

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT

for the
Southern District of California

W. F.

Petitioner

v.

WARDEN OF OTAY MESA DETENTION CENTER

Case No.

'25CV3635 BTM MMP


(Supplied by Clerk of Court)

Respondent

(name of warden or authorized person having custody of petitioner)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: WISKENDY FRANCOIS
(b) Other names you have used: N/A
2. Place of confinement:
(a) Name of institution: OTAY MESA DETENTION CENTER
(b) Address: 7488 CALZADA DE LA FUENTE
SAN DIEGO, CA 92154
(c) Your identification number: 
3. Are you currently being held on orders by:
 Federal authorities State authorities Other - explain: _____
4. Are you currently:
 A pretrial detainee (waiting for trial on criminal charges)
 Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
If you are currently serving a sentence, provide:
(a) Name and location of court that sentenced you: _____
(b) Docket number of criminal case: _____
(c) Date of sentencing: _____
 Being held on an immigration charge
 Other (explain): _____

Decision or Action You Are Challenging

5. What are you challenging in this petition:
 How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

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- Pretrial detention
- Immigration detention
- Detainer
- The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
- Disciplinary proceedings
- Other (explain):

6. Provide more information about the decision or action you are challenging:
- (a) Name and location of the agency or court: HON. SAMIET, MARK; OTAY MESA DETENTION CENTER
7488 CALZADA DE LA FUENTE, SAN DIEGO, CA 92154
 - (b) Docket number, case number, or opinion number:
 - (c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):

SEE ATTACHED EXHIBIT "A" ORDER ON DENYING BOND.

(d) Date of the decision or action: 08/27/2025

Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

- Yes
- No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) If you answered "No," explain why you did not appeal:

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

- Yes
- No

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(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) If you answered "No," explain why you did not file a second appeal:

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

Yes No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) If you answered "No," explain why you did not file a third appeal:

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

Yes No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

Yes No

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If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

Yes

No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: _____

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

Yes

No

If "Yes," provide:

(a) Date you were taken into immigration custody: 03/01/2025

(b) Date of the removal or reinstatement order: _____

(c) Did you file an appeal with the Board of Immigration Appeals?

Yes

No

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If "Yes," provide:

(1) Date of filing:

(2) Case number:

(3) Result:

(4) Date of result:

(5) Issues raised:

(d) Did you appeal the decision to the United States Court of Appeals?

Yes

No

If "Yes," provide:

(1) Name of court:

(2) Date of filing:

(3) Case number:

(4) Result:

(5) Date of result:

(6) Issues raised:

12. Other appeals

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

Yes

No

If "Yes," provide:

(a) Kind of petition, motion, or application:

(b) Name of the authority, agency, or court:

(c) Date of filing:

(d) Docket number, case number, or opinion number:

(e) Result:

(f) Date of result:

(g) Issues raised:

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Grounds for Your Challenge in This Petition

15. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Due process clause of the Fifth Amendment of the US Constitution.

ICE has violated Petitioner's due process rights by denying him an individualized custody review to which he is entitled under ICE policy. As a remedy, this Court should conduct its own review of Petitioner's custody, or at least, order ICE to review Petitioner's custody under the standard articulated in ICE custody.

(a) Supporting facts (Be brief. Do not cite cases or law.):

Petitioner enter the United States o August 16, 2016 via B2 class of admission as a tourist. Petitioner has been residing and working in the United States since 2016. Petitioner was detained on a traffic stop for driving with a suspended license, and was detained by ICE since March of 2025. Immigration Judge wrongfully denied Petitioner's request for custody three times on March 18, 2025, on May 13, 2025, and June 27, 2025 because of 8 traffic stops in 2021 and flight risk due to capias history. Petitioner is not subject to mandatory detention.

(b) Did you present Ground One in all appeals that were available to you?

Yes No

GROUND TWO: VIOLATION OF IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1231(a)(6)

8 U.S.C. SECTION 1231(a)(6), as interpreted by the Supreme Court in Zadvydas, government has legitimate interest protecting the public and ensuring noncitizen will appear at the immigration hearings., but any detention incidental to removal must bear a reasonable relation to its purpose. Zadvydas, 533 U.S. at 690.

(a) Supporting facts (Be brief. Do not cite cases or law.):

Petitioner enter the United States on August 16, 2016 via B2 class of admission as a tourist. Petitioner has been residing and working in the United States since 2016. Petitioner was detained on a traffic stop for driving with a suspended license, and was detained by ICE since March of 2025. Immigration Judge wrongfully denied Petitioner's request for custody three times on March 18, 2025, on May 13, 2025, and June 27, 2025 because of 8 traffic stops in 2021 and flight risk due to capias history. Petitioner is not subject to mandatory detention.

(b) Did you present Ground Two in all appeals that were available to you?

Yes No

GROUND THREE: ARBITRARY AND CAPRICIOUS AGENCY ACTION UNDER THE ADMINISTRATIVE

PROCEDURE ACT 5 U.S.C. SECTION 706(2)(A). Courts must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise in accordance with law." 5 U.S.C. SECTION 706(2)(A). ICE derived from its own policy by detaining Petitioner after asylum was granted.

(a) Supporting facts (Be brief. Do not cite cases or law.):

Petitioner is not subject to mandatory detention. Petitioner was not convicted for or accused of any violent crimes, or crimes involving theft, burglary, or fraud. Petitioner's driver's license was suspended due to the expiration of his employment authorization. Upon release, Petitioner is eligible will be able to renew his driver license. Petitioner's continued detention is not in the public interest. Likewise, all 8 traffic stop violations have been disposed and/or dismissed.

(b) Did you present Ground Three in all appeals that were available to you?

Yes No

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GROUND FOUR: VIOLATION OF INA SECTION 236(A), which authorizes Immigration judges to conduct bond hearings pending a decision on whether to remove the alien from the United States.

(a) Supporting facts (Be brief. Do not cite cases or law.):

Petitioner is not subject to mandatory detention. Petitioner was not convicted for or accused of any violent crimes, or crimes involving theft, burglary, or fraud. Petitioner's driver's license was suspended due to the expiration of his employment authorization. Upon release, Petitioner is eligible will be able to renew his driver license. Petitioner's continued detention is not in the public interest. Likewise, all 6 traffic stop violations have been disposed and/or dismissed.

(b) Did you present Ground Four in all appeals that were available to you?

Yes No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do: Assume jurisdiction over this matter; issue an order to show why this petition should not be granted within (3) days; declare that Petitioner's detention/challenged action violates the Due Process Clause of the Fifth Amendment, 5 U.S.C. section 1231 (a)(96) and violates Administrative Procedure Act; Issue a Writ of Habeas Corpus ordering Respondent to be released; award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; grant any further relief as Court deems just and proper.

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Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 12/15/2025

WISKENDY FRANCOIS/detained

Signature of Petitioner

Naira Zhrabyan, Esq.

Signature of Attorney or other authorized person, if any

EXHIBIT “A”



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OTAY MESA IMMIGRATION COURT

Respondent Name:
FRANCOIS, WISKENDY

A-Number:
~~XXXXXXXXXX~~

To:
Jean, Ruth
4992 N PINE ISLAND ROAD
LAUDERHILL, FL 33351

Riders:
In Custody Redetermination Proceedings

Date:
06/27/2025

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

Denied, because

The record shows that the respondent had a custody redetermination hearing on March 18, 2025, at Miami Krome Immigration Court, where the Immigration Judge denied release. After the Court makes an initial custody determination, it will only grant a motion for redetermination of custody status if the motion is made in writing and upon a showing that the applicant's circumstances have changed materially since the prior bond redetermination. 8 C.F.R. § 1003.19(e). Here, respondent presented no material change in circumstances that would warrant the Court to redetermine his custody status. In its prior custody redetermination decision, an Immigration Judge determined that respondent presented a public safety risk and danger to the community based on multiple traffic stops. While the respondent presents evidence that he is eligible to have his driver's license reinstated, this does not change the fact that the respondent had 8 traffic stops since 2021 and has a capias history. These factors upon which the court based its decision remain unchanged. See id. Therefore, the Court denies the respondent's request for a custody redetermination hearing.

- Granted. It is ordered that Respondent be:
 - released from custody on his own recognizance.
 - released from custody under bond of \$
 - other:

Other: