UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Jorge Luis Culcay Veletanga, 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. 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, Jorge Luis Culcay Veletanga, 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 been physically detained since September 6, 2025. He filed a motion before the Executive Office for Immigration Review challenging his detention and seeking a minimal bond to secure release. However, the Immigration Judge denied jurisdiction, citing the recent Board of Immigration Appeals decision in *Matter of Yajure-Hurtado*, 29 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, Petitioner Jorge Luis Culcay Veletanga respectfully requests that this Court enjoin Respondents from effectuating his removal from the United States and order his immediate release from custody, or in the alternative, or enjoin Respondents from continuing to detain him in violation of his due process rights.

Petitioner has been subjected to prolonged detention that far exceeds the brief period constitutionally permitted to facilitate removal. See *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001); *Demore v. Kim*, 538 U.S. 510, 530 (2003). His continued detention no longer serves any legitimate governmental purpose and has become arbitrary and punitive, in violation of the Due Process Clause of the Fifth Amendment.

Petitioner has been afforded deferral of removal as he has an approved Deferred Action for Childhood Arrivals ("DACA"), who also presently has a pending Application for Cancellation of Removal (Form EOIR-42B) and an Application for Asylum and Withholding of

Removal (Form I-589), both filed before the Immigration Court. He must remain lawfully present in the United States to complete adjudication of his meritorious claims for relief.

Further, the Immigration Court and the Board of Immigration Appeals have expressly disclaimed jurisdiction to review or redetermine custody in light of *Matter of Yajure-Hurtado*, 29 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. Jorge Luis Culcay Veletanga is a 28-year-old native and citizen of Ecuador who fled the country with his family at the age of six. His parents were targeted by [redacted] and the family left Ecuador to escape ongoing threats and persecution. Petitioner Jorge Culcay entered the United States on or about January 2003 and is currently seeking protection through asylum and cancellation of removal before the Immigration Court. He is currently detained at the Orange County Jail, 110 Wells Farm Rd., Goshen, New York 10924.

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. Jorge Culcay, was born in Cuenca, Ecuador, on July 10, 1997 (*See* **Exhibit "A").** Petitioner fled Ecuador in January 2003 at the age of six, after his parents had already departed the country due to [redacted] Given the urgent

circumstances and limited options, Petitioner traveled alone to the United States. Petitioner Jorge Culcay is currently seeking protection through asylum and cancellation of removal before the Immigration Court

Petitioner has been physically detained since September 6, 2025. He filed a motion before the Executive Office for Immigration Review challenging his detention and seeking a minimal bond to secure release. However, the Immigration Judge denied jurisdiction, citing the recent Board of Immigration Appeals decision in *Matter of Yajure-Hurtado*, 29 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. (*See* **Exhibit "B"**).

Petitioner, Mr. Jorge Culcay, is currently in removal proceedings before Immigration Judge Francisco R Prieto, at the Orange County Jail Immigration Court, located at 110 Wells Farm Road Goshen, NY 10924. Petitioner is scheduled for an individual hearing to hear him on an Application for Cancellation of Removal (*see* **Exhibit "C"**) and for the Asylum Application and for Withholding of Removal (*See* **Exhibit "D"**) on November 5, 2025 at 9:30 AM, at 10:30 AM. He is represented by counsel, Andrea C. Soto, who has entered a notice of appearance before this Honorable Court.

Petitioner was granted Deferred Action for Childhood Arrivals (DACA) on November 5, 2012, (**See Exhibit "E"**), further demonstrating his longstanding residence in the United States and his consistent efforts to regularize his immigration status through lawful channels. These records reflect his deep-rooted ties to the country and his continued pursuit of protection under applicable immigration laws.

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 in the record that Petitioner is being detained for a brief or temporary period. On the contrary, Petitioner is subject to prolonged detention that may extend for years, despite having meritorious claims for relief pending before the Immigration Court. Specifically, Petitioner has filed an Application for Asylum and Withholding of Removal (Form I-589) and an Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (Form EOIR-42B). Both forms of relief require full adjudication before the Immigration Court and depend on Petitioner's continued presence in the United States. Removal or continued detention without resolution of these applications would not only undermine the integrity of the immigration process but also risk violating Petitioner's statutory and constitutional rights. In the absence of timely action by the Court, Petitioner faces the dual harm of unreasonably prolonged detention and deprivation of a fair opportunity to pursue lawful relief.

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 applications for Asylum and Withholding of Removal (Form I-589) and for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (Form EOIR-42B).

Without this Court's intervention, the Respondents may seek to remove Petitioner in violation of law and inflict further cruel and unnecessary harm. Petitioner therefore requests that this Court issue an order requiring Respondents to notify the Court and Petitioner's counsel at least five days prior to any attempt to remove Petitioner from the United States.

Furthermore, Petitioner respectfully requests to be released from detention pending resolution of this matter. He has been subjected to prolonged detention despite having bona fide applications for Asylum and Withholding of Removal (Form I-589) and for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (Form EOIR-42B) currently pending before the Immigration Court. While Petitioner has a limited criminal history, he poses no threat to public safety and remains eligible for discretionary relief under applicable immigration laws. Alternatively, Petitioner requests that this Court order the Immigration Court to conduct an individualized bond hearing to determine whether continued detention is justified under the circumstances

VI. EXHAUSTION OF REMEDIES

Petitioner's claims regarding the constitutionally inadequate process and unlawful deprivation of liberty 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 might lead the Court to consider exhaustion as a discretionary matter, Petitioner has taken all reasonable steps available to him within the administrative framework.

Petitioner faces irreparable harm in the form of continued detention, psychological trauma, and the risk of premature removal before he can pursue the legal remedies available to him. Respondents have the authority to parole Petitioner under 8 C.F.R. §§ 235.3(b)(2)(iii), 1235.3(b)(2)(iii), yet have declined to do so despite his eligibility and humanitarian

circumstances. Further, because the administrative process offers no meaningful opportunity for relief due to the recent holding of the Board of Immigration Appeals in *Matter of Yajure-Hurtado,* 29 I&N Dec. 216 (BIA 2025), exhaustion of remedies is not required. See *McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992) (exhaustion excused where administrative remedies are inadequate or futile); *INS v. St. Cyr*, 533 U.S. 289, 314 (2001).

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. Order Respondents to provide five days of notice to the Court and Petitioner of his imminent removal;
9. Order Respondents to follow all applicable rules, regulations, laws, and constitutional protections in relation to Petitioner's pending applications for Asylum and Withholding of Removal (Form I-589) and Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (Form EOIR-42B).
10. 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;
11. Grant such further relief as the Court deems just and proper.

Dated: November 3, 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

November 3, 2025

By: _____

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