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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

OUMAR BELLA BERRY,

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. '26CV3955 DMS AHG

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 Guinea, Petitioner Mr. Oumar Bella Barry ("Mr. Barry"), who is being 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. Barry is a Guinean citizen who entered the United States without inspection on or about December 2023, and was released from the custody of respondents shortly thereafter, upon information and belief, on an Order of Release on Recognizance. He, upon information and belief, complied with that order as he pursued his claim for asylum in the United States. He was issued a work permit and built a life in the Buffalo, New York area. Mr. Barry was arbitrarily re-detained on June 26, 2026 after being pulled over by ICE agents. Not only did the Respondents fail to satisfy the requirements of the law when they unlawfully revoked his release, they also, upon information and belief, unlawfully detained him without a warrant. He was held at the Buffalo Federal Detention Facility in Batavia, New York before being transferred to the Port Isabel Service Processing Center in Los Fresnos, Texas, and then again to the Imperial facility in California. He has now been held for 13 days without due process.
2. DHS and EOIR each have nationwide policies mandating the detention of all persons who entered without admission or parole, regardless of whether that person was apprehended upon arrival. Most recently, on September 5, 2025, in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the Board of Immigration Appeals (BIA) held that all persons who have entered the United States without admission or parole are now subject to mandatory detention under § 1225(b)(2)(A). This legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.
3. The Second Circuit issued a decision in *Barbosa da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026) holding that 8 U.S.C. § 1226(a) governs the detention of a noncitizen who is present in the United States, having entered without inspection and admission, and not apprehended at or near the border. Petitioner was detained in the Second Circuit, yet was quickly moved outside of that jurisdiction.
4. 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

5. 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.

6. 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.

7. 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.

8. 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

9. 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

10. 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.

11. 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

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

III. VENUE

13. 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

14. Mr. Barry is a Guinean citizen who entered the United States without inspection on or about

[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.

December 2023 in Arizona.

15. Mr. Barry was released from the custody of respondents a few days later, upon information and belief, on an Order of Release on Recognizance.

16. Mr. Barry, upon information and belief, complied with that order as he pursued his claim for asylum in the United States.

17. Upon information and belief, Petitioner has no criminal record.

18. Mr. Barry, upon information and belief, filed an I-589 application for asylum and related relief. He was then issued a work permit and built a life in the Buffalo, New York area.

19. Mr. Barry was arbitrarily re-detained on June 26, 2026 in Buffalo, New York after being pulled over by ICE agents.

20. When ICE re-detained Petitioner, upon information and belief, they did not arrest him pursuant to a warrant as required by § 1226(a).

21. When ICE re-detained Petitioner, it was unlawful for them to detain him without a warrant without first making a finding that he was a flight risk.

22. Upon information and belief, no pre-deprivation hearing was held prior to his re-detention, nor was any deliberative process or any consideration of Petitioner's individual circumstances made.

23. Petitioner was re-detained without any opportunity to meaningfully challenge the decision to re-detain him.

24. Upon information and belief, ICE has issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

25. The revocation of Petitioner's release did not comply with the requirements of 8 C.F.R. § 236.1(c)(9) because, upon information and belief, none of the enumerated officials specified in that regulation made the decision to re-detain Petitioner, therefore the revocation was contrary to 8 C.F.R. § 236.1(c)(9) and in violation of the APA.

26. Mr. Barry was held at the Buffalo Federal Detention Facility in Batavia, New York before being transferred to the Port Isabel Service Processing Center in Los Fresnos, Texas, and then again to the Imperial facility in California.

27. Petitioner has not been given a new bond hearing, in keeping with the government's unlawful bond denial policy.

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

29. 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 UNLAWFUL WARRANTLESS ARREST, UNLAWFUL REVOCATION OF RELEASE, AND LIBERTY INTEREST

30. "Section 1357(a)(2) provides ICE with limited authority to conduct warrantless arrests." *Curimilma Quille v. Blanche*, No. 26-cv-2818, 2026 WL 1453889, at *5 (E.D.N.Y. May 22, 2026); see also *Yeleshev v. Larocco*, No. 26-cv-2294, 2026 WL 1353806, at *3 (E.D.N.Y. May 14, 2026) ("Except in the limited circumstances permitting warrantless arrests (which often all turn on the existence of exigent circumstances), due process does not tolerate arrest first and charge later schemes[.]"). "Specifically, ICE must obtain a warrant before arresting a noncitizen unless the officer 'has reason to believe that the [noncitizen] is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest.'" *Curimilma Quille*, 2026 WL 1453889, at *5 (quoting 8 U.S.C. § 1357(a)(2)) (emphasis in original); see also 8 C.F.R. § 287.8(c)(2)(ii) ("A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained."). "ICE officers must satisfy both prongs to establish probable cause to effect a warrantless arrest." *B.D.A.A. v. Bostock*, No. 25-cv-2062, 2025 WL 3484912, at *7 (D. Or. Dec. 4, 2025).

31. Petitioner was encountered during a random traffic stop, likely on the basis of racial profiling. He had a fixed address, a pending asylum matter, a work permit, no criminal record, and a documented history of lawful interaction with immigration officials. "No twist of logic or sophistry can transform him into a potential escapee." *Alfaro v. Mullin*, No. 26-cv-766, 2026 WL

734348, at *5 (E.D.N.Y. Mar. 16, 2026) (finding that a warrantless arrest pursuant to Section 1357 and 8 C.F.R. § 287.8(c)(2)(ii) under similar circumstances "was plainly illegal"); *Sisalema Rea*, No. 9:26-cv-012487 (N.D.N.Y. July 2, 2026).

32. Section 1226(a) provides that immigration officers may, in their discretion, detain noncitizens or may release them on conditional parole (also called an Order of Release on Recognizance, or "OREC"). 8 U.S.C. § 1226(a); *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) ("It is apparent that the INS used the phrase `released on recognizance' as another name for `conditional parole' under § 1226(a)"). The corresponding regulation requires that, before granting release, the immigration officer must determine that such "release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8).

33. By issuing the OREC, ICE necessarily determined that Petitioner would not pose a danger and was likely to appear for future proceedings. See 8 C.F.R. § 236.1(c)(8).

34. Section 1226(b) authorizes the Attorney General to "revoke a bond or parole ... rearrest the alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b). Immigration regulations clarify that only certain officials may exercise this revocation authority: "the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, [and] officer in charge (except foreign)[.]" 8 C.F.R. § 236.1(c)(9) (custody and release procedures).

35. Although Petitioner does not know exactly who revoked his release, he has reason to believe that it was not one of those enumerated officials. See *Ledesma Gonzalez v. Bostock,* 808 F. Supp. 3d 1189 (W.D.Wash. 2025), *citing United States v. Gemmill*, 535 F.2d 1145, 1152 (9th Cir. 1976) (agency officials not explicitly granted authority in regulation lack authority to act); *see also SMJ v. Bostock*, No. 6:25-cv-01426-MTK (D.Or., Nov 10, 2025) ("there is no evidence that S-M-J's release was revoked by anyone with authority to do so. Thus, Respondents' revocation of S-M-J's release was contrary to 8 C.F.R. § 236.1(c)(9) and in violation of the APA.")

36. Further, even if it was one of the enumerated officials who revoked Petitioner's release, it is

required for there to have been a valid exercise of DHS's discretion. *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475 (S.D.N.Y. 2025); *Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065 (E.D.N.Y. 2025) ("the hallmark" of the Fifth Amendment due process protections are "the requirement to provide notice and an opportunity to be heard.").

37. The Fifth Amendment states that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. The Supreme Court has repeatedly affirmed that "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987); see also *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("We have always been careful not to minimize the importance and fundamental nature of the individual's right to liberty."). Petitioner's interest in not being detained is "the most elemental of liberty interests[.]" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Consistent with this principle, individuals released on parole or other forms of conditional release, including immigration bonds, have a liberty interest in their "continued liberty." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). "The procedural component of due process 'imposes constraints on governmental decisions which deprive individuals of 'liberty' . . . within the meaning of the Due Process Clause.'" *D.B. v. Cardall*, 826 F.3d 721, 741 (4th Cir. 2016) (citing *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976)). For this reason, "civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protections." *Addington v. Texas*, 441 U.S. 418, 425 (1979) (emphasis added).

38. Thus, "when the government deprives a person of a protected liberty . . ., it is obliged to provide 'notice and opportunity for hearing appropriate to the nature of the case.'" *Cardall*, 826 F.3d at 741 (citing *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950)); *see generally Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest). The question of what form of "notice and opportunity for hearing" is "appropriate" and thus constitutionally required in a given case requires considering three factors. *Cardall,* at 742 (citing *Turner v. Rogers*, 564 U.S. 431, 444–45 (2011)). Specifically, the Supreme Court has instructed courts

to consider the following: (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." *Mathews*, 424 U.S. at 335.

39. "The three-factor Mathews framework is 'flexible' and highly 'fact-specific.'" *Cardall*, 826 F.3d at 743 (citing *Ciambriello v. Cnty. of Nassau*, 292 F.3d 307, 319 (2nd Cir. 2002)). "The mere availability and utilization of some procedures does not mean they [a]re constitutionally sufficient. That is, the Fifth Amendment guarantees 'due process of law,' not just 'some process of law.'" Id. (citing *Davidson v. City of New Orleans*, 96 U.S. 97, 107 (1877) (Bradley, J., concurring)).

40. Upon finding a person is in custody in violation of the laws of the United States, a district court may grant a writ of habeas corpus and "dispose of the matter as law and justice so require." 28 U.S.C. §§ 2241(a), 2243. The "typical remedy" for "unlawful executive detention" is release from custody. See *Munaf v. Geren*, 553 U.S. 674, 693 (2008); see also *Preiser v. Rodriguez,* 411 U.S. 475, 484 (1973). See, e.g., *Morales Mendez v. Field Office Director,* No. 9:26-cv-337-ECC (Coombe, J.), (N.D.N.Y., March 16, 2026); *Perez v. Akshar, et al*, No. 9:26-cv-120-ECC (Coombe, J.) (N.D.N.Y., March 5, 2026); *See also Crespo Tacuri v. Genalo*, No. 25-cv-6896, 2026 WL 35569, at *7 (E.D.N.Y. Jan. 6, 2026) (concluding that Petitioner had a "cognizable private interest in being freed from unlawful detention") (citing, among others, *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) ("[T]he most elemental of liberty interests [is] the interest in being free from physical detention by one's own government.")); *Fernandez Lopez v. Wofford*, 2025 WL 2959319 , at *4 (E.D. Cal. Oct. 17, 2025).

41. 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

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 detention provision at 8 U.S.C. § 1225(b) is not applicable in the case of a noncitizen who was detained inside of the United States, but rather, § 1226(a) applies. See, e.g., *Barbosa da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026), *Lopez-Campos v. Raycraft*, 175 F.4th 713 (6th Cir. 2026); *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, 175 F.4th 1258 (11th Cir. 2026); *Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048 (7th Cir. 2025), *Santillan Quiroz v. Mullin*, No. 26-6019 (10th Cir. 2026) (the five majority circuits that have held that § 1225(b) does not apply); but see *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) (the two minority circuits that held that § 1225(b), as advanced by the government, does apply).

44. Petitioner was detained over three years and three months after his initial entry into the United States, his initial apprehension, and subsequent release on OREC, and, thus, § 1225(b) does not provide Respondents the authority to detain Petitioner without a bond hearing or other due process.

45. Further, § 1226(b), as implemented by 8 C.F.R. § 236.1(c)(9), only authorizes specific officials to revoke the release of a noncitizen.

46. 8 U.S.C. § 1357(a)(2) requires a specific finding that a noncitizen is an escape risk before a warrantless arrest may be effectuated.

47. Respondents are in violation of these statutory requirements.

COUNT 2: VIOLATION OF DUE PROCESS

48. 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.

49. 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).

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

51. Because of Petitioner's profound legal interest in his liberty as a noncitizen, his detention violates his due process rights. *See generally Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest).

52. Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

COUNT 3: Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B)

53. 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.

54. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A), (B).

55. The APA's reference to "law" in the phrase "not in accordance with law," "means, of course, *any* law, and not merely those laws that the agency itself is charged with administering." *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

56. Respondents failed to follow their own regulations and procedures in re-detaining Petitioner.

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: July 9, 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: July 9, 2026

Respectfully Submitted,

/s/ Kurt R. Saccone

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