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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

1 **INTRODUCTION**

2 1. Petitioner Henri Ba (DHS No. A [REDACTED]) is in the custody of
3 Immigration and Customs Enforcement (“ICE”) and is detained at the Otay
4 Mesa Detention Center, an ICE Enforcement and Removal Operations
5 (“ERO”) holding facility in San Diego, CA.

6 2. Petitioner is unlawfully detained. Petitioner was previously released from
7 ICE custody on November 10, 2004 on his own recognizance, and had
8 remained free from custody for twenty-one years during his ongoing removal
9 proceedings and applications for asylum, withholding of removal and
10 protection under the Convention Against Torture, including during his
11 successful appeal before the Ninth Circuit Court of Appeals.

12 3. Petitioner’s immigration case is pending at the Board of Immigration
13 Appeals (“BIA”) after ICE’s request to terminate removal proceedings
14 against Petitioner was granted by the immigration judge over Mr. Ba’s
15 opposition.

16 4. On August 19, 2025, Petitioner attended an immigration supervision check-in
17 in San Diego, CA, and was arrested and detained by ICE.

18 5. There has been no change in Petitioner’s circumstances that would subject
19 Petitioner to re-detention. Petitioner does not have a final removal order.
20 Petitioner has complied with ICE supervision and the conditions of release.
21 Petitioner has developed significant liberty interests while he has remained
22 free from detention for twenty-one years.

23 6. ICE’s arrest and detention of Petitioner violate Petitioner’s rights under the
24 Fourth Amendment’s protection against unreasonable seizure and the Fifth
25 Amendment’s Due Process Clause, and they are in violation of the
26 Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A), (B), and (C).

27 **JURISDICTION AND VENUE**

28 7. Jurisdiction is proper and relief is available pursuant to 28 U.S.C. § 1331

1 (federal question), 28 U.S.C. § 1346 (original jurisdiction), 5 U.S.C. § 702
2 (waiver of sovereign immunity), 28 U.S.C. § 2241 (habeas corpus
3 jurisdiction), and Article I, Section 9, clause 2 of the United States
4 Constitution (the Suspension Clause).

5 8. Venue is proper in the Southern District of California under 28 U.S.C. § 1391
6 because at least one federal Respondent resides in this District and because
7 the Petitioner was arrested and is detained in this District.

8 PARTIES

9 *Petitioner*

10 9. Henri Ba is a citizen of Senegal who was admitted to the U.S. in 2000 on a J-
11 visa. His removal proceedings are pending at the BIA after the IJ granted
12 ICE's request to terminate his proceedings and pending applications for
13 relief. He does not have a final removal order.

14 *Respondents*

15 10. Todd Lyons is the Acting Director of Immigration and Customs
16 Enforcement, a federal law enforcement agency within the Department of
17 Homeland Security. ICE's responsibilities include operating the immigration
18 detention system. In his capacity as ICE Acting Director, Respondent Lyon
19 exercises control over and is a custodian of persons held at the ICE facilities
20 nationally. At all times relevant to this Complaint, Respondent Lyons was
21 acting within the scope and course of his employment with ICE. He is sued
22 in his official capacity.

23 11. Patrick Divver is the Director of the San Diego ERO Field Office, a federal
24 law enforcement agency within the Department of Homeland Security. ERO
25 is a directorate within ICE whose responsibilities include operating the
26 immigration detention system. In his capacity as ICE ERO San Diego Field
27 Office Director, Respondent Divver exercises control over and is a custodian
28 of persons held at the Otay Mesa Detention Center in San Diego, CA. at all

1 times relevant to this Complaint, Respondent Divver was acting within the
2 scope and course of his employment with ICE. He is sued in his official
3 capacity.

4 12. Christopher J. LaRose is the Warden for the Otay Mesa Detention Center in
5 San Diego, CA. At all times relevant to this Complaint, Respondent LaRose
6 was acting within the scope and course of his status as the warden of the
7 detention facility. He is sued in his official capacity.

8 **STATEMENT OF FACTS**

9 13. Petitioner was released from ICE custody on order of recognizance on
10 November 10, 2004, during his removal proceedings

11 14. While under ICE supervision, Petitioner enrolled in the Intensive
12 Supervision Appearance Program (“ISAP”) check-ins. He complied with all
13 requirements.

14 15. From November 2004 to present, Petitioner has attended all immigration
15 court appearances requiring his attendance.

16 16. On May 8, 2023, Petitioner’s removal proceedings were terminated by an
17 immigration judge at the request of the Government and over Mr. Ba’s
18 objection.

19 17. Petitioner filed a notice of appeal of the Immigration Judge decision to the
20 BIA on June 17, 2024. Petitioner filed a brief and the Government did not.
21 Petitioner’s appeal remains pending. Petitioner is therefore not subject to a
22 final administrative order of removal.

23 18. On August 19, 2025, Petitioner reported to his ICE check-in in downtown
24 San Diego. At that location, ICE officers arrested Petitioner.

25 19. Petitioner was transported to the Otay Mesa Detention Center in San Diego,
26 CA, where he has been since that date.

27 ///

28 ///

FIRST CLAIM FOR RELIEF

Petitioner's Detention Violates His Fourth Amendment Right Against Unreasonable Seizure

20. Petitioner repeats and incorporates by reference all allegations above as though set forth fully here.
21. Subjecting an individual to an unreasonable arrest without probable cause is a violation of the Fourth Amendment. *See, e.g., Sanchez v. Sessions*, 904 F.3d 643 (9th Cir. 2018).
22. Petitioner had previously successfully complied with his ISAP requirements and was presently complying with the conditions of his release in reporting to his ICE check-in, and his arrest by Respondents was unreasonable and constitutes a violation of the Fourth Amendment.

SECOND CLAIM FOR RELIEF

Petitioner's Detention Violates His Fifth Amendment Right to Due Process

15 23. Petitioner repeats and incorporates by reference all allegations above as
16 though set forth fully here.

17 24. “The Fifth Amendment’s Due Process Clause forbids the Government to
18 ‘deprive’ any ‘person . . . of . . . liberty . . . without due process of law.’ ”
19 *Zadyvydas v. Davis*, 533 U.S. 678, 690 (2001).

20 25. “Freedom from imprisonment—from government custody, detention, or
21 other forms of physical constraint—lies at the heart of the liberty that the
22 Clause protects.” *Id.* The guarantee applies in full force to “all ‘persons’ in
23 the United States, including aliens, whether their presence here is lawful,
24 unlawful, temporary, or permanent.” *Id.*, at 693.

25 26. Under due process required by the Fifth Amendment, Petitioner developed
26 significant liberty interests after being released from immigration custody
27 twenty-one years ago and was owed a pre-detention hearing. *See Zinermon v.*
28 *Burch*, 494 U.S. 113, 127 (1990) (“the Constitution requires some kind of

1 hearing before the State deprives a person of liberty or property” (emphasis
2 in original); *see also Morrissey v. Brewer*, 408 U.S. 471 (1972) (comparing
3 release from immigration custody to liberty interest in parole).

4 27. Here, Petitioner was released on his own recognizance and remained free
5 from ICE custody for twenty-one years. There was no change in
6 circumstances to authorize re-detention. *See Valencia Zapata v. Kaiser*, No.
7 25-CV-07492-RFL, 2025 WL 2741654, at *2 (N.D. Cal. Sept. 26, 2025) (“if
8 an [immigration judge] has determined the noncitizen ‘should be released,
9 the DHS may not re-arrest that noncitizen absent a change in
10 circumstance.’”). Respondents’ act of re-detaining Petitioner without notice
11 and without a hearing violates his right to due process.

12 **THIRD CLAIM FOR RELIEF**

13 **Petitioner’s Detention Violates the Administrative Procedure Act, 5 U.S.C.**

14 **§ 706(2)**

15 28. Petitioner repeats and incorporates by reference all allegations above as
16 though set forth fully here.

17 29. Under the Administrative Procedure Act, a court must “hold lawful and set
18 aside agency action” that is “arbitrary, capricious, an abuse of discretion, or
19 otherwise not in accordance with the law”; that is “contrary to constitutional
20 right [or] power”; or that is “in excess of statutory jurisdiction, authority, or
21 limitations, or short of statutory right.” 5 U.S.C. §§ 706(2)(A)–(C).

22 30. Respondents’ arrest and detention of Petitioner—who has remained out of
23 custody for twenty-one years during his removal proceedings—was arbitrary
24 and capricious. ICE released Petitioner twenty-one years ago on his own
25 recognition because he was not a flight risk or danger to the community.
26 ICE successfully moved the immigration judge to terminate Petitioner’s
27 removal proceedings over two years ago, demonstrating its intent not to
28 proceed with removal. ICE’s complete change of position in arresting

1 Petitioner is arbitrary and capricious and an abuse of discretion.

2 Respondents' arrest and detention of Petitioner violates the Fourth and Fifth
3 Amendments of the Constitution and is in violation of 5 U.S.C. § 706(2).

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Petitioner respectfully asks this Court to take jurisdiction over
6 this actual controversy and:

- 7 a. Issue a Writ of Habeas Corpus and order the release of Petitioner because his
8 arrest and detention violate the Fourth and Fifth Amendments and 5 U.S.C.
9 § 706(2);
- 10 b. In the alternative, issue injunctive relief ordering Respondents to release
11 Petitioner on the ground that his arrest and continued detention violates the
12 Fourth and Fifth Amendments and 5 U.S.C. § 706(2);
- 13 c. Order that Petitioner not be re-detained without a pre-detention hearing
14 before a neutral immigration judge;
- 15 d. Award Petitioner his costs and reasonable attorneys' fees in this action under
16 the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C.
17 § 2412, and on any other basis justified under law; and
- 18 e. Grant any other and further relief that this Court deems just and appropriate.

19
20 Dated: October 24, 2025

s/ Jean Reisz

21 JEAN REISZ

22 USC GOULD SCHOOL OF LAW,
IMMIGRATION CLINIC

23 Attorney for Petitioner

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VERIFICATION

I, Jean Reisz, declare as follows:

I am an attorney admitted to practice law in the State of California

Because many of the allegations of this Petition require a legal knowledge not possessed by Petitioner, I am making this verification on his behalf.

I have read the foregoing Petition for Writ of Habeas Corpus and know the contents thereof to be true to my knowledge, information, or belief.

I certify under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 24, 2025.

s/ Jean Reisz
JEAN REISZ
USC GOULD SCHOOL OF LAW, IMMIGRATION CLINIC
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 24, 2025, I served a copy of this Petition for Writ of Habeas Corpus by email to the following individuals:

Mary Wiggins
Civil Docketing Clerk
U.S. Attorney's Office
880 Front Street, Suite 6293
San Diego, CA 92101
Email: mary.wiggins@usdoj.gov

Janet A. Cabral, Assistant U.S. Attorney
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s/ Jean Reisz
JEAN REISZ
Attorney for Petitioner

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Henri Ba

(b) County of Residence of First Listed Plaintiff San Diego County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jean Reisz, Niels Frenzen, USC Law School Immigration Clinic, 699 Exposition Blvd., Los Angeles, CA 90089

DEFENDANTS

Todd Lyons, Acting Dir. ICE, Patrick Divver San Diego ICE Field Office Director. Christopher LaRose. Warden OMDC
County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'25CV2871 CAB BJW

Janet Cabral, Chief, Civil Division, US Atty's Office
Southern District of California, 880 Front St, Ste 6293

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input checked="" type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	REAL PROPERTY <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	CIVIL RIGHTS PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	LABOR SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWV (405(g)) <input type="checkbox"/> 864 SSDI Title XVI <input type="checkbox"/> 865 RSI (405(g))
				FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

<input type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File
------------------------------------------------	-----------------------------------------------------	----------------------------------------------------------	---------------------------------------------------	------------------------------------------------------------------------------	----------------------------------------------------------------	-------------------------------------------------------------------

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 2241

VI. CAUSE OF ACTION

Brief description of cause:
Habeas Petition challenging unlawful detention pursuant to 4th and 5th Amendment and APA

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

10/24/25

s/ Jean Reisz

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT _____

APPLYING IFF _____

JUDGE _____

MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 - United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1335 and 1338. Suits by agencies and officers of the United States are included here.
 - United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 - Original Proceedings. (1) Cases which originate in the United States district courts.
 - Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 - Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 - Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.

PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 - Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 - Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.