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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Henri Ba,

Petitioner,

v.

Todd Lyons, Acting Director
Immigration and Customs
Enforcement;

Patrick Divver, San Diego
Field Office Director,
Immigration and Customs
Enforcement Removal
Operations;

and

Christopher J. LaRose,
Warden, Otay Mesa
Detention Center,

Respondents.

CASE NO: 5:24-cv-2871-CAB-BJW

PETITIONER'S OPPOSITION TO
RESPONDENTS' MOTION FOR
EXTENSION OF TIME TO RESPOND
TO PETITIONERS EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER

1 Petitioner opposes granting Respondents any further extension of time to
2 respond to his application for a temporary restraining order. Petitioner has now
3 been unlawfully detained for 73 days in violation of his constitutional rights. His
4 irreparable injury is ongoing. *See Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th
5 Cir. 2012) (reiterating that “it is well established that the deprivation of
6 constitutional rights ‘unquestionably constitutes irreparable injury.’”) (citing *Elrod*
7 *v. Burns*, 427 U.S. 347, 373 (1976)).

8 Respondents request an extension of two weeks to “update the Court on the
9 outcome of the [November 6] bond hearing and the need for additional time or [to]
10 submit a response to the Petitioner and TRO motion.” Resp’ts Mot. For Ext., p. 2.
11 Respondents erroneously assert that a custody redetermination has “the potential to
12 result in [Petitioner’s] obtaining the relief he seeks” and that Petitioner must
13 exhaust administrative remedies. *Id.*, pp 2-3. A custody redetermination hearing
14 will not provide relief or remedy the violations of Petitioner’s constitutional rights,
15 will add to Petitioner’s injury, will likely not result in Petitioner’s release, and
16 exhaustion of administrative remedies is not required.

17 First, Respondents do not allege any basis for detaining Petitioner in their
18 request for an extension. The Form I-213 document that ICE prepared in
19 connection with Petitioner’s arrest in August establishes Petitioner was detained
20 while reporting to an ICE automated terminal. *See Exhibit A, Form I-213* (stating
21 Petitioner was arrested while reporting under “CART” which stands for
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1 Compliance Assistance Reporting Terminal). The Form I-213 also establishes that
2 Petitioner is not alleged to have a criminal record. *Id.* The Form I-213 wrongly
3 states that Petitioner was issued a Notice to Appear on February 27, 2023, but
4 Petitioner's Notice to Appear was issued on November 4, 2002 and his proceedings
5 had not been terminated by the immigration judge. *See* Exhibit in Support of TRO
6 ("TRO Exhibit") J, Notice to Appear dated November 4, 2002; *see also* TRO
7 Exhibit D, Immigration Judge Order dated May 8, 2023. The form I-213 does not
8 recognize that Petitioner has been in removal proceedings for approximately
9 twenty-one years or that he has a pending appeal with the Board of Immigration
10 Appeals ("BIA"). *See generally* Exhibit A, I-213. Accordingly, there is no basis
11 for a new arrest and no basis for any determination that Mr. Ba is a flight risk or
12 danger to the community. A future custody redetermination hearing does not
13 remedy the daily and ongoing violation of Petitioner's constitutional rights under
14 the Fourth Amendment and Fifth Amendment's Due Process Clause.

15
16 Respondents can release Petitioner at any time, yet Respondents have
17 opposed his release and are detaining him without bond. A custody
18 redetermination hearing does not cure Mr. Ba's constitutional violations and would
19 not result in his obtaining the relief he needs, because the relief he is requesting is
20 immediate release. Petitioner is not requesting a custody redetermination hearing
21 and Petitioner is not requesting release on bond. Petitioner is requesting release and
22 return to the *status quo*.

1 Petitioner will be further irreparably harmed because although Petitioner's
2 detention is unlawful, he will bear the burden to prove to the immigration judge at a
3 custody re-determination hearing that he is not a flight risk or danger to the
4 community, and Respondents are opposed. *See Matter of R-A-V-P-*, 27 I&N Dec.
5 803 (BIA 2020) (clarifying that "[a]n alien requesting a redetermination of his or
6 her custody status under section 236(a) [1226(a)] must establish to the satisfaction
7 of the Immigration Judge and the Board that he or she does not present a danger to
8 persons or property, is not a threat to the national security, and does not pose a risk
9 of flight.") (internal citations omitted); *see also Matter of Fatahi*, 26 I&N Dec. 791,
10 795 n.3 (BIA 2016) (noting that the BIA has "consistently held that aliens have the
11 burden to establish eligibility for bond while proceedings are pending"). Pursuant
12 to a custody redetermination under 8 U.S.C. §1226(a), under the best of
13 circumstances Petitioner will have to post a minimum bond of \$1500 adding to his
14 injury. 8 U.S.C. §1226(a)(2).

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20 Moreover, even if Petitioner is granted a bond by the immigration judge, and
21 can pay it, Respondents have the unilateral ability to block his release on that bond
22 for a prolonged period of time under 8 C.F.R. § 1003.19(i)(2) regardless of any
23 bond order issued by an immigration judge. Pursuant to 8 C.F.R. § 1003.19(i)(2),
24 Respondents need only file a form (Form EOIR-43 - Notice of Service Intent to
25 Appeal Custody Redetermination) and a notice of appeal to the BIA to trigger the
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1 automatic stay of bond “in any case in which DHS has determined that an alien
2 should not be released or has set a bond of \$10,000 or more” to block Petitioner’s
3 release on bond. 8 C.F.R. § 1003.19(i)(2). Given Respondents’ re-detention of
4 Petitioner after twenty-one years with no changed circumstances, it is almost
5 certain Respondents would invoke the stay of Petitioner’s release on any bond, and
6 Petitioner’s liberty would continue to be erroneously deprived.
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9 Finally, exhaustion of administrative remedies is not required for
10 constitutional challenges to Respondents’ arrest and detention of Petitioner. *See*
11 *Iraheta-Martinez v. Garland*, 12 F.4th 942, 949 (9th Cir. 2021) (noting “[a]n
12 exception to the exhaustion requirement has been carved for constitutional
13 challenges to ... [DHS] procedures.” (citing *Sola v. Holder*, 720 F.3d 1134, 1135
14 (9th Cir. 2013) (per curiam) (first alteration in original) (quoting *Rashtabadi v. INS*,
15 23 F.3d 1562, 1567 (9th Cir. 1994)) (citations modified)). Respondents have made
16 clear in the request for an extension of time that they oppose Petitioner’s habeas
17 petition and they oppose release. There is no administrative exhaustion
18 requirement for constitutional due process challenges where the due process claim
19 involves “more than mere procedural error that an administrative tribunal could
20 remedy.” *Chettiar v. Holder*, 665 F.3d 1375, 1379 n.2 (9th Cir. 2012). Here, the
21 immigration judge cannot remedy the constitutional due process challenge because
22 the immigration judge cannot review constitutional claims and order Petitioner’s
23 immediate release and return to the *status quo* in a custody redetermination hearing.
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1 For the foregoing reasons, Petitioner respectfully requests that Respondents'
2 second request for additional time to respond Petitioner's Ex Parte Application for
3 TRO be denied.¹
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5 Dated: October 31, 2025

Respectfully submitted,

6
7 s/ Jean Reisz
8 JEAN REISZ
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10 IMMIGRATION CLINIC
11 699 Exposition Blvd
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15 Attorney for Petitioner
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28 ¹ Respondents previously filed a joint motion for extension of time to respond to
Petitioner's ex parte TRO application. See Dkt. Entry 6.

A

U.S. Department of Homeland Security



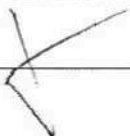
Subject ID : 399899122

Record of Deportable/Inadmissible Alien

Family Name (CAPS) BA, HENRI ANTOINE		First	Middle	Sex M	Hair BLK	Eyes BRO	Complexion DRK
Country of Citizenship SENEGAL	Passport Number and Country of Issue <div style="background-color: black; width: 100px; height: 20px; margin: 0 auto;"></div>			Height 69	Weight 150	Occupation	
U.S. Address				Scars and Marks			
Date, Place, Time, and Manner of Last Entry 05/27/1998 Unknown Time, J1-Exchange Visitor				Passenger Boarded at			
Number, Street, City, Province (State) and Country of Permanent Residence				FBI Number <div style="background-color: black; width: 100px; height: 20px; margin: 0 auto;"></div>			
Date of Birth <div style="background-color: black; width: 100px; height: 20px; margin: 0 auto;"></div> Age: 61				Date of Action 08/19/2025		Location Code SND/SND	
City, Province (State) and Country of Birth SENEGAL		AR <input checked="" type="checkbox"/>	Form: (Type and No.) Lifted <input type="checkbox"/> Not Lifted <input type="checkbox"/>				
NIV Issuing Post and NIV Number		Social Security Account Name		Method of Location/Apprehension NCA			
Date Visa Issued		Social Security Number <div style="background-color: black; width: 100px; height: 20px; margin: 0 auto;"></div>		At/Near See I-831		Date/Time 08/19/2025 09:30	
Immigration Record NEGATIVE				Criminal Record See Narrative			
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate)				Number and Nationality of Minor Children None			
Father's Name, Nationality, and Address, if Known BA, CLAUDE YVES NATIONALITY: SENEGAL		Mother's Present and Maiden Names, Nationality, and Address, if Known SAGNA, ANNA GUSTAVIE NATIONALITY: SENEGAL					
Monies Due/Property in U.S. Not in Immediate Possession None Claimed		Fingerprinted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Systems Checks See Narrative		Charge Code Word(s) See Narrative	
Name and Address of (Last)(Current) U.S. Employer		Type of Employment		Salary		Employed from/to Hr	
<p>Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)</p> <p>FIN: 8699790 Left Index fingerprint Right Index fingerprint</p> <div style="display: flex; justify-content: space-around; align-items: center;">    </div>							
<p>Subject Health Status The subject claims good health.</p> <p>Current Administrative Charges 08/19/2025 - 237a1C1 - NONIMMIGRANT STATUS VIOLATORS: FAILED TO MAINTAIN THE NONIMMIGRANT STATUS IN WHICH THE ALIEN WAS ADMITTED</p> <p>... (CONTINUED ON I-831)</p>							
Alien has been advised of communication privileges <u>8/19/25</u> (Date/Initials)				ROGELIO NUNEZ Deportation Officer (Signature and Title of Immigration Officer)			
Distribution:		Received: (Subject and Documents) (Report of Interview)					
FILE		Officer: ROGELIO NUNEZ					
EARM		on: August 19, 2025 (time)					
STATS		Disposition: Other					
		Examine Officer: CALDERON					

U.S. Department of Homeland Security






Continuation Page for Form I-213

Alien's Name BA, HENRI ANTOINE	File Number 	Date 08/19/2025
Previous Criminal History ----- No Crimes selected for inclusion on the I-213.		
RECORDS CHECKED ----- EARM Pos CIS Pos TECS Neg NCIC Neg AFIS Pos		
AT/NEAR ----- SAN DIEGO, CALIFORNIA		
Record of Deportable/Excludable Alien: ----- BA, Henri Antoine  COC: Senegal		
<p>On August 19, 2025, Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), San Diego Non-Detain Unit (NDU) arrested a BA, Henri Antoine, born on August 14, 1964, who is a citizen and national of Senegal, after attending a scheduled CART visit.</p> <p>On August 19, 2025, at approximately 0930 hours, San Diego ERO Deportation Officers (DOs) Ebba and Nunez identified themselves as ICE officers and informed BA, that he was being placed under arrest would be remanded back into custody. BA was asked of any known medical conditions and was transported to SND staging for processing without incident.</p>		
IMMIGRATION HISTORY BA entered the United States of America at New York, New York, on May 27, 1998, as a nonimmigrant Exchange Visitor (J-1). BA changed his immigration status to F-1 to attend City College of San Francisco, CA, on July 11, 2000. BA did not carry on a full course of study from June 15, 2002, to present. On 2/27/23, BA was issued a Notice to Appear (NTA) by an Asylum Officer.		
CRIMINAL HISTORY None BA was advised of his right to contact the Consulate of Senegal. BA was offered a free domestic phone call.		
Intake/Booking INFO: 		
Signature ROGELIO NUNEZ 	Title Deportation Officer	

2 of 3 Pages

U.S. Department of Homeland Security

Continuation Page for Form I-213

Alien's Name BA, HENRI ANTOINE	File Number 	Date 08/19/2025
DNA No:		
FINAL DISPOSITION: BA will be remanded back into ICE custody and transferred to Otay Mesa Detention Facility pending his immigration removal case.		
Other Identifying Numbers ----- ALIEN-  Driver's License (State and Country)-B0591257 (SENEGAL) U.S. Social Security Number-  Employer Identification Number-  ..COMMENT: WORK PERMIT (I765) EXPIRES: 5/14/29		
A7578 EBBA		
Signature ROGELIO NUNEZ 	Title Deportation Officer	

3 of 3 Pages

DEPARTMENT OF HOMELAND SECURITY
Immigration and Customs Enforcement

NOTICE TO EOIR: ALIEN ADDRESS

Event No: Date: August 19, 2025To: Enter Name of BIA or Immigration Court I-830 OTAY MESA DETENTION CENTEREnter BIA or Immigration Court Three Letter Code@usdoj.gov OTMFrom: Enter Name of ICE Office ERO - Otay CCA Facility, CA Sub OfficeEnter Street Address of ICE Office U.S. IMMIGRATION & CUSTOMS ENFORCEMENT DRO - OMD, CA Sub Office 7488 Calzada DeLa FuenteEnter City, State and Zip Code of ICE Office SAN DIEGO, CA 92154Respondent: Enter Respondent's Name BA, HENRI ANTOINEAlien File No: Enter Respondent's Alien Number 

This is to notify you that this respondent is:

☐ Currently incarcerated by federal, state or local authorities. A charging document has been served on the respondent and an Immigration Detainer-Notice of Action by the ICE (Form I-247) has been filed with the institution shown below. He/she is incarcerated at:

Enter Name of Institution where Respondent is being detained _____

Enter Street Address of Institution where Respondent is being detained _____

Enter City, State and Zip code of Institution where Respondent is being detained _____

Enter Respondent's Inmate Number _____

His/her anticipated release date is Enter Respondent's Anticipated Release Date. _____

☒ Detained by ICE on Enter Date Respondent was Detained by ICE at: August 19, 2025

Enter Name of ICE Detention Facility where Respondent is being detained OTAY MESA DETENTION CENTER

Enter Street Address of ICE Detention Facility where Respondent is being detained _____

7488 CALZADA DE LA FUENTE

Enter City, State and Zip Code of ICE Detention Facility where Respondent is being detained _____

SAN DIEGO CA 92154

☐ Detained by ICE and transferred on Enter Date Respondent was transferred to: _____

Enter Name of ICE Detention Facility where Respondent has been transferred _____

Enter Street Address of ICE Detention Facility where Respondent has been transferred _____

Enter City, State and Zip Code of ICE Detention Facility where Respondent has been transferred _____

☐ Released from ICE custody on the following condition(s):

- ☐ Order of Supervision or Own Recognizance (Form I-220A)
☐ Bond in the amount of Enter Dollar Amount of Respondent's Bond
☐ Removed, Deported, or Excluded
☐ Other _____

Upon release from ICE custody, the respondent reported his/her address and telephone number would be:

Enter Respondent's Street Address _____

Enter Respondent's City, State and Zip Code _____

Enter Respondent's Telephone Number (including area code) _____

☒ I hereby certify that the respondent was provided an EOIR-33 Form and notified that they must inform the Immigration Court of any further change of address.

ICE Official: Enter Your First, Last Name and Title Deportation Officer ROGELIO NUNEZ 

DEPARTMENT OF HOMELAND SECURITY
NOTICE OF CUSTODY DETERMINATION

Alien's Name: BA, HENRI ANTOINE

A-File Number [REDACTED]

Date: 08/19/2025

Event ID: [REDACTED]

Subject ID: [REDACTED]

Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that, pending a final administrative determination in your case, you will be:

- ☒ Detained by the Department of Homeland Security.
- ☐ Released (check all that apply):
- ☐ Under bond in the amount of \$ _____
 - ☐ On your own recognizance.
 - ☐ Under other conditions. [Additional document(s) will be provided.]

CALDERON, PABLO

Name and Signature of Authorized Officer

08/19/2025 11:36 AM

Date and Time of Custody Determination

SDDO

Title

ICE ENFORCEMENT AND REMOVAL OPERATIONS 880 FRONT STREET #2242 SAN
DIEGO, CA US 92101

Office Location/Address

You may request a review of this custody determination by an immigration judge.

- ☒ I acknowledge receipt of this notification, and
- ☒ I do request an immigration judge review of this custody determination.
- ☐ I do not request an immigration judge review of this custody determination.

Bon, Henri
Signature of Alien

08/19/2025

Date

The contents of this notice were read to BA, HENRI ANTOINE in the ENGLISH language.
(Name of Alien) (Name of Language)

NUNEZ, ROGELIO

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

Deportation Officer

Title

U.S. DEPARTMENT OF HOMELAND SECURITY Warrant for Arrest of Alien

File No. _____

Date: 08/19/2025

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that BA, HENRI ANTOINE is removable from the United States. This determination is based upon:

- ☒ the execution of a charging document to initiate removal proceedings against the subject;
- ☐ the pendency of ongoing removal proceedings against the subject;
- ☐ the failure to establish admissibility subsequent to deferred inspection;
- ☒ biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- ☐ statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

PABLO CALDERON - SDDO

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at SAN DIEGO, CA
(Location)

on BA, HENRI ANTOINE on August 19, 2025, and the contents of this
(Name of Alien) (Date of Service)

notice were read to him or her in the ENGLISH language.
(Language)

ROGELIO NUNEZ

Deportation Officer

Name and Signature of Officer

Name or Number of Interpreter (if applicable)