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

10 **IDJOU FOFANA**

11 Petitioner

12 v.

13 **Jeremy Casey**, Warden at Imperial Regional
14 Detention Center;

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

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


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

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

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

27 Respondents

Case No.: '26CV0506 JES DEB

Agency File No: 

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

INTRODUCTION

1
2 1. Petitioner Idjou Fofana respectfully submits this Petition for a Writ of Habeas Corpus
3 challenging his continued detention by the Department of Homeland Security (“DHS”).

4 Petitioner is a citizen of Guinea who entered the United States without inspection on or about
5 October 27, 2023. He was placed in removal proceedings under INA § 240, released from
6 custody, and thereafter complied with all immigration court hearings and all mandated ICE
7 check-ins. On November 13, 2025, more than two years after his entry and long after his release,
8 Petitioner was arrested by ICE at a routine check-in and is currently detained at the Imperial
9 Regional Detention Center.

10 2. Petitioner is detained based on DHS’s application of an interpretation of the
11 Immigration and Nationality Act (“INA”), articulated in *Matter of Yajure-Hurtado*, 29 I&N Dec.
12 216 (BIA 2025), under which DHS has treated certain noncitizens — despite prior release into
13 the community and placement in removal proceedings under INA § 240 — apprehended in the
14 interior of the United States long after entry as “applicants for admission” subject to detention
15 under INA § 235(b)(2)(A). As applied in this case, that custody classification deprives Petitioner
16 of eligibility for an individualized bond hearing under INA § 236(a).

17 3. Numerous federal courts have rejected DHS’s reliance on INA § 235(b) to detain
18 individuals apprehended in the interior of the United States following release and a prolonged
19 period of liberty, and have concluded that such custody, if lawful at all, must proceed under INA
20 § 236(a), which provides for eligibility for an individualized bond hearing. These decisions
21 reflect a consistent interpretation of the statutory framework governing detention following
22 interior arrests and post-release re-detention.

23 4. Petitioner remains detained without access to an individualized bond hearing under
24 INA § 236(a). He does not challenge the initiation of removal proceedings or the merits of
25 removability. Rather, this petition challenges the legal basis of his detention—specifically,
26 DHS’s unlawful reclassification of Petitioner’s custody after his release from custody and
27 placement into INA § 240 proceedings under INA § 235(b) rather than INA § 236(a).

1 5. Because *Matter of Yajure-Hurtado* remains binding agency precedent and Petitioner
2 has not received an individualized custody determination under INA § 236(a), judicial
3 intervention is necessary. Petitioner therefore seeks a writ of habeas corpus ordering his release
4 or, in the alternative, an order directing DHS to provide a prompt, individualized custody hearing
5 before a neutral decisionmaker pursuant to INA § 236(a).

6 **JURISDICTION AND VENUE**

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

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

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

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

22 **PARTIES**

23 10. Petitioner, Idjou Fofana, is a citizen of Guinea detained at the Imperial Regional
24 Detention Center in Imperial, California.

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

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

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

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

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

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

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

12 **LEGAL FRAMEWORK**

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

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

1 includes a credible-fear process for those expressing an intent to seek asylum—or to detention
2 pending a decision on admission under § 1225(b)(2). *Id.* at 297; see also *Dep't of Homeland Sec.*
3 *v. Thuraissigiam*, 591 U.S. 103 (2020).

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

16 21. For decades, individuals who entered without inspection but resided in the United
17 States and were later arrested in the interior were consistently treated as subject to § 1226(a)’s
18 discretionary detention framework. This included those who could not lawfully be placed in
19 expedited removal because they had been continuously present in the United States for more than
20 two years, as required by § 1225(b)(1)(A)(iii)(II).

21 22. Only in 2025 did DHS and the BIA begin advancing, in certain proceedings, a
22 contrary interpretation—asserting that noncitizens who entered without inspection must be
23 treated as subject to detention under § 1225(b)(2). This interpretation represented a departure
24 from decades of agency practice and contradicted settled expectations regarding custody
25 jurisdiction.

26 23. On July 8, 2025, U.S. Immigration and Customs Enforcement (“ICE”), in
27 coordination with the Department of Justice, issued Interim Guidance Regarding Detention
28

1 Authority for Applicants for Admission. The guidance asserted that noncitizens who entered
2 without inspection were subject to mandatory detention under INA § 235(b)(2)(A), regardless of
3 when or where they were apprehended, including individuals who had resided in the United
4 States for many years.

5 24. The Board of Immigration Appeals later adopted a similar statutory interpretation in
6 *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025).

7 25. In January 2025, Congress reaffirmed that 8 U.S.C. § 1226(a), not § 1225(b), governs
8 custody for noncitizens apprehended in the interior. Through the Laken Riley Act of 2025,
9 Congress amended § 1226(c) to add subparagraph (E), extending mandatory detention only to a
10 narrow category of individuals who (i) are inadmissible under § 1182(a)(6)–(7) and (ii) also meet
11 specific criminal-conduct criteria. By creating this limited carve-out, Congress confirmed that §
12 1226(a) remains the general detention framework for interior arrests, and that mandatory
13 detention applies only to the narrow class defined in new § 1226(c)(E). If, as DHS and the BIA
14 now contend, all such individuals were already subject to mandatory detention under § 1225(b)
15 (2), Congress’s amendment would have been superfluous.

16 **FACTS**

17 26. Petitioner, Idjou Fofana, is a citizen of Guinea who entered the United States without
18 inspection on or about October 27, 2023.

19 27. Following his entry, Petitioner was placed in the custody of the Office of Refugee
20 Resettlement (“ORR”), was subsequently released from custody, and was placed in removal
21 proceedings under INA § 240. (*Exhibit 1*). No Credible Fear Interview was ever conducted in
22 Petitioner’s case.

23 28. After his release, Petitioner complied with all conditions imposed by the Department
24 of Homeland Security (“DHS”), including appearing at every scheduled Master Calendar
25 Hearing before the Immigration Court and reporting to all mandated ICE check-ins.

26 29. On November 13, 2025, more than two years after his entry and following his third
27 routine ICE check-in, Petitioner was arrested by U.S. Immigration and Customs Enforcement

1 (“ICE”) officers without any allegation that he had violated the terms of his release or failed to
2 comply with immigration requirements. (*Exhibit 2*).

3 30. Petitioner was thereafter transferred to the Imperial Regional Detention Center and is
4 currently detained pending removal proceedings before the Imperial Immigration Court.

5 31. On September 5, 2025, the Board of Immigration Appeals issued its precedential
6 decision in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). In that decision, the Board
7 concluded that noncitizens who entered the United States without inspection are “applicants for
8 admission” subject to detention under INA § 235, regardless of the length of time since entry or
9 the presence of family or community ties.

10 32. Following *Matter of Yajure-Hurtado*, as DHS applies that decision, Immigration
11 Judges have asserted that they lack jurisdiction to conduct custody redetermination hearings for
12 individuals whom DHS classifies as subject to detention under INA § 235.

13 33. On December 10, 2025, Immigration Judge Anne Kristina Perry, sitting at the
14 Imperial Immigration Court, denied Petitioner’s request for a custody redetermination hearing. In
15 the written custody order, Judge Perry concluded that Petitioner was an “applicant for
16 admission” subject to detention under *Matter of Yajure-Hurtado* and that Immigration Judge
17 jurisdiction to conduct a bond hearing was therefore foreclosed. (*Exhibit 3*).

18 34. On November 25, 2025, the United States District Court for the Central District of
19 California granted class certification in *Lazaro Maldonado Bautista et al. v. Santacruz et al.*, No.
20 5:25-cv-01873 (C.D. Cal.), certifying a class of noncitizens detained by DHS who are classified
21 as subject to detention without bond based on DHS’s application of INA § 235(b) and related
22 agency policy.

23 35. On December 18, 2025, a federal district court vacated DHS’s July 8, 2025 Interim
24 Guidance regarding detention authority under the Administrative Procedure Act. See
25 *Maldonado-Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025). That
26 decision addressed DHS’s Interim Guidance only and did not vacate, overrule, or otherwise
27 disturb *Matter of Yajure-Hurtado* or any binding Board of Immigration Appeals precedent.

1 36. Prior to the entry of final judgment in *Maldonado-Bautista*, DHS maintained in other
2 federal habeas proceedings that district court rulings rejecting detention under INA § 235(b)
3 were interlocutory, non-final, and afforded no relief, and continued to rely on its interpretation of
4 INA § 235(b) as the basis for ongoing detention.

5 37. Following the entry of final judgment in *Maldonado-Bautista*, DHS acknowledged
6 the vacatur of its July 8, 2025 Interim Guidance, while expressly reserving the right to alter or
7 supplement its position in the event of appellate relief or a change in policy. Notwithstanding
8 those representations, Immigration Judges and attorneys from the Office of the Principal Legal
9 Advisor (“OPLA”) have continued to assert that bond jurisdiction is foreclosed under *Matter of*
10 *Yajure-Hurtado*.

11 38. On January 13, 2026, the Chief Immigration Judge, Teresa L. Riley, issued
12 nationwide guidance to Assistant Chief Immigration Judges instructing that *Maldonado-Bautista*
13 is not a nationwide injunction and does not vacate, stay, or enjoin *Matter of Yajure-Hurtado*, and
14 that *Matter of Yajure-Hurtado* therefore remains binding precedent on Immigration Judges and
15 other agency adjudicators.

16 39. As a result of DHS’s continued reliance on *Matter of Yajure-Hurtado* and the agency
17 guidance described above, Immigration Judges within the Southern District of California have
18 continued to deny custody redetermination hearings for noncitizens who were previously
19 released into the community and who fully complied with immigration supervision, including
20 Petitioner.

21 40. Petitioner remains detained at the Imperial Regional Detention Center without having
22 received an individualized custody hearing under INA § 236(a).

23 41. Absent relief from this Court, Petitioner faces continued and potentially prolonged
24 immigration detention despite having been released into the community, having complied with
25 all court and ICE requirements, and having been re-arrested solely based on DHS’s retroactive
26 reclassification of his custody status.

1 42. Without judicial intervention, Petitioner will remain subject to detention without any
2 meaningful opportunity for an individualized custody determination, in violation of the
3 Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.

4 **CLAIM FOR RELIEF**

5 **COUNT 1**

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

7 43. Petitioner incorporates by reference the allegations of fact set forth in the preceding
8 paragraphs.

9 44. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
10 noncitizens residing in the United States who are subject to grounds of inadmissibility. That
11 provision governs the inspection and admission process at the border and does not extend to
12 individuals who, like Petitioner, were released from custody, placed in removal proceedings
13 under INA § 240, and permitted to reside in the community. Petitioner entered the United States
14 on or about October 27, 2023, was released from custody, placed in removal proceedings under
15 INA § 240, and lived at liberty in the United States until his re-arrest. He is therefore not
16 lawfully detained under INA § 235(b). To the extent he remains in custody, detention must
17 proceed under INA § 236(a) (8 U.S.C. § 1226(a)), which authorizes release on bond or
18 conditional parole.

19 45. The application of INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)) to Petitioner unlawfully
20 mandates his continued detention in violation of the INA. Section 235(b)(2) applies only to
21 “applicants for admission” encountered at or near the border—not to individuals who, like
22 Petitioner, entered the United States years ago and were later arrested in the interior of the
23 United States. See *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018); *Dep’t of Homeland Sec. v.*
24 *Thuraissigiam*, 591 U.S. 103, 113 (2020). By treating Petitioner as an applicant for admission
25 rather than as a noncitizen subject to detention under INA § 236(a) (8 U.S.C. § 1226(a)), DHS
26 and EOIR have acted contrary to the statutory text, the structure of the INA, and the limits
27 Congress reaffirmed in the Laken Riley Act of 2025.

1 **COUNT 2**

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

3 46. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth
4 herein.

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

7 48. “Freedom from imprisonment—from government custody, detention, or other form of
8 physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533
9 U.S. 678, 690 (2001).

10 49. Civil immigration detention is constitutionally permissible only when it bears a
11 reasonable relation to a legitimate governmental objective, such as ensuring appearance at
12 proceedings or protecting the community. Detention that lacks adequate procedural safeguards or
13 is imposed without an individualized determination violates due process. See *Zadvydas*, 533 U.S.
14 at 690.

15 50. By continuing to detain Petitioner based on an unlawful classification of his custody
16 as governed by INA § 235(b), and by thereby depriving him of any meaningful opportunity for
17 an individualized custody determination before a neutral decisionmaker, Respondents have
18 violated Petitioner’s rights under the Due Process Clause of the Fifth Amendment.

19 **PRAAYER FOR RELIEF**

20 WHEREFORE, Petitioner respectfully requests that this Court:

- 21 A) Assume jurisdiction over this matter;
- 22 B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this
23 District while these proceedings are pending;
- 24 C) Issue an Order to Show Cause within three (3) days pursuant to 28 U.S.C. § 2243, requiring
25 Respondents to explain the legal basis for Petitioner’s continued detention;
- 26 D) Declare that Petitioner is not lawfully detained under INA § 235(b), and that, to the extent
27 Petitioner remains in custody, such detention must proceed under INA § 236(a).

- 1 E) Declare that, by depriving Petitioner of any meaningful opportunity to seek release, his
- 2 continued detention violates the Immigration and Nationality Act and the Due Process Clause of
- 3 the Fifth Amendment.
- 4 F) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately from
- 5 custody, or, in the alternative, order a constitutionally adequate bond hearing before a neutral
- 6 decisionmaker at which the Government must justify his continued detention by clear and
- 7 convincing evidence;
- 8 G) Grant such other and further relief as the Court deems just and proper.

9 Respectfully submitted,

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17 Dated: January 27, 2026

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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification as counsel for Petitioner in this action. I did not personally communicate directly with Petitioner prior to the filing of this Petition due to a language barrier, as Petitioner speaks Fulany. The factual allegations contained in the Petition are based on my review of official immigration records, including the Notice to Appear and the Immigration Judge’s written custody order, as well as information provided to me by Petitioner’s cousin, with whom Petitioner resided following his release from custody until his re-detention, and who communicated Petitioner’s responses to my inquiries through translation.

Based on my review of those records and communications, and to the best of my knowledge, information, and belief, the factual statements in the Petition accurately reflect Petitioner’s circumstances and the procedural history of his detention.

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

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