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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA
PHILADELPHIA DIVISION**



ABDOULAYE DIALLO	:	CIVIL ACTION NO. 2:25-CV-7421
	:	
Petitioner	:	
	:	
v.	:	
	:	
PAMELA BONDI, Attorney General, U.S. Department of Justice; KRISTI NOEM, Secretary, Department of Homeland Security; TODD LYONS, Acting Director, Immigration and Customs Enforcement (ICE); BRIAN MCSHANE, Field Office Director, ICE Philadelphia Field Office; J.L. JAMISON, Warden, Federal Detention Center, Philadelphia, in their official capacities; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT' U.S. DEPARTMENT OF JUSTICE; and U.S. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,	:	PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
	:	
Respondents	:	

INTRODCUTION

Petitioner, Abdoulaye Sergent Diallo, A-, by and through his undersigned counsel, respectfully petitions this Honorable Court to issue a Writ of Habeas Corpus to review the lawfulness of his detention and order his release from custody. Petitioner also files this action

for declaratory and injunctive relief. In support of this Petition and action, Petitioner alleges as follows:

BACKGROUND STATEMENT OF FACTS

1. Petitioner is Abdoulaye Sergent Diallo, a noncitizen in the custody of Immigration and Customs Enforcement (ICE) at the Federal Detention Center Philadelphia (FDCP). Mr. Diallo has been detained since December 26, 2025 when he was arrested at an ICE Check-In. (Exh. A)
2. Mr. Diallo's detention was made despite the requirement under 8 U.S.C. § 1226(a) and its implementing regulations that immigration officials make individualized custody determinations.
3. Petitioner is a citizen and national of the Guinea with a date of birth of 
 (Exh. B)
4. Petitioner entered the United States on or about November 5, 2023 and entered without inspection. After a brief period of detention, Petitioner was released into the United States on his own recognizance. (Exh. C)
5. Petitioner has been in removal proceedings since that date, and was previously in the jurisdiction of the Philadelphia EOIR. (Exh. D)
6. Petitioner timely filed an I-589 on or about February 16, 2024 (Exh. E)
7. Petitioner is work authorized. (Exh. F)
8. On or about April 4, 2025, Philadelphia EOIR cancelled Petitioner's hearing and gave no new date to return. (Exh. G)
9. Petitioner has no criminal history and has a family in the United States, he is not a flight risk nor a danger to the community.

10. Petitioner has been in the United States for more than two years, has steady work at a hospital and resides with his family at a fixed location. (Exh. H)
11. His detention is no longer justified under the Constitution or the Immigration and Nationality Act (INA).

EQUAL ACCESS TO JUSTICE ACT

12. Petitioner incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.
13. Petitioner has retained the undersigned counsel to represent him in this matter and has agreed to pay counsels reasonable attorney fees, costs and expenses. Petitioner therefore seeks an award of his costs', attorneys' fees, and expenses, under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, in this lawsuit.

PARTIES

14. Mr. Diallo is a citizen and national of Guinea seeking asylum in the United States and is in the physical custody of Respondents Pamela Bondi, Attorney General of the United States, Kristi Noem, Secretary of DHS, Todd Lyons, Acting Director of ICE, Brian McShane, Field Director (FOD) for the ICE Philadelphia Field Office, Leonard Oddo, Warden of the Moshannon Valley Processing Center in Philipsburg Pennsylvania.
15. Pamela Bondi, as the Attorney General of the United States, is ultimately responsible for EOIR and the administration of immigration laws under 8 U.S.C. § 1103(g) and is therefore responsible for Petitioner's detention.
16. Kristi Noem is the Secretary of the DHS and is tasked with enforcing immigration laws. Respondent Noem is therefore the ultimate legal custodian to Petitioner.

17. Todd Lyans, as the Acting Director of ICE, is a more immediate custodian to Petitioner.

18. Brian McShane is responsible for ICE-Philadelphia as the FOD and is a custodian of Petitioner.

19. At the time of the filing of this petition, Petitioner is detained at FDCP in Philadelphia Pennsylvania. J.L. Jamison, the Warden, through FDCP contracts with DHS to detain aliens such as Petitioner and is therefore a custodian to petitioner. Mr. Diallo is under the direct control of Respondents and their agents.

JURISDICTION AND VENUE

20. This action arises under the Constitution of the United States, the INA, 8 U.S.C. § 1101 et. seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, 110 Stat. 1570.

21. This Court has jurisdiction under 28 U.S.C. 2241, art. I, § 9, cl. 2 of the United States Constitution (“Suspension Clause”) and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of authority of the United States and such custody is in violation of the U.S. Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, and the All Writs Act, 28 U.S.C. § 1651.

22. Venue is proper because Petitioner resides and is detained in Philadelphia PA, which is within the Eastern District Court of Pennsylvania.

STATEMENT OF LAW

23. The issues presented within this petition have been capably and thoroughly analyzed by numerous members of this Court, and no purpose is served in the delay in preparing an opinion addressing the same issues. *See Ball Toure v. Bondi*, No. 25-cv-07101(E.D. Pa. Dec. 19 2025) *citing Ndiaye v. Jamison*, No. 25-cv-6007, 2025 WL 3229307 (E.D.

Pa. Nov. 19, 2025) (Sánchez, J.); *Kashranov v. Jamison*, No. 25-cv-5555, 2025 WL 3188399, at *4-7 (E.D. Pa. Nov. 14, 2025) (Wolson, J.); *Diallo v. O'Neill*, et al, No 25-cv- 6358 (E.D. Pa. Nov. 26, 2025) (Savage, J.);

24. Non-citizens attempting to enter the United States are subject to INA regulations as codified by 8 U.S.C. § 1225(b)(2)(A) which reads “in the case of an alien who is an application for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained.”
25. Further, it reads “An alien detained under Section 1225(b)(2) may be released only if he is paroled for ‘urgent humanitarian reasons or significant public benefit’ pursuant to 8 U.S.C. § 1182(d)(5)(A).” *See Gomes v. Hyde*, 25 Civ. 11571, 2025 WL 1868288, at *2 (D. Mass. July 7, 2025)(quoting *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018).
26. However, the Supreme Court has found that the government is authorized to detain certain aliens already *in the United States*, pending the outcome of removal proceedings, under § 1226(a) and (c). *See Jennings, supra*, at 288-89.
27. Noncitizens detained under Section 1226(a) have the right to request a bond hearing before an Immigration Judge, at which the government bears the burden to prove that continued detention is justified. *See Gomes v. Hyde, supra*, at 2.
28. The Immigration Court retains jurisdiction to determine if an alien is eligible for release of custody through bond as a matter of law. (See 8 CFR § 236.1, 8 CFR § 3.19, and 8 U.S.C. § 1226).
29. Further, the Immigration Court retains jurisdiction to conclude if an alien is subject to mandatory detention. (See INA 236(c)(1)(A)-(D) and 8 U.S.C. § 1226 (c)).

30. Moreover, after the initial custody determination by DHS, a respondent may request an initial bond redetermination by an immigration judge in either writing or orally and the application “shall be made to one of the following offices, in the designated order: (1) If respondent is detained, to the Immigration Court having jurisdiction over the place of detention....” (8 CFR § 1003.19 -quoting 8 CFR § 1003.19(c)(1)).

31. The statute is permissive in allowing the Attorney General to release an alien on bond or conditional parole. 8 U.S.C. § 1226

32. Specifically, 1226(a) reads:

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General-

(1) *may* continue to detain the arrested alien; and

(2) *may* release the alien on-

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole; (*emphasis added*)

33. The permissive nature of the black-letter of the law under 1226(a) contrasts with 1226(c), which directs the attorney general to take into custody certain criminal aliens.

“The Attorney General *shall* take into custody any alien...is inadmissible by reason of having committed any offense...” (*emphasis added*)

34. The Supreme Court has interpreted similar “may” language in other provisions of the INA to require “some level of individualized determination.” *I.N.S. v. Nat’l Ctr. for Immigrants’ Rights*, 502 U.S. 183, 194 (1991).

35. The statutory scheme for release is implemented through 8 U.S.C. § 1236.1(c)(8) which provides that an alien may be released so long as the release would not pose a danger to property or persons and that the alien is likely to appear for any future proceeding.
36. Courts have identified only two legitimate purposes for immigration detention: to “ensur[e] [the noncitizen’s] appearance ... at future immigration proceedings,” and to “[p]revent[] danger to the community.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
37. Recently, the Board of Immigration Appeals held that Immigration Judges lack authority to hear bond requests for aliens who are present in the United States without admission. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
38. *Matter of Yajure Hurtado*, had treated virtually all noncitizens who entered without inspection as subject to mandatory detention without bond under § 235(b)(2)(A), regardless of the circumstances of their apprehension.
39. This is a departure from nearly every other interpretation of detention since the current statutory scheme was created through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).
40. However, on or about November 20, 2025, the case was overturned. See *Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr. et al.*, 5:25-cv-01873-SSS-BFM (District Court (C.D. Cal.)) Five days later, the court issued a secondary opinion certifying its holding as a class.
41. The class was created on or about November 25, 2025 and includes:
 - a. All noncitizens in the United States without lawful status who (1) have entered or will enter the United states without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention

under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination. *Maldonado Bautista, supra* at 15 (Nov. 25)

42. According to the holding of *Maldonado Bautista*, the policy of detention was reviewable by higher courts as to the constitutionality of the detention policy. *Id.* at 4

43. Additionally, the decision held that The DHS Policy Violated Federal Law because DHS cannot treat individuals already inside the United States as “applicants for admission” simply because they are charged with inadmissibility. *Maldonado Bautista, supra* at 15 (Nov. 20) *Id.* at 12-13 See Also *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

44. The policy contradicts the structure of the INA, which clearly distinguishes between § 1225 (frontline, border-type processing) and § 1226 (interior arrests, where bond hearings are required). *Id.* at 11

45. *Maldonado Bautista* was also finalized on or about December 18, 2025 with a final order entered by the district judge, and is a final order under Rule 54(b) of the Federal Rules of Civil Procedure.

46. Moreover, INA §§ 1252(a), 1252(b)(9), and 1252(e)(3) do not strip federal courts of jurisdiction, contrary to DHS claims. *Id.* at 4

47. Pursuant to *Maldonado Bautista*, the EOIR is in error because they do not hold a hearing for bond while a noncitizen has their case before EOIR. While EOIR denies a bond hearing, Petitioner remains detained contrary to law.

48. Additionally, and again departing from decades of established jurisprudence, the BIA issued a decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), which held that

non-citizens who were apprehended at the border and subsequently released into the United States are subject to mandatory detention without the possibility of bail upon re-detention, pursuant to 8 U.S.C. § 1225(b), even if that re-detention occurs years after their initial release from custody.

49. Somehow, the BIA reasoned that “an applicant for admission who is arrested and detained without a warrant while in the process of arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section [1225(b)] and is ineligible for any subsequent release on bond under section [1226(a)]” *Id.* at 74.
50. Petitioner argues that this Honorable Court does not need to defer to DHS, as an agency, on a reasonable interpretation of an ambiguity in the law based on the holding of *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).
51. In *Loper*, the Supreme Court determined that *Chevron* was wrongly decided and that courts no longer have to defer to an agency on interpretation, instead opting for the weaker *Skidmore* deference. See *Loper v. Raimondo, supra*, see generally *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) and *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944).
52. Instead, this Honorable Court should rely on a case-by case basis in its deference to an agency’s interpretation of law. See *Skidmore, supra*.
53. Specifically, and as argued above, the validity of the ICE’s reasoning in *Q. Li and Hurtado* and the consistency in the interpretation of mandatory detention requirements are both lacking.

54. Respondent argues that ICE, in its agency interpretation, has failed to establish any validity in its reasoning as to why all EWIs are subjected to mandatory detention and that ICE's new interpretation is vastly inconsistent with prior regulatory interpretations from the last thirty years.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

55. Mr. Diallo has exhausted all of his administrative remedies to the extent required by law. Mr. Diallo has fully cooperated with Respondents and has not delayed or obstructed his detention.

56. Mr. Diallo's only remedy is by way of this judicial action.

CLAIMS FOR RELIEF

Count One – Statutory Violation of Rights Under 8 U.S.C. § 1226(a)

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

58. As established above, the mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to grounds of inadmissibility, as was erroneously held in *Matter of Hurtado* and *Matter of Q. Li*. See *Matter of Hurtado* and *Matter of Q. Li*, *supra*.

59. Further, as relevant in the instant matter, it does not apply to aliens who have been residing in the United States at liberty after a brief detention at or near the border. Such aliens, if detained later on, are done so under § 1226(a) and are therefore generally eligible for release on bond. See *Jennings*, *supra*. at 288-89.

60. Petitioner's continued detention by Respondents without a bond is unlawful and contravenes 8 U.S.C. § 1226(a), a statutory provision that provides for relief from detention under the INA.
61. Respondents have detained Petitioner without making an individualized determination regarding whether he poses a danger to the community or is a flight risk, as required under the regulations related to release and detention in § 1226(a).
62. Respondent's recent decisions in *Matter of Q. Li* and *Matter of Hurtado*, unlawfully contravene Petitioner from obtaining a custody determination in front of an Immigration Judge as is his right by statute.

**Count Two – Deprivation of Liberty Without Due Process Under the Fifth
Amendment**

63. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.
64. Respondents deprive Petitioner of his liberty interest under the Due Process Clause of the Fifth Amendment; 5 U.S.C. by detaining him in the Moshannon Valley Processing Center.
65. The Due Process Clause extends to noncitizens residing in the United States, whether they have lawful status or not. *See Mathews v. Diaz*, 426 U.S. 67, 77 (1976); *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Specifically, “[i]t is well established that the Fifth Amendment entitles [non-citizens] to due process of law in deportation proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993); *see also Abdulai v. Ashcroft*, 239 F.3d 542, 549 (3d Cir. 2001) (“[Non-citizens] facing removal are entitled to due process”); *Calderon-Rosas v. Atty’ Gen.*, 957 F.3d 378, 386 (3d Cir. 2020) (“In sum,

petitioners seeking discretionary relief are entitled to fundamentally fair removal proceedings, which constitutes a protected interest supporting a due process claim.”).

66. Evaluating the adequacy of the process provided to a non-citizen requires a balancing of factors. “First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).
67. Fifth Amendment violations are reviewed by courts under 5 U.S.C. §§ 702 and 706. Wherein a person suffering a legal wrong because of an agency action or adversely affected or aggrieved by agency action within the meaning of the relevant statute is entitled to judicial review thereof. 5 U.S.C. §§ 702.
68. Additionally, to the extent necessary to decide and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. 5 U.S.C. §§ 706.
69. Further, such a court shall compel an agency action unlawfully withheld or unreasonably delayed and hold unlawful any agency findings contrary to constitutional right, power, privilege, or immunity. 5 U.S.C. §§ 706(1) and (2)(b).
70. Petitioner faces on of the most significant liberty interests there is – the interest in being free from imprisonment. *See Velasco Lopez v. Decker*, 978 F. 3d 978 F.3d 842, 851 (2d Cir. 2020) (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)).

71. Further, Respondents have erroneously deprived Petitioner of his liberty without an individualized assessment of his circumstances. Specifically, Respondents did not make any individualized findings of Petitioner's dangerousness or flight risk. Therefore, there does not seem to be a significant, nor legitimate, government interest in detaining Petitioner.

72. An application of these factors requires that Petitioner was necessarily detained contrary to his rights under the Fifth Amendment.

Count Three – Violation of the Administrative Procedures Act, 5 U.S.C. § 701

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

74. Petitioner is aggrieved by agency action under the Administrative Procedures Act, (APA), 5 U.S.C. § 701 *et. seq.* Specifically, Respondents have acted in an arbitrary and capricious manner when they detained Petitioner without conducting an individualized determination into his circumstances.

75. Respondents have presented no evidence that would indicate that Petitioner's circumstances have changed in such a way that he is a danger to the community or a flight risk that is different than when he was originally detained and released by Respondents.

76. Additionally, the BIA is acting as a rule-making agency when issuing statements of general applicability and future effects designed to implement, interpret, or prescribe law or policy pursuant to 5 U.S.C. § 551(1), (4), and (5).

77. Specifically, the recent decisions of *Matter of Q. Li* and *Matter of Hurtado*, are "rules" contemplated in the APA which the BIA, as an agency, has failed to properly

publish in the Federal Registrar and follow other procedures prescribed by the APA, with no good cause exception. 5 U.S.C. § 553.

78. Instead, Respondents acted arbitrarily and capriciously when taking away Petitioner's rights under 8 U.S.C. § 1226(a) for an adjudication for custody redetermination and Bond, without an reasoned explanation for its action. *See Department of Homeland Security v. Regents of the University of California*, 591 U.S. 1 (2020).(wherein the Department of Homeland Security was found to have acted in an arbitrary and capricious manner when rescinding Deferred Action for Childhood Arrivals without a reasoned explanation for the action and without considering the conspicuous issues.)
79. The current policies are arbitrary, capricious, not in accordance with the text of the INA, and violative of Petitioner's rights under the APA.

Count Four - Equal Access to Justice Act

80. Petitioner re-alleges and incorporates by reference paragraphs 1-52 above.
81. If she prevails, Petitioner requests attorney's fees and costs under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, as amended.

PRAYER FOR RELIEF

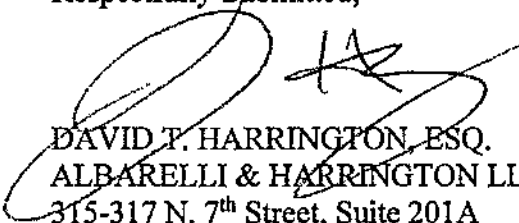
WHEREFORE, Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Issue an order directing Respondents to show cause why the writ should not be granted;
3. Issue a writ of habeas corpus ordering Respondents to release Mr. Diallo on his own recognizance, or under parole, under a low bond, or reasonable conditions of supervision;
4. Issue a declaration that, as applied to this case, Respondents are violating Mr. Diallo's statutory rights under 8 U.S.C. § 1226(a) and 8 U.S.C. § 1236.1(8), his Due Process Rights,

his rights under the Administrative Procedures Act, and under the Fifth Amendment to the US Constitution.

5. Award Petitioner reasonable costs and attorney's fees; and
6. Grant any other relief which this Honorable Court deems just and proper

Respectfully Submitted,

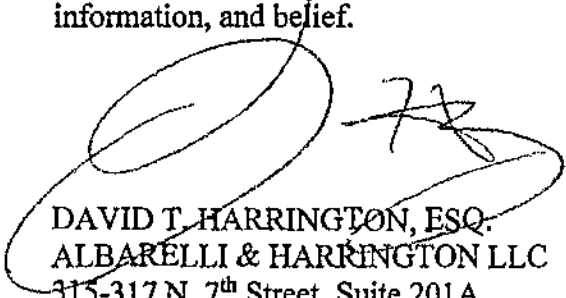


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Pennsylvania Bar No. 323908
Counsel for Petitioner

Dated: 12/31/2025
Allentown, PA

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S
BEHALF PURSUANT TO 28 U.S.C. § 2242**

I, David T. Harrington, Esq., declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I am submitting this verification on behalf of Mr. Diallo because he is currently detained at the Federal Detention Center, Philadelphia, and is unable to execute this verification in a timely manner. As Mr. Diallo's attorney, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.



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Dated: 12/31/2025
Allentown, PA