972). “‘Substantive due process’ prevents the government from engaging in conduct that ‘shocks the conscience,’ ... or interferes with rights ‘implicit in the concept of ordered liberty.’” *Salerno*, 481 U.S. at 746. (internal citations omitted).

Respondents’ power to detain and deport someone is not limitless, nor is it shielded from judicial review. *See Calderon v. Sessions*, 330 F. Supp. 3d 944, 950 (S.D.N.Y. 2018) *appeal withdrawn sub nom. Villavicencio Calderon v. Sessions*, No. 18-2926, 2018 WL 6920377 (2d Cir. Oct. 5, 2018) (ordering a stay of removal and release from detention to permit the Petitioner to continue with the provisional waiver process afforded by the government); *You Xiu Qing v. Nielsen*, 321 F.Supp.3d 451 (S.D.N.Y. 2018) (ordering a stay of removal and release from detention to permit the Petitioner to continue with the provisional waiver process and a motion to reopen); *S.N.C. v. Sessions*, No. 18 2018 WL 6175902, (S.D.N.Y. Nov. 26, 2018); *Compere v. Nielsen*, 2019 WL 332193, at *9 (D.N.H. Jan. 24, 2019) (granting a stay of removal for petitioner because deportation to Haiti would vitiate his ability to pursue an appeal to the BIA of the IJ’s denial for a motion to reopen); *Lin v. Nielsen*, 2019 WL 1958569 at *15 (D. Md. May 2, 2019) (court found that a preliminary injunction was “in the public interest, as it requires DHS to comport with its own rules and regulations, and bars arbitrary and capricious action towards vulnerable undocumented immigrants.”); *see also Martinez v. Neilsen*, 341 F.Supp.3d 400 (D.N.J. Sept. 14, 2018); *Fatty v. Nielsen*, 2018 WL 3491278 at *2 (W.D. Wash. Jul. 20, 2018); *Gutierrez-Soto v. Sessions*, 317 F. Supp. 3d 917, 933-35 (W.D. Tex. 2018); *Jimenez v. Nielsen*, No. CV 18-10225-MLW, 2018 WL 4539687 (D. Mass. Sept. 21, 2018); *Sied v. Nielsen*, 2018 WL 1142202 (N.D.

Cal. Mar. 2, 2018); *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29, 2018); *Ibrahim v. Acosta*, No. 17-CV-24574, 2018 WL 582520 (S.D. Fla. Jan. 26, 2018); *Chhoeun v. Marin*, 306 F. Supp. 3d 1147 (C.D. Cal. 2018); *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017).

“Habeas corpus is at its core, an equitable remedy.” *Schlup v. Delo*, 513 U.S. 298, 319 (1995). Judges have “broad discretion” to fashion an appropriate remedy. It may extend beyond simply ordering the release of a petitioner, *Carafas v. La Vallee*, 391 U.S. 234 (1968), and is to “be administered with the initiative and flexibility essential to ensure that miscarriages of justices within its reach are surfaced and corrected.” *Harris v. Nelson*, 394 U.S. 286, 291 (1969). Habeas corpus “never has been a static, narrow, formalistic remedy; its scope has been to achieve its grand purpose - the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963). At its historical core, habeas corpus “has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.” *Rasul v. Bush*, 542 U.S. 466, 474 (2004) (citations omitted). These protections extend fully to noncitizens subject to an order of removal. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also Martinez v. McAleenan*, 385 F.Supp.3d 349, 355 (“Due to its talismanic significance in protecting individual liberty from unlawful detention, habeas corpus is fundamentally governed by equity. The Supreme Court has granted the writ when justice has so required.”) (citing *Munaf v. Grren*, 128 S.Ct. 2207 (2008) and *Carafas v. LaVallee*, 392 U.S. 234 (1968)). The Supreme Court has noted the writ’s “scope and flexibility--its capacity to reach all manner of illegal detention--its ability to cut through barriers of form and procedural mazes.” *Harris*, 394 U.S. at 291.

Furthermore, in *Demore*, the Supreme Court held that mandatory detention under § 1226(c) was not unconstitutional on its face, but limited its holding to a brief period of detention,

stating "Congress, justifiably concerned that deportable criminal aliens who are not detained continue to engage in crime and fail to appear for their removal hearings in large numbers, may require that persons such as respondent be detained for *the brief period* necessary for their removal proceedings." 538 U.S. at 513 (emphasis added). The Court described the "brief period" that it held valid: "in the majority of cases," detention pursuant to § 1226(c) in 2003 "lasts for less than ... 90 days." *Id.* at 529.

In the present case, there is no indication the record that Petitioner is being detained for a brief period. On the contrary, Petitioner is subject to prolonged detention that may last for years. Additionally, Petitioner has a pending Application for T Nonimmigrant Status, which is a specific form of relief that Congress made available for victims of domestic violence and human trafficking, including those with final orders of removal pending against them. *See* 8 C.F.R. § 214.11(d)(1)(ii); *see also, S.N.C. v. Sessions*, 2018 WL 6175902 (SDNY 2018). However, as presence in the United States is a condition of eligibility, his T Nonimmigrant Status cannot be granted if he is removed. 8 C.F.R. § 214.11(g). As such, in the absence of action by the Court, Petitioner's rights will be violated either by unreasonably prolonged detention, or by interference with his T Application, or both.

V. REQUEST FOR RELIEF

Pending the adjudication of this Petition, Petitioner respectfully requests that the Court use its authority under 28 U.S.C. §2243 to order the Respondents to file a return within three days, unless they can show good cause for additional time. *See* 28 U.S.C. §2243. (Order to show cause why a petition for a writ of habeas corpus should not be granted should be "returned within three days unless for good cause additional time, not exceeding twenty days, is allowed").

Petitioner respectfully requests that Respondents be restrained from removing Petitioner from the United States pending a decision on his currently pending and bona fide application for a T visa. Without this Court's intervention, the Respondents will seek to remove Petitioner in violation of law and inflict further cruel and unnecessary harm on Petitioner. Petitioner requests that this Court issue an order that Respondents must notify the Court and Petitioner's counsel five days prior to any removal of Petitioner.

Furthermore, Petitioner requests to be released from detention pending resolution of this matter. Petitioner has been subjected to prolonged detention despite the fact that he is entitled to deferral of removal and potential nonimmigrant status based on his pending T visa. Petitioner has no criminal history and has expressed a desire to assist the FBI or other authorities in investigating and prosecuting the perpetrators who subjected him to human trafficking and forced labor. Alternatively, the Court should order the Immigration Court to conduct an individualized bond hearing to determine whether there is any relevant basis to keep him detained at this time.

VI. EXHAUSTION OF REMEDIES

Petitioner's claims of receiving a constitutionally inadequate process to justify the intrusions into his liberty interests are not subject to any statutory requirement of administrative exhaustion. *See McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). To the extent that prudential concerns lead the Court to require exhaustion as a discretionary matter, Petitioner has exhausted the administrative remedies available to him. Petitioner has filed a motion to reopen with the Immigration Court and has filed a timely appeal of the denial of that motion. Moreover, no administrative agency, not an Immigration Judge nor the BIA, can rule on the constitutional nature of Petitioner's due process claims.

Finally, Petitioner is threatened with irreparable harm – in the form of imminent physical danger and elimination of the ability to pursue legal processes and constitutional claims – such that exhaustion should not be required. Respondents have the ability to parole Petitioner. 8 C.F.R. §§ 235.3(b)(2)(iii), 1235.3(b)(2)(iii). Nevertheless, Respondents have refused to parole him up to this point, despite his pending T Application, which has been deemed bona fide.

VII. REQUEST FOR ORAL ARGUMENT

Petitioner respectfully requests oral argument on this Petition.

VIII. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Issue a Writ of Habeas Corpus on the ground that Petitioner’s continued detention violates the Due Process Clause and order Petitioner’s immediate release;
3. In the alternative, issue injunctive relief ordering Respondents to immediately release Petitioner on the ground that his continued detention violates the Due Process Clause;
4. Enjoin Respondents from removing Petitioner from the United States;
5. Order Respondents file a return within three days pursuant to 28 U.S.C. § 2243.
6. Declare that the process as applied to Petitioner by Respondents violates the Suspension Clause, the Due Process Clause of the Fifth Amendment, the Fourth Amendment, the INA, the APA, and federal regulations;
7. Issue a writ of habeas corpus directing Respondents to pursue a constitutionally adequate process to justify adverse immigration actions against Petitioner;

8. Stay Petitioner's removal from the United States until the adjudication of his T visa by USCIS is completed;
9. Order Respondents to provide five days of notice to the Court and Petitioner of his imminent removal;
10. Order Respondents to follow the applicable rules, regulations, law, and the constitution related to Petitioner's pending T visa application.
11. Award Petitioner his costs and reasonable attorney's fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. §2412, or other statutes;
12. Grant such further relief as the Court deems just and proper.

Dated: October 30, 2025
White Plains, NY

Respectfully submitted,

By: 

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

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition. On the basis of those discussions, on information and belief, I hereby verify that the factual statements made in the attached Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief are true and correct to the best of my knowledge.

Dated: White Plains, NY

October 30, 2025

By: 
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