UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Issa NDIAYE, *Petitioner*, v. LaDeon FRANCIS, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Kristi NOEM in her official capacity as Secretary of Homeland Security; Pam BONDI, in her official capacity as Attorney General. *Respondents.*	Case No. **PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

Petitioner Issa Ndiaye brings this petition to challenge his unlawful detention as he left immigration court in Manhattan on June 20, 2025. Mr. Ndiaye is an asylum seeker from Guinea who has been present in the U.S. since February 2024. At the time of his entry to the United States, Respondents determined he was subject to discretionary detention and released him. He filed a timely application for asylum. Yet at his hearing in June 2025, an immigration judge dismissed his removal proceedings and Immigration and Customs Enforcement ("ICE") officers detained Mr. Ndiaye as he left the courtroom. He has now been detained for nearly six months. The day after his detention, his father passed away—a loss he was unable to grieve with his family. In custody, Mr. Ndiaye has lost weight and felt overwhelmed with anxiety, and confusion at his sudden loss of freedom and access to the asylum process he had commenced.

Mr. Ndiaye's confinement is unlawful, and he brings this Petition seeking immediate and unconditional release. He also asks this Court to enjoin his transfer out of the New York City area.

PARTIES

1. Petitioner Ndiaye is a citizen of Guinea who lives in New York. He is currently detained at the Metropolitan Detention Center, located at 80 29th St, Brooklyn, NY 11232.

2. LaDeon Francis is named in his official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement ("ICE") within the United States Department of Homeland Security. In this capacity, he is also responsible for the administration of immigration laws and the execution of detention and removal determinations and is a legal custodian of Petitioner. Respondent Francis's address is New York ICE Field Office Director, 26 Federal Plaza, 7th Floor, New York, New York 10278.

3. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a) (2007); routinely transacts business in the Eastern District of New York; is legally responsible for pursuing any effort to remove the Petitioner; and as such is a legal custodian of the Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, 2707 Martin Luther King Jr Ave SE, Washington, District of Columbia 20528.

4. Respondent Pam Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review ("EOIR"), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the Eastern District of New York and is legally

responsible for administering Petitioner's removal and custody proceedings and for the standards used in those proceedings. As such, she is the custodian of Petitioner. Respondent Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530.

JURISDICTION

5. The federal district courts have jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Petitioner was detained by Respondents on June 23, 2025.

6. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241 (habeas); 28 U.S.C. § 1331 (federal question); and Article I, § 9, cl. 2 of the United States Constitution. This Court has authority to grant declaratory and injunctive relief. 28 U.S.C. §§ 2201, 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651 and the Declaratory Judgment Act, 28 U.S.C. § 2201.

VENUE

7. Venue is proper in this Court because Petitioner is detained by Respondents in Brooklyn at the time of filing. *See* Exh. A (ICE detainee locator).

SPECIFIC FACTS ABOUT PETITIONER

8. Mr. Ndiaye is a citizen of Guinea and resident of New York. He came to the U.S. seeking humanitarian protection in February 2024.

9. Upon entry to the U.S., Mr. Ndiaye was detained by Respondents, charged with removability under 8 U.S.C. § 1182(a)(6)(A)(i), and released.

10. On information and belief, Mr. Ndiaye has no criminal arrests or convictions in any country.

11. After his release, Respondents placed Mr. Ndiaye in removal proceedings under 8 U.S.C. § 1229a. Such proceedings are commonly referred to as "regular" removal proceedings because they afford an individual the ability to appear before an immigration judge and a number of other safeguards to challenge their removal. As part of that process, Mr. Ndiaye filed a timely application for asylum in September 2024 and attended at least four master calendar hearings. Throughout his removal proceedings, he diligently attended immigration court.

12. At his June 20, 2025 immigration hearing, the Department of Homeland Security moved to dismiss his removal proceedings, and an immigration judge did dismiss the proceedings. Upon exiting that hearing in June 2025, Mr. Ndiaye was surrounded and detained by Respondents without explanation.

13. Mr. Ndiaye appealed the dismissal of his proceedings three days after the decision was entered, on June 23, 2025. That appeal remains pending at the Board of Immigration Appeals ("BIA"). DHS did not file a brief opposing his appeal.

CAMPAIGN OF DETENTIONS

14. On or about May 20, 2025, Respondents began a nationwide campaign to detain people attending their immigration court hearings. In its early stages, this campaign was tied to motions to dismiss removal proceedings, predicated on Respondents' intention to place these individuals into expedited removal proceedings instead of allowing them to continue with the full removal proceedings commenced months or years earlier. After such a motion was made, and irrespective of the outcome, Respondents would detain individuals as they left the immigration courtroom.

15. This policy triggered a growing volume of individual habeas litigation and a class-action challenge to ICE's dismissal and courthouse arrest policies. In mid-2025, the pace of motions to dismiss by DHS declined significantly—yet ICE continued to detain many asylum seekers as they left their court appearances, even as their removal proceedings were scheduled to continue.

16. In New York City, this campaign has led to a large number of detentions in all three Manhattan immigration courthouses. The detentions are not individualized: on information and belief, Respondents create lists of individuals to be detained and then proceed to detain every single one, even in the face of protests such as that the person has minor children or medical conditions or cannot lawfully be subject to expedited removal.

17. Once detained, New Yorkers targeted by this campaign are subject to harsh detention conditions. Petitioner is detained in the Metropolitan Detention Center, a facility known for its brutal conditions. Among other challenges, it is very difficult for detainees there to speak with legal counsel, as ICE provides very limited availability for legal phone calls and often fails to facilitate legal calls even once scheduled. ICE officials have used detainees' vulnerability once in custody to pressure them to accept deportation orders or to stipulate to voluntary departure, regardless of their pending asylum claims.

LEGAL FRAMEWORK

18. The INA provides for removal proceedings to be the "sole and exclusive" procedures for removing people from the United States, subject to a few narrow exceptions. 8 U.S.C. 1229a. Section 1229a(a)(3) states that "[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be

admitted to the United States or, if the alien has been so admitted, removed from the United States."[1]

19. Mr. Ndiyae was in removal proceedings under section 1229a until an immigration judge terminated those proceedings, which laid the groundwork for his detention.

20. Congress has authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. *See Jennings v. Rodriguez*, 138 S.Ct. 830, 833 (2018); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). For individuals who are "arriving" in the U.S. or who are subject to expedited removal because they have been present under two years and meet certain other requirements, mandatory detention is authorized by 8 U.S.C. § 1225(b). For individuals who are in removal proceedings following entry without inspection and who are not subject to mandatory detention based on criminal history, detention is normally authorized by 8 U.S.C. § 1226(a). Individuals with a final order of removal may be subject to mandatory or discretionary detention pursuant to 8 U.S.C. § 1231(a).

21. In May 2025, the Board of Immigration Appeals held that "an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a)." *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025).

22. On July 8, Respondents promulgated an internal memo directing ICE attorneys to argue for an even more expansive interpretation of who is subject to mandatory detention. This memo, now leaked to the public, states that "effective immediately, it is the position of DHS that [any

[1] "Attorney General" in Section 1254a now refers to the Secretary of the Department of Homeland Security. *See* 8 U.S.C. § 1103; 6 U.S.C. § 557.

noncitizens who have not been admitted to the country] are subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)] and may not be released from ICE custody except by INA § 212(d)(5) [8 U.S.C. § 1182(d)(5)] parole. These [noncitizens] are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration just and may not be released for the duration of their removal proceedings absent a parole by DHS."

23. In September 2025, the Board of Immigration Appeals adopted this legal interpretation as well. *See Matter of Yajure Furtado,* 29 I&N Dec. 216 (BIA 2025). As a result, immigration judges cannot and will not grant noncitizens like Mr. Ndiaye release on bond pursuant to 8 U.S.C. § 1226(a).

24. Respondents' position on their own detention authority contradicts decades of settled precedent, which holds that individuals who entered the U.S. without inspection are governed by 8 U.S.C. § 1226(a). Regulations promulgated nearly thirty years ago provide that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination" under Section 1226. 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Until recently, Respondents consistently adhered to this interpretation. *See, e.g., Matter of Garcia-Garcia*, 25 I&N. Dec. 93 (BIA 2009); *Matter of D-J-*, 23 I&N. Dec. 572 (A.G. 2003); *see also* Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) ([Solicitor General]: "DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended.").

25. Since this shift, a growing number of courts have rejected Respondents' contention that entrants without inspection previously released pursuant to § 1226(a) are now subject to

mandatory detention under § 1225(b). *Lopez Benitez v. Francis,* 795 F.3d 475, 485-490 (S.D.N.Y. August 13, 2025) ("Lopez Benitez"); *Savane v. Francis,* No. 1:25-CV-6666-GHW, --- F.Supp.3d ---, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *4 (D. Mass. July 24, 2025). *Gomes v. Hyde*, No. 25 Civ. 11571 (JEK), 2025 WL 1869299, at *5-9 (D. Mass. July 7, 2025); *Rodriguez v. Bostock,* No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *14 (W.D. Wash. Apr. 24, 2025); *Ortiz-Lopez v. Francis,* No. 25 Civ. 7985 (KPF), 2025 WL ___ (S.D.N.Y. Oct. 22, 2025); *Tumba Huamani v. Francis*, No. 1:25-cv-08110-LJL, Doc. 14 (S.D.N.Y. Nov. 4, 2025); *Villarreal Obregon v. Francis*, No. 25 Civ. 9465 (KPF), 2025 U.S. Dist. LEXIS ___ (S.D.N.Y. Nov. 20, 2025). Overall, "hundreds of district court decisions have rejected Respondents' expansive interpretation of Section 1225." *Molina v. DelLeon,* No. 25-CV-06526 (JMA), 2025 WL 3718728, at *3 (E.D.N.Y. Dec. 23, 2025) (collecting cases).

26. Beginning in November, a district court in California also held in a series of decisions that DHS's position on bond eligibility is unlawful with respect to "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 v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *1 (C.D. Cal. Nov. 25, 2025); *see also Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3713987, at *1, *32 (C.D. Cal. Dec. 18, 2025), *judgment entered sub nom. Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025).

27. Although civil immigration detention is authorized by statute, that detention serves only two legitimate purposes: mitigating flight risk and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690; *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020).

28. DHS makes initial custody determinations pursuant to 8 C.F.R. § 1236.1(c)(8), which requires that noncitizens be released from custody *only* "if they demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." *See Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) ("8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination"); *see also Lopez Benitez* at *20.

29. A person's liberty cannot be infringed upon without "adequate procedural protections." *Zadvydas*, 533 U.S. at 690-91. The Second Circuit has held that the *Matthews v. Eldridge* balancing test is applicable to determine the adequacy of process in the context of civil immigration confinement. *Velasco Lopez*, 978 F.3d at 851 (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). This test requires process sufficient to mitigate the risk of erroneous deprivation of a liberty interest. Revocation of conditional release from confinement, even civil immigration confinement, infringes on a protected liberty interest. The liberty interest in even conditional release is well-established in the context of parole; probation; and freedom from civil immigration confinement. *See Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025) (finding immigration petitioner's "liberty interest is clearly established"); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (applying case law from the probation and parole contexts to conclude that the non-citizen petitioner had a "liberty interest in remaining out of [immigration] custody").

30. As to process, at a minimum, in the context of revocation of civil release, "an individual whose release is sought to be revoked is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing." *Villiers v. Decker*, 31 F.4th 825, 833 (2d Cir. 2022).

31. Despite these baseline requirements, Respondents now regularly re-detain individuals notwithstanding an earlier determination to release them and do so without according any notice or process whatsoever. These redetentions violate noncitizens' right to due process. *See Padilla Molina v. Deleon*,No. 25-CV-06526 (JMA), 2025 WL 3718728, at *5 (E.D.N.Y. Dec. 23, 2025); *Hyppolite v. Noem*, No. 25-cv-4304, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025); *Artiga v. Genalo*, No. 25-cv-5208, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025); *J.U. v. Maldonado*, No. 25-cv-04836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *Guerrero v. Noem*, No. 25-cv-5881, 2025 WL 3214787 (E.D.N.Y. Nov. 18, 2025)); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, (S.D.N.Y. August 13, 2025); *Chipantiza-Sisalema v. Francis*, No. 25 CIV. 5528 (AT), 2025 WL 1927931 at *3 (S.D.N.Y. July 13, 2025); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737 at *4 (S.D.N.Y. June 18, 2025).

CLAIMS FOR RELIEF

COUNT ONE
VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

32. Mr. Ndiaye repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

33. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. *See generally Reno v.*

Flores, 507 U.S. 292 (1993); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003).

34. Petitioner's detention violates both the substantive and procedural components of the Due Process Clause. He was determined not to pose danger or flight risk when he was released from custody in February 2024; he has since applied for asylum and diligently attended immigration court. There is no reason to now conclude he poses a danger or flight risk.

35. He was also not accorded sufficient process prior to his sudden re-detention by ICE in June 2025. He has received neither notice nor an opportunity to be heard as to whether a change in custody status was warranted. *See Padilla Molina*, 2025 WL 3718728, at *5; *Hyppolite*, 2025 WL 2829511, at *13; *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *12 (S.D.N.Y. June 12, 2018) ("Petitioner's re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment"); *see also Chipantiza-Sisalema*, 2025 WL 1927931, at *3; *Valdez*, 2025 WL 1707737, at *4.

36. Respondents now contend that Mr. Ndiaye is ineligible for bond under *Matter of Yajure Furtado*, 29 I&N Dec. 216 (BIA 2025). But that determination is contradicted by Respondents' prior determinations in Mr. Ndiaye's case and the text and structure of the detention statutes.

37. Finally, Mr. Ndiaye's ostensibly mandatory detention has now grown unconstitutionally prolonged, as he has been detained for nearly six months.

38. Respondents' actions violate Mr. Ndiaye's right to due process.

COUNT TWO
VIOLATION OF THE FOURTH AMENDMENT

39. Mr. Ndiaye repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

40. Mr. Ndiaye was detained by federal immigration officials as removable when he entered the United States. The government exercised its discretion under the Immigration and Nationality Act to release him while he litigated that charge in immigration court. At the time of Mr. Ndiaye's arrest, he had been living at liberty pursuant to that determination by federal immigration authorities.

41. The government lacked reliable information of changed or exigent circumstances that would justify Mr. Ndiaye's arrest on the same basis after federal immigration authorities previously decided he could pursue his claims for immigration relief at liberty.

42. His re-arrest based solely on the fact that he is subject to removal proceedings—which was also the predicate for his initial detention— is unreasonable and therefore violates the Fourth Amendment.

COUNT THREE
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

43. Mr. Ndiaye repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

44. The Administrative Procedure Act prohibits agency action which is arbitrary and capricious. 5 U.S.C. § 706(2)(A).

45. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (*quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,

463 U.S. 29, 43 (1983)). An agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

46. Respondents' decision to detain Petitioner as part of their coordinated campaign and policy of detaining individuals attending immigration court, irrespective of the individual circumstances in their case, and then to subject them to mandatory detention, is arbitrary and capricious.

COUNT FOUR
RELEASE PENDING ADJUDICATION

47. Mr. Ndiaye repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

48. Pursuant to *Mapp v. Reno*, this Court has the "inherent authority" to set bail pending the adjudication of a habeas petition when the petition has raised (1) substantial claims and (2) extraordinary circumstances that (3) "make the grant of bail necessary to make the habeas remedy effective." 241 F.3d 221, 226 (2d Cir. 2001).

49. Mr. Ndiaye presents substantial claims. He has been detained in a jail that is notorious for its poor conditions since June 2025, despite having never been charged with or convicted of a crime.

50. He requests immediate release pending adjudication of the instant petition.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Enjoin Petitioner's transfer out of the New York City area;
3. Order Respondents to show cause why the writ should not be granted within three days,

and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;

4. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment; the Fourth Amendment; and the Immigration and Nationality Act and implementing regulations;
5. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody without restraints on his liberty beyond those that existed prior to his redetention on June 23, 2025;
6. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
7. Grant such further relief as this Court deems just and proper.

Dated: Jan. 6, 2026

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CERTIFICATE OF SERVICE

I certify that on January 6, 2026, I electronically filed the attached the foregoing Petition for Writ of Habeas Corpus and accompanying Exhibits with the Clerk of the Court for the United States District Court for the Eastern District of New York using the CM/ECF system. Service will therefore be effected by the CM/ECF system.

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