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 **PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** **ORAL ARGUMENT REQUESTED**

Pursuant to Fed. R. Civ. P. 65, Petitioner, David Fernando Ayavaca Tenemea ("Petitioner") ([redacted]), by and through undersigned counsel, hereby moves this Court for a Temporary Restraining Order and a Preliminary Injunction enjoining the Respondents in the above captioned matter from removing him from the United States until further order of this court. In support of this Motion, Petitioner relies upon the Verified Petition for Writ of Habeas Corpus and the Memorandum of Points and Authorities in Support of this motion submitted herewith, and the exhibits submitted with those documents.

WHEREFORE, Petitioner respectfully prays that the Court:

(a) grant Petitioner's Motion for a Temporary Restraining Order and Preliminary Injunction;

(b) enter an Order enjoining Respondents and their agents from removing Petitioner Ayavaca Tenemea from the United States until further order of the Court;

(c) enter an Order requiring Respondents to notify Petitioner's counsel and the Court five days in advance of any imminent removal, and

(d) grant Petitioner such other, further and additional relief as the Court deems just and appropriate.

Respectfully submitted,

October 30, 2025

By: _____

Argenis Steven Gonzalez
RALDIRIS & GONZALEZ PLLC
90 North Street, Suite 101
Middletown, New York 10940
Phone: (718) 210-3380
Direct: (718) 210-3255
Email: sgonzalez@rgattys.com

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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 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITIONERS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION** **ORAL ARGUMENT REQUESTED**

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IN SUPPORT OF PETITIONER'S MOTION FOR

PRELIMINARY INJUNCTION

Pursuant to Fed. R. Civ. P. 65, David Fernando Ayavaca Tenemea ("Petitioner") (A# [redacted], by and through undersigned counsel, respectfully request this Court to enter an Order preliminarily enjoining the Respondents from removing him from the United States until further order of this court pending the adjudication of his habeas petition. The grounds for this Motion are set forth below and in the Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief ("Petition") and exhibits thereto.

FACTUAL BACKGROUND

The Petitioner, Mr. Ayavaca Tenemea, was born in Cuenca, Ecuador on [redacted]. Petitioner fled Ecuador in April of 2024 to escape from violent threats from [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 1**.

On December 31, 2024, Petitioner, through counsel, filed a motion to reopen before the Immigration Court. See, **Exhibit 2**. The motion argued that Petitioner did not understand the Scheduling Order. Petitioner submitted a copy of his Application for T nonimmigrant, 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 Application.

On January 13, 2025, the Immigration Judge denied the motion to reopen. *See* **Exhibit 3**. The Immigration Judge indicated 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 4**. Petitioner filed a motion for a stay of removal with the BIA on February 15, 2025. See, **Exhibit 5**. The petitioner submitted two requests to ICE for a stay of removal, which were subsequently denied. See, **Exhibit 6**. USCIS issued a notice indicating that it has determined that the application for a T Nonimmigrant Status had been deemed bona fide. See, **Exhibit 7**.

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 more than six 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.

ARGUMENT

I. Legal Standard

To obtain preliminary injunctive relief, Petitioner is required to show 1) that he is likely to suffer irreparable harm and (2) either (a) a likelihood of success on the merits of his case or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in his favor. *See UBS Fin. Servs., Inc. v. W.V. Univ. Hosps., Inc.*, 660 F.3d 643, 648 (2d Cir. 2011). Preliminary injunctive relief "is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Moore v. Consol. Edison Co. of N.Y., Inc.*, 409 F.3d 506, 510 (2d Cir. 2005) While a petitioner seeking a preliminary injunction has the burden of demonstrating likelihood of success on the merits, they are not required to prove their case in full at the preliminary injunction stage, but only such portions that enable them to obtain the injunctive relief that they seek. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981).

II. *Petitioner Is Entitled to Injunctive Relief*

Under the Due Process Clause of the Fifth Amendment, no person shall be deprived of life, liberty, or property, without due process of law. U.S. Const. Amend. V. Non-citizens on U.S. soil have constitutional rights, including the right to due process of law. *Yick Wo v. Hopkins*, 118 U.S. 356, 368-69 (1886); *Matthew v. Diaz*, 426 U.S. 67, 77 (1976). The Court in *Martinez*

v. McAleenan found that ICE had acted unlawfully in the detention and attempt to deport the petitioner, who had been afforded neither notice nor warning and had a pending claim for relief in the form of a U-visa. *Martinez v. McAleenan*, 2019 U.S. Dist. Lexis 100421 at *7 (S.D.N.Y. June 14, 2019). In the *Martinez* case, the court explained that "[d]ue 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.") *Id.* (citing *Hamdi v. Rumsfeld,* 542 U.S. 507 (2009), *Munaf v. Geren,* 128 S.Ct. 2207 (2008) and *Carafas v. LaVallee,* 392 U.S. 234 (1968);[1] see also *See S.N.C. v. Sessions*, No. 18 CIV. 7680 (LGS), 2018 WL 6175902 (S.D.N.Y. Nov. 26, 2018); *Bengally Fatty v. Nielsen*, 2018 WL 3491278 (W.D. Wash. July 20, 2018) (holding that a detained non-citizen victim of human trafficking with a pending application for T Nonimmigrant Status satisfied the *Mathew* Test).

Federal courts have "inherent power" to issue orders necessary to their jurisdiction over a pending case. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); *see id.* at 58 (Scalia, J., dissenting) ("Some elements of that inherent authority are so essential to the [Article III] judicial Power, that they are indefeasible, among which is a court's ability to enter orders protecting the integrity of its proceedings."). As such, Article III courts' inherent powers can be limited by only the clearest statutes or rules. *See Califano v. Yamaski*, 422 U.S. 682, 705 (1979) ("Absent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions...."). As the Supreme Court held in *Nken v Holder*, "[a]n [noncitizen] seeking a stay of removal . . . does not ask for a coercive order against the Government, but rather for the

[1] *See also* Gerard L. Neuman, Habeas Corpus, Executive Detention, and the Removal of Aliens, 98 Colum. L. Rev. 961, 1044 (1998) ("[H]istorical precedents beginning shortly after 1787 and reaching to the present confirm the applicability of the writ of habeas corpus to the detention involved in the physical removal of aliens from the United States. These precedents include opinions . . . denying the power of Congress to eliminate judicial inquiry.").

temporary setting aside of the source of the Government's authority to remove." *Nken v Holder*, 556 U.S. 418, 419 (2009).

Moreover, federal courts have inherent authority to protect litigants' access to the courts. *See Bounds v. Smith*, 430 U.S. 817, 824 (1977) (holding that the Constitution guarantees litigants "meaningful access to the courts"). This is particularly true in the habeas context. *See Johnson v. Avery*, 393 U.S. 483, 485 (1969) ("Since the basic purpose of the writ is to enable those unlawfully incarcerated to obtain their freedom, it is fundamental that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed."). *See also, Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (plurality opinion of O'Connor, J.); U.S. Const. art. I, § 9, cl. 2 ("The Privilege of the Writ of Habeas Corpus shall not be suspended . . ."); 28 U.S.C. § 2241(c)(3) (stating federal courts may grant the writ to any person "in custody in violation of the Constitution or laws or treaties of the United States"). Thus, when the Government argues that 8 U.S.C. § 1252 deprives the Court of habeas jurisdiction, a two-pronged inquiry follows: (i) whether the statute contains a clear statement that the Court lacks habeas jurisdiction, and (ii) if the statute does clearly deny jurisdiction, then whether the statute unconstitutionally suspends the habeas writ by failing to provide an adequate alternative forum for review. *See Boumediene v. Bush*, 553 U.S. 723, 736, 771 (2008) (determining first whether the statute "denies the federal courts jurisdiction," and then whether the statute "avoids the Suspension Clause mandate" by providing "adequate substitute procedures for habeas corpus").

Recognizing the need to protect access, multiple courts have issued temporary stays of removal in order to provide the court with the requisite time to consider the underlying relief sought. *See Calderon v. Sessions*, 330 F.Supp.3d 944 (S.D.N.Y. Aug. 1, 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 v. Nielsen*, 321 F.Supp.3d 451, 461 (S.D.N.Y Aug. 2, 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); *Jimenez v. Calderon,* 334 F.Supp.3d. 37, 390 (D. Mass. Sept. 21, 2018) (Court found that "ICE may not order the removal of an alien pursuing a provisional waiver solely because he or she is subject to a final order of removal.") and *De Jesus Martinez v. Nielsen,* ---F.Supp.3d---, 2018 WL 4442229 *4 (D.N.J. Sept. 14, 2018) (ordering a stay of removal and ultimately release of the petitioner to permit him the opportunity to continue with the provisional waiver process.) *See also, Compere v. Nielsen*, 18-cv-1036 (PB), Memorandum and Order (D.N.H. Jan. 24, 2019) (court ordered a stay of the petitioner's removal and found that "[h]abeas corpus is thus Compere's only option to test the lawfulness of the government's proposed action. In such circumstances, the jurisdiction-stripping provisions cannot be applied to deprive this Court of its habeas corpus jurisdiction without violating the Suspension Clause."); *Ibrahim v. Acosta*, No. 17-cv-24574-GAYLES (S.D. Fla. Dec. 19, 2017) (ordering a stay of removal pending consideration of habeas challenge, as well as provision of reasonable access to counsel); *Devitri v. Cronen*, No. 17-11842-PBS (D. Mass. Sept. 26, 2017) (ordering a stay of removal in order to maintain status quo pending consideration of habeas challenge to removal); *Neth v. Marin*, No. SACV 17-01898-CJC(GJSx) (C.D. Ca. Dec. 14, 2017) (ordering a stay of removal pending consideration of habeas challenge to re-detention, noting that a stay was necessary given the speed with which the Government intended to remove petitioners); *Sied v. Duke*, 17-cv-06785-LB, 2017 WL 6316821 (N.D. Ca. Dec. 11, 2017) (ordering a stay of removal pending consideration of habeas challenging removal, to allow time for petitioner to file a motion to reopen and noting that counsel had not yet been able to visit with Petition in detention); *Darweesh v. Trump*, 17-cv-480 (AMD) (E.D.N.Y. Jan. 28, 2017) (ordering

a stay of removal pending consideration of habeas petition challenging removal and detention); *Kabenga v. Holder*, 76 F. Supp. 3d 480, 486 (S.D.N.Y. Jan. 2, 2015) (ordering a stay of removal pending consideration of habeas challenge to validity of underlying removal order) and *Jimenez v. Napolitano*, C-12-03558 (RMW), 2012 WL 3144026 (N.D. Ca. Aug. 1, 2012) (ordering a stay of removal pending consideration of habeas petition).

A) Irreparable Harm in Absence of Injunction

An injury is "irreparable" if it is "not accurately measurable or adequately compensable by money damages." *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.* 102 F.3d 12, 19 (1st Cir. 1996); *see also United Steelworkers of Am., AFL-CIO v. Textron, Inc.* 836 F.2d 6, 8 (1st Cir. 1987). *Thuraissigiam v. U.S. Dep't of Homeland Sec.*, 917 F.3d 1097 (9th Cir. 2019). Due process cases recognize a broad liberty interest rooted in the fact of deportation, not just the process of removal proceedings. *See Bridges v. Wixon*, 326 U.S. 135, 154 (1945) (deportation "visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom."); *see also Chhoeun v. Marin*, 2018 WL 566821, at *9 (C.D. Cal., Jan. 25, 2018) (finding a "strong liberty interest" where being deported means being separated from home and family).

Irreparable harm to Petitioner in the absence of injunctive relief is readily established in this case. Petitioner's sworn statements indicate that he fears violent harm both by [redacted] who sought to subject him to human trafficking and forced labor. Additionally, Petitioner will be likely to lose his opportunity to assist in the investigation and prosecution of the perpetrators, who, upon information and belief, continue to engage in violent human trafficking activities within the United States. Petitioner also hopes to remain in the United States to obtain psychological and medical treatment for the ongoing harm

that he has suffered due to his experience. As such, Petitioner will suffer irreparable harm if he is removed from the United States.

B) Likelihood of Success on the Merits

Immigrants who pursue lawful immigrant and nonimmigrant status in the United States have rights under the Due Process Clause of the Fifth Amendment. Once a petitioner has identified protected liberty or property interest, the Court must determine whether constitutionally sufficient process has been provided. *Matthews*, 424 U.S. at 335. In making this determination, the Court balances (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural requirement would entail;" and (3) "the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.*

Due process cases recognize a broad liberty interest rooted in both the fact of removal and the process of removal proceedings. *See Bridges v. Wixon*, 326 U.S. 135, 154 (1945) (deportation "visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom."); *see also Chhoeun v. Marin*, 2018 WL 566821, at *9 (C.D. Cal., Jan. 25, 2018) (finding a "strong liberty interest" where being deported means being separated from home and family). Due process protects a noncitizen's liberty interest in the adjudication of discretionary applications for relief and benefits made available under the immigration laws. *See Arevalo v. Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003) (recognizing protected interests in the "right to seek relief" even when there is no "right to the relief itself"). Petitioners have protected due process interests in exhausting the statutory remedies provided by the INA. In the present case, Petitioner has filed a motion to reopen because he was never provided with a legally sufficient opportunity to submit

his asylum application and because he has a pending application for a nonimmigrant T visa based on his experience as a victim of severe human trafficking and forced labor.

The Government's actions toward Petitioners violate or will violate the APA and the Fifth Amendment. The APA provides that a court "shall. . . hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). To satisfy the APA, an agency must "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016) (quoting *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). In the present case, the Immigration Judge relied on arbitrary and erroneous analysis in denying the motion to reopen.

"Freedom from imprisonment- from government custody, detention, or other forms of physical restraint - lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001). This liberty interest applies equally to aliens present within the United States. The Supreme Court has repeatedly recognized that "the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id* at 693; *see also Reno v. Flores,* 507 U.S. 292, 306 (1993) ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings."); *Demore v. Kim,* 538 U.S. 510, 523 (2003) (same). As a result, the Supreme Court concluded in *Zadvydas* that "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem" under the Fifth Amendment. 533 U.S. at 690.

Furthermore, in *Demore,* the Supreme Court held that mandatory detention under 8 U.S.C. § 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 bona fide application for a T Nonimmigrant Status. A T visa 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 visa cannot be granted if he is removed. 8 C.F.R. § 214.11(g). As such, the Petitioner is likely to prevail on the merits of the habeas action because his removal or prolonged detention would constitute a violation of due process.

C) There is No Substantial Injury to Other Parties and Injunctive Relief is in Public Interest

The issuing of a temporary restraining order and a preliminary injunction is warranted because the balance of equities tips in the favor of the Petitioners and the injunction is squarely within the public interest. By creating the T visa, Congress has communicated a strong public interest in protecting the victims of human trafficking and allowing them to be free to cooperate in investigations and prosecutions against the perpetrators. Moreover, the record shows that

Petitioner was ordered removed due to an arbitrary scheduling order that did not include individualized consideration of the applicable circumstances.

The Petitioner, the public, and the Government all have an "interest in ensuring that all persons, including non-citizens, obtain fair treatment in legal proceedings." *Reid v. Donelan*, 22 F. Supp. 3d 84, 91 (D. Mass 2014). *See also, Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (a government agency "cannot suffer harm from an injunction that merely ends an unlawful practice"); *Devitri*, 2-18 WL 661518, at *7 ("[t]he public's interest in providing due process for non-citizens to ensure that they are not removed to a country where they will be persecuted is an extremely weighted one.") While the government has an interest in enforcing the nation's immigration laws, the government's actions here are in direct contravention of Congress's express intent and the government's own regulations.

The Government "cannot suffer harm from an injunction that merely ends an unlawful practice or reads a statute as required to avoid constitutional concerns." *R.I.L-R v. Johnson*, 80 F. Supp. 3d at 191 (D.D.C. Feb. 20, 2015) (citing *Rodriguez v. Robbins,* 715 F.3d 1127, 1145 (9th Cir. 2013)). Further, "the public interest is served when administrative agencies comply with [the requirements of U.S. law]." *Id.* Approving this temporary restraining order would ensure that Petitioner is afforded his rights under the Due Process clause and the applicable statute and regulations. Denying the order would result in an arbitrary outcome that would be violative of Petitioner's rights and contrary to the interest of justice.

CONCLUSION

WHEREFORE, Petitioners respectfully requests that this Court enter the proposed Order and preliminarily enjoin the Respondents from deporting Petitioner Vidal or moving him without providing 5 days-notice pending resolution of the merits of the Petition.

Dated: October 30, 2025,

Respectfully submitted,

By: _____

Argenis Steven Gonzalez
RALDIRIS & GONZALEZ PLLC
90 North Street, Suite 101
Middletown, New York 10940
Phone: (718) 210-3380
Direct: (718) 210-3255
Email: sgonzalez@rgattys.com