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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

SAMBE DIALLO

Petitioner

v.

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

TODD LYONS, in his official capacity as Acting  
Director of Immigration and Customs Enforcement,

ARTHUR WILSON, in his official capacity as ICE  
Field Officer Director,

JOHNNY CHOATE, in his official capacity as  
warden of the Aurora Immigration Detention  
Facility,

Respondents,

Case No. \_\_\_\_\_

**VERIFIED PETITION FOR  
HABEAS CORPUS**

## I. INTRODUCTION

Petitioner Sambe Diallo has been detained by the Department of Homeland Security since June 12, 2025. (Exhibit 4) On October 27, 2025, the Immigration Court granted Mr. Diallo withholding of removal under INA § 241(b)(3) and both parties waived appeal. (Exhibit 2). The removal order became administratively final on October 28, 2025. The 90-day statutory removal period expired on or about January 26, 2026. Mr. Diallo remains detained.

Following expiration of the removal period, U.S. Immigration and Customs Enforcement (“ICE”) conducted a post-order custody review pursuant to 8 C.F.R. § 241.4. ICE issued a “Decision to Continue Detention” concluding that Mr. Diallo poses a “significant risk of flight pending [his] removal.” (Exhibit 1). The determination does not identify any specific facts supporting that conclusion. *Id.* The determination likewise does not reference any criminal history, prior failures to appear, or violations of supervision. It does not address the Immigration Judge’s prior custody determination granting release on a \$1,500 bond. *Id.* Nor does it identify any concrete steps toward removal to a third country or any indication that removal is reasonably imminent. *Id.* Nothing in the custody determination identifies any diplomatic request, travel document effort, communication with a third country, or any other concrete step toward effectuating removal. *Id.* Respondents have not identified any statutory basis for tolling or restarting the removal period. Mr. Diallo has now been continuously detained for over eight months.

Mr. Diallo has no history of absconding, no criminal record, and no disciplinary infractions in detention. Prior to the conclusion of removal proceedings, a neutral Immigration Judge determined that he was eligible for release under a modest bond. He has now prevailed on

his application for protection from removal to Mauritania. Yet he remains incarcerated based solely on a conclusory executive determination.

This petition does not challenge the government's authority to detain during the statutory removal period. Nor does it seek to relitigate the prior bond determination. Instead, Mr. Diallo challenges the constitutional sufficiency of his continued detention under 8 U.S.C. § 1231(a)(6) after expiration of the removal period. When detention extends beyond that period and liberty remains at stake, due process requires a meaningful, individualized justification for continued confinement. A conclusory checkbox determination labeling a detainee a "significant risk of flight," without articulated factual findings or evidence of imminent removal, is insufficient under the Fifth Amendment.

Mr. Diallo respectfully requests that this Court order Respondents to provide a constitutionally adequate custody determination before a neutral adjudicator, at which the government bears the burden of demonstrating that continued detention is justified.

## **II. JURISDICTION AND VENUE**

This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in custody in violation of the Constitution and laws of the United States. Federal district courts retain jurisdiction to review the legality of immigration detention through habeas corpus.

Jurisdiction is also proper under 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States, including the Fifth Amendment and 8 U.S.C. § 1231(a)(6).

Venue is proper in the United States District Court for the District of Colorado because Petitioner is detained at the Aurora Contract Detention Facility in Aurora, Colorado, within this District.

## **PARTIES**

### **PETITIONER**

Petitioner, Sambe Diallo, is a Mauritanian citizen who is currently in the custody of the Department of Homeland Security in Aurora, Colorado.

### **RESPONDENTS**

Respondent Kristi Noem (“Secretary Noem”) is the Secretary of the Department of Homeland Security, the parent agency of Immigration and Customs Enforcement, which is currently engaging in the prolonged and unlawful detention of Petitioner. Respondent Kristi Noem is sued in her official capacity as an agent of the United States.

Respondent Todd Lyons is the acting director of the United States Immigration and Customs Enforcement and has the authority over the actions of respondent Arthur Wilson, Johnny Choate, and ICE in general. Respondent Lyons is a legal custodian of Petitioner.

Respondent Arthur Wilson is the Field Office Director for ICE Enforcement and Removal Operations in Denver, Colorado, and is responsible for the custody determinations affecting Petitioner. Respondent Arthur Wilson is sued in his official capacity as an agent of the United States.

Respondent Johnny Choate is the warden of the Aurora Detention Center and thus has custody over the Petitioner. Respondent Johnny Choate is sued in his official capacity as an agent of the United States.

### **III. STATUTORY POSTURE: DETENTION UNDER 8 U.S.C. §1231(a)**

On October 27, 2025, the Immigration Court granted Mr. Diallo withholding of removal under INA § 241(b)(3) and ordered him removed to Mauritania and both parties waived appeal. (Exhibit 2) The order therefore became administratively final on October 28, 2025.

Under 8 U.S.C. § 1231(a)(1)(A), when a removal order becomes final, the government is afforded a 90-day “removal period” within which it must effectuate removal. The removal period begins on the date the removal order becomes administratively final. 8 U.S.C. § 1231(a)(1)(B). Mr. Diallo’s removal period began on October 28, 2025, and expired on or about January 26, 2026.

During the removal period, detention is mandatory. 8 U.S.C. § 1231(a)(2). After expiration of the removal period, however, detention is governed by 8 U.S.C. § 1231(a)(6), which permits—but does not require—the government to continue detention of certain noncitizens pending removal. Accordingly, Mr. Diallo’s continued detention after January 26, 2026 is discretionary under § 1231(a)(6). On January 12, 2026, ICE issued a “Decision to Continue Detention” pursuant to 8 C.F.R. § 241.4. (Exhibit 1) The determination concluded that Mr. Diallo “poses a significant risk of flight pending [his] removal from the United States.” *Id.* He was served with that determination on January 16, 2026. *Id.* No further custody hearing has been provided. Mr. Diallo therefore remains detained pursuant to § 1231(a)(6), following expiration of the statutory removal period.

#### **IV. FACTUAL BACKGROUND RELEVANT TO CUSTODY**

Mr. Diallo has been detained since June 12, 2025. (Exhibit 4). On August 12, 2025, following a custody redetermination hearing pursuant to 8 C.F.R. § 1236, an Immigration Judge granted Mr. Diallo release on bond in the amount of \$1,500. (Exhibit 3). The Immigration Judge did not find Mr. Diallo to be a danger to the community. Nor did the Immigration Judge determine that he posed an unmanageable risk of flight. The bond order reflects a neutral adjudicator's conclusion that release under modest conditions was appropriate. *Id.* Mr. Diallo has no criminal history. He has never failed to appear for immigration proceedings. He has never absconded from supervision. He has not violated any conditions of custody. He has incurred no disciplinary infractions while detained. On October 27, 2025, Mr. Diallo was granted withholding of removal under INA § 241(b)(3). (Exhibit 2) Both parties waived appeal. *Id.* The Immigration Court ordered removal to Mauritania. *Id.* Because withholding was granted, Mr. Diallo may not be removed to Mauritania. Following expiration of the 90-day removal period, ICE issued a "Decision to Continue Detention" dated January 12, 2026. (Exhibit 1). The decision states that ICE reviewed Mr. Diallo's custody pursuant to 8 C.F.R. § 241.4 and determined that he poses a "significant risk of flight pending [his] removal from the United States." *Id.*

The determination does not identify any specific factual basis for that conclusion. It does not reference any prior failures to appear, criminal conduct, disciplinary history, or violations of supervision. It does not address the Immigration Judge's prior custody determination granting release under bond. *Id.* Nor does it identify any specific steps undertaken to effectuate removal to a third country or any indication that removal is reasonably imminent. *Id.* No neutral adjudicator has reviewed Mr. Diallo's continued detention since the conclusion of removal

proceedings. Mr. Diallo therefore remains detained based solely on ICE's conclusory determination that he presents a "significant risk of flight."

## V. LEGAL FRAMEWORK

### A. Post-Order Detention Under 8 U.S.C. § 1231(a)(6)

After expiration of the 90-day removal period, detention is governed by 8 U.S.C. § 1231(a)(6). That provision permits continued detention of certain noncitizens beyond the removal period but does not mandate indefinite confinement. The Supreme Court has recognized that civil immigration detention must remain reasonably related to its purpose and must avoid arbitrary or unjustified deprivation of liberty. *Zadvydas v. Davis*, 533 U.S. 678 (2001). In interpreting § 1231(a)(6), the Court explained that the statute does not authorize detention that is indefinite or untethered from the purpose of effectuating removal. *Id.* at 690–699. While the Court in *Zadvydas* addressed prolonged detention beyond six months, its reasoning reflects a broader constitutional principle: post-order detention must be justified by legitimate governmental objectives and accompanied by adequate procedural safeguards. Federal courts in this District have repeatedly recognized that prolonged civil immigration detention implicates serious constitutional concerns and have ordered individualized custody hearings where continued confinement lacks adequate factual justification. *See, e.g., Daley v. Ceja*, 158 F.4th 1152 (10th Cir. 2025) (affirming district court relief in prolonged immigration detention case). Where detention rests on conclusory assertions rather than articulated factual findings, due process concerns are heightened.

### B. Due Process Requires Meaningful and Individualized Review of Continued Civil Detention

The Fifth Amendment protects against deprivation of liberty without due process of law. Civil detention—particularly detention that continues after the statutory removal period—implicates a significant liberty interest. When detention is discretionary rather than mandatory, due process requires meaningful, individualized consideration of whether continued confinement is justified. A determination that affects a person’s physical liberty must rest on articulated factual findings rather than conclusory assertions. Moreover, due process does not permit the government to shift the burden to the detainee to prove that continued detention is unwarranted where liberty is at stake. Continued incarceration must be supported by a reasoned determination grounded in identified facts and legitimate removal objectives. Where detention continues beyond the removal period without a neutral adjudication and without articulated factual justification, serious constitutional concerns arise.

**C. *Mathews v. Eldridge***

The procedural due process analysis is governed by the three-factor balancing test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under that framework, courts weigh: (1) the private interest affected by the official action; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value of additional procedural safeguards; and (3) the government's interest, including the fiscal and administrative burdens that additional procedures would entail. *Id.* at 335. Each factor weighs decisively in Mr. Diallo's favor.

First, the private interest at stake is physical liberty — among the most fundamental interests protected by the Constitution. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (“[F]reedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects.”). Mr. Diallo has been detained for over eight months. He has been separated from his community, unable to work, and confined in a detention facility — not as punishment for any crime, but

pursuant to a discretionary civil determination. The Supreme Court has consistently recognized that civil detention implicates liberty interests of the highest order, and that the weight of this interest increases with the duration of confinement. This factor weighs heavily in Petitioner's favor.

Second, the risk of erroneous deprivation under the existing procedures is substantial. ICE's post-order custody review under 8 C.F.R. § 241.4 does not require a hearing before a neutral adjudicator, does not place the burden of proof on the government, and does not require articulated factual findings grounded in the record. The determination issued in this case illustrates the risk precisely: ICE concluded that Mr. Diallo poses a "significant risk of flight" without identifying a single supporting fact, without addressing a neutral Immigration Judge's prior finding that release on a \$1,500 bond was appropriate, and without acknowledging that he has no criminal history, no failures to appear, and no disciplinary infractions. The notice further placed the burden on Mr. Diallo to disprove flight risk — inverting the constitutional requirement. A process that permits continued incarceration on the basis of such a determination, without any neutral review of its factual adequacy, carries an unacceptably high risk of error. The probable value of additional safeguards — specifically, a hearing before a neutral adjudicator with the burden on the government — is correspondingly high. This factor weighs heavily in Petitioner's favor.

Third, the government's interest does not override the foregoing concerns. The government plainly has a legitimate interest in ensuring the appearance of noncitizens subject to removal orders and in protecting public safety. But those interests are not imperiled by requiring a meaningful, individualized hearing. Mr. Diallo does not seek release without conditions — he

requests only that the government be required to justify his continued detention before a neutral decision-maker. The administrative burden of conducting such a hearing is minimal, particularly given that immigration judges already conduct bond hearings routinely. Moreover, the government's removal interest is attenuated in this case: withholding of removal has been granted, Mr. Diallo cannot be removed to Mauritania, and the government has identified no third country willing to accept him and no concrete steps toward effectuating removal. Where removal is not reasonably foreseeable, the government's interest in detention as a means of ensuring presence at removal is correspondingly diminished. This factor does not override Petitioner's substantial liberty interest and the significant risk of erroneous deprivation through existing procedures.

Applying *Mathews*, the Due Process Clause requires, at minimum, that Mr. Diallo receive a custody hearing before a neutral adjudicator at which the government bears the burden of demonstrating, by clear and convincing evidence, that continued detention is justified by identified, individualized facts.

## VI. ARGUMENT

### **I. The Conclusory Custody Determination Under 8 C.F.R. § 241.4 Does Not Satisfy Due Process**

After expiration of the statutory removal period, detention under 8 U.S.C. § 1231(a)(6) is discretionary. Where the government elects to continue detention beyond that period, due process requires a meaningful and individualized determination that continued confinement is justified. ICE's January 12, 2026 "Decision to Continue Detention" does not meet that standard. (Exhibit 1). The determination concludes, without elaboration, that Mr. Diallo "poses a significant risk of flight pending [his] removal from the United States." *Id.* The decision does not

identify any specific facts supporting that conclusion. It does not reference any prior failures to appear, any violations of supervision, any criminal history, or any conduct suggesting a likelihood of absconding. Nor does the determination reconcile its conclusion with the Immigration Judge's prior custody finding. On August 12, 2025, a neutral Immigration Judge granted Mr. Diallo release on bond in the amount of \$1,500. (Exhibit 3). That determination necessarily reflected an individualized assessment of flight risk and danger. ICE's subsequent conclusory assertion that Mr. Diallo now presents a "significant" flight risk does not identify any change in circumstances or new evidence supporting that characterization.

The custody decision also reflects an improper allocation of burden. The notice states that Mr. Diallo has "not demonstrated" that he would not pose a significant risk of flight. (Exhibit 1). Continued civil detention affecting a fundamental liberty interest cannot rest on a detainee's failure to disprove risk. Rather, the government must justify continued confinement with articulated factual findings grounded in the record. A conclusory checkbox determination, unsupported by identified facts and issued without neutral adjudication, does not constitute meaningful review sufficient to satisfy the Fifth Amendment.

## **II. Continued Detention Is Not Reasonably Related to the Purpose of Removal**

Civil immigration detention is constitutionally permissible only insofar as it bears a reasonable relation to its purpose. *Zadvydas v. Davis*, 533 U.S. at 690. Mr. Diallo's removal period expired on or about January 26, 2026. He has now been detained for more than eight months in total. Withholding of removal has been granted, and he may not be removed to Mauritania. (Exhibit 2). The government has not identified any specific third country willing to accept him, nor has it identified any concrete steps undertaken to effectuate removal. (Exhibit 1).

Respondents' custody determination likewise does not assert that any country has agreed to accept Petitioner. Id. The January 12 custody determination does not assert that removal is imminent. It does not describe diplomatic communications, travel document requests, or removal logistics. Instead, detention is justified solely on the basis of an unexplained assertion of "significant risk of flight." Where removal is not shown to be reasonably imminent, and where continued detention is based solely on a conclusory executive determination, confinement risks becoming untethered from its statutory purpose. Due process does not permit continued incarceration on such a record. At minimum, the Constitution requires that continued detention under § 1231(a)(6) be supported by a neutral and individualized determination at which the government bears the burden of establishing, by clear and convincing evidence, that continued confinement is necessary to effectuate removal or protect legitimate governmental interests.

## **VII. REQUEST FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this action pursuant to 28 U.S.C. § 2241;
2. Declare that Respondents' continued detention of Mr. Diallo under 8 U.S.C. § 1231(a)(6), based solely on a conclusory executive determination without articulated factual findings or neutral adjudication, violates the Due Process Clause of the Fifth Amendment;
3. Order Respondents to provide Mr. Diallo, within fourteen (14) days, a constitutionally adequate custody hearing before a neutral adjudicator at which:
  - a. The Government bears the burden of establishing, by clear and convincing evidence, that continued detention is justified;
  - b. The determination is based on identified, individualized facts supported by the record;

- c. Written findings are issued explaining the basis for any continued detention;
4. Order that, if such a hearing is not provided within the time specified, Mr. Diallo be released under reasonable conditions of supervision;
5. Award such other and further relief as the Court deems just and proper.

DATED this 27<sup>th</sup> day of February, 2026.

Respectfully submitted,

/s/ Jonathon Bell

Counsel for Petitioner

**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I have reviewed the record and discussed the facts with Petitioner. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.

Dated this 27<sup>th</sup> day of February, 2026.

Respectfully Submitted,

/s/ Jonathon Bell