IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA	
YAYA DIALLO **Petitioner,** **v.** **CRAIG LOWE et. al.** **Respondents.**	**Case No. 3:25-cv-1724** **ELECTRONICALLY FILED**

REPLY IN SUPPORT OF FIRST AMENDED HABEAS PETITION

Yaya Diallo fled slavery in Mauritania and sought asylum in the United States. He was released on his own recognizance and built a life for himself in Philadelphia with his family. He found *pro bono* counsel, filed a timely asylum application, and complied with everything asked of him by Respondents.

Respondents do not argue that Mr. Diallo is a flight risk or a danger to the community and that his detention is justified on either those bases. That makes sense, as he has no criminal convictions or arrests and faithfully attended all immigration court dates and check-ins, even when knowing he would likely be detained. Instead, Respondents put forth unconvincing arguments that Mr. Diallo is subject to mandatory detention and that this Court lacks jurisdiction to consider his habeas

petition. Dozens of courts around the country have rejected these arguments in the last several months; indeed, as of this writing, undersigned counsel is aware of **one hundred and twenty-seven** district court cases since July rejecting Respondents' statutory arguments. But Respondents continue to subject people like Mr. Diallo to mandatory detention. Mr. Diallo respectfully requests that this Court grant his habeas petition forthwith and order his release from the illegal custody he has been subjected to since an immigration judge (IJ) ordered his release in July.

I. This Court has jurisdiction to adjudicate the habeas petition.

A. 8 U.S.C. § 1252(g) does not deprive this Court of jurisdiction.

Mr. Diallo's habeas petition is not barred under 8 U.S.C. § 1252(g), despite the government's claims to the contrary. 8 U.S.C. § 1252(g) states that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any [noncitizen] arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." The Supreme Court has described this restriction as a narrow one, explaining that it applies "only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. Am-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). The Court held that it was "implausible that

the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings." *Id.* Instead, it is a "discretion-protecting provision," insulating executive prosecutorial discretion against those three discrete actions. *Id.* at 483–87; *see also Tazu v. Att'y Gen.*, 975 F.3d 292, 297 (3d Cir. 2020) ("As the Supreme Court has noted, § 1252(g) was directed against a particular evil: attempts to impose judicial constraint upon prosecutorial discretion.").

Mr. Diallo's habeas petition is based not on any of the three discrete actions outlined in § 1252(g), but on his illegal custody first by operation of the automatic stay provision and then by the Board of Immigration Appeals (BIA)'s precedent decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). These claims are not barred by § 1252(g). *See, e.g.*, *Jefry Josue Del Cid Del Cid & Marlon Letona Marroquin Marroquin v. Bondi*, No. 3:25-cv-00304, 2025 WL 2985150, at *12–13 (W.D. Pa. Oct. 23, 2025); *Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947, at *5 (D. Minn. Oct. 1, 2025); *Lopez-Arevalo v. Ripa*, No. EP-25-CV-337-KC, at *4–5 (W.D. Tex. Sept. 22, 2025); *Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, 2025 WL 2676082, at *8 (D. Nev. Sept. 17, 2025); *Zarazoga-Mosqueda v. Noem*, No. 5:25-cv-02304, 2025 WL 2591530, at *3 (C.D. Cal. Sept. 8, 2025); *see also Roe v. Oddo*, No. 3:25-CV-128, 2025 WL 1892445 (W.D. Pa. July 9, 2025) ("Petitioner argues that neither 8 U.S.C. § 1252(g) nor (b)(9) strips this Court of jurisdiction

because Petitioner 'is contesting his detention and is not seeking judicial review of [his] removal order.' ... the Court agrees with Petitioner"); *Kong v. United States*, 62 F.4th 608, 617 (1st Cir. 2023) ("§ 1252(g) does not bar judicial review of [plaintiff's] challenge to the lawfulness of his detention").

B. 8 U.S.C. §§ 1252(a)(5) and (b)(9) do not deprive this Court of jurisdiction.

8 U.S.C §§ 1252(a)(5) and (b)(9), which channel questions of law and fact arising in the removal proceedings and applications for relief of a noncitizen to a circuit court petition for review are not applicable to habeas petitions challenging unlawful detention. 8 USC § 1252(b)(9) states "[j]udicial review of all questions of law and fact . . . arising from any action taken . . . to remove [a noncitizen] . . . shall be available only in judicial review of a final order under this section." Similarly, 8 U.S.C. § 1252(a)(5) states that a petition for review "shall be the sole and exclusive means for judicial review of an order of removal entered" under the INA.

The Supreme Court has repeatedly confirmed that § 1252(b)(9) does not strip district courts of jurisdiction to hear claims regarding unlawful detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018) (holding that such a broad reading would be "absurd"); *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (holding that where "claims for relief necessarily imply the invalidity of [petitioners'] confinement and removal . . . their claims fall within the 'core' of the writ of habeas corpus and thus must be brought in habeas."). As in *Jennings*, Mr. Diallo does not "challeng[e] any

part of the process by which [his] removability will be determined." *Jennings*, 583 U.S. at 294.[1]

Mr. Diallo does not challenge questions of law or fact arising in his removal proceedings. As discussed above, his merits hearing has been continually delayed and his applications for relief have not even been adjudicated. Instead, he challenges his unlawful detention, which challenge clearly falls outside the scope of §§ 1252(a)(5) and 1252(b)(9). *See, e.g.*, *Maldonado v. Olson*, No. 25-cv-3142, 2025 (SRN/SGE), 2025 WL 2374411, at *7–8 (D. Minn. Aug. 15, 2025); *Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431, at *3–4 (S.D. Cal. Sept. 3, 2025); *Zarazoga Mosqueda*, 2025 WL 2591530, at *3; *Jose J.O.E. v. Bondi*, No. 25-cv-3051 (ECT/DJF), 2025 WL 2466670, at *7 (D. Minn. Aug. 27, 2025).

The cases cited by Respondent are inapposite, as they challenge the "threshold detention decision." Resp. at 20 (citing *Saadulloev v. Garland*, No. 3:23-cv-00106, 2024 WL 1076106 (W.D. Pa. Mar. 12, 2024). Mr. Diallo does not challenge the

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[1] District Courts have repeatedly criticized Respondents where, as here, they misstate *Jennings* to try and support a jurisdiction stripping argument. *See Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025, at *6 n.8 (D. Md. Aug. 24, 2025) ("Of worthy note is the Government's misconstruction of Jennings v. Rodriguez, 583 U.S. 281 (2018)); *id.* at *6 ("In an effort to shoehorn the Petition into the jurisdictional bar created by § 1252(b)(9), the Government urges that the court should construe the Petition to be something it is not."); *Romero v. Hyde*, No. 25011631-BEM, 2025 WL 2403827, at *5 (D. Mass. Aug. 19, 2025) ("Respondents' reliance on a functionally dissenting opinion that contradicts the holding of the Court is obviously improper.").

initial decision to detain him. He challenges Respondents' legally invalid use of a mandatory detention statute that does not apply to him to continue his detention after he was granted bond by an immigration judge. There is no "threshold" detention decision at issue here.

Mr. Diallo challenges his unlawful detention, not any question of law or fact arising from a not-yet-issued removal order. His petition is not barred by 8 U.S.C. § 1252(b)(9) or § 1252(a)(5).

II. Mr. Diallo is detained pursuant to 1226(a).

Respondents' arguments as to why Mr. Diallo is detained under § 1225(b)(2) are unconvincing. First, Respondents almost entirely ignore 8 U.S.C. § 1226(a). But it is the plain language of § 1226(a) that provides the "default rule" for detention of noncitizens who are "already in the country." *Jennings*, 583 U.S. at 288–89. Section 1226(a) provides that "except as provided in subsection (c)," detained noncitizens may be released on bond. Subsection (c), in turn exempts noncitizens convicted or charged of certain crimes, including, notably, noncitizens who are "inadmissible under [8 U.S.C. § 1182(a)(6)(A)]." 8 U.S.C. § 1226(c). Mr. Diallo is charged by Respondents on the Notice to Appear filed with the immigration court as inadmissible pursuant to § 1182(a)(6)(A). *See* Dkt. 12-5. He has not been arrested, charged with, or convicted of any crime, let alone an enumerated crime outlined in § 1226(c). The exception set forth in that subsection proves the rule that Mr. Diallo,

by the statute's plain terms, is detained under § 1226(a). "When Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1256–57 (W.D. Wash. 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

As discussed in his habeas petition, the legislative history of the INA and accompanying regulations supports his reading. *See* Dkt. 8 ¶¶ 39–40. Beyond this, Respondents' view of the statute also renders meaningless a statute that Congress passed in January of this very year. Through the Laken Riley Act (LRA), Congress amended 8 U.S.C. § 1226(c) to specify that individuals who were present in the country without admission or parole and who had been arrested, charged, or convicted of certain crimes, would be subject to mandatory detention. *See* Pub. L. No. 119-1, 139 Stat. 3, § 2 (2025) (codified at 8 U.S.C. § 1226(c)(1)(E)). If "a noncitizen's inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 amendment would have no effect." *Diaz Martinez v. Hyde*, No. 25-11613-BEM, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025). It is the "most basic" of interpretive canons that a "statute should be construed so that effect is given to all of its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Corley v. United States*, 556 U.S. 303, 314 (2009). Respondents fail to grapple with this argument, simply stating that the BIA

held redundancy is permissible. Resp. at 25. But "[w]hen Congress amends legislation, courts must 'presume it intends [the change] to have real and substantial effect." *Ross v. Blake*, 578 U.S. 632, 641–42 (2016) (alteration in original).

Respondents' own longstanding practice preceding July 2025 likewise confirms Mr. Diallo's reading of § 1226(a). For decades, the BIA has acknowledged that § 1226(a) applies to individuals who are present without admission after entering the United States unlawfully. *See, e.g.*, *Matter of Aguilar Aquino*, 24 I. & N. Dec. 747 (BIA 2009). And even as of June 2025, the Board issued a precedential decision confirming that § 1226(a) authorized IJs to conduct bond hearings for someone in Mr. Diallo's position. *See Matter of Akhmedov*, 29 I. & N. Dec. 166 (BIA 2025). An agency's longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government interpretation and practice to reject government's new proposed interpretation of law at issue.").

Respondents have treated Mr. Diallo himself as subject to § 1226(a) for the entirety of his time in the United States, until their abrupt about-face in July. Respondents issued Mr. Diallo two different "Notice[s] of Custody Determination" across two years, both of which asserted that he was detained pursuant to 8 U.S.C. §

1226. *See* Dkt. 12-3; Dkt. 12-4. In both of those notices, the Department of Homeland Security (DHS) informed Mr. Diallo that he was detained under 8 U.S.C. § 1226 and 8 C.F.R. § 1236 and had him sign the document acknowledging this determination and *requesting a bond hearing before an immigration judge. Id.; see also* Dkt. 8-2 (administrative arrest warrant). The procedures given to Mr. Diallo "cannot be unilaterally abrogated without process by the Government simply 'switching' tracks" between §1226(a) and § 1225(b)(2) as a basis for detention. *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2637503, at *8 (N.D. Cal. Sept. 12, 2025); *see also Lopez-Benitez v. Francis*, No. 25 Civ. 5937, 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025) (stating that where "it is indisputable" that DHS treated the petitioner as detained under § 1226, "[t]he court cannot credit Respondents' new position . . . which was adopted post hoc . . .").[2]

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[2] Respondents cite to *DHS v. Thuraissigiam*, 591 U.S. 103 (2020) to bolster their argument, but *Thuraissigiam* is inapposite. In that case, the noncitizen was detained under § 1225 at the border, was placed in expedited removal proceedings, and attempted to challenge the negative interview result from those proceedings through a habeas petition, where he requested "a new opportunity to apply for asylum and other applicable forms of relief." *Id.* at 114–15. Mr. Diallo was never placed into expedited removal proceedings or paroled into the country. And as other courts have explained in detail, the Court's decision in *Thuraissigiam* discussed rights "only for purposes of his application for admission" through his credible fear interview, which is entirely distinct from the detention question here. *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7 (W.D. Tex. Sept. 22, 2025); *see also id.* ("The importance of the deportability-detention distinction is underscored by a series of post-*Thuraissigiam* circuit-court decisions" and collecting cases).

It is telling that Respondents cite to only one district court decision to support their recent re-invention of mandatory detention under §1225(b)(2). *See* Resp. at 12, citing *Pena v. Hyde,* No. CV 25-11983-NMG, 2025 WL 2108913, at *1 (D. Mass. July 28, 2025). This case is distinguishable and not persuasive. The court in *Pena* simply stated, without discussion, that section 1225 "authorizes the detention of any [noncitizen] who 1) is an applicant for admission to the country and 2) is not clearly and beyond doubt entitled to be admitted." *Id.* at *1. The court's focus was on the effect of an approved I-130 petition, and it is unclear from the limited facts presented whether the petitioner was similarly situated to Mr. Diallo. Other courts have found *Pena*'s undeveloped statement to be unpersuasive in this context. *See, e.g.*, *Romero*, 2025 WL 2403827, at *1 n.1; *Francisco T. v. Bondi*, No. 25-cv-03219 (JMB/DTS), 2025 WL 2629839, at *4 (D. Minn. Aug. 29, 2025) (noting that *Pena* "includes no analysis or assessment of the Respondents' arguments or of their current interpretation of section 1225(b)(2)(A) and 1226(a)."); *Arce v. Trump*, No. 8:25CV520, 2025 WL 2675934, at *3 n.3 (D. Neb. Sept. 18, 2025) ("[T]he issue in that case was not whether § 1225 or §1226 applied – indeed, the court did not even discuss § 1226(a)."). Even more importantly, Judge Gorton, who wrote *Pena* eventually did squarely address the government's statutory arguments on October 17, 2025 and found that § 1226(a) governs the detention of a petitioner in Mr. Diallo's identical procedural posture. *See Lema Zamora v. Noem*, No. cv 25-12750-

NMG, 2025 WL 2958879, at *1–2 (D. Mass. Oct. 17, 2025). Respondents' reliance on even this one district court decision, against the overwhelming backdrop of decisions not in their favor, is unavailing.[3]

III. The automatic stay provision violated Mr. Diallo's due process rights

The automatic stay of the IJ's bond decision in Mr. Diallo's case invoked by DHS has expired, since the BIA issued a decision in his case. *See* 8 C.F.R. § 1003.19(i)(2) ("[A]ny order of the immigration judge authorizing release . . . shall remain in abeyance pending decision of the appeal by the Board."). Respondents claim that the automatic stay is "[t]he current operative mechanism of [Mr. Diallo's] detention." Resp. at 21. This is incorrect, as they acknowledge themselves that the BIA has issued a decision on their appeal, remanding based on *Yajure Hurtado*, 29 I. & N. Dec. 216. Resp. at 32.

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[3] Respondents' contention that Mr. Diallo must administratively exhaust is disingenuous at best. Resp. at 27 n.5. Mr. Diallo did exhaust through a bond hearing with an IJ, whose decision was appealed to the BIA *by Respondents*, and which the BIA granted, as Respondents themselves acknowledge multiple times. Resp. at 4, 32. Even if there were some hypothetical extra step Respondents believe Mr. Diallo should take to fully exhaust, prudential exhaustion is not required where, as here, an agency precedential decision makes any administrative exhaustion futile, where constitutional rights are implicated, or where irreparable harm will occur pending exhaustion. *See Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003).

The Court therefore does not need to reach this issue, as it has become moot. Respondents are wrong, however, that the invocation of the automatic stay did not violate Mr. Diallo's due process rights. That constitutional violation informs the remedy this Court should grant, as discussed in more detail below.

Respondents do not meaningfully contest that the use of the automatic stay violated Mr. Diallo's procedural due process rights pursuant to *Mathews v. Eldridge*, 424 U.S. 319 (1976). They merely state that because the BIA granted the appeal and remanded, the use of the stay is "irrelevant" and that the government has "an enormous interest in detaining" noncitizens. Resp. at 32 (citing *Demore v. Kim*, 538 U.S. 510 (2003)). The government's interest is not the only factor that matters when considering an individual's constitutional rights; indeed, it is but one of three. *See Mathews*, 424 U.S. at 335. As court after court has held, the automatic stay violates an individual's due process rights by allowing the losing party to unilaterally stay a judge's decision and deprive them of freedom. *See* Dkt. 8 ¶ 63. Respondents' use of it to keep Mr. Diallo detained after an IJ ordered his release violated his constitutional rights.

IV. This Court should order Mr. Diallo's release

An immigration judge found on July 28, 2025, that Mr. Diallo was not a danger to the community or a flight risk and that he should be released on bond.

See Dkt. 12-7. He remains detained nearly three months later due to Respondents' illegal actions. Mr. Diallo was detained for 53 additional days due to Respondents' violation of his constitutional rights through use of the automatic stay provision. He has remained incarcerated in a county prison 38 days later due to Respondents' illegal and incorrect use of a mandatory detention statute. This Court can order that Respondents accept the bond payment of $7,500 that an immigration judge ordered in July and through which he would have been released but for their actions.

This Court also can, and should, order Mr. Diallo's release outright. Mr. Diallo has shown that he is not a danger to the community or a flight risk. Respondents provided no justification to detain Mr. Diallo in June after releasing him almost two years prior and have not provided any since. Even the BIA, in remanding Mr. Diallo's case, did not hold that he was a flight risk or a danger. *See* Dkt. 12-11. "Given the deprivation of Petitioner's liberty, formerly granted and approved by Respondent, the absence of any deliberative process prior to or contemporaneous with the deprivation, and the statutory and constitutional rights implicated, a writ of habeas corpus is the only form of relief and the most appropriate remedy." *J.U. v. Maldonado,* No. 25-CV-04836 (OEM), 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025).

Mr. Diallo is being represented by undersigned counsel *pro bono*, and payment of the bond, while possible, poses hardship for him and his family,

especially given his inability to work since Respondents' arrest in June. Release is equitable and just in this circumstance. Other courts considering these same issues have ordered release. *See, e.g.*, *id.*; *Lopez Benitez*, 2025 WL 2371588, at *15; *Juan Carlos Bethancourt Soto v. Luis Soto*, No. 25-cv-16200, 2025 WL 2976572, at *9 (D.N.J. Oct. 22, 2025); *Sabi Polo v. Chestnut*, No. 1:25-cv-01342 JLT HBK, 2025 WL 2959346, at *14 (E.D. Cal. Oct. 17, 2025) ("Because the government has no evidence that Petitioner poses a risk of flight or poses a danger to the community, Petitioner SHALL be released IMMEDIATELY from DHS custody.").[4] Mr. Diallo respectfully requests that the Court do so here.

Conclusion

For the foregoing reasons and for those outlined in his First Amended Petition, Petitioner Yaya Diallo requests that this Court grant his petition and order his immediate release from custody. In the alternative, he requests that this Court order Respondents to accept payment of the previously-ordered bond and release him forthwith without additional restrictions.

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[4] Where an immigration judge refused to hold a bond hearing on the basis of jurisdiction or where no bond hearing was requested, district courts have ordered Respondents to hold a bond hearing as relief. That is not the case here, and no additional bond hearing is needed given the IJ's prior decision.

Date: October 28, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Margaret Kopel, affirm that I filed the above document on October 28, 2025, via CM/ ECF which will cause service to be effectuated upon all parties in this case.

Date: October 28, 2025

/s/ Margaret Kopel
Margaret Kopel, Esq.