

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Ibrahima A. Barry,
Petitioner,

v.

Warden, Delaney Hall Detention Facility; John Tskoukaris, in his capacity as Newark Field Office Director, Immigration and Customs Enforcement; Kristi Noem, in her capacity as Secretary, Department of Homeland Security; Pamela Bondi, in her capacity as U.S. Attorney General,

Case No.

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner Ibrahima Barry is a 25-year-old citizen of Mali who was detained on July 3, 2025, as he left his Immigration Court preliminary hearing in Manhattan. His detention appears to be part of a campaign underway by Respondents to detain individuals who have been present in the U.S. for under two years at the time they attend their immigration court hearings, without notice or any individualized review of whether detention is necessary. Mr. Barry's detention as part of this campaign is unlawful and he brings this petition seeking his immediate release.

PARTIES

1. Petitioner Ibrahima Barry is a citizen of Mali who, prior to his detention, lived in New York City. He attended his regularly scheduled court appearance before an immigration court in Manhattan on July 3, 2025, and was detained by Respondents.
2. Respondent Alexander Cabezas is named in his official capacity as the Acting Assistant Field Office Director for the Newark Field Office for Immigration and Customs Enforcement ("ICE") within the United States Department of Homeland Security. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations and is Mr. Barry's legal custodian. Respondent Cabezas' address is U.S. Immigration and Customs Enforcement, 970 Broad Street, 11th Floor, Newark, New Jersey 07102.
3. Respondent Kristi Noem is named in her official capacity as the Acting 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 Southern 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, 800 K Street N.W. #1000, 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 Southern 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 July 3, 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 Mr. Barry is currently detained in the District of New Jersey, where he has been held since July 11, 2025.

SPECIFIC FACTS ABOUT PETITIONER

8. Ibrahima Barry, a citizen of Mali, arrived in the U.S. on January 1, 2024. He was detained shortly after entering the U.S. but was released by Respondents. On information and belief, this release was on his own recognizance. He is in removal proceedings, where he was charged with removability under 8 U.S.C. § 1182(a)(6)(A)(i) for lack of valid status.

9. After his release in January 2024 and despite appearing for his proceedings pro se, he submitted a timely application for asylum and related relief. His claim is based on the harm he experienced as a member of the Fulani tribe and his participation as a youth leader within the local community council, an elected position he held for four years and through which he advocated for his community. Mali, a country at war for over a decade, is plagued with tribal violence, and tribe and political affiliation are often interwoven.¹

¹ See Human Rights Watch, “Mali: Army, Wagner Group Disappear, Execute Fulani Civilians,” July 22, 2025; available at <https://www.hrw.org/news/2025/07/22/mali-army-wagner-group-disappear-execute-fulani-civilians>; see also International Crisis Group, “Central Mali: Putting a

Mr. Barry was repeatedly threatened with death, and in 2020, his brother and father were murdered by militias. He was in fact the intended target when his brother was murdered.

Mr. Barry filed his application for asylum and related relief with the Immigration Court on March 28, 2024.

10. On July 3, 2025, Mr. Barry attended his scheduled Immigration Court preliminary hearing. His case was adjourned until October 30, 2025.

11. Mr. Barry was detained by Respondents as he left the courtroom. He was not told why he was being arrested, where he was being taken, or if he would ever be released. He was initially detained at 26 Federal Plaza, then transferred for two days to Nassau County Correctional Facility, then transferred back to 26 Federal Plaza where he was detained for five days in inhumane conditions. During this time, Mr. Barry was kept in a crowded, hot room with about 50 other men, where he was not given sufficient food, had no bed to sleep in, and had no access to legal calls. Mr. Barry was finally transferred to Delaney Hall in New Jersey on the sixth day.

12. On information and belief, Respondents have no individualized basis for their redetention of Mr. Barry, as there is no change in the individual factors in his case apart from changes in his favor—namely, his timely submission of an asylum application and attendance in court. Respondents have not alleged that Mr. Barry now poses a danger or a risk of flight.

Stop to Ethnic Cleansing," May 25, 2019, available at
<https://www.crisisgroup.org/africa/sahel/mali/centre-du-mali-enrayer-le-nettoyage-ethnique>

13. Mr. Barry remains in active removal proceedings under INA § 240, 8 U.S.C. § 1229, and his immigration case is currently pending before the Elizabeth, New Jersey Immigration Court. However, EOIR's system shows no future hearing date for him, either as to his custody or the merits of his case. He is currently detained without review.

DHS's NEW CAMPAIGN OF COURTHOUSE DETENTIONS

14. For years, DHS, including ICE, largely refrained from conducting civil immigration arrests at courthouses, including immigration courts, out of recognition that conducting such arrests could deter noncitizens from attending mandatory court proceedings and disrupt the proper functioning of courts. This policy was reflected in a formal 2021 agency memo, "Civil Immigration Enforcement Actions in or near Courthouses," U.S. Dep't of Homeland Sec., April 27, 2021, Memo (Apr. 27, 2021). One of the core principles underlying the April 27, 2021 Memo was that "[e]xecuting civil immigration enforcement actions in or near a courthouse may chill individuals' access to courthouses, and as a result, impair the fair administration of justice." *Id.* at 1.

15. In early 2025, DHS rescinded this guidance without any explanation for how this reversal might affect noncitizens' access to courts and the fair administration of justice. This new policy was memorialized in a final agency memo, "Civil Immigration Enforcement Actions In or Near Courthouses" (hereinafter "Courthouse Arrest Memo"). U.S. Dep't of Homeland Sec., U.S. Immigr. & Customs Enf't, Courthouse Arrest Memo (May 27, 2025).

16. At the same time, on or about May 20, 2025, Respondents began a nationwide campaign (the “Courthouse Arrest Policy”) to seek dismissal of removal proceedings for people present in the U.S. for under two years; to detain individuals immediately after their appearance in immigration court; and to place them in “expedited removal” without a hearing before an immigration judge, in order to be able to remove them more rapidly from the United States. However, Respondents also detained many individuals in the New York courts even without moving to dismiss their immigration court cases.

17. In New York City, this campaign has led to a large number of detentions in all three Manhattan immigration courthouses that hear non-detained removal proceedings. The noncitizen in these cases walks outside the courtroom, where plainclothes, armed ICE officers, with their faces covered by masks or gaiters and no name or badge displayed, surround them.

18. The detentions are not individualized and have no relations to whether the person has any criminal history or indication of danger to the community or risk of flight. Upon information and belief, Respondents create lists of individuals to be detained and then proceed to detain every single one, even in the face of immediate information or pleas that the person has minor children in need of care or serious medical conditions. Noncitizens are arrested and handcuffed in the hallways and lobby of the federal buildings in front of their family members, attorneys, and members of the public.

19. Once detained, New Yorkers targeted by this campaign vanish for several days. Upon information and belief, they are held at the New York ICE Field Office for days on end even though the office is not designed as an overnight detention facility, with little to no

ability to communicate with family or attorneys. They are then transferred to one of many possible ICE detention facilities around the country, and often transferred to multiple facilities in the span of a few days. The ICE detainee locator, an online portal, often does not reflect their location for several days or reflects a detention center at which (according to facility staff there) detainees are not actually present.

DHS'S NEW NO-BOND POLICY

20. Mr. Barry has not been advised by Respondents that he has any process or recourse to challenge his sudden detention. Respondents will likely argue that Petitioner is not even eligible for a bond hearing, let alone release on bond or his own recognizance. In its recent decision in *Matter of Q. Li*, the Board of Immigration Appeals severely restricted bond eligibility for individuals apprehended shortly after entry into the United States but not at a port of entry. 29 I&N Dec. 66 (BIA 2025).

21. Furthermore, in an internal memo dated July 8, 2025, Respondents explicitly stated their new position (the “No Bond Policy”), breaking with decades of practice, which goes beyond even the scope of *Matter of Q. Li*, that “the only [non-citizens] eligible for a custody determination and release on recognizance, bond or other conditions under INA § 236(a) during removal proceedings are [those] admitted to the United States and chargeable with deportability under INA § 237.”²

² See Maria Sacchetti and Carol D. Leonnig, *ICE declares millions of undocumented immigrants ineligible for bond hearings*, Washington Post, July 15, 2025, available at <https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/> (last visited July 30, 2025).

LEGAL FRAMEWORK

22. The INA sets out a scheme for the detention and release of individuals, like Mr. Barry, who are in removal proceedings under INA § 240. *See Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (describing the “default rule” for individuals to seek review of their custody). Under INA § 236(a), a person whose removal proceedings are pending may be: 1) detained, 2)(A) released on at least \$1,500 bond, or 2)(B), released on “conditional parole,” which is another term for “release on recognizance” without a monetary bond. *See Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 749 (BIA 2023) (release on recognizance is the same as conditional parole); *Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011) (petitioner’s prior release on recognizance was under the INA § 235(a)(2)(B) conditional parole authority).

23. As an exception to this regular process, noncitizens who are detained at the U.S. border and processed for expedited removal are considered “applicants for admission” who are not eligible for release on bond. *See* INA § 235(a)(1), (b)(i)(B)(ii). Instead, the mechanism for such individuals to seek release is a grant of humanitarian parole under INA § 212(d)(5).

24. 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 now, 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. Under this long-standing practice, DHS retains discretion to place an individual who is apprehended at or near the border directly into INA § 240 proceedings, as well as to consider the person for discretionary release under INA § 236(a) on a bond or on recognizance. *Cruz-Miguel*, 650 F.3d at 198 (noting that the “executive retains the broader authority under § 1226(a)(2)(B) to order the release on bond or conditional parole of aliens who have been arrested and detained pending a final removability determination if they pose no risk of harm or flight.”); *Matter of Cabrera-Fernandez*, 28 I&N Dec. at 749 (finding that § 236(a)(2)(b) was a valid “alternate statutory mechanism for releasing the present respondents,” who had been apprehended near the border and placed into INA § 240 removal proceedings). Also, as a matter of long-standing practice, DHS would have no occasion to re-detain a person who had been released under INA § 236 or on parole and whose removal proceedings were still pending, absent a negative change in circumstances, such as the person being convicted of a new criminal offense or other new evidence showing danger or risk of flight. *See Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020) (noting these are the two valid bases for immigration detention).

26. DHS’s new Courthouse Arrest Policy, in conjunction with its No Bond Policy, results in the sudden re-detention of individuals previously found to pose no danger and no risk of

flight, with no notice before the deprivation of their liberty or opportunity to challenge detention. Once detained, individuals who were previously screened and deemed no risk to release without any monetary bond are held in jail-like conditions with no opportunity to see a judge and request review of their detention, which may continue for months or years in the case of a bona fide asylum seeker like Mr. Barry as he pursues humanitarian protection.

27. Although these DHS policies are new, multiple district courts have already found that the Courthouse Arrest Policy has posed serious as-applied constitutional concerns that warrant habeas courts granting immediate release. *See Chipantiza-Sisalema v. Francis*, No. 25-5528, 2025 WL 1927931 (S.D.N.Y. July 13, 2025) (finding due process violations in courthouse arrest with no pre-deprivation notice or opportunity to respond, and ordering immediate release); *Valdez v. Joyce*, No. 25-4627, 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (same); redetained); *Mata Velasquez v. Kurzdorfer*, No. 25-493, 2025 WL 1953796, at *11 (W.D.N.Y. July 16, 2025) (same, even for noncitizen who was originally released on § 212(d)(5) parole); *see also Arias Gudino v. Lowe*, No. 25-00571, 2025 WL 1162488 (M.D. Pa. Apr. 21, 2025) (finding that petitioner's re-detention while on supervised release without notice from ICE as to the basis for it raised procedural due process concerns).

28. Similarly, multiple district courts have already found that the No Bond Policy reads key language out of the INA's detention statutes and raises constitutional concerns warranting the grant of habeas relief, including bond hearings with the burden of proof on the government. *See Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299 (D. Mass. July 7,

2025); *Martinez v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rodriguez v. Bostock*, No. 25-05240, 2025 WL 1193850, at *14 (W.D. Wash. Apr. 24, 2025).³

CLAIMS FOR RELIEF

COUNT ONE

**VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT AND
IMPLEMENTING REGULATIONS**

29. Petitioners reallege and incorporate by reference each and every allegation contained above.
30. Petitioner's detention without an opportunity for a bond hearing violates INA § 236(a) and 8 C.F.R. § 1003.19(a). To the extent that the government takes the position that he is ineligible for bond, this reading is inconsistent with his statutory and regulatory rights to seek redetermination of his custody.

COUNT TWO

**VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO
THE U.S. CONSTITUTION (SUBSTANTIVE DUE PROCESS)**

³ District courts have also found it futile for noncitizens to exhaust their administrative remedies in similar cases, given the BIA's near-certain denial of bond appeals, and its lack of jurisdiction over the constitutional claims raised in this petition. *Rodriguez*, No. 25-05240, 2025 WL 1193850, at *7-9; *Chipantiza-Sisalema*, No. 25-5528, 2025 WL 1927931, at *3.

31. Petitioner realleges and incorporates by reference each and every allegation contained above.
32. 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).
33. Petitioner's detention violates the Due Process Clause because no change in Petitioner's case compels a change in custody status. He presents no flight risk or danger to the community. His detention is not rationally related to any immigration purpose, it is not the least restrictive mechanism for accomplishing any legitimate purpose the government could have in imprisoning Petitioner, and it appears to have been imposed for policy and punitive reasons.

COUNT THREE

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION (PROCEDURAL DUE PROCESS)

34. Petitioner realleges and incorporates by reference each and every allegation contained above.
35. ICE had already made a reasoned decision to release Petitioner on his own recognizance, after which he peacefully lived in the community for and attended his immigration hearings as required. Petitioner was not provided any process, let alone constitutionally

adequate process, before being suddenly deprived of his liberty. He is now being held without any meaningful custody review or process to challenge his detention post-deprivation of his liberty.

COUNT FOUR

VIOLATION OF THE FOURTH AMENDMENT TO THE U.S. CONSTITUTION

(UNLAWFUL ARREST); 5 U.S.C. §§ 702, 706

36. Mr. Barry repeats and realleges the allegations contained in all preceding paragraphs of this Petition-Complaint as if fully set forth herein.
37. Mr. Barry 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, or parole, him while he litigated that charge in immigration court. At the time of Mr. Barry's arrest, he had been living at liberty pursuant to a parole determination by federal immigration authorities.
38. The government lacked reliable information of changed or exigent circumstances that would justify his arrest after federal immigration authorities had already decided he could pursue his claims for immigration relief at liberty. His re-arrest based solely on the fact that he is subject to removal proceedings is unreasonable and violates the Fourth Amendment.

COUNT FIVE

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

39. Petitioner realleges and incorporates by reference each and every allegation contained above.

40. The Administrative Procedure Act prohibits agency action which is arbitrary and capricious.

41. Respondents' new policies of detaining individuals like Mr. Barry, who are in ongoing removal proceedings and for whom no circumstances have changed since their initial release, is arbitrary and capricious. The Immigration Courthouse Arrest Policy is an unreasoned departure from recent and longstanding agency policy and practice. The government has provided no reasoned explanation for this reversal.

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-New Jersey area during the pendency of this petition;
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 Immigration and Nationality Act and implementing regulations;
5. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

6. Declare that Petitioner's arrest and detention violates the Fourth Amendment;
7. Declare that Respondents' actions violate the Administrative Procedure Act;
8. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody, or in the alternative, hold a bail hearing before this Court where Respondents bear the burden to justify Petitioner's continued detention by clear and convincing evidence;
9. 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
10. Grant such further relief as this Court deems just and proper.

Dated: August 6, 2025

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CERTIFICATE OF SERVICE

I certify that on August 6, 2025, I electronically filed the attached the foregoing First Amended Petition for Writ of Habeas Corpus and accompanying Exhibits and Declarations with the Clerk of the Court for the United States District Court for the District of New Jersey using the CM/ECF system. Service will therefore be effected by the CM/ECF system.