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

SUSANA RAQUEL VENTURA-CLEMENTE

Case No.: 3:26-cv-1474-RSH-DDL

Petitioner

v.

CHRISTOPHER LAROSE, Senior Warden,
Otay Mesa Detention Center, *et al.*,

Judge: Hon. Robert S. Huie

**PETITIONER'S TRAVERSE TO
RESPONDENT'S RETURN**

I. Introduction

Petitioner challenges the legality of her continued detention following an interior arrest nearly a decade after her entry into the United States and long after her release from immigration custody. The Petition presents a narrow threshold question: whether the Department of Homeland Security may detain an individual under INA § 235(b) after releasing her into the United States and allowing her to live at liberty for years, or whether such detention must instead proceed, if at all, under INA § 236(a) with access to a bond hearing.

This question arises in urgent circumstances. Petitioner is the mother of four minor children, including a six-month-old infant who was actively breastfeeding at the time of her arrest. Her continued detention has resulted in the separation of that infant from his primary caregiver during a critical stage of early development. Each day of continued detention

1 compounds that harm. The deprivation of Petitioner's physical liberty, combined with the
2 ongoing separation from her infant child, constitutes immediate and irreparable injury warranting
3 prompt judicial intervention.

4 Respondents' Return does not meaningfully answer the question presented. Although
5 Respondents assert that Petitioner is subject to mandatory detention under § 235(b), they do not
6 distinguish this case from the numerous decisions in this District rejecting that position in
7 materially identical circumstances. To the contrary, Respondents expressly acknowledge that
8 "the facts in this case are not materially distinguishable" from those prior cases.

9 That concession is dispositive. Courts in this District have consistently held that
10 individuals who were released from custody and later apprehended in the interior of the United
11 States are subject to detention, if at all, under § 236(a), not § 235(b), and are therefore entitled to
12 an individualized custody determination. Respondents identify no intervening authority that
13 would justify a departure from that settled line of decisions.

14 Nor do Respondents provide any individualized justification for Petitioner's continued
15 detention. Instead, they rely on incorporation by reference of arguments raised in other cases,
16 without addressing the specific statutory and constitutional defects presented here. That approach
17 does not satisfy Respondents' burden in a habeas proceeding to establish lawful authority for
18 custody.

19 Because Respondents fail to distinguish controlling precedent, fail to establish a lawful
20 basis for detention under § 235(b), and continue to detain Petitioner under circumstances causing
21 immediate and irreparable harm to her and her infant child, the writ should issue and Petitioner
22 should be released.

23 **II. Respondents Fail to Identify Any Lawful Basis for Detention**

24 In a habeas proceeding challenging the legality of detention, Respondents bear the burden
25 of establishing a valid statutory basis for custody. That burden requires more than conclusory
26 assertions; it requires Respondents to demonstrate that Petitioner's detention is authorized under
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1 the governing statutory framework and supported by the facts of this case. Respondents fail to
2 meet that burden.

3 The Return does not identify any lawful basis for detaining Petitioner under INA §
4 235(b). Respondents assert, in conclusory fashion, that Petitioner is subject to mandatory
5 detention because she was present in the United States without admission or parole. But that
6 assertion does not address the dispositive fact that Petitioner was encountered by immigration
7 authorities in 2016, released from custody, and thereafter lived at liberty in the United States for
8 nearly a decade before being re-arrested in the interior of the country.

9 Respondents do not explain how the inspection-stage detention framework of § 235(b)
10 can apply to an individual who was released from custody and later apprehended in the interior
11 of the United States long after entry. Nor do they identify any statutory provision authorizing
12 DHS to reclassify such an individual as an “applicant for admission” for purposes of mandatory
13 detention years after release. Instead, Respondents rely on a generalized legal position divorced
14 from the factual posture of this case.

15 Indeed, Respondents expressly acknowledge that “the facts in this case are not materially
16 distinguishable” from prior cases in this District addressing the same issue. Those cases have
17 consistently rejected the application of § 235(b) to individuals who, like Petitioner, were released
18 from custody and later re-detained in the interior. Respondents identify no intervening authority
19 that would justify a different result here.

20 Nor do Respondents provide any individualized justification for Petitioner’s continued
21 detention. They do not contend that Petitioner poses a danger to the community or a flight risk,
22 nor do they identify any changed circumstances warranting re-detention after years of liberty.
23 The absence of any individualized determination further underscores that Respondents have not
24 established a lawful basis for custody.

25 Because Respondents fail to identify any statutory authority that permits detention under
26 § 235(b) in these circumstances, and fail to justify Petitioner’s continued confinement through
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1 any individualized assessment, the record establishes that her detention is unlawful. The writ
2 should therefore issue.

3 **III. Respondents' Incorporation by Reference Is Improper**

4 Respondents' Return relies on incorporation by reference of arguments advanced in other
5 cases rather than addressing the legality of Petitioner's detention in this case. That approach is
6 improper and insufficient in a habeas proceeding.

7 A return must respond to the specific petition before the Court and demonstrate a lawful
8 basis for detention based on the facts presented. Reliance on briefing from other cases—without
9 setting forth those arguments in full—does not satisfy Respondents' burden to justify custody.
10 Habeas review requires an individualized determination of whether detention is authorized under
11 the governing statutory framework, not a generalized assertion of legal positions developed
12 elsewhere.

13 Courts generally decline to consider arguments incorporated by reference where doing so
14 would require the Court to reconstruct a party's position from materials not properly presented in
15 the record. By incorporating prior briefing instead of articulating their arguments here,
16 Respondents effectively ask the Court to supply reasoning on their behalf. That is not the Court's
17 role, nor does it satisfy Respondents' obligation to demonstrate that Petitioner's detention is
18 lawful.

19 The deficiency is especially significant here because Respondents acknowledge that this
20 case is not materially distinguishable from others in which courts in this District have rejected
21 their position. If Respondents believe those decisions were wrongly decided, it is their burden to
22 present a developed argument explaining why. Incorporation by reference does not accomplish
23 that task.

24 Because Respondents fail to meaningfully respond to the Petition and instead rely on
25 incorporation by reference of arguments made in other proceedings, the Return does not establish
26 a lawful basis for Petitioner's detention and provides no basis to deny the writ.

IV. Courts in This District Have Repeatedly Rejected Respondents' Statutory Theory in Materially Indistinguishable Cases

Respondents advance the same statutory interpretation that courts in this District have repeatedly rejected in materially indistinguishable cases. In each of those cases, the government argued that noncitizens who entered without inspection remain subject to mandatory detention under INA § 235(b), even after being released from custody and living at liberty in the United States for extended periods of time. Courts in this District have consistently declined to adopt that position.

Instead, courts have held that individuals who were released from immigration custody and later apprehended in the interior of the United States are subject to detention, if at all, under INA § 236(a), not § 235(b), and are therefore entitled to an individualized custody determination. Those decisions reflect a consistent understanding of the statutory framework governing post-entry detention and the distinction between inspection-stage custody and interior arrest. See, e.g., *Penagos-Alvarez v. Larose*, No. 25-cv-00865-RBM-MSB (S.D. Cal. 2026) (ordering release where § 235(b) was improperly applied following release and interior re-arrest).

Respondents acknowledge as much. In their Return, they concede that “courts in this District have repeatedly reached the opposite conclusion” and that “the facts in this case are not materially distinguishable” from those prior cases. Respondents identify no intervening Supreme Court or Ninth Circuit authority that would justify a departure from this settled line of decisions.

Recent decisions in this District further confirm that where the government applies § 235(b) to individuals who were previously released from custody and later re-detained in the interior, habeas relief is warranted. In such cases, courts have rejected the government’s reliance on § 235(b), concluded that detention is governed by § 236(a), and ordered appropriate relief, including release from custody where detention lacked lawful authority.

The detention posture here is materially indistinguishable. Petitioner was released from custody in 2016 and lived at liberty in the United States for nearly a decade before being re-arrested in the interior of the country. The Immigration Judge denied bond based on the same

1 statutory theory advanced by Respondents here—that § 235(b) governs custody and forecloses
2 bond jurisdiction. As in the cases cited above, that position cannot be sustained.

3 In the absence of any intervening authority to the contrary, adherence to the consistent
4 decisions of courts in this District is warranted. Because Respondents’ statutory theory has been
5 repeatedly rejected in materially indistinguishable circumstances, it provides no basis to justify
6 Petitioner’s continued detention.

7 **V. Petitioner’s Detention Is Governed by INA § 236(a), Not INA § 235(b)**

8 The statutory framework governing immigration detention distinguishes between two
9 fundamentally different contexts: inspection-stage detention under INA § 235 and post-entry
10 detention under INA § 236(a). Section 235 applies to individuals encountered at or near the
11 border in the course of determining admissibility. By contrast, § 236(a) governs the arrest and
12 detention of individuals who have already entered the United States and are later taken into
13 custody pending removal proceedings.

14 This case falls squarely within the latter category. Petitioner entered the United States in
15 2016 and was shortly thereafter encountered by immigration authorities and released from
16 custody pursuant to a Form I-220A. She then resided at liberty in the United States for nearly a
17 decade before being arrested by ICE in 2026 in the interior of the country. That posture—release
18 followed by a later interior arrest—is the hallmark of detention governed by § 236(a), not §
19 235(b).

20 Nothing in the statutory scheme authorizes the government to apply the inspection-stage
21 detention framework of § 235(b) to an individual who was previously released from custody and
22 later apprehended in the interior of the United States years after entry. To the contrary, § 236(a)
23 expressly governs the detention of noncitizens “pending a decision on whether [they are] to be
24 removed from the United States,” and provides for discretionary detention subject to an
25 individualized custody determination.

26 Respondents’ position effectively collapses this statutory distinction by treating Petitioner
27 as an “applicant for admission” subject to § 235(b) despite her release from custody and long
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1 residence in the United States. That interpretation cannot be reconciled with the structure of the
2 INA, which contemplates that individuals apprehended in the interior after entry are governed by
3 § 236(a), not § 235(b).

4 Courts in this District have consistently recognized this distinction and have held that
5 individuals who were released from custody and later re-detained in the interior are subject to §
6 236(a). As those courts have explained, once an individual has been released and allowed to live
7 at liberty in the United States, subsequent detention must proceed under the discretionary
8 framework of § 236(a), with access to a bond hearing.

9 Here, Petitioner's detention is based solely on Respondents' assertion that § 235(b)
10 applies. But Respondents do not explain how that provision can govern detention nearly ten
11 years after release, nor do they identify any statutory authority permitting such a reclassification.
12 In the absence of such authority, detention under § 235(b) cannot be sustained.

13 Because Petitioner was released from custody and later apprehended in the interior of the
14 United States, her detention is governed, if at all, by INA § 236(a). The government's attempt to
15 detain her under § 235(b) is inconsistent with the statutory framework and provides no lawful
16 basis for her continued confinement.

17 **VI. Petitioner's Continued Detention Violates the Due Process Clause**

18 The Fifth Amendment prohibits the government from depriving any person of liberty
19 without due process of law. Freedom from physical restraint lies at the core of the liberty interest
20 protected by the Due Process Clause, and civil immigration detention must bear a reasonable
21 relation to a legitimate governmental purpose and be authorized by law.

22 Here, Petitioner's detention is not merely procedurally deficient—it is unlawful. As set
23 forth above, Respondents lack statutory authority to detain Petitioner under INA § 235(b). Where
24 detention is not authorized by the governing statute, it cannot be sustained consistent with due
25 process.

26 Petitioner was released from custody in 2016 and lived at liberty in the United States for
27 nearly a decade before being re-arrested in the interior of the country. That period of liberty

1 gives rise to a substantial protected interest in remaining free from arbitrary detention.

2 Respondents have not identified any lawful basis for revoking that liberty.

3 Instead, Petitioner's continued detention rests entirely on an incorrect statutory
4 classification that forecloses any meaningful opportunity to challenge her confinement.
5 Detention based on a legally erroneous framework, without lawful authority and without
6 justification, is precisely the type of arbitrary restraint the Due Process Clause forbids.

7 Because Respondents lack statutory authority to detain Petitioner and have imposed a
8 severe deprivation of liberty without lawful justification, her continued detention violates the
9 Fifth Amendment. The appropriate remedy for unlawful detention is immediate release.

10 **VII. Petitioner Is Suffering Immediate and Irreparable Harm**

11 Petitioner is suffering ongoing and irreparable harm as a direct result of her continued
12 unlawful detention. The loss of physical liberty, even for minimal periods of time, constitutes
13 irreparable injury. Each additional day that Petitioner remains detained prolongs a deprivation
14 that cannot be remedied after the fact.

15 The harm here is particularly severe. Petitioner is the mother of four minor children, two
16 of whom are United States citizens, including a six-month-old infant who was actively
17 breastfeeding at the time of her arrest. Her detention has resulted in the immediate separation of
18 that infant from his primary caregiver during a critical stage of early development. This is not a
19 speculative or abstract injury. It is a present and ongoing harm affecting both Petitioner and her
20 child.

21 Breastfeeding is a medically and developmentally significant process that supports infant
22 nutrition, immune protection, and maternal-child bonding. The abrupt interruption of that
23 relationship due to detention imposes consequences that cannot be undone. Each passing day
24 further disrupts that bond and compounds the harm.

25 Petitioner's detention also destabilizes the care and well-being of her other three minor
26 children, who depend on her as their primary caregiver. The sudden removal of a parent from the
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1 home imposes emotional and developmental harm that extends beyond Petitioner and affects the
2 entire family unit.

3 Because Petitioner's detention is unlawful and is causing immediate and ongoing harm
4 that cannot be remedied after the fact, judicial intervention is required now. The irreparable
5 nature of these injuries weighs strongly in favor of granting the requested relief and ordering
6 Petitioner's immediate release.

7 **VIII. Immediate Release Is the Appropriate Remedy**

8 Where detention lacks statutory authority and results in an ongoing deprivation of liberty,
9 the appropriate remedy is immediate release. Habeas corpus exists to secure release from
10 unlawful custody, not to permit its continuation while the government attempts to cure defects
11 after the fact.

12 As set forth above, Respondents have failed to identify any lawful basis for detaining
13 Petitioner under INA § 235(b), and their own Return acknowledges that this case is not
14 materially distinguishable from others in which courts in this District have rejected that position.
15 Because Petitioner's detention rests on an improper statutory framework and is unsupported by
16 any individualized justification, it cannot be sustained.

17 Permitting continued detention under these circumstances would prolong an unlawful
18 restraint on liberty and compound the irreparable harm already suffered by Petitioner and her
19 four minor children, including her six-month-old infant who was actively breastfeeding at the
20 time of her arrest. The Constitution does not permit such continued detention where no lawful
21 authority exists.

22 Accordingly, the proper remedy is not additional process or further administrative
23 proceedings, but termination of the unlawful detention itself. The Court should grant the writ of
24 habeas corpus and order Petitioner's immediate release.

25 **IX. Conclusion**

26 For the foregoing reasons, Respondents have failed to establish any lawful basis for
27 Petitioner's continued detention. Because her detention under INA § 235(b) is unsupported by
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1 the statutory framework, inconsistent with controlling decisions in this District, and in violation
2 of the Due Process Clause, it cannot be sustained.

3 Petitioner respectfully requests that the Court grant the Petition for Writ of Habeas
4 Corpus and order her immediate release from custody.

5 In the alternative, should the Court decline to order immediate release, Petitioner requests
6 that the Court order Respondents to provide a prompt custody hearing before an Immigration
7 Judge pursuant to INA § 236(a), at which the Government bears the burden of establishing, by
8 clear and convincing evidence, that continued detention is necessary to prevent flight or danger
9 to the community.

10 Petitioner further requests such other and further relief as the Court deems just and
11 proper.

12 Respectfully submitted,

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

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20 Dated: March 17, 2026