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

ABDOULAYE BARRY,

Petitioner

v.

JEREMY CASEY, et al.,

Respondents

Case No.: 26-cv-01408-BAS-DEB

Judge: Hon. Cynthia Bashant

**PETITIONER'S TRAVERSE
AND REQUEST FOR RELEASE
OR, IN THE ALTERNATIVE, A
CONSTITUTIONALLY
ADEQUATE BOND HEARING**

Petitioner Abdoulaye Barry respectfully submits this Traverse in response to Respondents' Return. The question presented is whether DHS may classify an individual apprehended in the interior of the United States under 8 U.S.C. § 1225(b), thereby foreclosing bond jurisdiction, after DHS previously exercised discretionary custody authority under 8 U.S.C. § 1226(a) and released the individual on Form I-220A to reside at liberty in the community.

Petitioner was released by DHS on Form I-220A, Order of Release on Recognizance, and lived at liberty in the United States before being re-detained by ICE. Following his re-arrest, the Immigration Judge denied bond solely on the ground that detention was governed by 8 U.S.C. § 1225(b).

1 In their Return, Respondents maintain their legal position that Petitioner is subject to
2 mandatory detention under § 1225(b). At the same time, Respondents acknowledge that courts in
3 this District have repeatedly reached the opposite conclusion and that the facts of this case are
4 not materially distinguishable from those prior decisions. Respondents further state that they do
5 not oppose an order requiring a bond hearing.

6 Because Respondents acknowledge that courts in this District have repeatedly rejected
7 their interpretation of §1225(b), and because the government revoked Petitioner’s previously
8 granted liberty without adequate process, the writ should issue.

9 **I. Respondents’ Incorporation by Reference Is Improper**

10 In their Return, Respondents state that they “incorporate by reference” arguments
11 previously advanced in other cases addressing the same statutory issue. That approach is
12 insufficient in a habeas proceeding.

13 A return must respond to the specific petition before the Court and demonstrate that the
14 petitioner’s detention is lawful under the applicable statutory framework. Reliance on briefing
15 from other cases—without setting forth those arguments in full—does not satisfy Respondents’
16 obligation to justify Petitioner’s present custody.

17 Habeas review requires an individualized assessment of the statutory and factual posture
18 presented in the petition before the Court. Respondents’ reliance on arguments advanced in
19 unrelated proceedings does not establish that detention in this case is lawful.

20 Moreover, Respondents acknowledge that courts in this District have repeatedly reached
21 the opposite conclusion regarding the statutory interpretation they advance. They identify no
22 intervening Supreme Court or Ninth Circuit authority that would alter the analysis previously
23 adopted in this District.

24 Accordingly, Respondents’ incorporation by reference provides no basis to deny the writ.

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1 **II. Respondents Acknowledge That Courts in This District Have Rejected**
2 **Their §1225(b) Theory**

3 Respondents maintain their legal position that Petitioner is subject to mandatory
4 detention under 8 U.S.C. § 1225(b) because he was allegedly present in the United States without
5 admission or parole. At the same time, however, Respondents expressly acknowledge that courts
6 in this District have repeatedly reached the opposite conclusion.

7 Respondents further acknowledge that the facts presented here are not materially
8 distinguishable from cases in which courts in this District have rejected the government's
9 interpretation and concluded that detention must proceed under 8 U.S.C. § 1226(a). This Court
10 has reached that conclusion in prior cases. See, e.g., *Contreras-Albino v. Noem*, No. 25-cv-
11 02965-BAS-BLM (S.D. Cal. Nov. 25, 2025); *Jacinto Rodriguez v. LaRose*, No. 26-cv-00693-
12 BAS-DEB (S.D. Cal. Feb. 2026); *De Loera Lopez v. LaRose*, No. 26-cv-00851-BAS-BLM (S.D.
13 Cal. Feb. 2026). Respondents identify no intervening Supreme Court or Ninth Circuit authority
14 altering the statutory analysis previously adopted by this Court.

15 In the absence of controlling authority to the contrary, this Court should adhere to its
16 prior rulings. Accordingly, Respondents have not demonstrated that Petitioner's detention under
17 § 1225(b) is lawful. Instead, consistent with the decisions cited in Respondents' own Return,
18 detention in this case must be governed by § 1226(a).

19 **III. DHS's Release of Petitioner on Form I-220A Created a Protected Liberty Interest**

20 Before the detention challenged in this case, DHS exercised its discretionary custody
21 authority and released Petitioner on Form I-220A, Order of Release on Recognizance. That
22 release permitted Petitioner to reside at liberty in the United States subject to conditions imposed
23 by immigration authorities.

24 Release on Form I-220A reflects a determination by DHS that continued physical
25 detention is unnecessary and that the individual does not pose a danger to the community or a
26 risk of flight that cannot be addressed through conditions of supervision. By releasing Petitioner
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1 from custody and permitting him to live in the community, the government granted Petitioner a
2 substantial liberty interest in remaining free from physical restraint.

3 The Supreme Court has emphasized that “[f]reedom from imprisonment—from
4 government custody, detention, or other forms of physical restraint—lies at the heart of the
5 liberty that the Due Process Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
6 Where the government has already exercised discretionary authority to release an individual
7 from custody, the subsequent revocation of that liberty without meaningful process raises serious
8 due process concerns.

9 Here, DHS released Petitioner on Form I-220A and allowed him to reside at liberty in the
10 community. Petitioner complied with the conditions of that release. The government later
11 revoked that previously granted liberty through re-detention, and the Immigration Judge denied
12 bond solely on the basis of statutory classification under § 1225(b). As a result, Petitioner was
13 deprived of any meaningful opportunity to contest the basis for his continued detention.

14 Under these circumstances, DHS’s prior release created a protected liberty interest that
15 cannot be extinguished without adequate procedural safeguards.

16 **IV. Re-Detention Without Process Violates the Fifth Amendment**

17 The Fifth Amendment provides that no person shall be deprived of liberty without due
18 process of law. Civil immigration detention must therefore include meaningful procedural
19 safeguards and must bear a reasonable relationship to legitimate governmental objectives.

20 Here, Petitioner’s liberty was revoked without any individualized determination that
21 renewed detention was necessary. After DHS released Petitioner on Form I-220A and permitted
22 him to reside at liberty in the community, he was later re-detained by ICE. Following that re-
23 detention, the Immigration Judge denied bond solely on the ground that detention was governed
24 by 8 U.S.C. § 1225(b), thereby concluding that bond jurisdiction was foreclosed.

25 As a result, Petitioner has been detained without any opportunity to obtain an
26 individualized custody determination before a neutral decisionmaker. The denial of bond was
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1 based exclusively on statutory classification rather than any assessment of whether Petitioner
2 presents a risk of flight or danger to the community.

3 Civil immigration detention must comport with the Due Process Clause. As the Supreme
4 Court has explained, “freedom from imprisonment—from government custody, detention, or
5 other forms of physical restraint—lies at the heart of the liberty that the Due Process Clause
6 protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

7 By revoking Petitioner’s previously granted liberty and categorically denying him access
8 to a bond hearing based solely on classification under § 1225(b), Respondents deprived
9 Petitioner of the procedural safeguards required by the Fifth Amendment. Under these
10 circumstances, Petitioner’s continued detention violates due process.

11 **V. A Bond Hearing Does Not Remedy the Constitutional Violation**

12 In their Return, Respondents state that they do not oppose an order requiring a bond
13 hearing. That proposed remedy does not cure the constitutional violation presented in this case.

14 The violation occurred when the government revoked Petitioner’s previously granted
15 liberty without providing any meaningful opportunity to contest the basis for renewed detention.
16 DHS exercised discretionary authority to release Petitioner on Form I-220A and permitted him to
17 reside at liberty in the community. Petitioner complied with the conditions of that release. The
18 government later re-detained him and denied bond solely on the basis of statutory classification
19 under § 1225(b), thereby foreclosing any individualized assessment of whether detention was
20 necessary.

21 Ordering a bond hearing after the fact does not remedy the deprivation that already
22 occurred. The constitutional injury arose when the government revoked Petitioner’s previously
23 granted liberty without providing any meaningful opportunity to contest detention. Where the
24 government has already deprived an individual of liberty in violation of due process, the
25 traditional function of habeas corpus is to restore that liberty.

26 Accordingly, the appropriate remedy for the unlawful detention presented here is release
27 from custody rather than a delayed custody hearing.

1 VI. The Proper Habeas Remedy Is Immediate Release

2 Because Respondents have not demonstrated that Petitioner's detention under 8 U.S.C. §
3 1225(b) is lawful, the writ should issue. The purpose of habeas corpus is to secure release from
4 unlawful custody. Where the government cannot establish lawful authority for continued
5 detention, the appropriate remedy is release.

6 Here, DHS previously exercised its discretionary custody authority and released
7 Petitioner on Form I-220A, permitting him to reside at liberty in the community. The
8 government later revoked that liberty through re-detention and the Immigration Judge denied
9 bond solely on the basis of statutory classification under § 1225(b). As explained above,
10 Respondents have not shown that this detention framework lawfully governs Petitioner's present
11 custody.

12 Under these circumstances, continued detention is unlawful. Because Petitioner has
13 already been deprived of liberty without adequate process, the proper habeas remedy is
14 immediate release.

15 Petitioner therefore respectfully requests that the Court grant the Petition for Writ of
16 Habeas Corpus and order Respondents to immediately release Petitioner from detention under
17 appropriate conditions of supervision.

18 Respectfully submitted,

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