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

JODELYN THEODORE

Petitioner

v.

Christopher LAROSE, Senior Warden, Otay

Mesa Detention Center;

Kristi NOEM, Secretary, U.S. Department of

Homeland Security;

Todd LYONS, Acting Director, U.S.

Immigration and Customs Enforcement;

Patrick DIVVER, Field Office Director, San

Diego Field Office, U.S. Immigration and

Customs Enforcement.

Sirce OWEN, Acting Director of the Executive

Office for Immigration Review (EOIR),

U.S. Department of Justice.

Pamela BONDI, Attorney General, U.S.

Department of Justice.

Respondents

Case No.: '26CV1463 LL VET

Agency File No:

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

INTRODUCTION

1. Petitioner Jodelyn Theodore respectfully submits this Petition for a Writ of Habeas Corpus challenging his unlawful detention by the Department of Homeland Security (“DHS”). Petitioner is a native and citizen of Haiti who entered the United States without inspection on or about December 3, 2021. On December 6, 2021, DHS issued Petitioner a Notice to Appear (“NTA”) placing him into removal proceedings under INA § 240. That same day, DHS released Petitioner from custody on his own recognizance pursuant to Form I-220A (Order of Release on Recognizance). Petitioner thereafter lived at liberty in the United States for more than four years, complied with all immigration requirements, and affirmatively filed Form I-589 with United States Citizenship and Immigration Services. Petitioner was subsequently granted employment authorization based on his pending asylum application. On February 8, 2026, Immigration and Customs Enforcement (“ICE”) officers arrested Petitioner in the interior of the United States while he was seated in his vehicle in San Diego, California, and transferred him to the Otay Mesa Detention Center, where he remains detained.

2. Beginning on December 6, 2021, DHS placed Petitioner in removal proceedings under INA § 240 rather than subjecting him to inspection-stage detention under INA § 235. DHS did not place Petitioner in expedited removal proceedings, did not conduct a credible fear interview, and did not maintain him in inspection-stage detention. Instead, DHS issued a Notice to Appear commencing removal proceedings and released Petitioner from custody on his own recognizance pursuant to Form I-220A, permitting him to remain at liberty in the community while his removal proceedings were pending.

3. Following Petitioner’s interior arrest in February 2026—more than four years after his release and placement into § 240 proceedings—to the extent DHS treats Petitioner as subject to detention under INA § 235(b), that classification deprives him of access to a custody redetermination hearing before an Immigration Judge. As a result, Petitioner has been denied access to an individualized, constitutionally adequate bond hearing before a neutral decisionmaker.

1 4. The detention authority set forth in INA § 235(b) governs initial inspection and
2 admission at or near the border. DHS's decision on December 6, 2021 to issue an NTA
3 commencing § 240 removal proceedings terminated any inspection-stage detention authority.

4 5. Once DHS elected regular removal proceedings and allowed Petitioner to reside at
5 liberty in the community for more than four years, any subsequent detention following an
6 interior arrest must proceed, if at all, under INA § 236(a), which provides eligibility for an
7 individualized bond hearing, consistent with due process.

8 6. Recent litigation has addressed the government's interpretation of detention authority
9 under INA § 235(b), including the Board of Immigration Appeals' decision in *Matter of Yajure-*
10 *Hurtado*, 29 I&N Dec. 216 (BIA 2025). On February 8, 2026, the United States District Court
11 for the Central District of California issued an order vacating that decision under the
12 Administrative Procedure Act. The government has since sought appellate review, and the
13 United States Court of Appeals for the Ninth Circuit has temporarily stayed that ruling while the
14 appeal proceeds.

15 7. Regardless of the ultimate resolution of that litigation, the legality of Petitioner's
16 detention in this case does not turn on the validity of *Yajure-Hurtado*. Petitioner was released
17 from custody and placed into removal proceedings under INA § 240 in 2021 and lived at liberty
18 in the United States for more than four years before his interior arrest in 2026. Under these
19 circumstances, detention must proceed, if at all, under INA § 236(a) rather than INA § 235(b).

20 8. Because Petitioner has been denied access to an individualized custody determination
21 before a neutral decisionmaker, judicial intervention is necessary. Petitioner therefore seeks a
22 writ of habeas corpus ordering his release or, in the alternative, an order directing DHS to
23 provide a prompt, constitutionally adequate bond hearing consistent with the Due Process
24 Clause, at which the Department of Homeland Security bears the burden of proving, by clear and
25 convincing evidence, that continued detention is necessary.

JURISDICTION AND VENUE

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

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

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

12. Venue is proper in this District under 28 U.S.C. § 1391(e) because Petitioner is detained at the Otay Mesa Detention Center, which lies within the jurisdiction of this Court.

PARTIES

13. Petitioner, Jodelyn Theodore, is a native and citizen of Haiti currently detained at the Otay Mesa Detention Center in San Diego, California.

14. Respondent Christopher LaRose is the Senior Warden of the Otay Mesa Detention Center.

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

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

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

1 18. Respondent Sirce Owen is the Acting Director of the Executive Office for
2 Immigration Review (EOIR).

3 19. Respondent Pamela Bondi is the Attorney General of the United States and the head
4 of the U.S. Department of Justice (DOJ).

5 20. All Respondents are named in their official capacities.

6 **LEGAL FRAMEWORK**

7 21. The Immigration and Nationality Act (“INA”), codified at 8 U.S.C. § 1101 et seq.,
8 provides multiple detention authorities. For decades, courts, Congress, and agencies have
9 consistently distinguished between two distinct statutory frameworks: INA § 235 (8 U.S.C. §
10 1225), which governs applicants for admission encountered at or near the border, and INA § 236
11 (8 U.S.C. § 1226), which governs the arrest and detention of individuals already present in the
12 United States and placed in removal proceedings. The Supreme Court analyzed the interplay
13 between these provisions in *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

14 22. Section 1225 provides that, for purposes of initial inspection at the border, “an alien
15 who arrives in the United States or is present in this country but has not been admitted, is treated
16 as an applicant for admission.” *Jennings*, 583 U.S. at 287 (quoting 8 U.S.C. § 1225(a)(1)). The
17 Court explained that decisions concerning who may enter or remain in the United States
18 “generally begin at the Nation’s borders and ports of entry, where the Government must
19 determine whether an alien seeking to enter the country is admissible.” *Id.* Section 1225(b)
20 governs this inspection and admission process, applying primarily to individuals encountered at
21 or near the border, subjecting them either to expedited removal under § 1225(b)(1)—which
22 includes a credible-fear process for those expressing an intent to seek asylum—or to detention
23 pending a decision on admission under § 1225(b)(2). *Id.* at 297; see also *Dep’t of Homeland Sec.*
24 *v. Thuraissigiam*, 591 U.S. 103 (2020).

25 23. By contrast, § 1226(a) governs the detention of individuals who entered years ago and
26 were later apprehended in the interior, “pending a decision on whether [they are] to be removed
27 from the United States.” *Jennings*, 583 U.S. at 303. Unlike § 1225, which applies at the border, §
28

1 1226(a) authorizes the Attorney General to detain or release such individuals on bond or
2 conditional parole, except as provided in subsection (c), which applies only to a narrow category
3 of noncitizens with specified criminal or security-related grounds. *Id.* at 303, 306. Arrests made
4 pursuant to § 1226(a) are ordinarily executed on administrative warrants, and longstanding
5 regulations confirm that such individuals are eligible for Immigration Judge bond hearings. See 8
6 C.F.R. §§ 236.1(c)(8), 236.1(d)(1), 1236.1(d)(1); 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
7 Congress further described § 1226(a) as merely a “restatement” of prior detention authority
8 under former INA § 242(a), confirming its application to interior arrests pending removal. H.R.
9 Rep. No. 104-469, pt. 1, at 229 (1996).

10 24. DHS’s decision to release Petitioner from custody pursuant to Form I-220A reflects a
11 relinquishment of inspection-stage detention authority under INA § 235. Release on an Order of
12 Release on Recognizance is a form of conditional parole authorized under INA § 236. See
13 *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115–16 (9th Cir. 2007) (holding that a
14 noncitizen released on an Order of Release on Recognizance pursuant to INA § 236 “was
15 conditionally paroled under the authority of § 1226(a)”). Courts have consistently recognized
16 that release on recognizance reflects the government’s determination that the individual does not
17 pose a danger to the community or a flight risk and places the individual within the discretionary
18 detention framework of INA § 236 rather than the mandatory inspection detention provisions of
19 INA § 235. See *Faizyan v. Casey*, No. 3:25-cv-02884-RBM-JLB (S.D. Cal. Nov. 17, 2025).

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

25 26. On July 8, 2025, U.S. Immigration and Customs Enforcement (“ICE”), in
26 coordination with the Department of Justice, issued Interim Guidance Regarding Detention
27 Authority for Applicants for Admission. The guidance asserted that noncitizens who entered
28

1 without inspection were subject to mandatory detention under INA § 235(b)(2)(A), regardless of
2 when or where they were apprehended, including individuals who had resided in the United
3 States for many years.

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

6 FACTS

7 28. Petitioner, Jodelyn Theodore, is a native and citizen of Haiti who entered the United
8 States without inspection on or about December 3, 2021, near San Luis, Arizona.

9 29. On December 6, 2021, shortly after his entry, DHS issued a Notice to Appear
10 (“NTA”) placing Petitioner in removal proceedings pursuant to INA § 240. (*Exhibit 1*). DHS
11 simultaneously released Petitioner from custody on his own recognizance and issued him Form
12 I-220A, Order of Release on Recognizance, dated December 6, 2021. (*Exhibit 2*).

13 30. DHS did not place Petitioner in expedited removal proceedings under INA §235(b)
14 (1), did not conduct a credible fear interview, and did not maintain him in inspection-stage
15 detention. Instead, DHS issued a Notice to Appear placing Petitioner in removal proceedings
16 under INA §240 and permitted him to remain at liberty in the community pursuant to the Order
17 of Release on Recognizance described above.

18 31. Following his release on recognizance, Petitioner has resided continuously in the
19 United States since December 2021. While living at liberty in the community, Petitioner
20 complied with the immigration process and remained engaged with his pending immigration
21 case.

22 32. After his release, Petitioner affirmatively filed Form I-589 (Application for Asylum
23 and for Withholding of Removal) with United States Citizenship and Immigration Services.

24 33. Based on his pending asylum application, Petitioner was issued employment
25 authorization under category C08, valid for a five-year period, reflecting DHS’s recognition of
26 his pending asylum application and authorization to live and work lawfully in the United States
27 while his case was pending.

1 34. On or about February 8, 2026, Petitioner was arrested by officers of U.S. Immigration
2 and Customs Enforcement (“ICE”) in the interior of the United States while seated in his vehicle
3 in San Diego, California.

4 35. Petitioner was transferred to the Otay Mesa Detention Center in San Diego,
5 California, where he remains detained.

6 36. Following his arrest, DHS issued a new charging document classifying Petitioner as
7 an “arriving alien,” thereby treating him as subject to detention under INA § 235(b). (*Exhibit 3*).
8 This classification is inconsistent with DHS’s prior actions in this case. In December 2021, DHS
9 issued a Notice to Appear placing Petitioner in removal proceedings under INA § 240 and
10 released him from custody on his own recognizance pursuant to Form I-220A. After permitting
11 Petitioner to live at liberty in the United States for more than four years while his removal
12 proceedings remained pending, DHS now seeks to reclassify Petitioner as an arriving applicant
13 for admission in order to deprive him of access to a custody redetermination hearing before an
14 Immigration Judge.

15 37. As a result of that classification, Petitioner has been denied access to a custody
16 redetermination hearing before an Immigration Judge.

17 38. Petitioner has not received an individualized, constitutionally adequate custody
18 hearing at which the government bears the burden of justifying continued detention.

19 39. Recent litigation has addressed the government’s interpretation of detention authority
20 under INA § 235(b), including the Board of Immigration Appeals’ decision in *Matter of Yajure-*
21 *Hurtado*, 29 I&N Dec. 216 (BIA 2025), and related proceedings in the United States District
22 Court for the Central District of California.

23 40. Petitioner remains detained at the Otay Mesa Detention Center without having
24 received a constitutionally adequate bond hearing.

25 41. Absent relief from this Court, Petitioner will remain detained without a meaningful
26 opportunity to obtain a constitutionally adequate bond hearing at which the government bears the
27 burden of justifying continued detention.

CLAIM FOR RELIEF

COUNT 1

Violation of the Immigration and Nationality Act (INA)

42. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

43. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to grounds of inadmissibility. It does not extend to individuals who have been released from custody and placed into regular removal proceedings under INA § 240 following entry. Petitioner entered the United States on or about December 3, 2021, near San Luis, Arizona. On December 6, 2021, DHS issued a Notice to Appear placing him in removal proceedings under INA § 240. At the time of his February 8, 2026 arrest in the interior of the United States, Petitioner had resided continuously in the country for more than four years following DHS's election to proceed under § 240. He is therefore not lawfully detained under INA § 235(b); to the extent he remains in custody, detention must proceed under INA § 236(a), 8 U.S.C. § 1226(a), which authorizes release on bond or conditional parole.

44. Courts across the country, including courts within this District, have repeatedly held that noncitizens who were released from custody on an Order of Release on Recognizance and later re-detained in the interior of the United States are subject to detention under INA § 236 rather than INA § 235. See *Faizyan v. Casey*, No. 3:25-cv-02884-RBM-JLB (S.D. Cal. Nov. 17, 2025); *Maldonado-Aldana v. LaRose*, No. 26-cv-0723-LL-MMP (S.D. Cal. Feb. 23, 2026). These decisions recognize that § 235 governs inspection-stage detention at the border or immediately upon entry, whereas § 236 governs detention of noncitizens already present in the United States while removal proceedings are pending.

COUNT 2

Violation of the Due Process Clause of the Fifth Amendment

1 45. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth
2 herein.

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

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

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

13 49. By continuing to detain Petitioner under INA § 235(b) despite DHS’s prior release of
14 Petitioner and placement of him in removal proceedings under INA § 240, and by denying him a
15 meaningful opportunity for an individualized custody determination before a neutral
16 decisionmaker, Respondents have violated the Due Process Clause of the Fifth Amendment.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Petitioner respectfully requests that this Court:

- 19 A) Assume jurisdiction over this matter;
20 B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this
21 District while these proceedings are pending;
22 C) Issue an Order to Show Cause within three (3) days pursuant to 28 U.S.C. § 2243, requiring
23 Respondents to explain the legal basis for Petitioner’s continued detention;
24 D) Declare that Petitioner is not lawfully detained under INA § 235(b), and that, in light of
25 DHS’s release of Petitioner and its election to proceed under INA § 240, any continued detention
26 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 consistent with due
6 process, at which the Department of Homeland Security bears the burden of proving, by clear
7 and convincing evidence, that Petitioner's continued detention is necessary to prevent flight or
8 danger to the community;

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

10 Respectfully submitted,

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

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17 Counsel for Petitioner

18 Dated: March 8, 2026

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I submit this verification as counsel for Petitioner in this action. The factual allegations contained in the Petition are based on information provided to me by Petitioner during a personal interview conducted during an in-person legal visit at the Otay Mesa Detention Center, as well as my review of the documentary records in this matter, including the Notices to Appear (Forms I-862) issued by the Department of Homeland Security and the Form I-220A (Order of Release on Recognizance).

Based on my review of those records and communications with Petitioner, and to the best of my knowledge, information, and belief, the factual statements contained 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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Dated: March 8, 2026