

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

YAYA DIALLO

Petitioner,

Case No. 3:25-cv-1724

v.

CRAIG LOWE et. al.

**ELECTRONICALLY
FILED**

Respondents.

FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Yaya Diallo is a formerly enslaved individual from Mauritania seeking asylum in the United States. He has no criminal history and has always complied with everything asked of him by the Department of Homeland Security (“DHS”) and the Immigration Court. On July 28, 2025, an Immigration Judge (“IJ”) granted Mr. Diallo bond in order to secure his release from detention. That same day, DHS filed a form with the court to invoke an automatic stay of that bond. As discussed below, the automatic stay violates Mr. Diallo’s due process rights and is ultra vires.



The Board of Immigration Appeals (“BIA”) then remanded Mr. Diallo’s bond case in order for the IJ to reconsider her jurisdiction in light of the BIA’s recent decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) that purports to strip almost every detained noncitizen of bond eligibility. As discussed below, that case is wrongly decided, and Mr. Diallo remains eligible for the bond granted as an individual detained pursuant to 8 U.S.C. § 1226(a). But for the unlawful, ultra vires actions of the government, he would have been released and remains eligible for release upon payment of the bond set by the IJ. He therefore respectfully requests that this Court grant his petition and order his release.

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C. § 2241, et seq. (habeas corpus); 28 U.S.C. § 1331 (federal question); 5 U.S.C. § 702 (waiver of sovereign immunity); 5 U.S.C. § 701 et seq the (“APA”); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 2201 (Declaratory Judgment Act); and Art. 1, § 9, cl. 2 of the United States Constitution (Suspension Clause).
2. Venue is proper in this District because Mr. Diallo is detained at the Pike County Correctional Facility. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004).

PARTIES

3. Petitioner Yaya Diallo is an asylum seeker originally from Mauritania, who has lived in the United States since 2023.
4. Respondent Craig Lowe is the warden of Pike County Correctional Facility. As warden, he is Mr. Diallo's immediate custodian. He is sued in his official capacity.
5. Respondent Brian McShane is the Acting Field Office Director of the Philadelphia Field Office of Immigrations and Customs Enforcement ("ICE"). In this capacity, he directs all ICE activity where Mr. Diallo is detained. He is an immediate custodian of Mr. Diallo, and he is sued in his official capacity.
6. Todd Lyons is the Acting Director of Immigration and Customs Enforcement. In this capacity, he has responsibility for the enforcement of immigration laws and, as such, is a legal custodian of Mr. Diallo. He is sued in his official capacity.
7. Kristi Noem is the Secretary of Homeland Security. In this capacity she runs the Department of Homeland Security and is charged pursuant to 8 U.S.C. § 1103(a)(1) with administering and enforcing the immigration laws. She is the ultimate legal custodian of Mr. Diallo. She is sued in her official capacity.

8. Pamela Bondi is the Attorney General of the United States and directs the Department of Justice (“DOJ”), which encompasses the Board of Immigration Appeals (“BIA”) and immigration courts, collectively known as the Executive Office of Immigration Review (“EOIR”). Ms. Bondi shares responsibility for the implementation and enforcement of immigration laws along with Respondent Noem. Ms. Bondi is a legal custodian of Mr. Diallo. She is sued in her official capacity.
9. Respondent Yaya Diallo is a native and citizen of Mauritania. He is 23 years old. Mr. Diallo entered the United States on or about August 2, 2023, having fled caste-based enslavement as a person in his home country, as well as race-based and political persecution as 
 See Tab A (I-589 Application for Asylum and Withholding of Removal).¹
10. Mr. Diallo was born into the maccube caste—the lowest caste in his village—and was enslaved from birth, forced by threat of beating, to work. After escaping the village to seek freedom and opportunity, he was arrested and beaten by the military police in Mauritania for his

¹ Given the confidential nature of asylum proceedings, *see* 8 C.F.R. § 208.6, Petitioner has attached only the first page of his I-589 application as an exhibit, along with other documents that were attached as part of that submission that are relevant to this petition. Counsel can provide more complete documentation about Mr. Diallo’s asylum application if requested by the Court.

peaceful participation in a political protest, just as his father had been for his participation in a human rights organization that promotes abolition.

11. Mr. Diallo first arrived at or near the Lukeville, AZ port of entry on or around August 2, 2023. *See* Tab B (DHS Form I-200, Warrant for Arrest of Alien (August 3, 2023)). CBP transported him to the Yuma, Arizona Border Patrol Station, where he was briefly detained, processed, and then released on recognizance on August 3, 2023. *See* Tab C (Case Details print-out (August 3, 2023), noting “NTA issued because INA section 235(b)(1) expedited removal order was vacated.”); Tab D (DHS Form I-286, Notice of Custody Determination (August 3, 2023)); Tab E (DHS Form I-220A, Order of Release on Recognizance (August 3, 2023)).

12. At the time of his release, DHS issued Mr. Diallo an I-862 Notice to Appear, charging him as removable under § 212(a)(6)(A)(i), ordering him to appear in the Philadelphia Immigration Court on December 16, 2024. *See* Tab A.

13. Mr. Diallo then flew to Philadelphia, where he has resided with his cousin, up until his re-detention on June 18, 2025.

14. Because there was no record yet of his case before the Immigration Court, Mr. Diallo, by and through his *pro bono* counsel, timely filed his I-589 Application for Asylum with the USCIS Asylum Vetting Center

on May 8, 2024, *See* Tab A; Tab F (USCIS Receipt Notice (May 31, 2024)).

15. Mr. Diallo, by and through his counsel, sought to have his NTA filed with the Philadelphia Immigration Court so that his case could move forward, as scheduled. *See* Tab G (Email communications with DHS-OPLA and DHS-ICE ERO re filing of NTA with the Immigration Court, August and September 2024). But DHS never submitted the NTA with the Court, and Immigration Judge Lee terminated removal proceedings on December 16, 2024, for DHS's failure to prosecute.

16. Despite no longer being in removal proceedings, and arguably no longer required to appear for his previously scheduled ICE check-ins, Mr. Diallo diligently complied with all requirements set by DHS, including attending both subsequently scheduled check-ins, even while knowing there was a significant risk that he would be taken into custody. *See* Tab H (ICE check-in receipts for March 20, 2025, and June 18, 2025).

17. Indeed, ICE ERO took Mr. Diallo into custody at his ICE check-in on June 18, 2025. *See* Tab I (Warrant for Arrest (June 18, 2025)). Immediately following, he was issued a new NTA with charges identical to those provided in the NTA initially served on him upon entry to the United States in 2023. *See* Tab J (DHS Form I-862, Notice to Appear

(June 18, 2025)) (charging Mr. Diallo as removable under § 212(a)(6)(A)(i)) (8 U.S.C. § 1182(a)(6)(A)(i)).

18. At the time he was taken into custody, Mr. Diallo indicated his desire to request review of DHS-ICE's Custody Determination. *See* Tab K (DHS Form I-286, Notice of Custody Determination, dated June 18, 2025, but not signed by the client). DHS subsequently submitted an I-261 Additional Charges of Inadmissibility/Deportability, adding an additional charge under 212(a)(7)(A)(i)(I), not included in the first two NTAs served on Mr. Diallo, and changing the allegations as to Mr. Diallo's manner of entry.

19. The Immigration Court held a bond hearing for Mr. Diallo on July 28, 2025, where he was represented by *pro bono* counsel.

20. At that hearing, DHS asserted that Mr. Diallo was not eligible for bond. They argued that he was an "applicant for admission" and was therefore detained pursuant to 8 U.S.C. § 1225(b) (INA § 235(b)) and subject to mandatory detention.

21. Counsel for Mr. Diallo argued that Mr. Diallo was detained pursuant to 8 U.S.C. § 1226(a) (INA § 236(a)), because he was never subjected to expedited removal, and had been arrested pursuant to a DHS warrant. *See* 8 U.S.C. § 1226(a) ("On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the

alien is to be removed from the United States.”); *see also* Tab L (Brief filed by Mr. Diallo in opposition to DHS appeal of bond decision (Sept. 2, 2025)).

22. The Immigration Judge (“IJ”) agreed that Mr. Diallo was detained pursuant to § 1226(a), was not subject to *Matter of Q Li*,² and was therefore eligible for bond. She found that he was not a danger to the community (which DHS did not dispute), and he was not a serious flight risk. She therefore granted bond in the amount of \$7,500. *See* Tab M (Bond Order).

23. The day after the bond hearing, *pro bono* counsel met with family members, who were fortunately able to find money to pay the bond. *See* Tab N (Declaration of *pro bono* counsel Sarah Paoletti).

24. Just hours after the IJ’s bond decision, however, DHS had filed an EOIR-43 “Notice of ICE Intent to Appeal Custody Redetermination”

² Respondents’ arguments as to precisely why non-citizens similarly situated to Mr. Diallo are subject to mandatory detention have changed multiple times. Their initial arguments prior to the shift in policy described below had been that non-citizens initially detained pursuant to the government’s expedited removal authority and subsequently released were still subject to detention under *Matter of Q Li*, 29 I&N Dec. 66 (BIA 2025). In that case, the noncitizen had been detained 100 yards after entering the border, without a warrant, had been paroled into the United States and was then later rearrested after his parole was terminated, without a warrant. The IJ agreed with Mr. Diallo’s counsel that *Matter of Q Li* was entirely inapplicable in this case, and Respondents do not now challenge that holding.

with the court. *Id.*; Tab O (Form EOIR-43). The form automatically stayed the IJ's bond decision "pursuant to 8 C.F.R. § 1003.19(i)(2)." *Id.*

25. That regulation reads, in its entirety:

Automatic stay in certain cases. In any case in which DHS has determined that an alien should not be released or has set a bond of \$10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR-43) with the immigration court within one business day of the order, and, except as otherwise provided in 8 CFR 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board. The decision whether or not to file Form EOIR-43 is subject to the discretion of the Secretary.

26. Because of this stay, Mr. Diallo's family was not allowed to pay his bond and release him.

27. On August 12, DHS filed a notice of appeal with the BIA. *See* Tab M (Notice of Appeal by DHS (Aug. 12, 2025)).

28. On September 5, 2025, the BIA issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

29. On September 19, the BIA remanded Mr. Diallo's case in order to make additional fact finding about his manner of entry and to reconsider her jurisdiction in light of *Yajure Hurtado*. See Tab P.

30. Mr. Diallo's merits hearing on his asylum claim was scheduled for September 26, 2025. Counsel submitted a prehearing brief, a witness list, and over 650 pages of evidence in support of his claim. On the morning of September 26, counsel received a notice from the immigration court that Mr. Diallo's hearing had been rescheduled to November 14, 2025.

31. Mr. Diallo remains detained at the Pike County Correctional Facility.

CLAIMS FOR RELIEF

COUNT ONE

Violation of the INA

32. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

33. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

34. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have

been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

35. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

36. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

37. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

38. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119–1, 139 Stat. 3 (2025).

39. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

40. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

41. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

42. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”³ claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

³ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

43. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.
44. Since Respondents adopted this new policy, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.
45. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).
46. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No.

CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *1 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670, at *8 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566 at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL

2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

47. Courts have largely rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

48. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” These removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

49. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also* *Gomes*, 2025 WL 1869299, at *7.

50. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

51. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

52. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner. Petitioner was arrested on a warrant charging him under § 1226(a), released into the United States, and then rearrested pursuant to a new warrant under § 1226(a). It was only after his detention that DHS attempted to add new charges to categorize him as an "applicant for admission" pursuant to 8 U.S.C. § 1182(a)(7), and the IJ did not sustain those charges.

53. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously

entered the country and have been residing in the United States prior to being apprehended pursuant to a warrant and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

54. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT TWO

Violation of Due Process

55. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

56. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment— from government custody, detention, or other forms of physical restraint— lies at the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

57. Petitioner has a fundamental interest in liberty and being free from official restraint.

58. The government’s grant of the DHS bond appeal and remand to keep him detained despite the IJ’s determination that he is not a flight risk and is not a danger to the community and should be released violates his right to due process.

COUNT THREE

Violation of Mr. Diallo's Procedural Due Process Rights under the Fifth Amendment

59. The automatic stay provision violates Mr. Diallo's due process rights and is unconstitutional as applied to him. The automatic stay provision located at 8 C.F.R. § 1003.19(i)(2) has raised "due process concerns from its inception." *Günaydin v. Trump*, ---F. Supp. 3d---, No. 25-cv-01151, 2025 WL 1459154, at *4 (D. Minn. May 21, 2025) (detailing the history of the provision). It was enacted shortly after September 11, 2001, without notice and comment, which the Attorney General stated would be "impracticable, unnecessary, and contrary to the public interest." 66 Fed. Reg. 54909-02 (Oct. 31, 2001).

60. Shortly after its publication, several district courts found that its application violated noncitizens' due process rights. *See e.g., Ashley v. Ridge*, 288 F. Supp. 2d 662, 675 (D.N.J. 2003) ("[T]his Court holds that the continued detention of Petitioner without judicial review of the automatic stay of the bail determination, despite the Immigration Judge's decision that he be released on bond, violates the Petitioner's procedural and substantive due process constitutional rights."); *Bezmen v. Ashcroft*, 245 F. Supp. 2d 446, 450–51 (D. Conn. 2003) (same); *Zabadi v. Chertoff*, No. 3:05-CV-01796, 2005 WL 1514122, at *1 (N.D. Cal. 2005) ("[T]his order finds [the regulation] unconstitutional because the regulation invoked by [ICE] for an automatic

stay [of the IJ's bond decision] violates both petitioner's substantive and procedural due process rights under the Fifth Amendment.").

61. In 2006, the Department of Justice conducted notice and comment rule making, changing the original automatic stay provision. *See* 71 Fed. Reg. 57873 (Oct. 2, 2006). As Judge Bryan of the District of Minnesota recently explained, "the final rule added a requirement that the decision to invoke an automatic stay must be made by the Secretary of DHS, and a senior legal official at DHS must certify that sufficient factual and legal bases exist to justify the continued detention." *Günaydin*, 2025 WL 1459154, at *5; *see also* 8 C.F.R. § 1003.6(c)(1)(ii).

62. Additionally, the rule "imposed some time limitations. The final rule provides that DHS's order of automatic stay will lapse ninety days after the filing of the notice of appeal if the BIA has not acted on the custody appeal. However, DHS may seek an additional discretionary stay from the BIA to prevent lapse..." *Günaydin*, 2025 WL 1459154, at *5; 8 C.F.R. § 1003.6(c)(1).

63. DHS rarely invoked the stay provision in the intervening years but has invoked it in nearly every bond decision issued in recent months. Accordingly, district courts have again begun to consider the constitutionality of the provision and have, unsurprisingly, found that it is unconstitutional. *See, e.g.,* *Günaydin*, 2025 WL 1459154, at *10; *Mayo Anicasio v. Kramer*, No. 4:25-cv-3158, 2025 WL 2374224, at *3–4 (D. Neb. Aug. 14, 2025); *Aguilar*

Maldonado v. Olson, No. 25-cv-3142, 2025 WL 2374411, at *9-14 (D. Minn. Aug. 15, 2025); *Leal-Hernandez v. Noem*, No. 1:24-cv-02428, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Jacinto v. Trump*, No. 4:25-cv-03161, --- F. Supp. 3d ---, 2025 WL 2402271 (D. Neb. Aug. 19, 2025).

64. This Court should likewise find that invocation of the automatic stay provision here violated Mr. Diallo's constitutional rights. Every person in the United States is guaranteed due process of law, including noncitizens. *See Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (per curiam) (“‘It is well established that the Fifth Amendment entitles aliens to due process of law’ in the context of removal proceedings.”) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).
65. Courts apply the test set forth in *Mathews v. Eldrige*, 424 U.S. 319 (1976), when assessing a due process challenge to civil detention. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (collecting cases and noting that, “when considering due process challenges to [discretionary noncitizen detention] other circuits . . . have applied the *Mathews* test”); *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 213 (3d Cir. 2020).
66. Under this test, courts consider (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 safeguards”; 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.”

Mathews, 424 U.S. at 335.

67. Mr. Diallo’s interest in remaining free from detention is “of the highest constitutional import.” *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1078 (N.D. Cal. 2004). “[F]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690. Every day in which he remains in custody past his order to be released under a bond compounds his injury.

68. Under the second factor, the invocation of the stay poses an enormous risk of erroneous deprivation without additional safeguards. An immigration judge conducted a bond hearing and determined that Mr. Diallo met his burden to establish that he is not a danger to the community, and that any flight risk could be mitigated by a bond. That process has been nullified by a stay procedure containing no safeguards, invoked not by the neutral arbiter but by the non-prevailing party.

69. This “unilateral determination” that “effectively overrules the reasoned decision of the [IJ] poses a serious risk of error.” *Zavala*, 310 F. Supp. 2d at 1078; *see also Günaydin*, 2025 WL 1459154, at *6; *Ashley*, 288 F. Supp. 2d at 670–71 (“[T]he risk of the erroneous deprivation of liberty is substantial, as the application of the automatic stay provision here was the result of a unilateral determination made by [ICE].”). Stay requests typically require that

a party demonstrate likelihood of success on the merits and a balancing of interests favoring one party. *See Nken v. Holder*, 556 U.S. 418 (2009). The lack of any such requirement in this stay provision, and the automatic nature of the stay without consideration by any arbiter, results in an unacceptably high risk of erroneous deprivation. *See Ashley*, 288 F. Supp. at 670–71.

70. The individualized determination made by an immigration judge has now been wholly undermined by Petitioner’s jailer and adversarial party. The regulation places the stay authority entirely in the hands of DHS, as “any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed” upon DHS’s filing of the Form EOIR-43. 8 C.F.R. § 1003.19(i)(2). The only act DHS counsel need complete under the regulation is to fill out and file a one-page form indicating an intent to appeal the bond. *Id.* The IJ and the BIA play *no* role in assessing the merits of the stay request. The rule is “anomalous in our legal system” as a rule “in which a non-prevailing party” is granted the authority “to unilaterally override” a judge’s decision. *Günaydin*, 2025 WL 1459154, at *8.

71. Finally, under the third *Mathews* factor, the government’s competing interests and burdens of additional or substitute procedural requirements are minimal. Courts have found that “little, if any, additional burden” would befall Respondents “if they were unable to invoke the automatic stay regulation.” *Günaydin*, 2025 WL 1459154, at *10. Indeed, the automatic stay is meant to

be a “limited measure.” *Id.* (quoting *Executive Office for Immigration Review; Review of Custody Determination*, 66 Fed. Reg. 54909 (Oct. 31, 2001)). And while DHS may have an interest in detaining noncitizens it deems to be a danger or a flight risk, an IJ already determined that Mr. Diallo met his burden to show that he did not fall under either of those categories. This is especially true when Mr. Diallo’s case was dismissed for lack of prosecution by DHS itself, and when Mr. Diallo faithfully appeared for check-ins with ICE, even knowing he would be detained.

72. Respondents’ competing interests here are therefore not compelling, especially given the alternate mechanisms available to them.

73. The automatic stay provision deprives Mr. Diallo of his due process rights under the Fifth Amendment.

COUNT FOUR

Violation of Mr. Diallo’s Substantive Due Process Rights under the Fifth Amendment

74. Because liberty is a fundamental right, government detention violates Due Process unless it is ordered in a criminal proceeding with adequate procedural protections, or in non-punitive circumstances “where a special justification . . . outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690.

75. Respondents' invocation of the automatic stay is not based on any "special justification," but has been done as a matter of course in almost every single bond case since July 2025. *See Leal-Hernandez*, 2025 WL 2430025, at *4.

76. As such, the automatic stay violates Mr. Diallo's substantive due process rights by subjecting him to arbitrary further detention. *See id.* at *13; *Ashley*, 288 F. Supp. 2d at 669; *Jacinto*, 2025 WL 2402271, at *5.

COUNT FIVE

Violation of the Administrative Procedures Act and the Immigration and Nationality Act

77. The invocation of the automatic stay violates the INA because the stay provision is ultra vires.

78. As found by the Immigration Judge, Mr. Diallo is detained pursuant to 8 U.S.C. § 1226(a). *See* Tab L; Tab M.

79. Section 1003.19(i)(2) is ultra vires and exceeds the authority granted to DHS by Congress in passing 8 U.S.C. § 1226. *See Zabadi*, 2005 WL 1514122 at *1.

80. Congress explicitly, in 8 U.S.C. § 1226(c) and 1225(b), subjected certain classes of noncitizens in removal proceedings to mandatory detention. All other noncitizens in removal proceedings are entitled to an individualized bond determination by the immigration court and release should the noncitizen pay that bond. *See* 8 U.S.C. § 1226(a).

81. Nothing in 8 U.S.C. § 1226(a) authorizes the unilateral deprivation of an Immigrant Court ordered bond by ICE. As such, "the automatic-stay

regulation...deprives the immigration court of its congressionally-conferred power to determine bond, and is therefore ultra vires.” *Zabadi*, 2005 WL 1514122 at *1; *see also Zavala*, 310 F. Supp. 2d at 1079 (“[T]his back-ended approach effectively transforms a discretionary decision by the immigration judge to a mandatory detention imposed by [DHS], it flouts the express intent of Congress and is *ultra vires* to the statute.”); *Mayo Anicasio*, 2025 WL 2374224, at *3–4; *Torosyan v. Nielsen*, No. 2:18-CV-5873-PSG (SK), 2018 WL 5784708, at*7 (C.D. Cal. Sept. 27, 2018), report and recommendation adopted, No. 218CV5873PSGSK, 2018 WL 6167918 (C.D. Cal. Oct. 26, 2018) (collecting cases)

CONCLUSION

82. Mr. Diallo is detained pursuant to 8 U.S.C. § 1226(a). An IJ made that determination, and ordered him released on bond. Yet Respondents’ illegal and unconstitutional actions mean that Mr. Diallo remains detained. His detention is illegal, and he respectfully requests that this Court grant his petition.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a) Assume jurisdiction over this matter;

- b) Order Respondents to show cause why the writ should not be granted
“within three days unless for good cause additional time, not exceeding twenty days, is allowed,” and set a hearing on this Petition within five days of the return, pursuant to 28 U.S.C. § 2243;
- c) Grant this Writ and order Respondents to release Mr. Diallo pursuant to the Immigration Court’s Bond Order;
- d) Declare that Mr. Diallo is detained pursuant to 8 U.S.C. § 1226(a);
- e) Declare that 8 C.F.R. § 1003.19(i)(2) is ultra vires and violates the Fifth Amendment;
- f) Award Petitioner his costs and reasonable attorneys’ fees in this action under the Equal Access to Justice Act, as amended, 28 U.S.C. § 2412, and on any other basis justified by law;
- g) Grant any other and further relief which this Court deems just and proper.

Respectfully submitted,

/s/ Margaret Kopel
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Yaya Diallo, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 30 day of September, 2025.

/s/ Margaret Kopel
Margaret Kopel, Esq.

