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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

NEWTON WAITE,

Petitioner,

v.

WARDEN OF IMPERIAL REGIONAL DETENTION FACILITY,

MARKWAYNE MULLIN, In his official capacity as Secretary of Homeland Security,

GREGORY JOHN ARCHAMBEAULT, in his official capacity as Field Office Director, San Diego Field Office, U.S. Immigration & Customs Enforcement;

DAVID VENTURELLA, In his official capacity as Acting Director, U.S. Immigration and Customs Enforcement,

TODD BLANCHE, In his official capacity as Acting Attorney General;

Respondents.

Civil Action No. '26CV3617 LL SBC

Immigration No. [redacted]

VERIFIED EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS AND INCORPORATED MEMORANDUM OF LAW

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PRELIMINARY STATEMENT

1. This matter involves a citizen of Jamaica, Petitioner Mr. Newton Waite ("Mr. Waite"), who is being unlawfully detained by in the custody of ICE ERO's San Diego Field Office at the Imperial Regional Detention Facility, in violation of the law. Mr. Waite is a 52-year-old Jamaican citizen who lawfully entered the United States on January 6, 2007, as a non-immigrant and has remained in the United States since then, having married a U.S. Citizen in 2010. He is the father of two U.S. Citizen children and the owner of a successful restaurant in Martha's Vineyard, Massachusetts. He has spent a cumulative total of over six months in ICE detention post-removal order, awaiting a decision on the appeal before the Board of Immigration Appeals of his motion to reopen an *in abstentia* removal order. That *in absentia* removal order was entered against him, without his knowledge and with no notice of the hearing having been received by him, on September 21, 2022. Years later, on September 26, 2025, Mr. Waite was arrested and detained by Immigration and Customs Enforcement ("ICE") on his way to the grocery store to purchase food for his restaurant. ICE predicates its detention of Mr. Waite under section § 1231, however, where Petitioner's detention does not fall within the 90-day removal period set out in § 1231(a)(1), detention under 8 U.S.C. § 1231(a)(2)(A) is not applicable. Mr. Waite was detained by ICE and has been held in custody since then, without a bond hearing or any due process. He was held at the Buffalo Federal Detention Facility in Batavia, New York before being transferred to the Imperial facility.

2. Where a non-citizen's detention does not fall within the 90-day removal period set out in § 1231(a)(1), detention under 8 U.S.C. § 1231(a)(2)(A) is not applicable. Multiple courts that have found that 8 U.S.C. § 1231(a)(6) applies to individuals originally detained during the 90-day removal period, whose detention may be extended beyond the 90 days, and does not apply to an initial detention occurring after the removal period has ended. *See* 8 U.S.C. § 1321(a)(3) ("If the alien ... is not removed within the [90-day] removal period, the alien, pending removal, *shall be subject to supervision* under regulations prescribed by the Attorney General.") (emphasis added).

3. Accordingly, Petitioner seeks a writ of habeas corpus. Petitioner requests an order requiring

his immediate release, or in the alternative, his immediate release unless Respondents provide a bond hearing under § 1226(a) within seven days.

THE PARTIES

4. Petitioner is detained in the custody of ICE. He is being detained in the custody of the San Diego ICE Field Office at the Imperial Regional Detention Facility, which is located within this judicial district. His custody and governmental actions related to his removal are likewise controlled by the ICE San Diego Field Office.

5. Respondent Warden of the Imperial Regional Detention Facility is the unknown individual who is in charge of the Imperial Regional Detention Facility, and is therefore the individual who has direct physical authority over the Petitioner. His office is located at 1572 Gateway Road, Calexico, CA 92231.

6. Respondent Gregory John Archambeault is the Field Office Director for the San Diego Field Office of Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement. He is the local ICE official who has authority over the Petitioner. *See Vasquez v. Reno*, 233 F,3d 688, 690 (lst Cir. 2000), cert. denied, 122 S. Ct. 43 (2001). Respondent Archambeault's office is at 880 Front Street #2242, San Diego, CA 92101.

7. Petitioner's custody and the governmental actions related to his potential removal from the district are likewise controlled by Respondents David Venturella (who is the Acting Director of U.S. Immigration and Customs Enforcement), Markwayne Mullin (who is the Secretary of Homeland Security), and Todd Blanche (who is the Acting Attorney General and therefore in control of the Executive Office for Immigration Review, which administers the Immigration Courts and the Board of Immigration Appeals).

CUSTODY

8. Petitioner is in the physical custody of Respondents and U.S. Immigration and Customs Enforcement ("ICE") at the Imperial Regional Detention Facility. The Deportation Officer responsible for his case is employed by the San Diego Field Office of ICE. The Petitioner is under the direct care, custody and control of Respondents and their agents.

JURISDICTION & VENUE

I. Subject Matter Jurisdiction

9. This action arises under the Constitution of the United States, and the Immigration and Nationality Act ("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, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.

10. This Court has jurisdiction under 28 U.S.C, § 2241, Art. I, § 9, el. 2 of the Constitution of the United States (the Suspension Clause) and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, the All Writs Act, 28 U.S.C. § 1651 and the Court's equitable habeas authority.

II. Personal Jurisdiction

11. This Court has personal jurisdiction over Petitioner's immediate custodian (who is physically within the district).[1]

III. VENUE

12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.484, 493-500 (1973), venue lies in the United States District Court for the Eastern District of California, the judicial district in which Petitioner is being detained. Petitioner is being detained at the Imperial facility and his detention falls under the jurisdiction of the ICE Field Office of San Diego, California, which encompasses the area where Petitioner is being detained, pursuant to 28 U.S.C. § 1391.

FACTS

13. Mr. Waite is a 52-year-old native and citizen of Jamaica. He entered the United States on

[1] Petitioner asserts this Court has personal jurisdiction over the additional Respondents, however, in the interest of brevity, the Petitioner will brief this if (1) any governmental acts challenged herein are found to relate to those Respondents (instead of the immediate custodian) and (2) the Government seeks to argue against personal jurisdiction.

January 6, 2007, as a non-immigrant and has remained in the United States since.

14. Mr. Waite adjusted his non-immigrant status to conditional permanent residency on June 24, 2010, based on his marriage to a U.S. Citizen. On June 24, 2012, his permanent resident status was terminated when his spouse withdrew the petition to remove conditions.

15. Six years later, on January 23, 2018, a Notice to Appear ("NTA") was issued, but the NTA did not contain a date or time for the hearing, making it a statutorily deficient NTA. His case was scheduled for a hearing four years later, on September 21, 2022.

16. Mr. Waite did not receive notice of his September 21, 2022 immigration court hearing.

17. He exercised due diligence in attempting to correct this error upon discovering the missed hearing. A motion to reopen was filed on his behalf in 2025 and it was denied, largely based on errors of previous immigration court counsel. Then, Mr. Waite filed an appeal of the motion to reopen denial with the Board of Immigration Appeals (BIA) and an emergency request for a stay of removal.

18. Mr. Waite has two United States Citizen ("USC") children – one of whom is a minor.

19. Mr. Waite is the chef-owner of Vineyard Caribbean Cuisine in Martha's Vineyard, Massachusetts, a well-known restaurant that has been operating for nearly a decade.

20. Despite the removal order having been issued on September 21, 2022, over three years later, on September 26, 2025, Mr. Waite was arrested and detained by Immigration and Customs Enforcement ("ICE") on his way to the grocery store to purchase food for his restaurant.

21. Upon information and belief, Mr. Waite was never served with a warrant for his arrest.

22. Mr. Waite, upon information and belief, was not provided with an initial determination of flight risk or danger to the community.

23. Mr. Waite was then transferred to the Buffalo Federal Detention Facility in Batavia, New York. He was scheduled for deportation and flown to Pine Prairie, Louisiana in mid-October 2025. On October 22, 2025, after his arrival to Louisiana, the Board of Immigration Appeals (BIA) granted his request for an emergency stay of removal. Mr. Waite was then transferred back to the Buffalo Federal Detention Facility in Batavia, New York.

24. On or about the third week of December 2025, an ICE officer spoke with Mr. Waite for the first time regarding a ninety-day custody review. He was told that they would consider any and all evidence, and his legal representative submitted a filing related to the custody review with ICE. Quickly thereafter, Mr. Waite was denied release from detention, with ICE indicating he is a significant flight risk and that his removal is imminent. Mr. Waite was asked if he would like to request an interview for his 180-day custody review, and he answered in the affirmative. Mr. Waite recently underwent his 180-day custody review, although ICE did not allow him to call his legal representative during the interview. No response has been provided to Mr. Waite following his 180-day custody review, to date. Mr. Waite remains detained in conditions which mirror those of a high security penal institution and his mental health is deteriorating.

25. Prior to detention, Mr. Waite was diagnosed with early stage glaucoma. He was prescribed eyedrops and given special glasses to prevent migraines. Since being in detention, he has been deprived of his eyedrops and glasses, resulting in his migraines returning and persisting during the last several months. Indeed, Mr. Waite's prescription glasses were taken with him to Louisiana, where ICE lost the glasses and refused to provide Mr. Waite with a new pair. In addition to his vision problems, Mr. Waite suffered a heart attack in 2018 and has been receiving cardiological care since his arrival at the Buffalo Federal Detention Facility. Finally, Mr. Waite is suffering health problems from the low food quality at the facility and he reports only having bowel movements once every ten days, [redacted]

26. On May 21, 2026, Mr. Waite filed a habeas corpus petition in the Western District of New York.

27. On May 26, 2026, Mr. Waite was moved from the Buffalo Federal Detention Facility to the Imperial Regional Detention Facility.

28. On May 29, 2026, the federal judge in the Western District of New York entered an Order that Respondents refrain from transferring Petitioner out of the United States until after the Court determines whether an evidentiary hearing is warranted.

29. To date, Petitioner has not been afforded a bond hearing.

30. Petitioner's appeal before the Board of Immigration Appeals was dismissed on June 10, 2026. On June 17, 2026, a Petition for Review was filed with the United States Court of Appeals for the Eleventh Circuit and is currently pending.

31. Petitioner, given that he is now detained in California, now brings this action in the Southern District of California seeking relief, and has or will be seeking dismissal of the Western District of New York action.

32. Without relief from this Court, Petitioner faces the prospect of additional months, or even years, in immigration custody.

33. Accordingly, Petitioner seeks a writ of habeas corpus. Petitioner requests an order requiring his immediate release from custody, since he was detained outside of the 90-day removal period and has also been detained for an unconstitutionally prolonged period of time.

LEGAL FRAMEWORK WITH RESPECT TO THE REMOVAL PERIOD

34. Where a non-citizen's detention does not fall within the 90-day removal period set out in § 1231(a)(1), detention under 8 U.S.C. § 1231(a)(2)(A) is not applicable.

35. Multiple courts that have found that 8 U.S.C. § 1231(a)(6) applies to individuals originally detained during the 90-day removal period, whose detention may be extended beyond the 90 days, and does not apply to an initial detention occurring after the removal period has ended. *See* 8 U.S.C. § 1321(a)(3) ("If the alien ... is not removed within the [90-day] removal period, the alien, pending removal, *shall be subject to supervision* under regulations prescribed by the

Attorney General.") (emphasis added). *See Parra v. Favro*, No. 9:26-CV-00363 (AMN), 2026 WL 1030870, at *4 (N.D.N.Y. Apr. 16, 2026) ("Section 1231(a)(6) does not provide Respondents the authority to detain Petitioner years after the *In Absentia* Order became final."); *Diallo v. Joyce*, No. 25-CV-9909 (AS), 2025 WL 3718477, at *1 (S.D.N.Y. Dec. 23, 2025) (same); *Saly v. Blanch,* 26-cv-225-wmc (W.D. Wis. May 05, 2026) (same); *Da Silva Lima v. Wesling*, 1:26-cv-12266-IT (D.Mass. May 27, 2026) (same); *Acosta v. Warden of the Golden State Annex Det. Facility*, 1:26-cv-00530-TLN-EFB (E.D. Cal. Feb 07, 2026) (same); *Alva v. Kaiser*, No. 25-CV-06676-RFL, 2025 WL 2419262, at *3 (N.D. Cal. Aug. 21, 2025) ("As mandated by Congress, the default status after the 90-day removal period is therefore release on conditions, not detention."); *Diaz v. Wofford*, No. 1:25-CV-01079 JLT EPG, 2025 WL 2581575, at *4 (E.D. Cal. Sept. 5, 2025) (finding that where a noncitizen's removal order "became final long ago . . . he is no longer even arguably subject to mandatory detention under § 1231(a)," but is instead subject to supervision under § 1231(a)(3)).

36. In *Diallo v. Joyce*, 817 F. Supp. 3d 202 (S.D.N.Y. 2025), the court explained that this reading reflects the longstanding view of the Supreme Court, the United States, and immigration authorities themselves about how section 1231(a)(6) works. See, e.g., *Zadvydas v. Davis*, 533 U.S. 678, 683 (2001) ("After entry of a final removal order and during the 90-day removal period, however, aliens must be held in custody. § 1231(a)(2). Subsequently, as the post-removal-period statute provides, the Government 'may' continue to detain an alien who remains here or release that alien under supervision. § 1231(a)(6)." (emphasis added)); Brief for Petitioners at 21, *Ashcroft v. Ma*, 533 U.S. 678 (2001) (No. 00-38), 2000 WL 1784982, at *21 ("The plain language of Section 1231(a)(6) thus vests the Attorney General with the authority to continue an alien in detention beyond the removal period . . . ." (emphasis added)); Continued Detention of Aliens Subject to Final Orders of Removal, 66 Fed. Reg. 56967-01, 2001 WL 1408247 (Nov. 14, 2001) ("After expiration of the removal period, section [1231(a)(6)] of the Act grants authority to the Attorney General to continue the detention of . . . [a]ny inadmissible alien . . . ." (emphasis added)).

37. Accordingly, detention under 8 U.S.C. § 1231(a)(6) is not applicable here where Petitioner was never detained during the removal period.

38. Immediate release is the appropriate remedy where a non-citizen petitioner is detained unlawfully in violation of their due process rights. *See J.A.C.P. v. Wofford*, 1:25-cv-01354, 2025 WL 3013328 at *8 (E.D.Cal. Oct 27, 2025).

CLAIMS FOR RELIEF

COUNT 1: VIOLATION OF THE INA

39. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein, and does so for all additional counts.

40. The detention provision at 8 U.S.C. § 1231(a)(2)(A) is not applicable in the case of a noncitizen who is outside of the removal period as prescribed by that statute, specifically, a 90-day period of time.

41. Petitioner was detained nearly three years after the expiration of his removal period, and, thus, § 1231(a)(6) does not provide Respondents the authority to detain Petitioner years after the *In Absentia* Order became final

COUNT 2: VIOLATION OF DUE PROCESS

42. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein, and does so for all additional counts.

43. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

44. Petitioner has a fundamental interest in liberty and being free from official restraint.

45. The government's detention of Petitioner for a prolonged period of time, as he withstands ongoing government delay in pursuing the reopening of his *in absentia* removal order, and

without a bond redetermination hearing to determine whether Petitioner is a flight risk or danger to others, violates the right to due process.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Prevent the Petitioner's removal outside of this judicial district until this action is decided;

(3) Issue a temporary stay of Petitioner's removal until this action is decided;

(4) Issue a writ of habeas corpus clarifying that the statutory basis for Petitioner's detention is 8 U.S.C. § 1226(a) and that 8 U.S.C. § 1231 does not apply to Petitioner;

(5) Issue a writ of habeas corpus requiring that Respondents release Petitioner immediately, and that if the government seeks to re-detain petitioner, it must provide no less than seven (7) days' notice to petitioner and must hold a pre-deprivation bond hearing before a neutral arbiter pursuant to section 1226(a) and its implementing regulations, at which petitioner's eligibility for bond must be considered and where the Government shall bear the burden of proving by clear and convincing evidence that Petitioner poses a danger to the community or a flight risk; and

(6) Fashion such additional relief as is necessary and appropriate, including declaratory relief or other interim relief necessary to vindicate Petitioners' rights under U.S. and international law

Dated: June 18, 2026

Respectfully Submitted,

/s/ Kurt R. Saccone

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

I represent Petitioner and submit this verification on Petitioner's behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: June 18, 2026

Respectfully Submitted,

/s/ Kurt R. Saccone

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