UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Elhadj Amadou DIALLO,
Petitioner,

v.

Paul ARTETA, in his official capacity as Sheriff of Orange County, New York and Warden of the Orange County Correctional Facility; William JOYCE, in his official capacity as District Director of New York, Immigration and Customs Enforcement; Kristi NOEM in her official capacity as Secretary of Homeland Security; Pam BONDI, in her official capacity as Attorney General,

Respondents.

Case No.

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner Elhadj Amadou Diallo is a 25-year-old citizen of Guinea who was detained on May 29, 2025, as he attended his hearing at immigration court in Manhattan. On information and belief, his detention is part of a campaign underway by Respondents to detain individuals who have been present in the U.S. for under two years at the time they attend their immigration court hearings, without notice or any individualized review of whether detention is necessary. Mr. Diallo's detention as part of this campaign is unlawful and he brings this petition seeking his immediate release.

PARTIES

1. Petitioner Elhadj Amadou Diallo is a citizen of Guinea who lives in New York City. He attended his regularly scheduled court appearance before an immigration court in Manhattan on May 29, 2025, and was detained by Respondents.
2. Respondent Paul Arteta is named in his official capacity as Sheriff of Orange County, NY, and Warden of the Orange County Correctional Facility in Goshen, NY, where Petitioner is detained. In this capacity, he is a legal custodian of Petitioner. Respondent Arteta's address is 110 Wells Farm Road, Goshen NY, 10924.
3. Respondent William Joyce is named in his official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement ("ICE") within the United States Department of Homeland Security. In this capacity, he is also responsible for the administration of immigration laws and the execution of detention and removal determinations and is a legal custodian of Petitioner. Respondent William Joyce's address is New York ICE Field Office, 26 Federal Plaza, 7th Floor, New York, New York 10278.
4. Respondent Kristi Noem is named in her official capacity as the Acting Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a) (2007); routinely transacts business in the Southern District of New York; is legally responsible for pursuing any effort to remove the Petitioner; and as such is a legal custodian of the Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, 800 K Street N.W. #1000, Washington, District of Columbia 20528.

5. Respondent Pam 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 ("EOIR"), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the Southern District of New York and is legally responsible for administering Petitioner's removal and custody proceedings and for the standards used in those proceedings. As such, she is the custodian of Petitioner. Respondent Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530.

JURISDICTION

6. The federal district courts have jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Demore v. Kim,* 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Petitioner was detained by Respondents on June TK, 2025.

7. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241 (habeas); 28 U.S.C. § 1331 (federal question); and Article I, § 9, cl. 2 of the United States Constitution. This Court has authority to grant declaratory and injunctive relief. 28 U.S.C. §§ 2201, 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651 and the Declaratory Judgment Act, 28 U.S.C. § 2201.

VENUE

8. Venue is proper in this Court because Mr. Diallo is currently detained in the Southern District of New York, which is also where he was taken into custody on May 29, 2025.

SPECIFIC FACTS ABOUT PETITIONER

9. Elhadj Amadou Diallo is a citizen of Guinea who has been in the U.S. since January 2024. He was detained shortly after entering the U.S. but was released by Respondents on his own recognizance. He is in removal proceedings, where he was charged with removability under 8 U.S.C. § 1182(a)(6)(A)(i) for lack of valid status.

10. After his release in January 2024 and despite appearing for his proceedings pro se, he submitted a timely application for asylum and related relief. His claim relates to his affiliation with the *Union des Forces Démocratiques de Guinée* (UFDG), a political party opposed to the ruling government in Guinea. For years, Mr. Diallo actively participated in many protests against the government. As a result, was repeatedly arrested, detained, and tortured by Guinean authorities. Mr. Diallo suffered severe physical harm, including burns to his body, a stabbing in the ribs, and severe beatings, one of which led to a broken leg. Many of these abuses occurred while he was detained. In addition, Guinean officials threatened to disappear Mr. Diallo if he continued to support the opposition movement.

11. On May 29, 2025, at Mr. Diallo's first appearance in Immigration Court, ICE moved to dismiss his removal proceedings based on alleged changed circumstances, namely, Respondents' expansion of expedited removal in January 2025. The Immigration Judge granted this motion over Mr. Diallo's objection.

12. As Mr. Diallo left the immigration courtroom, he was detained by Respondents. On information and belief, the sole basis for Respondents' re-detention of Mr. Diallo is its own campaign, not any change in the individual factors in his case.

13. Mr. Diallo is experiencing serious emotional trauma because of his detention, which has caused flashbacks to his time in detention in Guinea. He is having trouble sleeping because of the stress and fear, and he feels he is being broken.

14. On June 20, 2025, Mr. Diallo secured pro bono counsel who filed an appeal of the Immigration Judge's dismissal of his removal proceedings. Because that appeal is pending with the Board of Immigration Appeals, 1) Mr. Diallo remains in active "regular" removal proceedings under INA § 240, 8 U.S.C. § 1229; 2) Respondents' placement of him in expedited removal is *void ab initio*, as he cannot be in both types of proceedings at once; and 3) he cannot be removed pursuant to the Board of Immigration Appeals' automatic stay regulation at 8 C.F.R. § 1003.6(a).

CAMPAIGN OF COURTHOUSE DETENTIONS

15. For years, DHS, including ICE, largely refrained from conducting civil immigration arrests at courthouses, including immigration courts, out of recognition that conducting such arrests could deter noncitizens from attending mandatory court proceedings and disrupt the proper functioning of courts. This policy was reflected in a formal 2021 agency memo, "Civil Immigration Enforcement Actions in or near Courthouses," U.S. Dep't of Homeland Sec., April 27, 2021, Memo (Apr. 27, 2021). One of the core principles underlying the April 27, 2021 Memo was that "[e]xecuting civil immigration enforcement actions in or near a courthouse may chill individuals' access to courthouses, and as a result, impair the fair administration of justice." *Id.* at 1.

16. In early 2025, DHS rescinded this guidance without any explanation for how this reversal might affect noncitizens' access to courts and the fair administration of justice. This new

policy was memorialized in a final agency memo, "Civil Immigration Enforcement Actions In or Near Courthouses" (hereinafter "Courthouse Arrest Memo"). U.S. Dep't of Homeland Sec., U.S. Immigr. & Customs Enf't, Courthouse Arrest Memo (May 27, 2025).

17. At the same time, on or about May 20, 2025, Respondents began a nationwide campaign to seek dismissal of removal proceedings for people present in the U.S. for under two years; to detain individuals immediately after their appearance in immigration court; and to place them in "expedited removal" without a hearing before an immigration judge, in order to be able to remove them more rapidly from the United States.

18. In New York City, this campaign has led to a large number of detentions in all three Manhattan immigration courthouses that hear non-detained removal proceedings. At non-detained hearings, ICE counsel are moving to dismiss removal proceedings against the person, often without stating a legal reason. Immigration Judges rule in a variety of ways on these motions: they may grant them and dismiss proceedings; deny them and set a next hearing to move forward in the case; or continue to the case for further briefing or argument on the dismissal motion. Regardless of how the Immigration Judge rules, the noncitizen in these cases walks outside the courtroom, where plainclothes, armed ICE officers, with their faces covered by masks or gaiters and no name or badge displayed, surround them.

19. The detentions are not individualized and have no relations to whether the person has any criminal history or indication of danger to the community or risk of flight. Upon information and belief, Respondents create lists of individuals to be detained and then proceed to detain every single one, even in the face of immediate information or pleas that the person has minor children in need of care or serious medical conditions.

20. Noncitizens are arrested and handcuffed in the hallways and lobby of the federal buildings in front of their family members, attorneys, and members of the public, irrespective of whether motions to dismiss are granted; denied; or set over for further consideration.

21. Once detained, New Yorkers targeted by this campaign vanish for several days. Upon information and belief, they are held at the New York ICE Field Office for days on end even though the office is not designed as an overnight detention facility, with little to no ability to communicate with family or attorneys. They are then transferred to one of many possible ICE detention facilities around the country, and often transferred to multiple facilities in the span of a few days. The ICE detainee locator, an online portal, often does not reflect their location for several days or reflects a detention center at which (according to facility staff there) detainees are not actually present.

22. For some individuals who successfully volunteer a fear of persecution or torture in their home country that ICE staff actually acknowledge, like Mr. Diallo, ICE schedules a credible fear interview, but often with little or no notice to the detained person or their counsel.

23. Mr. Diallo has not been advised by Respondents that he has any process or recourse to challenge his sudden detention. Upon information and belief, Respondents are likely to argue that Petitioner is not even eligible for a bond hearing, let alone release on bond or his own recognizance, under the recent Board of Immigration Appeals' very recent ruling in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), severely restricting bond eligibility for individuals apprehended shortly after entry into the United States but not at a port of entry.

LEGAL FRAMEWORK

24. The INA provides for removal proceedings to be the "sole and exclusive" procedures for removing people from the United States, subject to a few narrow exceptions. 8 U.S.C. § 1229a. Section 1229a(a)(3) states that "[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States."[1]

25. "Jurisdiction vests, and proceedings before an Immigration Judge, when a charging document is filed with the Immigration Court by the Service." 8 C.F.R. § 1003.14(a). The only means to terminate the jurisdiction of the immigration court is a motion to dismiss or terminate. Dismissal in most cases requires that "Circumstances of the case have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government." 8 C.F.R. § 239.2(a)(7).

26. Petitioner is currently in removal proceedings under section 1229a. The Immigration Judge's dismissal order is not administratively final because an appeal by right is pending before the Board of Immigration Appeals.

27. Certain noncitizens may be ordered removed by an immigration officer under the expedited removal procedures described in 8 U.S.C. 1225(b). Expedited removal is a one- or two-stage process: the first is inspection by an immigration officer; the second, where applicable, is a credible fear interview by an asylum officer.

[1] "Attorney General" in Section 1254a now refers to the Secretary of the Department of Homeland Security. See 8 U.S.C. § 1103; 6 U.S.C. § 557.

28. For an individual who applies for admission at a port of entry, the immigration officer must first determine if the individual is a noncitizen who is inadmissible either because they have engaged in fraud or lack valid entry documents. *See* 8 U.S.C. § 1225(b)(1)(A)(i), (ii) (citing 8 U.S.C. § 1182(a)(6)(C), (a)(7)). If an individual claims to be a U.S. citizen, lawful permanent resident, or refugee, or to have been granted asylum, then the individual is entitled to limited additional review. See 8 U.S.C. § 1225(b)(1)(C); 8 C.F.R. § 235.3(b)(5).

29. Otherwise, if the officer concludes that the individual is inadmissible under either ground, the officer "shall" order the individual removed "without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i). At any time during the process, the officer may allow the person to withdraw his or her application for admission and leave the country. 8 U.S.C. § 1225(a)(4).

30. In late January 2025, DHS issued a new rule expanding the application of expedited removal to certain noncitizens arrested anywhere in the country who cannot show "to the satisfaction of an immigration officer" that they have been continuously present in the United States for longer than two years. Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139 (Jan. 21, 2025) ("Rule"). The effective date of the Rule was January 21, 2025. As a result, noncitizens who have resided in the country for less than two continuous years are at imminent risk of deportation without any hearing or meaningful review, regardless of their ties to the United States, or the availability of claims for relief from and defenses to removal.

31. At a bare minimum, "the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention." *Zadvydas v. Davis*, 533 U.S. 678, 718 (2001) (Kennedy, J., dissenting) (emphasis added). Where federal law explicitly prohibits an individual's removal, removing them also violates the Due Process Clause.

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT AND IMPLEMENTING REGULATIONS

32. Petitioners reallege and incorporate by reference each and every allegation contained above.

33. Section 1229a of Title 8 of the U.S. Code provides that, "[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States."

34. Petitioner is in Section 1229a removal proceedings. No administratively final determination has yet been made whether Petitioner is to be removed from the United States in such proceedings. Respondents cannot lawfully dismiss or move to dismiss Petitioner's proceedings absent a change in the circumstances of his case, yet have done so anyway and used this as seemingly the sole basis to detain him without any individualized review.

35. Moreover, Petitioner has a statutory right to apply for asylum, which he has done. 8 U.S.C. 1158(a). His sudden detention and Respondents' attempts to dismiss his case and change the removal regime to which he is subject violates that right. The credible fear process in detained, expedited removal proceedings is *not* equivalent to the right he has to present his already-filed asylum application at a full evidentiary hearing in regular removal proceedings, which are still pending. Respondents' actions violate the Immigration and Nationality Act and implementing regulations.

36. While Petitioner has filed an appeal of the Immigration Judge's dismissal order, given backlogs at the Board of Immigration Appeals and Respondents' immediate detention of

Petitioner, he fears Respondents will execute an expedited removal order unlawfully without him having a meaningful chance to exercise his statutory rights.

COUNT TWO

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION (SUBSTANTIVE DUE PROCESS)

37. Petitioner realleges and incorporates by reference each and every allegation contained above.

38. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. *See generally Reno v. Flores*, 507 U.S. 292 (1993); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003).

39. Petitioner's detention violates the Due Process Clause because no change in Petitioner's case compels a change in custody status. He presents no flight risk or danger to the community. His detention is not rationally related to any immigration purpose, it is not the least restrictive mechanism for accomplishing any legitimate purpose the government could have in imprisoning Petitioner, and it appears to have been imposed for policy and punitive reasons, in order to remove him more quickly than the constitutionally adequate removal proceedings he was already in.

COUNT THREE

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION (PROCEDURAL DUE PROCESS)

40. Petitioner realleges and incorporates by reference each and every allegation contained above.

41. ICE had already made a reasoned decision to release Petitioner on his own recognizance, after which he peacefully lived in the community for a year and a half and attended his immigration hearings as required. Petitioner was not provided any process, let alone constitutionally adequate process, before being suddenly deprived of his liberty. He is now being held without any meaningful custody review or process to challenge his detention post-deprivation of his liberty.

COUNT FOUR

VIOLATION OF THE FOURTH AMENDMENT TO THE U.S. CONSTITUTION (UNLAWFUL ARREST); 5 U.S.C. §§ 702, 706

42. Mr. Diallo repeats and realleges the allegations contained in all preceding paragraphs of this Petition-Complaint as if fully set forth herein.

43. Mr. Diallo was detained by federal immigration officials as removable when he entered the United States. The government exercised its discretion under the Immigration and Nationality Act to release, or parole, him while he litigated that charge in immigration court. At the time of Mr. Diallo's arrest, he had been living at liberty pursuant to a parole determination by federal immigration authorities.

44. The government lacked reliable information of changed or exigent circumstances that would justify his arrest after federal immigration authorities had already decided he could pursue his claims for immigration relief at liberty. His re-arrest based solely on the fact that he is subject to removal proceedings is unreasonable and violates the Fourth Amendment.

COUNT FIVE

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

45. Petitioner realleges and incorporates by reference each and every allegation contained above.

46. The Administrative Procedure Act prohibits agency action which is arbitrary and capricious.

47. Respondents' policy of seeking dismissal and then detaining individuals like Mr. Diallo, who are in ongoing removal proceedings and for whom no circumstances have changed since their initial release, is arbitrary and capricious. The Immigration Courthouse Arrest Policy is an unreasoned departure from recent and longstanding agency policy and practice. The government has provided no reasoned explanation for this reversal.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Enjoin Petitioner's transfer out of the New York area during the pendency of this petition;
3. Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. 2243;
4. Declare that Petitioner's detention violates the Immigration and Nationality Act and implementing regulations;
5. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
6. Declare that Petitioner's arrest and detention violates the Fourth Amendment;

7. Declare that Respondents' actions violate the Administrative Procedure Act;
8. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody, or in the alternative, hold a bail hearing before this Court where Respondents bear the burden to justify Petitioner's continued detention;
9. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
10. Grant such further relief as this Court deems just and proper.

Dated: June 27, 2025

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CERTIFICATE OF SERVICE

I certify that on June 27, 2025, I electronically filed the attached the foregoing First Amended Petition for Writ of Habeas Corpus and accompanying Exhibits and Declarations with the Clerk of the Court for the United States District Court for the Southern District of New York using the CM/ECF system. Service will therefore be effected by the CM/ECF system.