

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

ABDOUL KARIMOU DIALLO,

Petitioner,

v.

DONALD J. TRUMP, *et al.*,

Respondents.

Civil Action No. 1:25-cv-2012

Judge Jerry Edwards, Jr.

Magistrate Judge Joseph H L Perez-Montes

**PETITIONER ABDOUL KARIMOU DIALLO'S REPLY
IN FURTHER SUPPORT OF THE MOTION FOR RELEASE PENDING
ADJUDICATION OF PETITIONER'S HABEAS CORPUS PETITION**

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INTRODUCTION

Respondents' arguments that this Court lacks authority to issue interim relief are without merit. Federal Respondents' Response to Petitioner's Motion for Release Pending Adjudication of Petitioner's Habeas Corpus Petition ("Response") at 5-7, ECF No. 35. This Court has the inherent authority to issue interim relief and release Petitioner Abdoul Karimou Diallo pending adjudication of his Petition for Writ of Habeas Corpus (the "Petition"). *See Calley v. Callaway*, 496 F.2d 701, 702 (5th Cir. 1974). Abdoul asks that this Court exercise that authority because (1) he raises substantial legal claims that go to the core of habeas relief and (2) he demonstrates extraordinary circumstances concerning his re-detention and deteriorating health.

First, as a threshold matter, Respondents fail to acknowledge that courts have applied *Calley* in the immigration habeas context. *See, e.g., Barrera v. Wolf*, No. 4:20-CV-1241, 2020 WL 5646138, at *4-6 (S.D. Tex. Sep. 21, 2020) (holding that the court had the inherent authority to grant bail in the immigration habeas context).

Second, this Court has repeatedly rejected Respondents' overexpansive interpretation of 8 U.S.C. § 1225(b) and held that petitioners such as Abdoul are entitled to an individualized bond hearing. *See, e.g., Martinez v. Rice*, No. 25-1780 SEC P, 2025 WL 3554620, at *4 (W.D. La. Dec. 11, 2025); *Kostak v. Trump*, No. 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025). In addition, Respondents do appear to not contest Abdoul's membership in the bond-eligible class certified in *Bautista v. Santa Cruz*, --- F. Supp. 3d ---, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025). The *Bautista* court's declaratory judgment further supports Abdoul's request for release.

Third, Respondents fail to raise a single fact to suggest that Abdoul is either a danger to the community or a flight risk, or demonstrate any legitimate rationale that militates in favor of his continued detention. And their persistent failure to provide proper medical care constitutes a

serious violation of his substantive due process rights. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92 (2001).

Lastly, Respondents do not meaningfully engage with the facts showing Abdoul’s deteriorating health since his re-detention in May 2025. Abdoul, who is HIV positive, has suffered from fevers, severe pain, progressive weakness, loss of sleep, impaired vision, and difficulty walking. The “serious deterioration of [his] health while incarcerated” is precisely the type of “extraordinary circumstances” that warrant his release. *See Calley*, 496 F.2d at 702 n.1.

Because Abdoul satisfies the standard set forth in *Calley*, the Court should order his immediate release pending adjudication of the Petition.¹

ARGUMENT

I. This Court Has the Inherent Authority to Grant Bail.

This Court has the inherent authority to grant bail pending resolution of a habeas petition in the immigration context. Respondents contend that the Fifth Circuit has not extended *Calley* to the immigration context and should decline to do so here because Abdoul’s removal order is not final. Resp. at 5. That argument is unpersuasive.

Several district courts in this Circuit have recognized the “inherent authority to grant bail pending the merits of a habeas petition” in the immigration context. *Barrera*, 2020 WL 5646138, at *4-6; *Sacal-Micha v. Longoria*, 449 F. Supp. 3d 656, 662 (S.D. Tex. 2020) (recognizing the court’s authority to grant bail in the habeas context, though denying such relief); *Arzanipour v. Parra*, No. CIV. A. No. H-88-0158, 1989 WL 101481 at *1 & n.1 (S.D. Tex. Feb. 23, 1989) (citing *Calley* as support for granting petitioner’s interim motion to set bond pending resolution of his

¹ While Respondents contend that they were not formally served with the Petition until December 29, 2025, Petitioner’s counsel emailed Respondents with a copy of the Petition and supporting exhibits on December 12, 2025.

challenge to a deportation order). In addition, at least in dicta, the Fifth Circuit has approved of a court's "inherent power to grant bail pendente lite pending determination of the merits" where "the court had jurisdiction to order release from custody as a final disposition of the action." *Pierre v. U.S.*, 525 F.2d 933, 936 (5th Cir. 1976).

"While the Fifth Circuit has not explicitly extended *Calley* to apply in alien habeas petitions, this same standard has been applied by the Second Circuit when considering bail for an alien challenging his detention through a habeas petition." *Singh v. Gillis*, No. 5:20-cv-96-DCB-MTP, 2020 WL 4745745, at *2 (S.D. Miss. June 4, 2020) (citing *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001)); *Mapp*, 241 F.3d at 223 ("[T]he federal courts have the same inherent authority to admit habeas petitioners to bail in the immigration context as they do in criminal habeas cases."); see *Sanchez v. Winfrey*, No. Civ.A.SA04CA0293RFNN, 2004 WL 1118718, at *2 (W.D. Tex. Apr. 28, 2004) (applying the standard set forth in *Mapp* in the context of an immigration habeas petition).

Respondents make much of the fact that Abdoul is not facing a final order of removal. Resp. at 6-7. But that fact is irrelevant to the relief Abdoul seeks. As in *Barrera*, Abdoul challenges the constitutionality of his detention under the Fifth Amendment—he "do[es] not seek review of a removal order." See *Barrera*, 2020 WL 5646138, at *5; see also *Perdomo v. Noem*, No. 2:25-cv-05605-MEMF-SP, 2025 WL 3050056, at *1, 6-7 (C.D. Ca. July 30, 2025) (granting an immigrant detainee bail in the habeas context where the detainee was in removal proceedings).

Therefore, the Court has the authority to grant bail pending final adjudication of the Petition.

II. The Petition Presents Substantial Claims with a High Probability of Success.

This Court has jurisdiction over Abdoul's Petition, which, under the first prong of the *Calley* test, presents "substantial constitutional claims upon which [there is] a high probability of success." *Calley*, 496 F.2d at 702. Respondents erroneously contend that (1) the Court lacks

jurisdiction, and (2) Abdoul's detention is lawful. Resp. at 3-4. For the reasons below, the Court should reject both arguments, which we address in turn.

A. The Court Has Jurisdiction over the Claims in the Petition.

As explained more fully in Abdoul's Reply in Further Support of his Petition for a Writ of Habeas Corpus (the "Habeas Reply"), the Court has jurisdiction over his claims. Habeas Reply at 2-4. Respondents contend that certain statutory provisions under 8 U.S.C. § 1252 limit the Court's jurisdiction, but this Court has already largely rejected those arguments in similar cases. *See Avendano Lopez v. Garcia*, No. 1:25-CV-01776 SEC P, 2026 WL 105023, at *1 (W.D. La. Jan. 14, 2026) ("Neither 8 U.S.C. § 1252(b) nor § 1252(g) divest the Court of jurisdiction.") (Edwards, J.); *Martinez*, 2025 WL 3554620, at *1-2 (same).

Respondents' reliance on § 1252(e)(3) is similarly unpersuasive. That subsection concerns "[c]hallenges on validity of the system." 8 U.S.C. § 1252(e)(3). "[T]he statute funnels systemic 'facial challenges to the expedited removal process' itself to the District of Columbia." *Zafra v. Noem*, No. EP-25-CV-00541-DB, 2025 WL 3239526, at *2 (W.D. Tex. Nov. 20, 2025) (quoting *Rodriguez v. McAleenan*, 435 F. Supp. 3d 731, 738 (N.D. Tex. 2020)). Abdoul does not raise a systemic facial challenge to the expedited removal process. Instead, he brings an as-applied challenge to his individual detention. Section 1252(e)(3) does not bar the Court from considering that challenge. *See Zafra*, 2025 WL 3239526, at *2 ("Constitutional as applied challenges to an individual's detention during said removal process, however, are left to the regional federal courts."); *Barros v. Noem*, No. EP-25-CV-488-KC, 2025 WL 3154059, at *2 (W.D. Tex. Nov. 10, 2025) (rejecting the argument that § 1225(e)(3) deprived the court of jurisdiction because petitioner asserted "an as-applied due process challenge to his detention" and such a "claim[] of invalid confinement may only be raised through a petition for writ of habeas corpus").

Therefore, the Court has jurisdiction over the claims in the Petition.

B. Abdoul's Detention Under § 1225(b) Is Unlawful.

As explained in the Petition and Habeas Reply, Abdoul is not subject to mandatory detention under § 1225(b)(2) and, therefore, his continued detention violates his rights under the Due Process Clause.

Section 1225(b)(2) does not apply to petitioners, such as Abdoul, who were residing in the United States at the time of their re-detention. Indeed, this Court has repeatedly rejected Respondents' new and expansive interpretation of § 1225(b)(2). *See Avendano Lopez*, 2026 WL 105023, at *1; *Martinez*, 2025 WL 3554620, at *3-4. And a majority of courts that have addressed this issue have similarly rejected Respondents' misinterpretation. *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 United States when detained (quoting *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *4 (E.D. Mich. Sep. 9, 2025))).

Simply put, Abdoul was not seeking admission when he was re-detained on May 30, 2025. He had been residing in the United States since December 2023. Therefore, because Abdoul "resided within the United States when detained . . . § 1226(a)—not § 1225(b)—governs" his detention and requires that he receive a bond hearing. *Martinez*, 2025 WL 3556420, at *4.

Furthermore, Respondents do not contest Abdoul's membership in the bond-eligible class certified in *Bautista*.² For the reasons explained in the Habeas Reply, the Court should afford the *Bautista* declaratory judgment preclusive effect. Habeas Reply 8-10.

Abdoul's challenge to his unlawful mandatory detention presents a high probability of success and he, therefore, satisfies the first prong of the *Calley* test.

III. Abdoul's Petition Presents Extraordinary Circumstances.

Turning to the second prong of the *Calley* test, in its Order to Show Cause dated January 20, 2026, the Court instructed Respondents to focus on *Calley*, *Sanchez*, and *Mapp*, and "whether such 'extraordinary circumstances' exist here." ECF No. 32. But in their response, Respondents fail to meaningfully engage with the extraordinary circumstances around Abdoul's detention and medical conditions, which continue to worsen each day he remains unlawfully detained.³

Respondents merely argue that "[a]llegations that a petitioner may face health issues in the future do not suffice." Resp. at 7-8. But the facts demonstrate that Abdoul faces significant health issues right now that only continue to worsen each day he remains detained.⁴ Indeed, over the past several months, Abdoul, who is HIV positive, has suffered from fevers, severe pain, progressive

² The Court previously ordered Respondents to "address whether they challenge Petitioner's class membership." Order dated Jan. 9, 2026, ECF No. 28.

³ As explained in the Motion, Abdoul's detention is itself extraordinary because he was unlawfully re-detained following Respondents' newfound misinterpretation of federal law, and Respondents have failed to provide a bond hearing despite the declaratory judgment issued in *Bautista*. Mot. at 16-17. Respondents do not address this argument in their discussion of whether extraordinary circumstances exist here. *See* Resp. at 7-8.

⁴ Respondents cherry-pick notes from Abdoul's medical record and omit assertions made since September 2025, including from Abdoul's own counsel. *See* ECF 29-2, Declaration of Alpha Diallo ("Alpha Diallo Decl."). Respondents' avoidance is a tactical one: Abdoul's poor and deteriorating health constitutes precisely the type of "extraordinary circumstances" that warrant a petitioner's release on bail.

weakness, loss of sleep, impaired vision, and difficulty walking. Pet. ¶¶ 37-40, 97. As explained in the Petition and Motion for Release Pending Adjudication of the Petition (“Motion”), Abdoul has required a procedure under anesthesia to evaluate an anal fistula and treat his rectal pain. Pet. ¶¶ 38-40; Mot. at 14. To date, and despite repeated complaints, Abdoul has not received that procedure. Pet. ¶ 40; Mot. at 14. Respondents’ inaction has led Abdoul to reduce his food intake to limit or avoid excruciating bowel movements and associated episodes of bleeding. Mot. at 14. Withholding medical treatment under these circumstances is inhumane and unacceptable. Furthermore, Respondents have failed to consistently provide Abdoul with access to prescribed medication, including antibiotics, pain medication, and medication to treat his HIV diagnosis. Pet. ¶¶ 97, 101. Respondents’ continuing inaction creates the substantial risk that the amount of HIV in his body will allow the virus to develop resistance to the medication, which likely will limit Abdoul’s future treatment options. *Id.* ¶ 97.⁵ Respondents simply ignore these facts.

For the reasons stated above, Abdoul’s continued detention despite his bond eligibility and worsening health presents extraordinary circumstances that warrant release. *See Calley*, 496 F.2d at 702 n.1 (extraordinary circumstances include the “serious deterioration of the petitioner’s health while incarcerated.”); *Perdomo*, 2025 WL 3050056, at *6 (granting release on bond in the immigration habeas context where the petitioner reported “symptoms—including dizziness, headaches, confusion, and a blood pressure reading of 190” which did “not appear to be controlled with medication”); *Singh*, 2020 WL 4745745, at *2 (discussing examples that qualify as “extraordinary circumstances” in the bail habeas petition context, including “serious deterioration

⁵ Respondents note that the medical records Abdoul attached to his Petition cover the period of his detention from May 2025 to September 2025. Resp. at 2. But Abdoul also submitted a declaration from his immigration counsel, Alpha Diallo, which describes medical issues post-dating the filing of the Petition in December 2025. Alpha Diallo Decl. at ¶¶ 6-7.

of a petitioner's health while incarcerated"); *Sanchez*, 2004 WL 1118718, at *3 (finding the facts of the case "exceptional" where petitioner's "residence, employment, relationships and financial condition are exceedingly stable," where the petitioner "has lived in the same city since she arrived in the United States," "has never been convicted of any criminal offense," or "has never been the subject of a lawsuit").

CONCLUSION

For the foregoing reasons, Abdoul respectfully requests that the Court order his release on bail pending adjudication of the Petition.

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