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

9 SERIGNE TACKO WAGNE,
10 FALLOU SOW,
11 HAMADY SOW,
12
13 Petitioners,

14 vs.

15 CHRISTOPHER LAROSE, warden of
16 Otay Mesa Detention Center
17 PATRICK DIVVER, San Diego Field
18 Office Director, Immigration and
19 Customs Enforcement and Removal
20 Operations ("ICE/ERO");
21 TODD LYONS, Acting Director of
22 Immigration Customs Enforcement
23 ("ICE");
24 MARKWAYNE MULLIN, Secretary of
25 the Department of Homeland Security
26 ("DHS");
27 ACTING Attorney General of the United
28 States,
U.S. DEPARTMENT OF HOMELAND
SECURITY;
U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT;
Respondents.

Case No.: '26CV2504 RSH AHG

Agency Number: 





PETITION FOR WRIT OF HABEAS
CORPUS

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INTRODUCTION

1. Serigne Tacko WAGNE, Fallou SOW and Hamady SOW are citizens of Senegal. Each of them fled Senegal due to persecution. Each of them believed their lives were in danger. To avoid further persecution, they made their way to the United States. They each entered the United States and requested asylum.

2. After each of them entered the United States, they were briefly detained by Respondents. Each was vetted as to whether they were a flight risk or a danger to the community. Each of them was granted conditional parole by release on their own recognizance.

3. Each of them began his life in the United States after being released. They found places to live and integrated themselves into the local community. In the over 2 years they have lived here they have established themselves financially as well. Each has filed his I-589 application for Asylum.

4. The three petitioners are not related. They met each other in California and became friends. On March 13, 2026, they decided to go to the beach in San Diego together. As they approached Oceanside, heading south, the traffic became very heavy and the driver, Wegne, thought it best to get off the freeway and head toward the beach and drive along the coast. Unfortunately, he was not familiar with the area and when he exited Interstate 5 south he turned left instead

1 of right. Suddenly they found themselves in the entrance lanes to Camp Pendleton.
2
3 Once you are in the entrance lanes you are trapped. There is no turn around, there
4 is no way to avoid driving up the entrance gate. When they arrived at the gate, the
5 guard asked them for ID. They explained they were lost and just needed to turn
6 around. The guard asked each of them for their immigration status and whether
7 they had green cards. They all answered no. They were instructed by the guard to
8 pull to the side of the road. They asked why they were being detained. No answer
9 was given, just that they needed to wait. They sat there for nearly 4 hours. At one
10 point a military officer came out and took pictures of them and of the car. They had
11 no idea what was happening until the ICE officers arrived. They were instructed to
12 exit the vehicle. They were each put in handcuffs and then transported to the San
13 Diego downtown facility.

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18 5. The were not presented with warrants. They were not told why they
19 were being detained. They were never given notice that their parole was being
20 revoked. No prior determination was ever made that they were flight risks or a
21 danger to the community. They were not advised of their Miranda rights. With no
22 cause and no explanation and no warrant they were put in the ICE vehicle and
23 eventually transferred to the Otay Mesa facility.

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26 6. One of the benefits that petitioner enjoyed with conditional parole
27 has been his ability to work and to more actively participate in their asylum
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1 application process. Suddenly, with no notice, no neutral determination that there
2 has been a change in circumstances, Respondents seek to revoke Petitioners'
3 liberty and force them to remain in custody for the duration of their application
4 process. Respondents do so based not on Petitioners' personal circumstances but
5 because of Respondents' interpretation of President Trump's whim and categorical
6 determination that, the Fifth Amendment notwithstanding, noncitizens are not
7 entitled to due process.
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11 7. But Respondents cannot evade the law so easily. The U.S.
12 Constitution requires the Respondents provide at least the rights available to them
13 when they were granted parole and when they filed their applications for asylum¹.
14

15 8. Accordingly, to vindicate Petitioners' rights, this Court should grant
16 the instant petition for a writ of habeas corpus. Petitioners ask this Court to find
17 that Respondents' attempt to detain them are arbitrary and capricious and in
18 violation of the law, and to immediately issue an order preventing their transfer out
19 of this district.
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21

22 JURISDICTION

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26 ¹ See, e.g., NBC News, Meet the Press interview of President Donald Trump (May 4, 2025),
27 <https://www.nbcnews.com/politics/trump-administration/read-full-transcript-president-donaldtrump-interviewed-meet-press-mod-rcna203514> (in response to a question whether noncitizens
28 deserve due process under the Fifth Amendment, President Trump replied "I don't know. It seems—it might say that, but if you're talking about that, then we'd have to have a million or 2 million or 3 million trials.").

1 9. This action arises under the Constitution of the United States and
2 the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.
3

4 10. This court has subject matter jurisdiction under 28 U.S.C. § 2241
5 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the
6 United States Constitution (Suspension Clause).
7

8 11. This Court may grant relief under the habeas corpus statutes, 28
9 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq.,
10 the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8
11 U.S.C. § 1252(e)(2).
12

13 VENUE

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15 12. Venue is proper because Petitioners are in Respondents' custody
16 in San Diego, California. Venue is further proper because a substantial part of the
17 events or omissions giving rise to Petitioners' claims occurred in this District,
18 where Petitioners are now in Respondent's custody. 28 U.S.C. § 1391(e).
19

20
21 13. For these same reasons, divisional venue is proper under Local
22 Rule HC.1

23 REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243


24
25 14. The Court must grant the petition for writ of habeas corpus or
26 issue an order to show cause (OSC) to the Respondents "forthwith," unless the
27 petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court
28


1 must require Respondents to file a return “within three days unless for good cause
2 additional time, not exceeding twenty days, is allowed.” *Id.*
3


4 15. Courts have long recognized the significance of the habeas statute
5 in protecting individuals from unlawful detention. The Great Writ has been
6 referred to as “perhaps the most important writ known to the constitutional law of
7 England, affording as it does a swift and imperative remedy in all cases of illegal
8 restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).
9
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11 16. Petitioners are “in custody” for the purpose of § 2241 because
12 they were arrested and detained by Respondents.
13

14 PARTIES

15 17a. Serigne Tacko Wagne (“Petitioner 1”) is a 23-year-old citizen of
16 Senegal born  He is currently a resident of San Diego, California,
17 and is present within the state of California as of the time of the filing of this
18 petition.
19

20 17b. Fallou Sow (Petitioner 2) is a 30-year-old citizen of Senegal born
21  He is currently a resident of San Diego, California, and is
22 present within the state of California as of the time of the filing of this petition.
23

24 17c. Hamady Sow (Petitioner 3) is a 28-year-old citizen of Senegal
25 born  He is currently a resident of San Diego, California, and is
26 present within the state of California as of the time of the filing of this petition.
27
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1 18. Respondent Christopher LaRose is the Warden of the Otay Mesa
2 Detention Center and is a legal custodian of Petitioner.
3

4 19. Respondent Patrick Divver is the Field Office Director for the San
5 Diego Field Office, Immigration and Customs Enforcement and Removal
6 Operations ("ICE"). The San Diego Field Office is responsible for local custody
7 decisions relating to non-citizens charged with being removable from the United
8 States, including the arrest, detention, and custody status of non- citizens. The San
9 Diego Field Office's area of responsibility includes San Diego, California and the
10 Otay Mesa Detention Center. Respondent Sidney Aki is a legal custodian of
11 Petitioner.
12
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14

15 20. Respondent Todd Lyons is the acting director of U.S. Immigration
16 and Customs Enforcement, and he has authority over the actions of respondent
17 Sidney Aki and ICE in general. Respondent Lyons is a legal custodian of
18 Petitioner.
19

20
21 21. Respondent Markwayne Mullin is the Secretary of the Department
22 of Homeland Security (DHS) and has authority over the actions of all other DHS
23 Respondents in this case, as well as all operations of DHS. Respondent Noem is a
24 legal custodian of Petitioner and is charged with faithfully administering the
25 immigration laws of the United States.
26
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1 22. Respondent Acting Attorney General of the United States has
2 authority over the Department of Justice and is charged with faithfully
3 administering the immigration laws of the United States.
4

5 23. Respondent U.S. Immigration Customs Enforcement is the federal
6 agency responsible for custody decisions relating to non-citizens charged with
7 being removable from the United States, including the arrest, detention, and
8 custody status of non-citizens.
9
10

11 24. Respondent U.S. Department of Homeland Security is the federal
12 agency that has authority over the actions of ICE and all other DHS Respondents.
13

14 25. This action is commenced against all Respondents in their official
15 capacities.
16

17 **LEGAL FRAMEWORK**

18 26. The Refugee Act of 1980, the cornerstone of the U.S. asylum
19 system, provides a right to apply for asylum to individuals seeking safe haven in
20 the United States. The purpose of the Refugee Act is to enforce the “historic policy
21 of the United States to respond to the urgent needs of persons subject to
22 persecution in their homelands.” Refugee Act of 1980, § 101(a), Pub. L. No. 96-
23 212, 94 Stat. 102 (1980).
24
25

26 27. The INA gives the Attorney General or the Secretary of Homeland
27 Security discretion to grant asylum to noncitizens who satisfy the definition of
28

1 “refugee.” Under that definition, individuals generally are eligible for asylum if
2 they have experienced past persecution or have a well-founded fear of future
3 persecution on account of race, religion, nationality, membership in a particular
4 social group, or political opinion and if they are unable or unwilling to return to
5 and avail themselves of the protection of their homeland because of that
6 persecution of fear. 8 U.S.C. § 1101(a)(42)(A).
7

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10 28. Noncitizens seeking asylum are guaranteed Due Process under the
11 Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306
12 (1993).
13

14 29. Noncitizens who are applicants for asylum are entitled to a full
15 hearing in immigration court before they can be removed from the United States. 8
16 U.S.C. § 1229a. Consistent with due process, noncitizens may seek administrative
17 appellate review before the Board of Immigration Appeals of removal orders
18 entered against them and judicial review in federal court upon a petition for
19 review. 8 U.S.C. § 1252(a) *et seq.*
20
21

22 30. Immigration detention is a form of civil confinement that
23 “constitutes a significant deprivation of liberty that requires due process
24 protection.” *Addington v. Texas*, 441 U.S. 418, 4253 (1979).
25

26 31. Immigration detention should not be used as a punishment and
27 should only be used when, under an individualized determination, a noncitizen is a
28

1 flight risk because they are unlikely to appear for immigration court or a danger to
2 the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
3

4 32. When a noncitizen arrives in the United States, the Attorney
5 General or his designees also have the authority to either detain, release on bond or
6 release on parole the noncitizen. INA § 212(d)(5)(A).
7

8 33. Parole must be terminated upon written notice after an
9 individualized determination that the purposes no longer apply. 8 C.F.R. §
10 212.5(e)(2)(i).
11

12 **FACTUAL BACKGROUND**

13 34. Petitioners are citizens of Senegal. Each was born in Senegal.
14

15 35. Petitioners were repeatedly persecuted in Senegal. Each became
16 afraid for their lives and believed They could no longer remain in Senegal.
17

18 36. Each of them entered through the southern border and each of
19 them was granted conditional parole through release on their own recognizance.
20 See Exhibit A. Petitioners were granted conditional parole into the United States to
21 seek asylum. This release was based on the individualized facts in each case
22 determined during their border interview, under 8 U.S.C. § 1182(d)(5).
23

24 37. Each was also issued an NTA and placed in 240 removal
25 proceedings.
26

1 38. Each has attended all scheduled hearings in connection with his
2 removal proceedings.
3

4 39. On information and belief, Petitioners continues to meet all the
5 requirements of their parole.
6

7 40. Petitioners have each applied for asylum.

8 41. On information and belief, Respondents issued work authorization
9 to Petitioners pursuant to 8 C.F.R. § 274a.12(c)(08).
10

11 42. The three petitioners are not related. They met each other in
12 California and became friends. On March 13, 2026, they decided to go to the beach
13 in San Diego together. As they approached Oceanside, heading south, the traffic
14 became very heavy and the driver, Wegne, thought it best to get off the freeway
15 and head toward the beach and drive along the coast. Unfortunately, he was not
16 familiar with the area and when he exited Interstate 5 south he turned left instead
17 of right. Suddenly they found themselves in the entrance lanes to Camp Pendleton.
18 Once you are in the entrance lanes you are trapped. There is no turn around, there
19 is no way to avoid driving up the entrance gate. When they arrived at the gate, the
20 guard asked them for ID. They explained they were lost and just needed to turn
21 around. The guard asked each of them for their immigration status and whether
22 they had green cards. They all answered no. They were instructed by the guard to
23 pull to the side of the road. They asked why they were being detained. No answer
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1 was given, just that they needed to wait. They sat there for nearly 4 hours. At one
2 point a military officer came out and took pictures of them and of the car. They had
3 no idea what was happening until the ICE officers arrived. They were instructed to
4 exit the vehicle. They were each put in handcuffs and then transported to the San
5 Diego downtown facility.
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8 43. The were not presented with warrants. They were not told why
9 they were being detained. They were never given notice that their parole was being
10 revoked. No prior determination was ever made that they were flight risks or a
11 danger to the community. They were not advised of their Miranda rights. With no
12 cause and no explanation and no warrant they were put in the ICE vehicle and
13 eventually transferred to the Otay Mesa facility.⁴⁴ Petitioners was never
14 presented with a warrant for his arrest. The ICE agents did not provide him any
15 process. The ICE agents did not offer him any opportunity to be heard prior to
16 arresting and detaining him.
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21 45. On January 20, 2025, President Donald Trump issued several
22 executive actions relating to immigration, including “Protecting the American
23 People Against Invasion,” an executive order (EO) setting out a series of interior
24 immigration enforcement actions. The Trump administration, through this and
25 other actions, has outlined sweeping, executive branch-led changes to immigration
26 enforcement policy, establishing a formal framework for mass deportation. The
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1 “Protecting the American People Against Invasion” EO instructs the DHS
2 Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to
3 prioritize civil immigration enforcement procedures including through the use of
4 mass detention.
5

6
7 46. On information and belief, Respondents are detaining Petitioners
8 regardless of the individual facts and circumstances of his case.

9
10 47. On information and belief, Respondents are using the immigration
11 detention system as a means to punish individuals for asserting rights under the
12 Refugee Act.

13
14 48. On information and belief, Petitioners have no criminal history.

15 **CLAIMS FOR RELIEF**

16 **COUNT ONE**

17
18 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)**

19 **Not in Accordance with Law and in Excess of Statutory Authority**

20
21 **Unlawful Detention**

22 49. Petitioners restates and realleges all paragraphs as if fully set forth
23 here.

24
25 50. Under the APA, a court shall “hold unlawful and set aside agency
26 action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).
27

1 51. An action is an abuse of discretion if the agency “entirely failed to
2 consider an important aspect of the problem, offered an explanation for its decision
3 that runs counter to the evidence before the agency, or is so implausible that it
4 could not be ascribed to a difference in view or the product of agency expertise.”

5
6 *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551U.S. 644, 658 (2007)
7 (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,
8 463 U.S. 29, 43 (1983)).
9
10

11 52. To survive an APA challenge, the agency must articulate “a
12 satisfactory explanation” for its action, “including a rational connection between
13 the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S. Ct. 2551,
14 2569 (2019) (citation omitted).
15

16 53. By categorically revoking Petitioners’ liberty and transferring
17 them to Otay Mesa Detention Center without consideration of their individualized
18 facts and circumstances, Respondents have violated the APA.
19
20

21 54. Respondents have made no finding that Petitioners are a danger to
22 the community.
23

24 55. Respondents have made no finding that Petitioners are a flight
25 risk.
26

27 56. By detaining the Petitioners categorically, Respondents have
28 further abused their discretion because there have been no changes to his facts or

1 circumstances since the agency made its initial determination to parole him into the
2 United States that support detention.
3

4 57. Respondents have already considered Petitioners' facts and
5 circumstances and determined that they were not a flight risk or danger to the
6 community when they granted them conditional parole. There have been no
7 changes to the facts that justify this revocation of their parole.
8

9
10 **COUNT TWO**

11 **Violation of Fifth Amendment Right to Due Process**

12 **Procedural Due Process**

13
14 58. Petitioner restates and realleges all paragraphs as if fully set forth
15 here.

16
17 59. The Due Process Clause of the Fifth Amendment to the U.S.
18 Constitution prohibits the federal government from depriving any person of "life,
19 liberty, or property, without due process of law." U.S. Const. Amend. V. Due
20 process protects "all 'persons' within the United States, including [non-citizens],
21 whether their presence here is lawful, unlawful, temporary, or permanent."
22 *Zadvydas*, 533 U.S. at 693; *accord Flores*, 507 U.S. at 306.
23

24
25 60. Due process requires that government action be rational and non-
26 arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).
27
28

1 61. While the government has discretion to detain individuals under 8
2 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this
3 discretion is not “unlimited” and must comport with constitutional due process. *See*
4 *Zadvydas*, 533 U.S. at 698.
5

6 62. Here, Respondents have chosen to revoke Petitioners’ liberty in an
7 arbitrary manner and not based on a rational and individualized determination of
8 whether each of them is a safety or flight risk, in violation of due process. Because
9 no individualized custody determination was made prior to their detention and no
10 circumstances have changed to make Petitioners a flight risk or a danger to the
11 community, Respondents’ revocation of Petitioner’s release violates their right to
12 procedural due process.
13
14
15

16 **Bond is not the appropriate remedy**
17

18 63. Many courts recently have been ordering a bond hearing as an
19 alternative avenue for relief. If Petitioners’ detention was unlawful, *ab initio*, they
20 should not be required to post a bond and, in effect, pay a ransom to be released
21 from this illegal detention. Nothing indicates that Petitioners have somehow
22 become a flight risk or a danger to the community. They were not detained at
23 Camp Pendleton because they were suddenly a flight risk or a danger to the
24 community. When ICE put them in handcuffs, they did not assert that they had
25 suddenly determined they were a flight risk or a danger to the community. They
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1 were simply swept up in this administration's scheme to lock up all immigrants
2 without green cards.
3

4 64. Ordering a bond hearing because they are no longer deemed subject
5 to mandatory detention rewards the government's unlawful behavior. First, it
6 legitimizes their detention. Second, it allows the government to detain without a
7 prior determination of a change in individual circumstances regarding flight risk
8 and danger. Third, it requires the petitioners to prove that they are not a flight risk
9 or a danger to the community, something the government already determined when
10 they released them. Fourth, it requires the petitioners to pay a fee to the parties that
11 unlawfully detained them in order to be released from his unlawful detention.
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15 65. Upon release from Otay Mesa it is the custom of ICE to
16 immediately place detainees in Alternative to Detention Programs and affix an
17 ankle monitor to them. As the name of the program indicates, this is just another
18 form of detention that is made without any determination that there has been a
19 change in circumstances such that Petitioners' movements must now be restricted
20 to a 75-mile radius and monitored with an ankle monitor. Petitioners should be
21 returned to their predetention status. This should also include the return to them of
22 any and all documents and/or identification cards and work authorization cards in
23 their possession when they were detained.
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PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(3) Declare that Petitioners' detention without notice and an individualized determination prior to their arrest violates the Due Process Clause of the Fifth Amendment and the Administrative Procedures Act;

(4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioners from custody;

(5) Issue an Order prohibiting the Respondents from transferring Petitioners from the district without the court's approval;

(6) Issue an Order that, upon release, Respondents are prohibited from enrolling the Petitioners in any Alternative to Detention program, specifically barring them from requiring an ankle monitor;

(7) Issue an Order requiring Respondents to return to Petitioners any and all documents that were with them upon their detention;

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///

1 (8) Grant any further relief this Court deems just and proper.

2 Dated: April 20, 2026

3 */s/ Brian J. McGoldrick*
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8 San Diego, CA 92107
9 Telephone: +1 619-675-2366
10 *Attorney for Petitioners*

VERIFICATION PURSUANT TO 28 U.S.C. 2242

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3
4 I am submitting this verification on behalf of the Petitioner because I am
5 Petitioners' attorney. I have discussed with the Petitioners the events described in
6 the Petition. Based on those discussions, I hereby verify that the factual statements
7 made in the attached Petition for Writ of Habeas Corpus are true and correct to the
8 best of my knowledge.
9

10 Executed on this 20th day of April, 2026, in San Diego, California.
11

12
13 /s/ Brian J. McGoldrick
14 Brian J. McGoldrick, Esq.
15 Attorney for Petitioner
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