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. 7:25-cv-09211

Judge:

Magistrate Judge:

No request for jury trial

APPLICATION FOR ISSUANCE OF ORDER TO SHOW CAUSE

PETITIONER'S BRIEF IN SUPPORT OF HIS ORDER TO SHOW CAUSE

INTRODUCTION

This Court has jurisdiction pursuant to 28 U.S.C. § 2241(c)(3), which extends to individuals in custody under the authority of the United States in violation of the Constitution, laws, or treaties of the United States. Venue is proper in the Southern District of New York because Petitioner is detained within this District.

Petitioner, Mr. Jorge Luis Culcay Veletanga ("Mr. Culcay"), is a citizen and national of Ecuador. He is a twenty-eight year-old male who has resided in the United States since January 2003, when he fled Ecuador at the age of six due to [redacted] Mr. Culcay entered the country alone as an unaccompanied minor.

Mr. Culcay has deep-rooted ties to the United States and was granted Deferred Action for Childhood Arrivals ("DACA") on November 5, 2012, granting him deferred action from removal. This further reflects his longstanding residence and efforts to regularize his immigration status through lawful channels. He is currently pursuing protection through applications for asylum, withholding of removal, and cancellation of removal before the Immigration Court.

Mr. Culcay has been physically detained since September 2025 at the Orange County Jail in Goshen, New York. He sought redetermination of his custody via Immigration Court, but the Immigration Judge denied jurisdiction, citing the Board of Immigration Appeals' recent decision in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), which held that Immigration Judges lack jurisdiction to redetermine custody for noncitizens charged as removable under INA § 236(a)(1).

Petitioner challenges the legality of his detention and respectfully requests that this Court issue a Temporary Restraining Order (TRO) preventing his transfer outside the jurisdiction of the Southern District of New York while this habeas petition is pending.

FACTS OF THE CASE

Mr. Jorge Luis Culcay Veletanga, a twenty-eight-year-old citizen and national of Ecuador (*See* **Exhibit "A"**), has resided in the United States since January 2003, when he fled his home country at the age of six due to [redacted] Mr. Culcay entered alone as an unaccompanied minor.

Mr. Culcay was granted Deferred Action for Childhood Arrivals (DACA) on November 5, 2012 (*See* **Exhibit "B"**), further demonstrating his longstanding residence in the United States and his consistent efforts to regularize his immigration status through lawful channels. He is currently seeking protection through an application for Cancellation of Removal and an application for Asylum and Withholding of Removal before the Immigration Court.

On or about September 6, 2025, Mr. Culcay was apprehended by police due to allegedly disobeying a Court Order which required him to register with the probation office. ICE detained him at his arraignment at the Carmel Town Court. What ICE officers failed to determine was that Mr. Culcay had been released on bail on a separate matter over the weekend, and was unable to register with the parole office, because it was closed on the weekend. He was arraigned and apprehended by ICE the morning of September 6, 2025. Mr. Culcay was never issued a Form I-213 Record of Deportable Alien, which would have apprised the Petitioner with the facts relating to his arrest and DHS's authority to do so.

September 8, 2025, the Department of Homeland Security issued a Notice to Appear ("NTA") initiating removal proceedings against Mr. Culcay pursuant to section 8 U.S.C. § 1229(a) (*See* **Exhibit "C"**). The NTA charges Mr. Culcay with removability as an alien present in the United States without being admitted or paroled, and lacking valid documentation to enter, under §§ 212(a)(6)(A)(i) and 212(a)(7)(A) of the Immigration and Nationality Act.

Mr. Culcay has been physically detained since September 2025 and is currently held at the Orange County Jail in Goshen, New York. He is 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. He is scheduled for an individual hearing on November 5, 2025, at 9:30 A.M. to hear his Application for Cancellation of Removal (*See* **Exhibit "D**"), and at 10:30 A.M. for his Asylum and Withholding of Removal claims (*See* **Exhibit "E").** He is represented by counsel, Andrea C. Soto, who has entered a notice of appearance before this Honorable Court.

While detained, Mr. Culcay filed a motion before the Executive Office for Immigration Review seeking a minimal bond to secure his release. However, on November 17, 2025, the Immigration Judge denied jurisdiction, citing the Board of Immigration Appeals' decision in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), which 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 "F").**

The BIA's decision in *Matter of Yajure-Hurtado* represents a significant departure from longstanding practice. In that case, the Board improperly conflated the detention authority applicable to "arriving aliens" under 8 U.S.C. § 1225(b)(2) with that applicable to individuals already present in the United States under § 1226(a). By extending § 1225(b)(2) authority to long-term residents arrested in the interior, *Yajure-Hurtado* effectively stripped Immigration Judges of jurisdiction to redetermine custody for individuals like Mr. Culcay, who have lived in the United States for decades and are indisputably not "arriving aliens." This misapplication of the statute underscores the need for judicial correction and further supports the issuance of habeas relief in this case

Mr. Culcay does not have a final order of removal. His case remains pending. His prolonged detention without a full, fair, and individualized bond hearing violates his constitutional

rights and places undue hardship on his ability to prepare his defense and pursue lawful relief. Mr. Culcay respectfully seeks judicial intervention to challenge the legality of his detention and prevent any transfer outside the jurisdiction of the Southern District of New York while this habeas petition is pending.

Courts within the Second Circuit have consistently recognized that prolonged immigration detention without an individualized bond hearing violates due process. In *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020), the Court held that a noncitizen detained under 8 U.S.C. § 1226(c) for an extended period was entitled to a bond hearing before a neutral decision-maker to determine whether continued detention was justified. Likewise, in *Sajous v. Decker*, No. 18-CV-2447 (AJN), 2018 WL 2357266 (S.D.N.Y. May 23, 2018), the Southern District of New York granted habeas relief to a detainee held under § 1226(a), finding that prolonged detention without a bond hearing violated the Fifth Amendment's Due Process Clause. These authorities clarify that the Constitution does not permit the government to detain individuals like Mr. Culcay indefinitely without meaningful review, particularly where, as here, his removal proceedings remain ongoing and he presents strong equities favoring release.

LEGAL ARGUMENT

Mr. Culcay has not been issued a final order of removal. He remains in active removal proceedings and is scheduled for an individual hearing on his applications for asylum, withholding of removal, and cancellation of removal. Mr. Culcay further has deferred action pursuant to his approved DACA status, which underscores his longstanding residence and lawful engagement with immigration processes. He now challenges the legality of his continued detention without bond, and the constitutional framework under which Respondents have denied him access to individualized custody review.

I. Motion for Temporary Restraining Order and Preliminary Injunctive Relief

To obtain a temporary restraining order, a petitioner-plaintiff "must establish that he is

likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Piedmont Heights Civic Club, Inc. v. Moreland*, 637 F.2d 430 (5th Cir. 1981)). Under disturbingly similar circumstances, courts within this Circuit have granted petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 where, as here, the petitioner has been present in the United States for more than two years, was unlawfully detained in the interior by the Department of Homeland Security under §§ 1225(a)(1), (b)(2) and sought immediate release.

In a similar case where the Petitioner had been present in the United States for a lengthy period of time, this Court found that detaining her under 8 U.S.C. § 1225(b)(2) was unlawful and inapplicable—holding that § 1225(b)(2) did not authorize her interior arrest and detention. *See Rivera Zumba v. Bondi*, Civ. No. 25-cv-14626 (KSH), D.N.J. (Sept. 26, 2025) (Hayden, U.S.D.J.). Another recent decision by this Court held that detention under 1225(b)(2)(A) amounts to detention in violation of the laws of the U.S. *Mugliza Castillo v. Lyons*, No. 2:25-cv- 16219 (D.N.J. filed Oct. 3, 2025) (Farbiarz, J.).

The elements are easily satisfied here. Mr. Culcay Veletanga's detention is unlawful and a textbook violation of his Due Process rights.

I. Mr. Culcay Veletangawill likely succeed on the merits.

Mr. Culcay Veletanga seeks his immediate release because he is unlawfully and unconstitutionally deemed ineligible for bond based on an erroneous finding that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

In examining the relevant provisions of §§ 1225 and 1226, the Court considers "whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). The Court's "job is to interpret the words consistent with their 'ordinary meaning . . . at the time Congress enacted the statute.'"

Wis. Cent. Ltd v. U.S., 585 U.S. 274, 277 (2018) (quoting *Perrin v. U.S.*, 444 U.S. 37, 42 (1979)); *see also New Prime Inc. v. Oliveira*, 586 U.S. 105, 113 (2019) (If courts could "freely invest old statutory terms with new meanings, we would risk amending legislation" and "upsetting reliance interests in the settled meaning of a statute") (internal quotations and citations omitted). Of course, the words of a statute "cannot be construed in a vacuum. It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Roberts v. Sea-Land Services, Inc.*, 566 U.S. 93, 101 (2012) (*quoting Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989)).

In *Jennings v. Rodriguez*, the Supreme Court analyzed the interplay between Section 1225 and Section 1226. 583 U.S. 281 (2018). The Supreme Court noted that Section 1225(b) applies primarily to "aliens seeking entry into the United States." *See* quoting *Jennings*, 583 U.S. at 297. The statute itself contemplates "arriving," "seeking," the present tense of someone at the port of entry, where the Government must determine whether an alien seeking to enter the country is admissible. *Kostak v. Trump*, No. 3:25-cv-01093, slip op. at 6 (W.D. La. Aug. 27, 2025) (Edwards, J.) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018)).

For non-citizens already present inside the United States, "Section 1226(a) creates a default rule for those aliens by permitting the Attorney General to release them on bond, 'except as provided in subsection (c) of this section." *See Jennings*, 583 U.S. at 303.

A line must be drawn between how §§ 1225 and 1226 function when it comes to detention of noncitizens, and it is straightforward: detention authority under §1225 is exercised at or near the port of entry for those seeking admission, and detention authority under §1226 must be used when a non-citizen is arrested in the interior of the United States. *See Martinez v. Hyde*, – F.Supp.3d –, 2025 WL 2084238 at *4 (D. Mass. July 24, 2025)(The line historically drawn between these two sections, making sense of their text and overall statutory scheme, is that section 1225 governs

detention of non-citizens "seeking admission into the country," whereas action 1226 governs detention of non-citizens "already in the country."); *see also* Lopez-Campos v. Raycraft, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025)("There can be no genuine dispute that Section 1226(a), and not Section 1225(b)(2)(A), applies to a noncitizen who has resided in this country for over twenty-six years and was already within the United States when apprehended and arrested during a traffic stop, and not upon arrival at the border."); Rodriguez v. Bostock, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. 2025) (holding that § 1226(a), not § 1225(b)(2), governs detention of a noncitizen who had resided in the United States for 15 years).

At Mr. Culcay Veletanga's arrest on September 6, 2025, he was not apprehended while seeking admission at a port of entry. Rather, he was arrested within the interior of the United States, where he has resided since childhood. His detention did not follow any individualized assessment or timely opportunity to challenge the basis for custody. Accordingly, Mr. Culcay should not be subject to mandatory detention provisions that apply to recent entrants or arriving noncitizens, and his continued detention raises serious constitutional concerns.

II. *Mr. Culcay Veletanga will Suffer Irreparable Harm*

The harms that flow from the violation of Mr. *Culcay Veletanga's* constitutional rights constitute irreparable harm. See K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist., 710 F.3d 99, 113 (3d Cir. 2013). The deprivation of an alien's liberty is, in and of itself, irreparable harm. *See* Opulent Life Church v. City of Holly Springs, 697 F.3d 279, 295 (5th Cir. 2012) (quoting Elrod v. Burns, 427 U.S. 347, 373 (1976)). Irreparable harm is virtually presumed in cases like this one where an individual is detained without due process. Torres-Jurado v. Biden, No. 19 CIV. 3595 (AT), 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023). ("[B]efore the Government unilaterally takes away that which is sacred, it must provide a meaningful process.").

III. *Balance of the Equities and Public Interest*

The "public interest is best served by ensuring the constitutional rights of persons within the United States are upheld." *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). As discussed above, the abrupt detention without bond of Mr. *Culcay Veletanga* likely violated federal law and his due process. "There is generally no public interest in the perpetuation of unlawful agency action," and "there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations." *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (cleaned up).

Here, Mr. *Culcay Veletanga*'s continued detention without a bond hearing is in violation of his Fifth Amendment rights and far outweighs any burden the Respondents would suffer.

IV. *The Court Has Authority to Grant Mr. Culcay Veletanga 's Immediate Release Pending the Adjudication of His Habeas Petition.*

As a general matter, writs of habeas corpus are used to request release from custody. *Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005). A habeas court has "the power to order the conditional release of an individual unlawfully detained—though release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted." *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (noting that at "common-law habeas corpus was, above all, an adaptable remedy").

Release in this case is appropriate. DHS initially granted Mr. Culcay Veletanga Deferred Action for Childhood Arrivals (DACA) on November 5, 2012, recognizing his longstanding residence and eligibility for protection as a childhood arrival. Mr. Culcay complied with the terms of his release and maintained a consistent presence in the United States. The only material change between his prior

lawful status and his re-arrest on September 6, 2025, was a policy shift in the interpretation of custody jurisdiction under § 236(a)(1), as reflected in the Board of Immigration Appeals' decision in *Matter of Yajure*. This departure from prior practice has resulted in the denial of bond eligibility and prolonged detention without individualized review.

Furthermore, Mr. Culcay Veletanga previously requested a bond redetermination before an Immigration Judge, which was denied on November 17, 2025. He has been detained since September 6, 2025, without access to a full and individualized custody review. Given the prolonged nature of his detention, the absence of a final removal order, and his strong equities—including longstanding residence, prior DACA status, and pending applications for relief—Petitioner respectfully submits that release from custody is the appropriate remedy in this case, allowing him to return to his home in New York and continue pursuing his claims for protection.

CONCLUSION

For the foregoing reasons, the Court should grant the instant writ and order his immediate release from ICE custody.

Dated: November 3, 2025

Respectfully Submitted,

By: _____

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