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

11 Henri Ba, )  
12 Petitioner, ) CASE NO: 5:24-cv-2871-CAB-BJW  
13 )  
14 v. ) PETITIONER'S OPPOSITION TO  
15 Todd Lyons, Acting Director ) RESPONDENTS' MOTION FOR  
16 Immigration and Customs ) EXTENSION OF TIME TO RESPOND  
17 Enforcement; ) TO PETITIONERS EX PARTE  
18 Patrick Divver, San Diego ) APPLICATION FOR TEMPORARY  
19 Field Office Director, ) RESTRAINING ORDER  
20 Immigration and Customs )  
21 Enforcement Removal )  
22 Operations; )  
23 and )  
24 Christopher J. LaRose, )  
25 Warden, Otay Mesa )  
26 Detention Center, )  
27 Respondents. )  
28

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

19  
20 First, Respondents do not allege any basis for detaining Petitioner in their  
21 request for an extension. The Form I-213 document that ICE prepared in  
22 connection with Petitioner’s arrest in August establishes Petitioner was detained  
23 while reporting to an ICE automated terminal. *See Exhibit A, Form I-213* (stating  
24 Petitioner was arrested while reporting under “CART” which stands for

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*.  
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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).

15 Moreover, even if Petitioner is granted a bond by the immigration judge, and  
16 can pay it, Respondents have the unilateral ability to block his release on that bond  
17 for a prolonged period of time under 8 C.F.R. § 1003.19(i)(2) regardless of any  
18 bond order issued by an immigration judge. Pursuant to 8 C.F.R. § 1003.19(i)(2),  
19 Respondents need only file a form (Form EOIR-43 - Notice of Service Intent to  
20 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.

7 Finally, exhaustion of administrative remedies is not required for  
8 constitutional challenges to Respondents’ arrest and detention of Petitioner. *See*  
9 *Iraheta-Martinez v. Garland*, 12 F.4th 942, 949 (9th Cir. 2021) (noting “[a]n  
10 exception to the exhaustion requirement has been carved for constitutional  
11 challenges to ... [DHS] procedures.” (citing *Sola v. Holder*, 720 F.3d 1134, 1135  
12 (9th Cir. 2013) (per curiam) (first alteration in original) (quoting *Rashtabadi v. INS*,  
13 23 F.3d 1562, 1567 (9th Cir. 1994)) (citations modified)). Respondents have made  
14 clear in the request for an extension of time that they oppose Petitioner’s habeas  
15 petition and they oppose release. There is no administrative exhaustion  
16 requirement for constitutional due process challenges where the due process claim  
17 involves “more than mere procedural error that an administrative tribunal could  
18 remedy.” *Chettiar v. Holder*, 665 F.3d 1375, 1379 n.2 (9th Cir. 2012). Here, the  
19 immigration judge cannot remedy the constitutional due process challenge because  
20 the immigration judge cannot review constitutional claims and order Petitioner’s  
21 immediate release and return to the *status quo* in a custody redetermination hearing.

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.<sup>1</sup>

4  
5 Dated: October 31, 2025

6 Respectfully submitted,  
7  
8 s/ Jean Reisz  
9 JEAN REISZ  
10 USC GOULD SCHOOL OF LAW,  
11 IMMIGRATION CLINIC  
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14 Telephone: (213) 821-3108  
15 Email: [jreisz@law.usc.edu](mailto:jreisz@law.usc.edu)  
16 Attorney for Petitioner  
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<sup>1</sup> 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) <b>BA, HENRI ANTOINE</b>		First	Middle	Sex <b>M</b>	Hair <b>BLK</b>	Eyes <b>BRO</b>	Complexion <b>DRK</b>
Country of Citizenship <b>SENEGAL</b>	Passport Number and Country of Issue		X				
U.S. Address							
Date, Place, Time, and Manner of Last Entry <b>05/27/1998 Unknown Time, J1-Exchange Visitor</b>				Passenger Boarded at			
Number, Street, City, Province (State) and Country of Permanent Residence							
Date of Birth <b>XX-XX-XX</b>	Age: <b>61</b>	Date of Action <b>08/19/2025</b>	Location Code <b>SND/SND</b>	F.B.I. Number <b>XX-XX-XX</b>			
City, Province (State) and Country of Birth <b>SENEGAL</b>		AR <input checked="" type="checkbox"/> Form : (Type and No.) Lifted <input type="checkbox"/> Not Lifted <input type="checkbox"/>	Method of Location/Apprehension <b>NCA</b>				
NIV Issuing Post and NIV Number		Social Security Account Name					
Date Visa Issued		Social Security Number <b>XX-XX-XX</b>					
Immigration Record <b>NEGATIVE</b>		Criminal Record <b>See Narrative</b>					
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate)						Number and Nationality of Minor Children <b>None</b>	
Father's Name, Nationality, and Address, if Known <b>BA, CLAUDE YVES NATIONALITY: SENEGAL</b>		Mother's Present and Maiden Names, Nationality, and Address, if Known <b>SAGNA, ANNA GUSTAVIE NATIONALITY: SENEGAL</b>					
Monies Due/Property in U.S. Not in Immediate Possession <b>None Claimed</b>		Fingerprinted? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <b>See Narrative</b>	Systems Checks <b>See Narrative</b>	Charge Code Words(s) <b>See Narrative</b>			
Name and Address of (Last) Current U.S. Employer		Type of Employment	Salary	Employed from/to <b>Hr</b>			

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.)

FIN: 8699790

Left Index fingerprint

Right Index fingerprint



Subject Health Status

The subject claims good health.

Current Administrative Charges

08/19/2025 - 237a1Ci - NONIMMIGRANT STATUS VIOLATORS: FAILED TO MAINTAIN THE NONIMMIGRANT STATUS IN WHICH THE ALIEN WAS ADMITTED

... (CONTINUED ON I-831)

Alien has been advised of communication privileges

8/19/25 RN

(Date/Initials)

**ROGELIO NUNEZ**  
Deportation Officer  
(Signature and Title of Immigration Officer)

Distribution:

FILE

EARM

STATS

Received: (Subject and Document) (Report of Interview)

Officer: **ROGELIO NUNEZ**

on: **August 19, 2025**

Disposition: **Other**

Examining Officer: **CALDERON**

Alien's Name BA, HENRI ANTOINE	File Number [REDACTED]	Date 08/19/2025
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## 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  
[REDACTED]

COC: Senegal

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.

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.

## 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 [Signature]	Title Deportation Officer
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Alien's Name BA, HENRI ANTOINE	File Number [REDACTED]	Date 08/19/2025
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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

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ALIEN- [REDACTED]  
 Driver's License (State and Country)-BG591257 (SENEGAL)  
 U.S. Social Security Number- [REDACTED]  
 Employer Identification Number- [REDACTED]  
 ..COMMENT: WORK PERMIT (I765) EXPIRES: 5/14/29

A7578 EBBA

Signature ROGELIO NUNEZ [Signature]	Title Deportation Officer
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3 of 3 Pages



DEPARTMENT OF HOMELAND SECURITY  
NOTICE OF CUSTODY DETERMINATION

Alien's Name: BA, HENRI ANTOINE

A-File Number: 

Date: 08/19/2025

Event ID: 

Subject ID: 

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.

BA, 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. 

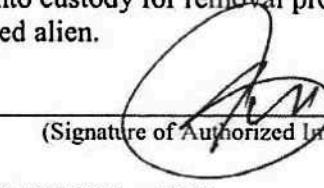
Date: 08/19/2025

**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)

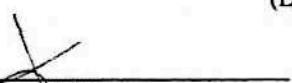
PABLO CALDERON - SDDO

(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.  
ROGELIO NUNEZ  


Deportation Officer

Name and Signature of Officer

Name or Number of Interpreter (if applicable)