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8  
9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 **ABDOULAYE BARRY**

12 Petitioner

13 v.

14 **Jeremy CASEY**, Warden at Imperial Regional  
15 Detention Center;

16 **Kristi NOEM**, Secretary, U.S. Department of  
17 Homeland Security;

18 **Todd LYONS**, Acting Director, U.S.  
19 Immigration and Customs Enforcement;

20 **Patrick DIVVER**, Field Office Director, San  
21 Diego Field Office, U.S. Immigration and  
22 Customs Enforcement.

23 **Sirce OWEN**, Acting Director of the Executive  
24 Office for Immigration Review (EOIR),  
25 U.S. Department of Justice.

26 **Pamela BONDI**, Attorney General, U.S.  
27 Department of Justice.

28 Respondents

Case No.: '26CV1408 BAS DEB

Agency File No:



**PETITION FOR WRIT OF  
HABEAS CORPUS AND  
REQUEST FOR ORDER TO  
SHOW CAUSE WITHIN THREE  
DAYS**

1 INTRODUCTION

2 1. Petitioner Abdoulaye Barry respectfully submits this Petition for a Writ of Habeas  
3 Corpus challenging his unlawful detention by the Department of Homeland Security (“DHS”).  
4 Petitioner is a native and citizen of Guinea who entered the United States without inspection on  
5 or about August 13, 2024. On October 17, 2024, DHS released Petitioner from custody on his  
6 own recognizance and permitted him to reside in the United States. Petitioner thereafter lived at  
7 liberty in the community, timely filed an application for asylum, and complied with all  
8 immigration requirements. On November 3, 2025, Petitioner was arrested by Immigration and  
9 Customs Enforcement (“ICE”) during a scheduled check-in and was later transferred to the  
10 Imperial Regional Detention Center, where he remains detained.

11 2. DHS released Petitioner from custody on his own recognizance and permitted him to  
12 reside in the United States while pursuing protection under the immigration laws. Following his  
13 release, Petitioner lived at liberty in the community and complied with immigration  
14 requirements, including by timely filing Form I-589 with United States Citizenship and  
15 Immigration Services. At the time of his arrest by Immigration and Customs Enforcement  
16 (“ICE”) on November 3, 2025, Petitioner had been living at liberty in the United States for more  
17 than one year following his release from DHS custody.

18 3. To the extent DHS treats Petitioner as subject to detention under INA § 235(b) despite  
19 his release and subsequent residence in the United States, that classification deprives him of  
20 access to a custody redetermination hearing before an Immigration Judge. As a result, Petitioner  
21 has been denied a constitutionally adequate bond hearing before a neutral decisionmaker.

22 4. Moreover, on February 18, 2026, the United States District Court for the Central  
23 District of California vacated *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) under the  
24 Administrative Procedure Act. A vacated agency decision has no legal force and cannot serve as  
25 the basis for detention or to divest Immigration Judges of bond jurisdiction.

26 5. Petitioner does not challenge the initiation of removal proceedings or the merits of  
27 removability in this action. Rather, this petition challenges only the legal basis of his detention—

1 specifically, DHS’s unlawful classification of his custody under INA § 235(b) rather than INA §  
2 236(a). Petitioner therefore seeks a writ of habeas corpus ordering his release from custody or, in  
3 the alternative, a prompt and constitutionally adequate bond hearing before a neutral  
4 decisionmaker.

### 5 JURISDICTION AND VENUE

6 6. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in the custody  
7 of the Department of Homeland Security within this District and he challenges the legality of  
8 that custody.

9 7. This Court also has jurisdiction under 28 U.S.C. § 1331 because this action arises  
10 under the Constitution and laws of the United States, including the Immigration and Nationality  
11 Act and the Due Process Clause of the Fifth Amendment.

12 8. Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) strips this Court of jurisdiction. Section  
13 1252(g) bars only challenges to the Attorney General’s discretionary decisions to “commence  
14 proceedings, adjudicate cases, or execute removal orders,” not independent challenges to  
15 unlawful detention. Likewise, § 1252(b)(9) consolidates review of removal orders in the courts  
16 of appeals, but does not foreclose habeas review of detention claims, which are collateral to the  
17 removal proceedings.

18 9. Venue is proper in this District under 28 U.S.C. § 1391(e) because Petitioner is  
19 detained at the Imperial Regional Detention Center in Calexico, California, which lies within the  
20 Southern District of California.

### 21 PARTIES

22 10. Petitioner, Abdoulaye Barry, is a native and citizen of Guinea currently detained at  
23 the Imperial Regional Detention Center in Calexico, California.

24 11. Respondent Jeremy Casey is the Warden at Imperial Regional Detention Center,  
25 located in the city of Calexico, California.

26 12. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland  
27 Security (DHS).

1 13. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs  
2 Enforcement (ICE).

3 14. Respondent Patrick Divver is the Director of the San Diego Field Office of U.S.  
4 Immigration and Customs Enforcement.

5 15. Respondent Sirce Owen is the Acting Director of the Executive Office for  
6 Immigration Review (EOIR).

7 16. Respondent Pamela Bondi is the Attorney General of the United States and the head  
8 of the U.S. Department of Justice (DOJ).

9 17. All Respondents are named in their official capacities.

### 10 **LEGAL FRAMEWORK**

11 18. The Immigration and Nationality Act (“INA”), codified at 8 U.S.C. § 1101 et seq.,  
12 provides multiple detention authorities. For decades, courts, Congress, and agencies have  
13 consistently distinguished between two distinct statutory frameworks: INA § 235 (8 U.S.C. §  
14 1225), which governs applicants for admission encountered at or near the border, and INA § 236  
15 (8 U.S.C. § 1226), which governs the arrest and detention of individuals already present in the  
16 United States and placed in removal proceedings. The Supreme Court analyzed the interplay  
17 between these provisions in *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

18 19. Section 1225 provides that, for purposes of initial inspection at the border, “an alien  
19 who arrives in the United States or is present in this country but has not been admitted, is treated  
20 as an applicant for admission.” *Jennings*, 583 U.S. at 287 (quoting 8 U.S.C. § 1225(a)(1)). The  
21 Court explained that decisions concerning who may enter or remain in the United States  
22 “generally begin at the Nation’s borders and ports of entry, where the Government must  
23 determine whether an alien seeking to enter the country is admissible.” *Id.* Section 1225(b)  
24 governs this inspection and admission process, applying primarily to individuals encountered at  
25 or near the border, subjecting them either to expedited removal under § 1225(b)(1)—which  
26 includes a credible-fear process for those expressing an intent to seek asylum—or to detention

1 pending a decision on admission under § 1225(b)(2). *Id.* at 297; see also *Dep't of Homeland Sec.*  
2 *v. Thuraissigiam*, 591 U.S. 103 (2020).

3 20. By contrast, § 1226(a) governs the detention of individuals who entered years ago and  
4 were later apprehended in the interior, “pending a decision on whether [they are] to be removed  
5 from the United States.” *Jennings*, 583 U.S. at 303. Unlike § 1225, which applies at the border, §  
6 1226(a) authorizes the Attorney General to detain or release such individuals on bond or  
7 conditional parole, except as provided in subsection (c), which applies only to a narrow category  
8 of noncitizens with specified criminal or security-related grounds. *Id.* at 303, 306. Arrests made  
9 pursuant to § 1226(a) are ordinarily executed on administrative warrants, and longstanding  
10 regulations confirm that such individuals are eligible for Immigration Judge bond hearings. See 8  
11 C.F.R. §§ 236.1(c)(8), 236.1(d)(1), 1236.1(d)(1); 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).  
12 Congress further described § 1226(a) as merely a “restatement” of prior detention authority  
13 under former INA § 242(a), confirming its application to interior arrests pending removal. H.R.  
14 Rep. No. 104-469, pt. 1, at 229 (1996).

15 21. For decades, individuals who entered without inspection but were later released from  
16 custody and allowed to reside in the United States were treated as subject to detention under INA  
17 § 236(a), not § 235(b). DHS’s decision to release an individual from custody and permit that  
18 individual to reside in the United States terminates inspection-stage detention under INA § 235.  
19 Any later detention following an interior arrest must therefore proceed under the detention  
20 framework of INA § 236(a).

21 22. On May 15, 2025, the Board of Immigration Appeals issued its precedential decision  
22 in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), addressing the scope of detention authority  
23 under INA § 235 for certain noncitizens who entered the United States without inspection.

24 23. On July 8, 2025, U.S. Immigration and Customs Enforcement (“ICE”), in  
25 coordination with the Department of Justice, issued Interim Guidance Regarding Detention  
26 Authority for Applicants for Admission. The guidance asserted that certain noncitizens who  
27 entered without inspection could be treated as subject to detention under INA § 235(b)(2)(A),

1 including individuals apprehended in the interior of the United States. That interim guidance was  
2 later vacated by the United States District Court for the Central District of California under the  
3 Administrative Procedure Act.

4 24. On September 5, 2025, the Board of Immigration Appeals issued its precedential  
5 decision in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), addressing the application  
6 of detention authority under INA § 235(b) in certain removal proceedings. That decision was  
7 later vacated by the United States District Court for the Central District of California under the  
8 Administrative Procedure Act on February 18, 2026.

9 **FACTS**

10 25. Petitioner, Abdoulaye Barry, is a native and citizen of Guinea who entered the United  
11 States without inspection on or about August 13, 2024.

12 26. On October 17, 2024, DHS released Petitioner from custody on his own recognizance  
13 and permitted him to reside in the United States while pursuing protection under the immigration  
14 laws.

15 27. DHS did not conduct a credible fear interview prior to Petitioner's release because the  
16 government was unable to secure an interpreter in Fulani, Petitioner's language.

17 28. Following his release, Petitioner resided in the United States while pursuing  
18 protection under the immigration laws. Petitioner timely filed Form I-589, Application for  
19 Asylum and for Withholding of Removal, with United States Citizenship and Immigration  
20 Services.

21 29. Based on the pendency of that application, Petitioner was issued an Employment  
22 Authorization Document, permitting him to work lawfully in the United States while his asylum  
23 application remained pending.

24 30. Petitioner complied with all immigration requirements and remained in regular  
25 contact with immigration authorities.

26 31. On November 3, 2025, Petitioner appeared for a scheduled check-in with  
27 Immigration and Customs Enforcement ("ICE") in New York City. Petitioner appeared

1 voluntarily for that appointment in compliance with ICE reporting requirements. During that  
2 check-in, ICE officers took Petitioner into custody.

3 32. Following his arrest, Petitioner was transferred to the Imperial Regional Detention  
4 Center in Calexico, California, where he remains detained.

5 33. On January 21, 2026, an Immigration Judge ordered Petitioner removed pursuant to  
6 the Asylum Cooperative Agreement (“ACA”) third-country transfer process, to Uganda, without  
7 a merits hearing on Petitioner’s asylum claim.

8 34. Petitioner timely appealed that decision, and the Board of Immigration Appeals  
9 received the appeal on February 13, 2026.

10 35. Because Petitioner’s appeal remains pending before the Board of Immigration  
11 Appeals, the removal order is not administratively final.

12 36. Petitioner has not received an individualized custody redetermination hearing at  
13 which the government bears the burden of justifying his continued detention.

14 37. Petitioner remains detained at the Imperial Regional Detention Center without having  
15 received a constitutionally adequate bond hearing.

16 38. Absent relief from this Court, Petitioner will remain detained without a meaningful  
17 opportunity to obtain an individualized custody determination at which the government bears the  
18 burden of justifying continued detention.

19 **CLAIM FOR RELIEF**

20 **COUNT 1**

21 **Violation of the Immigration and Nationality Act (INA)**

22 39. Petitioner incorporates by reference the allegations of fact set forth in the preceding  
23 paragraphs.

24 40. The mandatory detention provision set forth in 8 U.S.C. § 1225(b) governs the  
25 inspection and admission process for noncitizens encountered at or near the border during the  
26 initial inspection process. That provision does not extend to individuals who have been released  
27

1 from DHS custody and permitted to reside in the United States while pursuing immigration  
2 proceedings.

3 41. Petitioner entered the United States on or about August 13, 2024, and was released  
4 from DHS custody on October 17, 2024, after which DHS permitted him to reside in the United  
5 States while pursuing protection under the immigration laws. Following his release, Petitioner  
6 lived at liberty in the community for more than one year before being taken into custody by ICE  
7 during a scheduled check-in on November 3, 2025.

8 42. The mandatory detention provision of 8 U.S.C. §1225(b) governs the detention of  
9 noncitizens who are arriving at the border or who remain in inspection-stage custody shortly  
10 after entry. It does not apply to individuals who have been released from custody and permitted  
11 to reside in the United States. DHS released Petitioner from custody on October 17, 2024 and  
12 allowed him to live in the community while pursuing protection under the immigration laws.  
13 Petitioner thereafter lived at liberty in the United States for more than one year before his arrest  
14 on November 3, 2025. At the time of that arrest, Petitioner was already residing in the interior of  
15 the United States rather than undergoing inspection at the border. Under these circumstances,  
16 any detention must proceed under 8 U.S.C. §1226(a), which governs detention of noncitizens  
17 already present in the country pending removal proceedings and provides eligibility for an  
18 individualized custody determination before an Immigration Judge. DHS cannot revive  
19 inspection-stage detention under §1225(b) after releasing an individual and allowing that person  
20 to live at liberty in the United States.

21 43. By continuing to treat Petitioner as subject to detention under INA § 235(b) despite  
22 his prior release and subsequent residence in the United States, Respondents are detaining  
23 Petitioner under an inapplicable statutory provision and denying him the custody determination  
24 required by INA § 236(a).

25 44. Petitioner's continued detention under INA § 235(b) therefore violates the  
26 Immigration and Nationality Act.

27 **COUNT 2**

1 **Violation of the Due Process Clause of the Fifth Amendment**

2 45. Petitioner incorporates by reference the allegations set forth in the preceding  
3 paragraphs.

4 46. The Fifth Amendment provides that “[n]o person shall be deprived of life, liberty, or  
5 property, without due process of law.”

6 47. Freedom from physical restraint lies at the core of the liberty protected by the Due  
7 Process Clause. As the Supreme Court has explained, “freedom from imprisonment—from  
8 government custody, detention, or other forms of physical restraint—lies at the heart of the  
9 liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

10 48. Civil immigration detention is constitutionally permissible only when it bears a  
11 reasonable relationship to a legitimate governmental objective, such as ensuring a noncitizen’s  
12 appearance at immigration proceedings or protecting the community. Detention imposed without  
13 adequate procedural safeguards and without an individualized determination of necessity violates  
14 the Due Process Clause.

15 49. By continuing to detain Petitioner without providing a meaningful opportunity for an  
16 individualized custody determination before a neutral decisionmaker, Respondents have deprived  
17 Petitioner of liberty without due process of law.

18 50. As a result, Petitioner’s continued detention violates the Due Process Clause of the  
19 Fifth Amendment.

20  
21 **PRAYER FOR RELIEF**

22 WHEREFORE, Petitioner respectfully requests that this Court:

- 23 A) Assume jurisdiction over this matter;  
24 B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this  
25 District while these proceedings are pending;  
26 C) Issue an Order to Show Cause pursuant to 28 U.S.C. § 2243 requiring Respondents to explain  
27 the legal basis for Petitioner’s continued detention;

1 D) Declare that Petitioner is not lawfully detained under INA § 235(b) and that, in light of  
2 DHS’s decision to release Petitioner from custody on October 17, 2024, any continued detention  
3 must proceed, if at all, under INA § 236(a);

4 E) Declare that Respondents’ continued detention of Petitioner without providing a meaningful  
5 opportunity for an individualized custody determination violates the Immigration and Nationality  
6 Act and the Due Process Clause of the Fifth Amendment;

7 F) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody, or, in  
8 the alternative, to provide a prompt and constitutionally adequate bond hearing before an  
9 Immigration Judge, at which the Department of Homeland Security bears the burden of  
10 demonstrating, by clear and convincing evidence, that Petitioner’s continued detention is  
11 necessary to prevent flight or danger to the community;

12 G) Grant such other and further relief as the Court deems just and proper.

13 Respectfully submitted,

14 /s/ Alejandro J. Monsalve, Esq. CA SBN 324958

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19 Counsel for Petitioner

20 Dated: March 5, 2026

