UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA ALEXANDRIA DIVISION

ABDOUL KARIMOU DIALLO,

Petitioner,

v.

DONALD J. TRUMP, in his official capacity as President of the United States;

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security;

PAMELA BONDI, in her official capacity as Attorney General of the United States;

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;

TODD LYONS, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement;

SCOTT LADWIG, in his official capacity as Acting Field Office Director of the New Orleans Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations;

ELEAZAR GARCIA, in his official capacity as Warden, Winn Correctional Center;

Respondents.

Civil Action No. 25-2012

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. This case concerns the unlawful re-arrest and re-detention of Abdoul Karimou Diallo ("Abdoul"), a gay man who, on or about December 10, 2023, fled persecutory violence in his home country of Guinea after he was [redacted] all for being gay. After fleeing Guinea, Abdoul entered the United States without inspection ("EWI") on or about December 27, 2023. After he expressed desire to seek asylum, immigration authorities placed him in removal proceedings and released him on his own recognizance. Upon his release, Abdoul settled in New York City, where he obtained housing, steady employment, and enrolled in English language classes. But, despite Abdoul doing all the right things, Respondents abruptly changed course and re-detained Abdoul without any notice or process or any changed circumstances to justify his re-detention.

2. On May 30, 2025, Abdoul appeared, as required, at his immigration court hearing at 26 Federal Plaza in New York City. For reasons that remain unknown, Abdoul's immigration case and asylum application were summarily dismissed with no notice, explanation, or opportunity to be heard. Indeed, Abdoul had no understanding of what happened that day in court.

3. As Abdoul walked out of his court appearance, he was re-arrested and re-detained by Respondents without any notice, warning, or an opportunity to defend. But there was no basis to re-arrest and re-detain Abdoul, particularly where the government had already determined he was neither a danger to the community nor a flight risk when he was initially released by the government on or about December 27, 2023. And there was simply no change in circumstances between that initial determination and May 2025 that could justify his re-arrest and re-detention.

4. Respondents provided no justification for the decision to take Abdoul into custody, nor could they: Abdoul is not a dangerous person or a flight risk, as evidenced by his community ties,

established stability, dependence on healthcare, and appearance in court as required. Respondents re-detained him nonetheless and quickly transported him to a jail in Louisiana over 1,370 miles from his home and legal counsel.

5. Respondents' purported basis for subjecting Abdoul to an unnoticed mandatory detention is their unlawful application of 8 U.S.C. § 1225(b). But Abdoul's detention on this basis presents procedural due process concerns regardless of what statute now governs detention, particularly where Abdoul was released prior to Respondents' radical shift in statutory interpretation. And, in any event, § 1225(b)(2) does not apply to individuals like Abdoul, who were previously released by the government and where there is no change in circumstances that can justify re-arrest and re-detention. Abdoul remains subject to a different statute, § 1226(a), that allows for release as the government previously determined was appropriate.

6. Now in Respondents' custody for over five months, Abdoul's health has seriously declined, and he is experiencing persistent and stabbing pain. He has not been provided with consistent access to antiretroviral medications for human immunodeficiency virus ("HIV") and a painful anal fistula, which went unassessed for at least four months of the time Respondents have been responsible for his medical care. A planned procedure to assess his condition on October 21, 2025 did not go forward because pre-operative instructions were not given to Abdoul in a language he understands or reads. And recently, Abdoul has been bleeding significantly from the affected area and his requests for medical attention have often been unanswered.

7. Respondents' re-detention of Abdoul violates his constitutional rights and further poses a serious risk of severe injury or death given Abdoul's medical conditions.

8. Accordingly, Abdoul seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven days. Abdoul notes that it is the

U.S. Department of Homeland Security's ("DHS") current practice to invoke an automatic stay provision per 8 C.F.R. § 1003.19(i)(2) to prevent release of individuals even after bond is granted by an immigration judge ("IJ"), despite numerous courts finding use of this provision to be unconstitutional.[1] Therefore, Abdoul respectfully asserts that release is the only appropriate remedy.

II. JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus authority); 28 U.S.C. § 1331 (federal question jurisdiction); and U.S. CONST. art. I, § 9, cl. 2 (Suspension Clause).

10. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging both the lawfulness and the constitutionality of their detention. *See Demore v. Kim*, 538 U.S. 510, 516–18 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001).

11. Abdoul's current detention, as imposed by Respondents, constitutes a "severe restraint[] on [his] individual liberty," such that he is "in custody for purposes of the habeas corpus statute." *See Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist.*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241(c)(3). Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

[1] "Invocation of the automatic stay per 8 C.F.R. § 1003.19(i)(2) renders the IJ's custody redetermination order an 'empty gesture' absent demonstration of a compelling interest or special circumstance left unanswered by [the] IJ." *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, --- F. Supp. 3d ---, 2025 WL 2430025, at *13 (D. Md. Aug. 24, 2025) ("The Government's discretion in matters of immigration is deep and wide, but surely its chop does not overcome the banks of due process enshrined in the Constitution"); *see also Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1077-79 (N.D. Cal. 2004) (automatic stay violates substantive due process, procedural due process, and is ultra vires); *Ashley v. Ridge*, 288 F. Supp. 2d 662, 675 (D.N.J. 2003) ("In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception. Detention after a bail hearing rendered meaningless by an automatic stay likewise should not be the norm.") (citations omitted); *Zabadi v. Chertoff*, No. C 05-01796 WHA, 2005 WL 1514122, at *2 (N.D. Cal. June 17, 2005) (automatic stay violates substantive and procedural due process and is ultra vires); *Altagracia Almonte-Vargas v. Elwood*, No. CIV.A. 02-CV-2666, 2002 WL 1471555, at *5 (E.D. Pa. June 28, 2002) (automatic stay violates substantive due process).

12. Venue properly lies with this Court under 28 U.S.C. § 1391(e) because Petitioner is physically present and in the custody of Respondents at Winn Correctional Center located in Winnfield, Louisiana, within the jurisdiction of the Western District of Louisiana. *See* 28 U.S.C. § 2241(d).

13. Venue is proper within the Alexandria Division because a substantial part of the events giving rise to the claims in this action took place in this District. Petitioner is detained by Respondents at Winn Correctional Center, located in Winnfield, Louisiana, which is within the Alexandria Division. *See* W.D. La. Local Civ. R. 77.3.

III. PARTIES

14. Petitioner Abdoul Karimou Diallo is a 27-year-old gay Guinean man who was unlawfully re-detained by Respondents on May 30, 2025. Prior to his re-detention, he was residing within the United States since his arrival in December 2023. Abdoul is currently detained at Winn Correctional Center in Winnfield, Louisiana.

15. Respondent Donald J. Trump is named in his official capacity as President of the United States. In this role, he is ultimately responsible for the policies and actions of the executive branch, including those of DHS.

16. Respondent Kristi Noem is the Secretary of DHS. As the Secretary of DHS, Respondent Noem is responsible for the administration of immigration laws and policies pursuant to 8 U.S.C. § 1103. She supervises DHS's components including Immigration and Customs Enforcement ("ICE") and, as such, is a legal custodian of Petitioner. She is sued in her official capacity.

17. Respondent Pamela Bondi is the Attorney General of the United States. Respondent Bondi is named in her official capacity as the U.S. Attorney General. Respondent Bondi is responsible for continuing a custody case against a noncitizen under 8 CFR § 1003.6(d). She is

responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103, and the Executive Office for Immigration Review ("EOIR"), which houses the immigration courts and the Board of Immigration Appeals ("BIA" or "Board").

18. Respondent Todd Lyons is the Acting Director of ICE and senior official performing the duties of the director. In that capacity, he is a legal custodian of Abdoul. He is sued in his official capacity.

19. Respondent Scott Ladwig, upon information and belief, is ICE's Acting Field Office Director for the New Orleans Field Office of ICE Enforcement and Removal Operations. As Field Office Director, Respondent Ladwig oversees ICE's enforcement and removal operations in the New Orleans District, which includes Louisiana. Abdoul is currently detained within this area of responsibility and, as such, Respondent Ladwig is a legal custodian of Abdoul. He is sued in his official capacity.

20. Respondent Eleazar Garcia is employed by Winn Correctional Center as the facility administrator for Winn Correctional Center, where Abdoul is detained. Garcia has immediate physical custody of Abdoul. He is sued in his official capacity.

IV. EXHAUSTION OF REMEDIES

21. No statutory exhaustion requirement applies to a petition challenging immigration detention under 28 U.S.C. § 2241. *See, e.g.*, *Montano v. Texas*, 867 F.3d 540, 542 (5th Cir. 2017) ("Unlike 28 U.S.C. § 2254, Section 2241's text does not require exhaustion."); *Robinson v. Wade*, 686 F.2d 298, 303 n.8 (5th Cir. 1982) ("[S]ection 2241 contains no statutory requirement of exhaustion like that found in section 2254(b) . . . .").

22. Abdoul's claims—that his detention is unconstitutional because it contravenes the protections of the Fourth and Fifth Amendments—are unrelated to any legitimate governmental

purpose and therefore are not subject to any statutory requirement of administrative exhaustion. Exhaustion is, therefore, not a jurisdictional prerequisite. *See McCarthy v. Madigan*, 503 U.S. 140, 147 (1992) (holding that exhaustion is not appropriate where petitioner "may suffer irreparable harm if unable to secure immediate judicial consideration of his claim").

23. Furthermore, the absence of a request for a bond hearing does not present a jurisdictional bar because such a request would be futile. As explained further below, a recent precedential decision from the BIA issued in *Matter of Yajure Hurtado* erroneously strips an IJ of jurisdiction over custody redeterminations for noncitizens who EWI. 29 I. & N. Dec. 216, 228 (B.I.A. 2025). In addition, even prior to the BIA's decision, DHS implemented a widespread practice of invoking the automatic stay provision under 8 C.F.R. § 1003.19(i)(2) to prevent release of individuals granted bond by an IJ. *See, e.g., Arcos v. Noem*, No. 4:25-cv-04599, 2025 WL 2856558, at *1 (S.D. Tex. Oct. 8, 2025) (invoking automatic stay after IJ granted bond); *Martinez v. Secretary of Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *1 (W.D. Tex. Sept. 8, 2025) (same). However, numerous courts have doubted the constitutionality of this dubious practice. *See, e.g., Martinez*, 2025 WL 2598379, at *3 (noting that petitioner is likely to demonstrate that the automatic stay provision "creates a substantial risk of erroneous deprivation of [petitioner's] interest in being free from detention"); *Leal-Hernandez*, 2025 WL 2430025, at *13 ("Invocation of the automatic stay per 8 C.F.R. §1003.19(i)(2) renders the IJ's custody redetermination order an 'empty gesture' absent demonstration of a compelling interest or special circumstance left unanswered by the IJ.").

24. Accordingly, because an IJ would not entertain Aboul's request for bond and, even if bond were granted, DHS would invoke an automatic stay of that grant, the only remedy available to Abdoul is release from detention.

V. STATEMENT OF FACTS AND PROCEDURAL HISTORY

History in Guinea and Persecution

25. Abdoul is a 27-year-old citizen of Guinea who has been living in the United States since December 2023, after fleeing persecution by [redacted] for his identity as a gay man. *See generally*, Exh. A, Declaration of Petitioner Abdoul Karimou Diallo ("Pet'r Decl.").

26. Homosexuality is illegal in Guinea where gay people are subject to arrest, imprisonment, abuse by authorities, and community violence. *Id.* at ¶¶ 1–4. Further, Abdoul is [redacted] *Id.* at ¶ 2.

27. After facing threats of [redacted] Abdoul decided to escape Guinea out of fear for his safety and his life. *Id.* at ¶¶ 25, 37–38, 40–43.

Arrival in the United States and Life in New York City

28. Abdoul entered the United States without inspection near Sasabe, Arizona on approximately December 27, 2023. After entering, Abdoul was briefly detained by immigration officials and then released on his own recognizance ("ROR") pursuant to 8 U.S.C. § 1226(a). *Id.* at ¶¶ 49–50. To be released on ROR, immigration officials had to make a determination that Abdoul was neither a flight risk nor a danger to the community. *Lopez-Arevelo v. Ripa*, --- F. Supp. 3d ---, 2025 WL 2691828, at *11 (W.D. Tex. Sept. 22, 2025). As demonstrated by his time in the United States, immigration officials' initial determination was correct and there are no facts or change in circumstances to justify Abdoul's re-detention in May 2025.

29. Following his arrival in the United States, Abdoul settled down in New York and obtained an apartment in the Bronx. He timely filed his asylum application with the immigration court on

April 22, 2024. He began to learn English, obtained work authorization, and was employed as a delivery driver. Pet'r Decl. at ¶ 51.

30. Shortly after his arrival, Abdoul obtained medical care at Elmhurst Hospital and tested positive for HIV on January 22, 2024. *See* Exh. E, NYC Health and Hospitals Elmhurst HIV Positive Test Results from January 22, 2024 ("HIV Test Results"); Exh. F, NYC Health and Hospitals Elmhurst, T Cell Subset Test Results from January 22, 2024 ("T Cell Results"); *see also* Pet'r Decl. at ¶ 51. Following his HIV diagnosis, Abdoul continued to receive medical care at Elmhurst Hospital and was responding well to medication management. *See* Exh. G, NYC Health and Hospitals Elmhurst, CBC and Differential Results from April 24, 2025 ("CBC Test Results") (stating that Abdoul's HIV virus "remain[ed] undetectable on the Cabenuva injections"). In addition to his HIV diagnosis, Abdoul has struggled with rectal pain and began treatment on April 24, 2024. *See* Exh. H, NYC Health and Hospitals MyChart, Patient Health Summary ("Health Summary"). He subsequently underwent surgery for [redacted] in Brooklyn, New York. *See* Exh. C Winn Correctional Center Medical Records File, Part 1 ("Winn Medical 1"), at 1.

Master Calendar Hearing and Details of Detention

31. On May 30, 2025, Abdoul appeared in person for his scheduled Master Calendar Hearing at 26 Federal Plaza, New York, NY. During the hearing, Abdoul observed the attorney for DHS and the IJ speaking in English. Nothing was interpreted for Abdoul who speaks Pulaar and French. Upon information and belief, DHS made an oral motion to dismiss Abdoul's application for asylum, which the IJ granted.

32. Immediately after leaving the courtroom, an ICE agent stopped Abdoul and arrested him. Upon information and belief, Abdoul was placed into expedited removal proceedings under 8

U.S.C. § 1225(b)(1).[2] But Abdoul had no understanding of what was happening to him or why. He felt shock, hopelessness, and fear.

33. While being held at 26 Federal Plaza, Abdoul reiterated his fear of return to Guinea. Within a matter of days, DHS transferred Abdoul from New York to Winn Correctional Center in Winnfield, Louisiana. Only after spending nearly seven weeks in detention was Abdoul scheduled for a Credible Fear Interview ("CFI"), which he passed on or around July 17, 2025, after an asylum officer determined that Abdoul had a credible fear of persecution if removed. As a result, DHS placed Abdoul back into regular removal proceedings. Because Respondents moved Abdoul to Louisiana, his immigration court proceedings were also moved from the New York Immigration Court to the Oakdale Immigration Court in Oakdale, Louisiana.

34. Upon information and belief, Abdoul's seizure at the immigration courthouse was part of a policy newly instituted by Respondents aimed at increasing the number of daily noncitizen arrests. Public reports explain that the arrests of noncitizens following their immigration court proceedings occurred in order to meet the Executive Branch's target quota of 3,000 daily immigration arrests (up from the previous quota of 1,000 daily arrests).[3]

35. Upon information and belief, DHS's dismissal of Abdoul's removal proceedings and subsequent detention under § 1225(b)(1) are also part of a nationwide campaign by DHS that began in or around May 2025, the same month Abdoul was re-detained. With no advance notice to the noncitizens, Respondents are moving for IJs to dismiss people's removal proceedings; arresting

[2] "Expedited removal under § 1225(b)(1) applies in narrower, statutorily defined circumstances — typically to individuals apprehended at or near the border who lack valid entry documents or commit fraud upon entry — and allows for their removal without a hearing before an immigration judge, subject to limited exceptions." *Hernandez Nieves v. Kaiser*, No. 25-cv-06921-LB, 2025 WL 2533110, at *2 (N.D. Cal. Sept. 3, 2025). Noncitizens subject to expedited removal under § 1225(b)(1) are to be "removed from the United States 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).

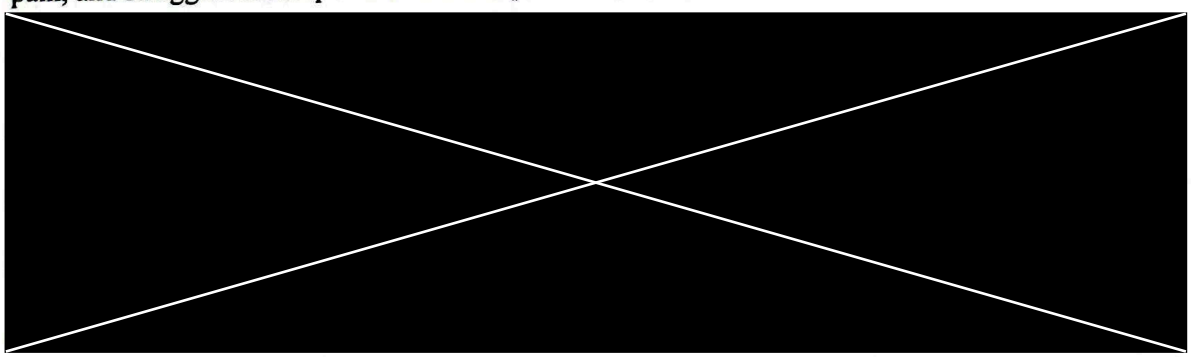
[3] *See* Brittany Gibson & Stef W. Knight, *Scoop: Stephen Miller, Noem tell ICE to supercharge immigrant arrests*, Axios (May 28, 2025), https://www.axios.com/2025/05/28/immigration-icedeportations-stephen-miller.

and detaining people who have appeared for their court hearings as directed; and placing them in expedited removal proceedings, thereby denying them any meaningful opportunity to be heard before quickly removing them from the country.

36. In Abdoul's case, Respondents placed Abdoul in removal proceedings under 8 U.S.C. § 1229a ("Section 240") of the Immigration and Nationality Act ("INA") when they released him on his own recognizance in December 2023. However, in May 2025, Respondents moved to dismiss the Section 240 proceedings against Abdoul without any advance notice and swiftly re-detained him as he walked out of his Master Calendar Hearing. Soon after he was re-detained, Abdoul reaffirmed his desire to seek asylum in the United States. Abdoul was once again placed in Section 240 removal proceedings under the same procedural posture as the day he was detained – except that he has now been deprived of his liberty interests and has suffered severe health consequences as a result of his continued detention.

Deterioration of Abdoul's Health After Re-Detention

37. Since his re-detention, Respondents have failed to address Abdoul's health concerns and have failed to consistently provide him with his necessary medication, which has caused his health to sharply decline: he is losing sight in his left eye and his ability to walk, has frequent fevers and pain, and struggles to sleep. Pet'r Decl. at ¶ 54.



other possible procedures. Exh. C, Winn Medical 1 at 1, 2, 4. The procedure was scheduled for

October 21, 2025. *Id.* at 4.

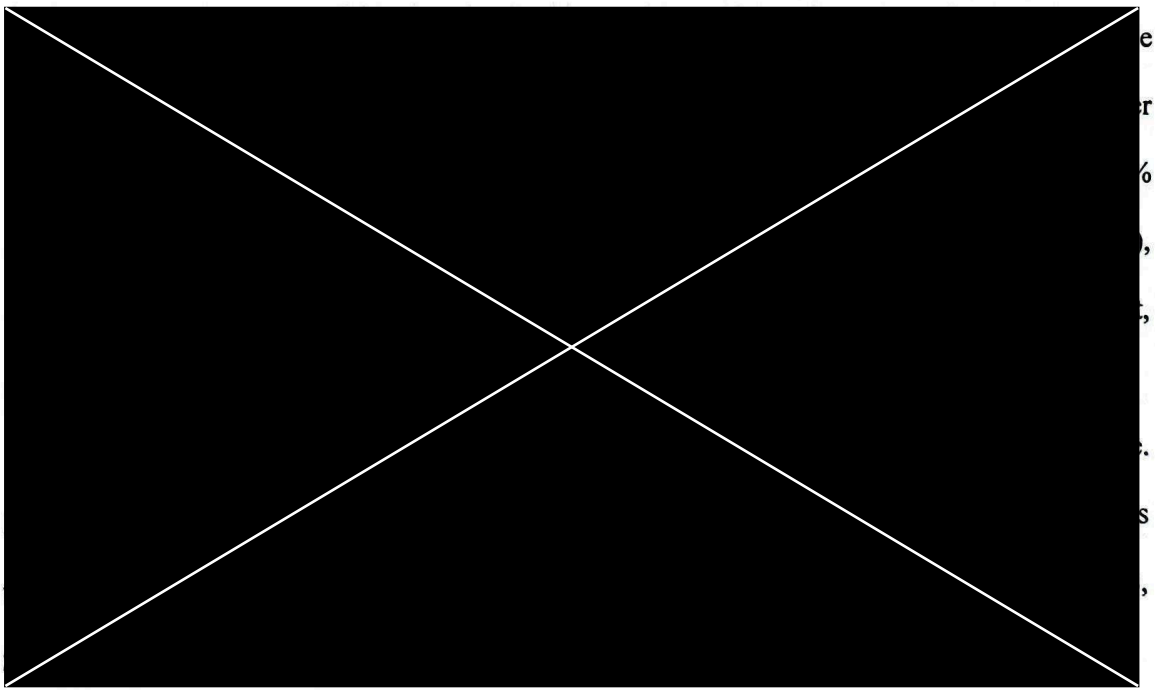
39. Although Dr. Lee reported that informed consent was obtained for the procedure, Abdoul did not receive any explanation of what the procedure entailed or how to prepare. *Id.* at 2. The pre-procedure instructions were only in English, a language he does not speak or read.

40. Abdoul's surgical plan required transfer to Winn's medical unit the day before surgery and a full day of clear liquids, with no food after midnight. *See* Exh. C, Winn Medical 1 at 4–6. However, he was never given these instructions in a language he understands and continued receiving regular meals, so the surgery was cancelled. As a result, he remains in severe pain. [redacted] surgical intervention if needed. *See* Exh. B, Declaration of Dr. Kate Sugarman, MD ("Sugarman Decl.") at ¶¶ 14(a), 15(c). But, without the procedure, [redacted] placing him at risk of infection including sepsis, which can lead to permanent disability or death. *Id.* at ¶¶ 16(a)-(d), 27 (stating [redacted] and even death. Importantly, these outcomes are entirely preventable and treatable with prompt and appropriate medical care").

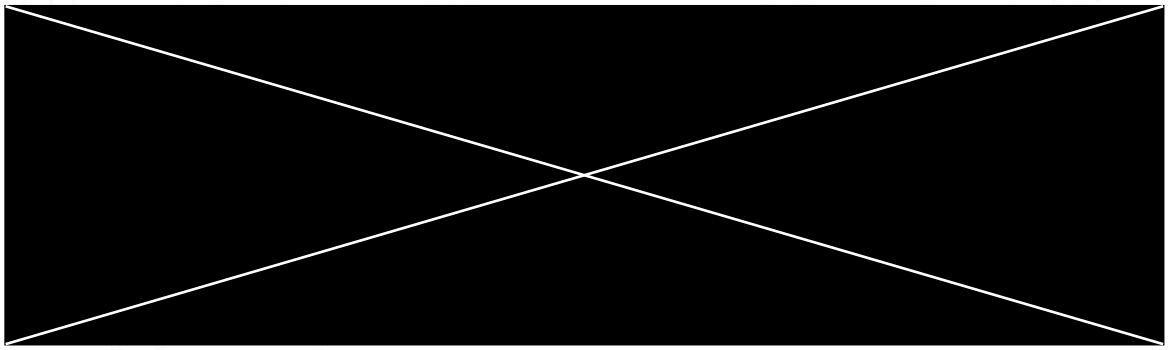
41. Following the cancellation of the planned procedure under anesthesia, Abdoul has experienced increasingly severe pain and debilitating symptoms. Most recently, Abdoul has been bleeding significantly from the affected area for several days. He has requested medical attention and, as of this filing, the procedure has not yet been rescheduled. Abdoul was recently taken to an outside provider, where he met with a doctor who advised that another appointment would be scheduled. It is not clear whether this appointment will include the necessary procedure to treat Abdoul's rectal pain.

42. Separately, Respondents have failed to regularly provide Abdoul with his necessary

medication. On June 3, 2025, while in detention, Respondents switched Abdoul's HIV medication from Cabenuva to Biktarvy (to be taken daily). *See* Exh. D, Winn Correctional Center Medical Records File 2 ("Winn Medical 2") at 24, 30. Yet he reports not receiving regular access to his daily medications, including Biktarvy. Exh. A, Pet'r Decl. at ¶ 54. Between June 3 and June 31, Abdoul missed seven doses, and between July 1 and July 31 he missed five more. Exh. C, Winn Medical 1 at 18, 22; *see also* Exh. B, Sugarman Decl. at ¶ 12(c) (finding that over the course of 59 days in detention, Abdoul missed several doses of his medication, falling below the "recommended threshold for optimal HIV control (100%)"). Interruptions in medication administration "place the patient at imminent risk of viral rebound…., heighten[] the likelihood of the virus developing drug resistance…., [and] over time … may lead to a decline in CD4 cell counts, weakening the immune system…." *Id.* at ¶ 13(a).



45. Further, Abdoul has not had consistent pain management, and it is unclear what pain medication, if any, he is currently receiving. As of September 2025, Abdoul is supposed to receive



46. Throughout his civil detention, Abdoul's blood pressure readings have consistently suggested prehypertension and hypertension. Exh. D, Winn Medical 2 at 6, 11, 13, 28, 29, 44; Exh. C, Winn Medical 1 at p. 1; Exh. B, Sugarman Decl. at ¶ 18(a). High blood pressure places Abdoul at an increased risk of "heart attack, stroke, aneurysm, kidney damage, and vision loss." Exh. B, Sugarman Decl. at ¶ 19(a).

47. Despite legal counsel's frequent outreach to ICE, Abdoul's medication access has not improved, and his reports of deteriorating health remain unaddressed.

VI. LEGAL BACKGROUND

Statutory Framework at Issue

48. In a departure from decades of statutory interpretation and practice, Respondents recently began subjecting every noncitizen in the United States to mandatory detention by unlawfully applying 8 U.S.C. § 1225(b) to their circumstances. The BIA endorsed this new legal interpretation in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025). But Respondents' position, and the BIA's decision, run afoul of well-established practice and Supreme Court precedent.

49. The INA contemplates three forms of detention for the vast majority of noncitizens in removal proceedings.

50. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ under 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.

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

51. Since his time in the United States, Abdoul has not been charged with or convicted of *any* crimes. Therefore, in the absence of Respondents' current policy and the BIA's decision in *Matter of Yajure Hurtado*, Abdoul would be afforded a genuine bond hearing with a meaningful opportunity for release on bond.

52. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225, specifically, 8 U.S.C. §1225(b)(1), and for other recent arrivals seeking admission referred to under § 1225(b)(2). This expedited removal provision at § 1225(b)(1) does not apply to Abdoul. DHS previously detained and released Abdoul on his own recognizance under § 1226(a) when he entered the country and placed Abdoul in regular removal proceedings under § 1229. While Respondents erroneously placed him in expedited removal proceedings after his re-detention in May 2025, he was again placed in regular removal proceedings under § 1229. Mandatory detention under § 1225(b)(2) also does not apply to someone like Abdoul who was re-detained in the interior of the country and is not a recent arrival, as discussed further below.

53. Lastly, 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)(2). This provision also does not apply to Abdoul, as he has not been ordered removed and is not in withholding-only proceedings.

Interplay between §§ 1226(a) and 1225(b)(2) and the Department of Justice's New Policy

54. Abdoul's re-detention concerns the detention provisions in § 1226 and § 1225. *See* 8 U.S.C. § 1226(a); 8 U.S.C. § 1225(b)(2).

55. 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).

56. Following the IIRIRA, EOIR drafted new regulations explaining that, in general, people who EWI 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).

57. Consequently, for decades, most people who EWI were placed in standard removal proceedings and received bond hearings, unless their criminal history rendered them ineligible. *See* 8 U.S.C. § 1226(c). This was consistent with decades of prior practice, where noncitizens 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)).

58. Notwithstanding this well-established statutory framework and practice, ICE, "in coordination with" the Department of Justice ("DOJ"), recently reversed decades of practice through a new policy titled "Interim Guidance Regarding Detention Authority for Applicants for Admission."[4] This policy, announced on July 8, 2025, claims that those who EWI will now be subject to mandatory detention under Section 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,

[4] *ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission*, American Immigration Lawyers Association (Jul. 8, 2025), *available at* https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

years, and even decades.

59. On September 5, 2025, the BIA adopted this same position in its published decision, *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025). There, the BIA held that all noncitizens who entered the United States without admission or parole were subject to detention under Section 1225(b)(2)(A) and ineligible for bond hearings. *Id.* at 229.

60. As noted above, this new position is in stark contrast to the statutory text. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]." 8 U.S.C. § 1229a(a)(1). Section 1226 also explicitly applies to people charged as being inadmissible, including those who EWI. *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).

61. Therefore, § 1226 undoubtedly applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

62. By contrast, § 1225 applies to people arriving at U.S. ports of entry. The entire statutory 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); *id.* at 297, 303 (noting that § 1225(b) "applies primarily to aliens seeking entry into the United States" whereas § 1226 "applies to aliens already present in the United States").

63. Indeed, many courts to consider the issue have rejected both DHS's and EOIR's new

interpretation of the INA, and with good reason — the plain text of the statute demonstrates that § 1226(a), not § 1225(b), applies to people like Abdoul. *See, e.g.*, *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025) ("As almost every district court to consider this issue has concluded, 'the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades' support finding that § 1226 applies to these circumstances" where the petitioner is already present in the U.S. when detained (quoting *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *4 (E.D. Mich. Sept. 9, 2025)); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, --- F. Supp. 3d ---, 2025 WL 1869299, at *1, 5–8 (D. Mass. July 7, 2025) (habeas petition granted where petitioner EWI in 2024); *Martinez v. Hyde*, 792 F. Supp. 3d 211, 212, 214, 222–23 (D. Mass. 2025) (same); *Pineda Parada v. Rice*, No. 25-cv-1660, 2025 WL 3146250, at *3 (W.D. La. Nov. 4, 2025) (habeas petition granted where petitioner EWI in 2023); *Kostak v. Trump*, No. 3:25-1093, 2025 WL 2472136, at *2–3 (W.D. La. Aug. 27, 2025).[5]

64. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Abdoul, who have already entered and were residing in the United States at the time they were re-detained.

[5] An overwhelming majority of courts to consider the issue have also rejected DOJ's new policy. *See Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *8–11 (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*, 795 F. Supp. 3d 475, 487–92 (S.D.N.Y. 2025); *Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1149–52 (D. Minn. 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285, at *2 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, 795 F. Supp. 3d 271, 272 (D. Mass. 2025) (collecting cases); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831, at *3 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *3–4 (N.D. Cal. Aug. 21, 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, --- F. Supp. 3d ---, 2025 WL 2496379, at *6–8 (E.D. Mich. Aug. 29, 2025); *Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431, at *6 (S.D. Cal. Sept. 3, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *4–5 (C.D. Cal. Sept. 8, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, --- F. Supp. 3d ---, 2025 WL 2607924, at *7–8 (D. Mass. Sept. 9, 2025).

Medical Care Obligations in Immigration Detention

65. The Performance-Based National Detention Standards 2025 ("PBNDS") outlines the rules and regulations that guide ICE actions as they relate to immigration detention and removal enforcement. The National Detention Standards 2025 ("NDS") sets out the rules and regulations for treatment of detainees being held in detention facilities not operated by ICE.

66. Winn Correctional Facility, where Abdoul is detained, is operated by LaSalle Corrections, a private prison company, and in 2024 housed a daily average of 1,455 individuals. Sarah Decker, et al., *Inside the Black Hole: Systemic Human Rights Abuses Against Immigrants Detained & Disappeared in Louisiana*, ACLU of LA at 12 (Aug. 2024), https://www.aclu.org/documents/inside-the-black-hole (hereinafter "Louisiana Detention Report"). This is a 142% increase from the average daily population at Winn Correctional Center in 2022. *Id.* at 13.

67. Winn Correctional Center is subject to the requirements and regulations set forth in the PBNDS.[6] The PBNDS details the rules and regulations that guide ICE actions as they relate to immigration detention and removal enforcement, including administration of medical care.[7] However, despite these rules, individuals housed at Winn Correctional Center report numerous violations of these standards. For example, individuals detained at Winn report an inability to communicate with facility officials and the denial of interpreters when seeking urgent medical treatment. Louisiana Detention Report at 32–34. They also report the denial of medications and treatment for critical and chronic conditions, including diabetes, high blood pressure, nerve pain,

[6] *See* Compliance Inspection of the Winn Correctional Center, 2025-001-079, Jan. 14-16, 2025, at 4, https://www.ice.gov/doclib/foia/odo-compliance-inspections/winnCorrCntr_WinnfieldLA_Jan14-16_2025.pdf; ICE Detention Management (last updated Sept. 25, 2025), https://www.ice.gov/detain/detention-management.

[7] *See* Immigration and Customs Enforcement, Performance-Based National Detention Standards (Dec. 2016), https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf.

liver disease, and chronic kidney disease, bowel cancer, a broken cheekbone, heavy rectal bleeding, a hernia requiring surgery, and multiple other serious conditions. *Id.* at 69–76. Further, individuals detained at Winn report that officials fail to explain test results and diagnoses and deny individuals proper informed consent prior to treatment. *Id.* at 76–77.

68. Standard 4.3 of the PBNDS concerns medical care and continuity of medical care. Section 4.3(II)(1) requires that detention facilities provide "a continuum of health care services, including screening, prevention, health education, diagnosis and treatment." PNBDS at 257. Individuals must be able to request medical attention daily and receive timely follow up on their medical complaints. *Id.* at 257. Under Section 4.3(V)(S), requests for medical care must be received and triaged within 24 hours. *Id.* at 271.

69. Pursuant to Section 4.3(II)(12), if an individual in custody has a chronic condition, then the individual must receive ongoing treatment for this condition, including medication, diagnostic procedures, and care through chronic care clinics. *Id.* at 258. This treatment must include consistent access to medication, as all individuals in custody have the right to access their medication "on schedule and without interruption" under 4.3(U), (V). *Id.* at 273.

70. If an individual placed in ICE custody is HIV positive, then 4.3(V)(C)(4) instructs facilities to provide proper medical care as governed by national guidelines and timely access to HIV medication. *Id.* at 263.

71. As described *supra*, Abdoul is HIV positive and has a chronic rectal condition causing severe pain. Further, Abdoul is regularly hypertensive. Yet, in violation of the PBNDS, Respondents have failed to timely and consistently provide Abdoul with his HIV medication and pain management. Further, in violation of informed consent standards and requirements regarding comprehension of medical procedures, Abdoul was not properly informed of the protocols for his

rectal surgery, leading to its cancellation. *See* Exh. B, Sugarman Decl. at ¶ 15(c). Additionally, despite several hypertensive blood pressure readings, Abdoul is not receiving blood pressure treatment. *See id.* at ¶¶ 17–19.

72. Furthermore, Section 6.2 of the PBNDS requires detention facilities to implement and enforce a grievance procedure. Section 6.2(II)(3) contemplates that individuals in ICE custody "shall be able to file formal grievances, including medical grievances, and shall receive written responses ... in a timely manner." PBNDS at 414. Furthermore, Sections 6.2(V)(A) and (B) state: "Each facility shall have written policy and procedures for a detainee grievance system that," among other things, includes the right to file both informal and formal medical grievances, and emergency grievances, which involve "an immediate threat to health, safety or welfare." *Id.* at 416–17.

73. Respondents are not exempt from their obligation to uphold Abdoul's constitutional rights. The Fifth Amendment of the Constitution guarantees that civil detainees, including noncitizen detainees, may not be subject to conditions of confinement or denial of medical care that "amount to punishment." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979); *Vasquez Barrera v. Wolf*, 455 F. Supp. 3d 330, 338 (S.D. Tex. 2020) ("Where the government is holding the detainee in conditions that amount to punishment, and those conditions do not reasonably relate to a 'legitimate, non-punitive governmental objective,' such conditions violate the detainee's due process rights." (quoting *Cadena v. El Paso Cnty.*, 946 F.3d 717, 727 (5th Cir. 2020))); *Dada v. Witte*, No. 1:20-CV-00458, 2020 WL 2614616 (W.D. La. May 22, 2020) (granting motion for temporary restraining order and ordering immediate release of detainees at Winn Correctional Center due to COVID-19 conditions). The government violates this constitutional right when an official has subjective knowledge of a substantial risk of serious harm and nevertheless responds

with deliberate indifference. *See Cope v. Cogdill*, 3 F.4th 198, 206–07 (5th Cir. 2021); *see also Helling v. McKinney*, 509 U.S. 25, 32 (1993) ("[W]hen the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—*e.g.*, . . . medical care and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment." (quoting *DeShaney v Winnebago Cnty. Dep't of Social Services*, 489 U.S. 189, 199–200 (1989))).

VII. ARGUMENT

Abdoul's Re-Detention Violates His Procedural Due Process Right

74. Abdoul's re-detention violates the procedural due process clause of the Fifth Amendment. The Fifth Amendment guarantees that no person in the United States shall be deprived of liberty without due process. U.S. Const. amend. V. These procedural protections apply to all people, including noncitizens, regardless of their immigration status. *Trump v. J.G.G.*, 604 U. S. 670, 673 (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))). The due process clause protects individuals against arbitrary deprivation of their property or liberty interests without adequate process.

75. Abdoul was deprived of his liberty without any procedural protections, including notice or opportunity to challenge his re-detention or meaningful process to contest his re-detention. Such a significant deprivation of liberty violates his procedural due process right. *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

76. It is well-settled that where the government seeks to deprive an individual of a "particularly important individual interest[]," it must bear the burden of justifying this deprivation by clear and convincing evidence. *See, e.g., Addington v. Texas*, 441 U.S. 418, 424 (1979). In a

case like this, where Abdoul was suddenly re-detained without explanation, and with no changed circumstances that could justify his re-detention, there is a significant interest at stake and a "clear and convincing" evidence standard provides the appropriate level of procedural protection. *See id.* at 425.

77. Abdoul's re-arrest and re-detention runs afoul of the procedural due process clause no matter what statute governs his re-detention. *See Lopez-Arevelo*, 2025 WL 2691828, at *10 (explaining that, notwithstanding which statute applies, "[r]espondents fail to contend with the liberty interests created by the fact that the [p]etitioner[] in this case [was] released on recognizance *prior to the manifestation of this interpretation*").

78. When Abdoul entered the United States, DHS briefly detained him under § 1226(a) and subsequently released him on his own recognizance. *See* Exh. I, Notice to Appear. Abdoul then settled in New York and established a life in this country. He did what our government expected of him in timely filing for asylum, obtaining a work permit, and appearing in court. But our government ignored Abdoul's fulfillment of those expectations. Instead, Respondents abruptly changed course with no notice, justification or opportunity to be heard. DHS and ICE moved to dismiss Abdoul's removal proceedings and asylum application in order to subject him to expedited removal, a process that cannot legally apply to him under the terms of the INA. That Abdoul later passed a credible fear interview – a process he should never have faced – and was placed back in Section 240 removal proceedings, demonstrates the absurdity of the unconstitutional procedure imposed on him. Moreover, subjecting Abdoul to this unlawful scheme and months of unconstitutional detention only to now claim that Abdoul's detention would have been governed by § 1225(b) from the outset, belies the due process violations inherent in Respondents' actions.

79. Respondents cannot abruptly change course in their treatment of individuals like Abdoul

without comporting with even the most basic tenets of constitutional due process. Indeed, courts have rejected post-hoc rationalizations for agency action as occurred here. *See Pacheco Mayen v. Raycraft*, No. 2:23-CV-13056, 2025 WL 2978529, at *8 (E.D. Mich. Oct. 17, 2025) (rejecting the government's "new position" concerning the applicability of § 1225(b)(2) to the petitioner originally processed under Section 1226(a)); *Gomes*, 2025 WL 1869299, at *8 n.9 ("DHS cannot convert the statutory authority governing . . . detention from [§ 1225(b)] to [§ 1226(a)] through the post-hoc *issuance* of a warrant." (citing *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 n.4 (B.I.A. 2025) (emphasis added)). Respondents' detention of Abdoul under the mandatory detention framework is a violation of his due process rights.

80. Abdoul is aware that at least one court in this District has accepted the government's new interpretation of the relevant detention statutes and concluded that petitioners such as Abdoul are subject to mandatory detention under § 1225(b). *Sandoval v. Acuna*, No. 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *see also Silva Oliveira v. Patterson,* No. 6:25-CV-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025) (concluding same). But Abdoul respectfully maintains that he has been deprived of due process and that, under the statutory scheme, he falls within the auspices of § 1226(a).

81. *Sandoval* essentially concludes that any noncitizen in the United States who has not been admitted is an "applicant for admission," regardless of how long the individual has been in the country, and therefore subject to mandatory detention under § 1225(b)(2). 2025 WL 3048926, at *5. But the court's conclusion is flawed. The court did not analyze the full text of § 1225(b)(2), which requires detention of "an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). While the court focused on the language

"applicant for admission," it did not consider the significance of the phrase "seeking admission." Because "courts must give effect, if possible, to every clause and word of a statute," the phrase "seeking admission" must have some meaning separate from "applicant for admission." *Loughrin v. United States*, 573 U.S. 351, 358 (2014). That meaning is that "'seeking admission' requires an alien to *continue* to want to *go into* the country." *J.G.O. v. Francis*, No. 25-CV-7233-AS, 2025 WL 3040142, at *3 (S.D.N.Y. Oct. 28, 2025); *Villa v. Normand*, No. 5:25-CV-89, 2025 WL 3188406, at *6 (S.D. Ga. Nov. 14, 2025) (finding *Sandoval* unpersuasive because in part it did not "address the significance of the phrase 'seeking admission,'" which "implies action" and "would most logically occur at the border upon inspection"). Because Abdoul is already here, he is not an alien "seeking admission" and therefore more appropriately falls under § 1226(a).

82. Under its plain language, the mandatory detention provision of § 1225 does not apply to people like Abdoul, who have already entered the United States and have been residing here at the time of their detention. *Jennings*, 583 U.S. at 287.

83. Indeed, many courts have found that § 1226(a), not § 1225(b), applies to noncitizens like Abdoul who are already present in the United States when re-detained. *See Buenrostro-Mendez*, 2025 WL 2886346, at *3 ("As almost every district court to consider this issue has concluded, 'the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades support finding that § 1226 applies to these circumstances" where the petitioner is already present in the U.S. when detained (quoting *Pizarro Reyes*, 2025 WL 2609425, at *4)); *Kostak v. Trump*, No. 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025) ("Respondents' position that Section 1225 applies 'because [p]etitioner is present in the United States without being admitted' is contrary to the Supreme Court's analysis of the application of 1225 to arriving aliens."); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1255–56 (W.D. Wash.

2025) (concluding that the plain text of § 1226(a) is applicable to noncitizens "already residing in the United States, including those who are charged with inadmissibility…" (cleaned up)); *see also Gomes*, 2025 WL 1869299, at *8 (granting habeas petition based on same conclusion).

84. Abdoul maintains that he is subject to detention only under § 1226. But, putting aside the issue of statutory interpretation, Abdoul's re-detention is still unconstitutional because he was never provided with notice that he would be detained based on Respondents' newfound interpretation of the INA, nor allowed to be heard on why such a determination was erroneous under the circumstances here.

85. Therefore, even if Respondents were correct about their reinterpretation of § 1225(b) for Abdoul's detention (which they are not), his re-detention remains unconstitutional. *Hernandez Nieves*, 2025 WL 2533110, at *4 ("Moreover, even when ICE has discretion to detain or release a noncitizen pending removal proceedings, after release, the petitioner has a protected liberty interest in remaining out of custody."). Indeed, Respondents' reinterpretation of the INA deprived Abdoul of any actual or genuine process and thus opportunity for relief – to writ, release, despite the fact that he falls within the auspices of § 1226(a), not § 1225(b).

Abdoul's Substantive Due Process Rights Are Being Violated Because His Detention Bears No Reasonable Relationship to Any Legitimate Government Purpose

86. Abdoul's detention also violates his substantive right to due process because his detention bears no reasonable relationship to any legitimate government purpose.

87. To comport with substantive due process, civil immigration detention must bear a reasonable relationship to its two regulatory purposes—(1) to ensure the appearance of noncitizens at future hearings and (2) to prevent danger to the community pending the completion of removal. *Zadvydas*, 533 U.S. at 690–91. Abdoul's detention violates his substantive right to due process because he cannot be deemed a danger to the community or a flight risk.

88. Abdoul has resided in the United States since November 2023. During that time, he has been nothing short of a law-abiding and productive member of society. He has attended his immigration court appearances and has had no criminal history. He started taking classes to learn English. And he had been receiving medical treatment for his HIV. There is simply no reason to believe that he would fail to appear at future hearings, or that he is a danger to the community. Indeed, it is absurd to believe Abdoul would flee or otherwise risk his liberty or opportunity to remain in the U.S. in light of his medical conditions. His re-detention is simply punitive in purpose, which *Zadvydas* prohibits. 533 U.S. at 690.

89. The government thus has no legitimate interest in detaining him. *See Demore*, 538 U.S. at 533 (O'Connor, J., concurring). The Court should order his immediate release.

Abdoul's Unlawful Arrest Underscores the Unconstitutionality of Respondents' Actions

90. Respondents' invocation of § 1225(b) in order to re-detain Abdoul emphasizes the lawlessness of his arrest, which included an unnecessary ruse as there were no exigent circumstances present necessitating a pretext for arrest.

91. Nevertheless, ICE officials, on information and belief, waited for Abdoul to exit an immigration court appearance at 26 Federal Plaza on May 30, 2025 for the purpose of arresting him.

92. While the use of a "ruse" is not strictly prohibited by the Fourth Amendment, the Supreme Court has held that there are restraints against the government. *See Lewis v. United States*, 385 U.S. 206, 209 (1966) ("The various protections of the Bill of Rights, of course, provide checks upon such official deception for the protection of the individual."). The facts of a particular case will be considered to determine whether the government's use of a ruse violated a person's rights under the Fourth Amendment.

93. Here, there were no exigent circumstances justifying Abdoul's sudden arrest without notice or opportunity to contest the new policy that now unlawfully subjects him to detention.

Respondents are Violating Abdoul's Substantive Due Process Rights by Failing to Provide Necessary Medical Care Responsive to His Serious Medical Needs, Especially Given His Immunocompromised Status.

94. Under the Fifth Amendment, civil detainees, including noncitizens, may not be subjected to punitive conditions or the denial of necessary medical care. *See Bell*, 441 U.S. at 535; *Farmer v. Brennan*, 511 U.S. 825, 832 (1994) (explaining that officials have a duty to ensure that inmates receive adequate medical care).

95. An official violates this duty when their conduct demonstrates deliberate indifference to a prisoner's serious medical needs, constituting an "unnecessary *and wanton* infliction of pain." *Wilson v. Seiter*, 501 U.S. 294, 297 (1991) (citation omitted) (emphasis in original).

96. Deliberate indifference requires a showing that prison officials had actual knowledge of a risk and disregarded it. *See Petzold v. Rostollan*, 946 F.3d 242, 249 (5th Cir. 2019). Knowledge may be inferred from the circumstances, particularly where the risk of harm is obvious. *See Hope v. Pelzer*, 536 U.S. 730, 738 (2002). For example, if the risk of inmate attacks was longstanding, pervasive, well-documented, or previously noted, and the defendant was exposed to that information, a jury may infer the defendant had actual knowledge. *See Farmer*, 511 U.S. at 842–43.

97. Respondents knew that (1) Petitioner is HIV-positive and recently underwent surgery, (2) he has been repeatedly denied his prescribed medications, and (3) that his health is severely declining: spiking fevers, escalating pain, progressive weakness, loss of sleep, impaired vision, and difficulty walking. *See* Exh. D, Winn Medical 2 at 3, 31, 46; Exh. C, Winn Medical 1 at 22; Exh. A, Pet'r Decl. at ¶ 54; Exh. B, Sugarman Decl. at ¶¶ 24–28. Nevertheless, Respondents failed

to administer 47% of Abdoul's prescribed Colace doses and 20% of his prescribed Biktarvy doses. *See* Exh. C, Winn Medical 1 at 18, 22; Exh. B, Sugarman Decl. at ¶¶ 12–16. Even missing a few doses of Biktarvy increases the amount of HIV in a patient's body and allows the virus to develop resistance to the drug, which limits future treatment options. *See* Exh. B, Sugarman Decl. at ¶ 13 .

[redacted]. *See* Exh. C, Winn Medical 1 at 16–17; Exh. B, Sugarman Decl. at ¶¶ 12–13.

98. Notably, documentation of the prescribed medication regimen is missing for most of Abdoul's detention, so the extent of missed doses is likely underreported.

99. The medical records document his HIV status, the post-surgical abscess, and the ongoing symptoms and show that facility officials were exposed to this information. Respondents had these records, and on these facts, a trier of fact may reasonably infer that officials were subjectively aware of a substantial risk to Abdoul's health and nevertheless disregarded it.

100. An inmate states a constitutional claim by showing officials refused treatment, ignored complaints, intentionally provided incorrect care, or otherwise acted with wanton disregard for serious medical needs. *See Domino v. Tex. Dep't of Crim. Just.*, 239 F.3d 752, 756 (5th Cir. 2001). Generally, "the indifference is manifested by…prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed." *Roberts v. Lessard*, 841 F. App'x 691, 693 (5th Cir. 2021) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104–05 (1976) (citation omitted)).

101. Despite clear notice of a substantial risk, exacerbated by Abdoul's immunocompromised status, officials knowingly withheld his prescribed medications. *See* Exh. C, Winn Medical 1 at 16–17; Exh. A, Pet'r Decl. at ¶ 54. Fully aware of the risk, they ignored his

repeated requests, turning a deaf ear to urgent medical needs. Petitioner does not dispute medical judgment; he instead alleges that officials failed to follow a physician-ordered regimen requiring timely administration of his prescribed medications.

102. Respondents refused to provide Abdoul's prescribed medications and ignored his repeated complaints, despite knowing he is immunocompromised and had recently undergone surgery—conditions that heighten the risk of reinfection and serious harm. This conduct meets the deliberate indifference standard. *See e.g., Lawson v. Dallas Cnty.*, 286 F.3d 257, 263 (5th Cir. 2002) (affirming a deliberate indifference finding where staff ignored doctors' explicit care orders for a paraplegic despite knowledge of the seriousness of the inmate's condition); *Harris v. Hegmann*, 198 F.3d 153, 159–60 (5th Cir. 1999) (concluding that ignoring an inmate's repeated requests for medical treatment and complaints of excruciating pain satisfied the deliberate indifference standard); *Fletcher v. Whittington*, No. 18-1153, 2022 WL 3643513, at *8 (W.D. La. Aug. 23, 2022) (denying summary judgment because evidence that nurses knew the detainee had struck his head and was acting erratically could allow a jury to find deliberate indifference); *O'Bryant v. Walker Cnty.*, No. H–08–1880, 2009 WL 212933, at *4–5 (S.D. Tex. Jan. 29, 2009) (denying Rule 12(b)(6) qualified immunity where allegations that the officer, after a traffic-stop altercation, failed to take an injured arrestee to the nearest hospital plausibly stated deliberate indifference for failure to provide prompt medical care).

VIII. CLAIMS FOR RELIEF

COUNT ONE

Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution (Procedural Due Process); U.S. Const. Amend. V.

103. Abdoul realleges and incorporates by reference all of the aforementioned allegations included in the above-numbered paragraphs as if set forth fully herein.

104. The government's infringement upon Abdoul's liberty interest triggers a right to meaningful process to contest that infringement by, for example, a right to a hearing before that right is deprived. *See Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 569–70 (1972) (holding that "when protected interests are implicated, the right to some kind of prior hearing is paramount.").

105. The determination of what procedures are required under the Fifth Amendment requires consideration of: (1) "the private interest that will be affected by the official action"; (2) "the risk of erroneous deprivation of such interest through the procedures used"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Mathews*, 424 U.S. at 335.

106. Because Abdoul's re-detention on May 30, 2025 was not accompanied by any hearing or any of the procedural protections that such a significant deprivation of his liberty interest would require, his continued detention violates his procedural due process rights. *See Mathews*, 424 U.S. at 332.

107. The lack of individual consideration creates the highest risk of erroneous deprivation of liberty.

108. The governmental interest in providing these procedures is not burdensome as it merely comports with the constitutional protections guaranteed by the Fifth Amendment.

109. For these reasons, Abdoul's ongoing detention is unconstitutional. The Court should order his release.

COUNT TWO

Violation of the Fifth Amendment Right to Due Process (Substantive Due Process); U.S. Const. Amend. V.

110. Abdoul realleges and incorporates by reference all of the aforementioned allegations included in above-numbered paragraphs as if set forth fully herein.

111. Abdoul's re-detention violates his substantive due process rights because his liberty is being restricted without justification. *See Hensley*, 411 U.S. at 351; 28 U.S.C. § 2241(c)(3).

112. 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*, 533 U.S. at 690.

113. The only permissible purposes for detention—preventing danger and flight risk—are not present here, unlawfully infringing upon Abdoul's liberty interest. *See id.* at 690–91.

114. The government's re-detention of Abdoul is unjustified as Respondents have not demonstrated that he cannot be safely released back to the community.

COUNT THREE

Violation of the Fifth Amendment Right to Due Process (Substantive Due Process); U.S. Const. Amend. V.

115. Abdoul realleges and incorporates by reference all of the aforementioned allegations included in above-numbered paragraphs as if set forth fully herein.

116. Abdoul's re-detention further violates his rights under the due process clause by depriving him of liberty and access to urgent medical care for a serious and ongoing medical condition that manifested while in Respondents' custody. Respondents have failed to provide Abdoul with adequate medical care.

117. The Fifth Amendment of the Constitution guarantees that people in civil detention may not be subject to conditions of confinement or denial of medical care that "amount to punishment." *Bell*, 441 U.S. at 535. The government violates this constitutional right when an

official has subjective knowledge of a substantial risk of serious harm and nevertheless responds with deliberate indifference. *See Cope*, 3 F.4th at 206–07.

118. Because Petitioner's detention is substantively unconstitutional, he should be released.

COUNT FOUR

Violation of the Immigration and Nationality Act

119. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set herein.

120. The mandatory detention provision at Section 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 and placed in removal proceedings by Respondents. Such noncitizens are detained under Section 1226(a), unless they are subject to Section 1225(b)(1), Section 1226(c), or 8 U.S.C. § 1231.

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

COUNT FIVE

Violation of the Fourth Amendment (Unlawful Arrest); U.S. Const. amend. IV.

122. Abdoul's detention violates his Fourth Amendment right to be free from unreasonable seizure.

123. Abdoul realleges and incorporates by reference all of the aforementioned allegations included in the above-numbered paragraphs as if set forth fully herein.

124. The Fourth Amendment protection against "unreasonable searches and seizures" is a protection against "arrest without probable cause." *Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 206

(5th Cir. 2009).

125. Abdoul was re-arrested by federal immigration agents without justification following his appearance in immigration court.

126. The government lacked any information of changed or exigent circumstances that would justify Abdoul's sudden detention while leaving immigration court.

127. Indeed, Section 1225's mandatory detention provisions for individuals in expedited removal proceedings do not apply to him.

128. The government's violation of Abdoul's right to be free from unreasonable seizure resulted not only in his initial arrest, but also his subsequent wrongful detention under Section 1225(b).

129. His re-arrest, which was premised on an unlawful ruse and led to his unlawful detention, was the fruit of a poisonous tree that can be rectified by ordering his release pursuant to her Fourth Amendment claim.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Issue an order prohibiting Respondents from transferring Petitioner outside of this judicial district during the pendency of these habeas proceedings;
3. Order the immediate release of Petitioner pending these proceedings;
4. Declare that Respondents' determination that Petitioner is subject to mandatory detention is unconstitutional because Petitioner was re-detained without notice or an opportunity to be heard and, in any event, he is subject to Section 1226(a) proceedings, not the expedited removal proceedings applicable to Section

1225(b); and,

5. Grant such further relief as the Court deems just and proper.

Dated: December 12, 2025

Respectfully submitted,

/s/ Charles Andrew Perry
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Attorneys for Petitioner
**Pro hac vice application forthcoming*

28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner, and/or someone acting in his behalf, the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in this Petition are true and correct to the best of my knowledge.

Dated: December 12, 2025

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