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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Mamadou Oury Diallo,

Petitioner,

v.

Raul Maldonado,
in his official capacity as Warden,
Brooklyn Metropolitan Detention Center;

Judith Almodovar,
in her official capacity as Acting New York Field Office Director, U.S. Immigration & Customs Enforcement; and

Todd Blanche,
in his official capacity as Acting Attorney General, U.S. Department of Justice,

Respondents.

Case No. 26-cv-4067

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. The Department of Homeland Security ("DHS") has detained Mr. Mamadou Oury Diallo ("Mr. Diallo") since January 8, 2026. He is presently located at the Brooklyn Metropolitan Detention Center. As of this writing, DHS has detained Mr. Diallo for 181 days, with no timeline for release, and his prolonged deprivation of liberty is not justified. Absent intervention from this Court, his detention will continue indefinitely.
2. Through this petition, Mr. Diallo challenges his continued detention as violative of the Due Process Clause of the Fifth Amendment because it is unreasonably prolonged.
3. Accordingly, Mr. Diallo seeks a writ of habeas corpus ordering his release unless he receives a bond hearing before an Immigration Judge ("IJ") at which DHS bears the burden of justifying his continued detention by clear and convincing evidence and where an IJ, *inter alia*, considers his ability to pay any bond amount and alternatives to detention.

PARTIES

4. Mr. Diallo has been incarcerated by Immigration and Customs Enforcement ("ICE"), a subagency within DHS, at Brooklyn Metropolitan Detention Center, 80 29th St., Brooklyn, NY 11232, for 181 days. Mr. Diallo challenges Respondents' failure to provide a constitutionally adequate bond hearing as required by the Fifth Amendment.
5. Respondent Raul Maldonado is the Warden of the Brooklyn Metropolitan Detention Center, and is a legal custodian of Mr. Diallo. He is sued in his official capacity.

6. Respondent Judith Almodovar is the ICE New York Acting Field Office Director. She is responsible for carrying out ICE's immigration detention operations in New York City. Respondent Almodovar is a legal custodian of Mr. Diallo. She is sued in her official capacity.

7. Respondent Todd Blanche is named in his official capacity as the Acting Attorney General of the United States. He is responsible for the administration of the immigration laws as exercised by EOIR, pursuant to 8 U.S.C. § 1103(g). He routinely transacts business in the Eastern District of New York, and is legally responsible for administering Mr. Diallo's removal proceedings as well as the procedural standards used in those proceedings. He is therefore a legal custodian of Mr. Diallo. Respondent's office is: 950 Pennsylvania Avenue, NW, Washington, DC 20530.

JURISDICTION AND VENUE

8. Respondents incarcerated Mr. Diallo on January 8, 2026, and he is under the direct control of Respondents and their agents.

9. This action arises under the Constitution of the United States, and the Immigration and Nationality Act ("INA").

10. Federal courts have subject matter jurisdiction under 28 U.S.C. § 2241(c)(1) and (c)(3) (habeas corpus) to determine whether people imprisoned in federal custody are held in violation of law. *INS v. St. Cyr*, 533 U.S. 289, 305 (2001).

11. Jurisdiction is also proper pursuant to 28 U.S.C. § 1331 (federal question); 5 U.S.C. § 702 (waiver of sovereign immunity); 28 U.S.C. § 1346 (original jurisdiction); Article I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause); the All Writs Act, 28 U.S.C. § 1651; and 28 U.S.C. §§ 2201-2202 (Declaratory Judgement Act).

12. Further, the Court has jurisdiction to grant injunctive relief pursuant to the Declaratory

Judgment Act, 28 U.S.C. §§ 2201–02, 1651, 2241, and the All Writs Act, 28 U.S.C. § 1651. Mr. Diallo's detention constitutes a "severe restraint[] on his individual liberty" interest such that Mr. Diallo is "subject to restraints not shared by the public generally" and "in custody in violation of the . . . laws . . . of the United States." *See Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973).

13. The federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness of their detention by DHS. *Jennings v. Rodriguez*, 583 U.S. 281, 292-95 (2018); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

14. Venue properly lies in the Eastern District of New York. 28 U.S.C. §§ 1391(b)(2), (e). This petition is filed while Mr. Diallo is physically present within the district, as he is incarcerated at the Brooklyn Metropolitan Detention Center.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. Exhaustion is not necessary because Congress did not codify a requirement that petitioners seeking a writ of habeas corpus exhaust administrative remedies. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992) ("Where Congress specifically mandates, exhaustion is required… But where Congress has not clearly required exhaustion, sound judicial discretion governs.") (citation omitted).

16. Further, exhaustion of remedies is unnecessary if futile. Here, exhaustion would be futile because the detention statute does not provide for a bond hearing when an individual is held pursuant to 8 U.S.C. § 1226(c) and IJs lack jurisdiction to render an individualized custody determination for individuals incarcerated pursuant to that statute. 8 U.S.C. § 1226(c).

17. Further, EOIR, the agency housing the nation's immigration courts and appellate body,

already decided in precedential decisions that the noncitizen must shoulder the burden by clear and convincing evidence to show they may be released on bond. *See Matter of R-A-V-P-*, 27 I. & N. Dec. 803 (BIA 2020) (concluding that the noncitizen's "assertion that the DHS should bear the burden . . . lacks merit because we have *clearly* held that [the statute] places the burden of proof on the [noncitizen] to show that he merits release on bond") (emphasis added) (citations omitted); *Matter of Fatahi*, 26 I. & N. Dec. 791, 795 n. 3 (BIA 2016) (finding that the BIA has "consistently held that [noncitizens] have the burden to establish eligibility for bond while proceedings are pending").

18. Moreover, EOIR lacks authority to rule on the constitutionality of the immigration statutes, and both the immigration courts and BIA lack jurisdiction to interpret issues beyond the scope of the INA and its corresponding regulations. *Matter of G-K-*, 26 I. & N. Dec. 88 (BIA 2013); *Matter of Valdovinos*, 18 I. & N. Dec. 343, 345–46 (BIA 1982), Requesting EOIR to review Mr. Diallo's detention therefore "would be to demand a futile act." *Houghton v. Shafer*, 392 U.S. 639, 640 (1968) (finding that requiring the petitioner to exhaust administrative remedies was futile because the attorney general already decided that the rules were appropriately applied to the petitioner).

19. Even if meaningful administrative remedies were promptly available, Mr. Diallo, as a noncitizen challenging the lawfulness of his ongoing immigration detention, is not required to exhaust those remedies under 8 U.S.C. § 2241. *See Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010).

20. No administrative mechanisms exist through which Mr. Diallo can seek a neutral review of whether his ongoing and prolonged detention is justified. Further exhaustion is not required.

21. Therefore, exhaustion is satisfied because: (a) Congress did not require exhaustion under

the circumstances; and (b) the pursuit of administrative remedies is futile.

STATEMENT OF FACTS

22. Mr. Diallo entered the United States on or about December 9, 2023.

23. Mr. Diallo was detained by ICE on January 8, 2026.

24. On February 25, 2026, the Immigration Judge denied Mr. Diallo's application for relief and ordered him removed. Mr. Diallo thereafter filed a timely appeal to the Board of Immigration Appeals, which remains pending.

LEGAL BACKGROUND

25. ICE detained Mr. Diallo 181 days ago and Mr. Diallo merits a constitutionally adequate bond hearing.

A. Due Process Requires Neutral Review of Liberty Determinations.

26. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in [removal] proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. This fundamental protection applies to all persons present in the United States, including both removable and inadmissible noncitizens. *Id.* at 721 (Kennedy, J., dissenting) ("[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious."). Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the [incarcerated] individual's constitutionally protected interest in avoiding physical restraint." *Id.* at 690 (internal citation omitted). Civil immigration detention is therefore constitutional only in "certain special and 'narrow' nonpunitive 'circumstances.'" *Id.* at 690 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). The Supreme Court

identified those limited circumstances as mitigating the risk of danger to the community and preventing flight. *Id.* at 690–91; *see also Demore*, 538 U.S. at 515, 527–28.

27. The Supreme Court has repeatedly recognized that civil detention must be carefully limited to avoid due process concerns and ensure the government's justifications for continued detention are legitimate. *E.g.*, *Kansas v. Hendricks*, 521 U.S. 346, 368 (1997) (upholding involuntary civil commitment of certain sex offenders but requiring "strict procedural safeguards" including a right to a jury trial and proof beyond a reasonable doubt); *Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996) ("[D]ue process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake . . . are both particularly important and more substantial than mere loss of money.") (citation and quotation marks omitted); *Foucha v. Louisiana*, 504 U.S. 71, 80–83 (1992) (striking civil detention statute because it placed the burden on the person in custody to prove eligibility for release); *Addington v. Texas*, 441 U.S. 418, 423 (1979) (state must justify civil detention of allegedly dangerous individual with mental illness by clear and convincing evidence). *See also U.S. v. Salerno*, 481 U.S. 739, 750–52 (1987) (upholding federal bail statute permitting pretrial detention where statute required strict procedural protections, including prompt hearings where government bore the burden of proving dangerousness by clear and convincing evidence). It is of no consequence that these precedents are unrelated to immigration detention because "the 'constitutionally protected liberty interest' in avoiding physical confinement, even for [noncitizens] already ordered removed, [is not] conceptually different from the liberty interests of citizens considered in *Jackson*, *Salerno*, *Foucha*, and *Hendricks*." *Velasco Lopez v. Decker*, 978 F.3d 842, 856 (2d Cir. 2020) (*quoting Demore,* 538 U.S. at 553 (Souter, J., concurring in part and dissenting in part)).

B. Reasonableness of Continued Detention Requires Judicial Scrutiny.

28. While the Supreme Court upheld the constitutionality of the detention scheme under § 1226(c) in *Demore*, it did so based on the petitioner's concession of deportability and the Court's flawed understanding that detention under § 1226(c) is typically "brief" and lasts a "very limited time." *Demore*, 538 U.S. at 513, 529 & n.12. The Court cited government-provided data that purported to show that "in the majority of cases [detention under § 1226(c)] lasts for less than the 90 days we considered presumptively valid in *Zadvydas*," and that "in the minority of cases in which the [noncitizen] chooses to appeal," detention lasts "about five months." *Id.* at 529–30. However, those statistics were inaccurate even when the Supreme Court decided *Demore*.

29. Nevertheless, once detention extends beyond the limited timeframe authorized by *Demore*, immigrants must be afforded procedural protections. *See Demore*, 538 U.S. at 532 (Kennedy, J., concurring) ("individualized determinations as to [] risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"). *See also Hutto v. Finney*, 437 U.S. 678, 685–86 (1978) ("the length of confinement cannot be ignored in deciding whether the confinement meets constitutional standards"); *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (detention beyond a "reasonable period of time" requires additional process or release); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249–50 (1972) ("lesser safeguards may be appropriate" only if "duration of the confinement [is] strictly limited").

30. The Court of Appeals for the Second Circuit has squarely held that the Fifth Amendment imposes a temporal limitation on detention pursuant to the Due Process Clause itself. *See Black v. Decker*, 103 F.4th 133, 145 (2d Cir. 2024) (hereinafter, "*Black*") ("[W]e nonetheless read *Zadvydas, Demmore,* [and] *Jennings* . . . to suggest strongly that due process places *some* limits on detention under section 1226(c) without a bond hearing.")

(emphasis in original). The Second Circuit in *Black* further concluded that the framework set out by the Supreme Court in *Matthews v. Edlridge* "applies when determining when and what additional procedural protections are due." *Id.* at 159.

C. Application of *Matthews v. Eldridge*

31. *Matthews v. Eldridge* requires an evaluation of: (1) "the private interest that will be affected by the official action"; (2) "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 (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Black*, 103 F.4th at 151 (*quoting Matthews*, 424 U.S. at 335). Evaluation of the above-captioned factors leads to a clear conclusion that the continued detention of Mr. Diallo without a bond hearing where the government bears the burden of proof is unconstitutional.

32. The first factor strongly favors Mr. Diallo, as the "'the private interest affected by the official action is the most significant liberty interest there is—the interest in being free from imprisonment.'" *Black*, 103 F.4th at 151 (*quoting Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020)). Furthermore, as in *Black*, Mr. Diallo's present detention "did not arise from new or unpunished conduct," nor does Mr. Diallo have alternative administrative mechanisms to challenge his confinement. *See id.* And Mr. Diallo's confinement of 181 days (and counting) has already vastly surpassed the "short" duration of confinement the Supreme Court considered acceptable in *Demore*.[1] *See id.*

[1]The Solicitor General in 2016 revealed that the statistical information provided by the government and relied upon by the Supreme Court in *Demore* was inaccurate, and the true average length of immigration detention was shown to be much longer. *See Jennings*, 583 U.S. at 343 (Breyer, J., dissenting) ("The Government now tells us that the statistics it gave to the Court in *Demore* were wrong. Detention normally lasts twice as long as the Government then said it did . . . thousands of people here are held for considerably

33. The second *Matthews v. Eldridge* factor, "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," likewise favors Mr. Diallo. The Second Circuit in *Black* explained that "[t]he only interest to be considered at this part of the *Matthews* analysis is that of the detained individuals—not the government," and that "the almost nonexistent procedural protections in place for section 1226(c) detainees markedly increased the risk of an erroneous deprivation of . . . private liberty interests." *Black*, 103 F.4th at 152.

153. Therefore, as in *Black*, this factor supports the conclusion that "[i]n the absence of any meaningful initial procedural safeguards, it appears to us that almost *any* additional procedural safeguards at some point in the detention would add value," and that "[t]he most obvious of these . . . would be an individualized bond hearing at which an IJ can consider the noncitizen's dangerousness and risk of flight." *See id.* (emphasis in original).

34. Finally, as in *Black*, the "additional procedural safeguards we would allow here under *Matthews* do nothing to undercut [the government's] interests." *See id.* Legitimate governmental concerns for public safety are measured by the fact that the grant of habeas relief will not lead to Mr. Diallo's immediate release—just a bond hearing. *See id.* at 153-54 ("At any ordered bond hearing, the IJ would assess on an individualized basis whether the noncitizen presents a flight risk or a danger to the community, as IJs routinely do for other noncitizen detainees."). And cost concerns are minimal or nonexistent. *See id.* at 154-55 ("We expect that the additional resources that the government will need to expend to justify continued detention at bond hearings will be minimal—and will likely be

longer than six months without an opportunity to seek bail.").

outweighed by costs saved by reducing unnecessary detention.").

35. Due process therefore requires an individualized analysis of dangerousness and risk of flight, and at any future bond hearing DHS must prove by clear and convincing evidence that Mr. Diallo should remain detained. *See Black*, 103 F.4th at 157 ("Accordingly, we conclude that once detention under section 1226(c) has become so prolonged that due process warrants a bond hearing . . . the government must justify continued detention at such a hearing. . . . by clear and convincing evidence."). Furthermore, due process requires that at any future bond hearing the IJ must "consider [Mr. Diallo's] ability to pay and alternatives to detention when setting any bond amount."). *See id.*

PRAYER FOR RELIEF

WHEREFORE, Mr. Diallo prays that this Court grant the following relief:

1) Assume jurisdiction over this matter;

2) Enjoin Respondents from transferring Mr. Diallo outside of the jurisdiction of the Eastern District of New York pending the resolution of this case;

3) Issue a writ of habeas corpus directing Respondents to provide him, within seven days of this Court's order, a constitutionally adequate, individualized bond hearing before an impartial adjudicator where: (1) DHS bears the burden of establishing by clear and convincing evidence that continued detention is justified; and (2) the adjudicator is required to meaningfully consider alternatives to imprisonment such as community-based alternatives to detention including conditional release and parole, as well as Mr. Diallo's ability to pay a bond; and

4) Award Mr. Diallo attorney's fees and costs under the Equal Access to Justice Act ("EAJA") as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law.

Dated: July 8, 2026

Respectfully submitted,

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Attorney for Petitione

VERIFICATION

I, /s/ Michael Z. Goldman, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that, on information and belief, the factual statements in the foregoing Petition for Writ of Habeas Corpus are true and correct.

Dated: July 8, 2026