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Detained

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

NEISSA PHILOSTENE,
Petitioner,

v.

CHRISTOPHER J. LAROSE,
in his official capacity as
Warden of
Otay Mesa Detention Center;
THE SAN DIEGO FIELD
OFFICE DIRECTOR,
U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT,
in his or her official capacity;
TODD BLANCHE,
in his official capacity as
Acting Attorney General
of the United States; and
MARKWAYNE MULLIN,
in his official capacity as
Secretary of
the U.S. Department of
Homeland Security,

Respondents.

Case No.: '26CV2433 AGS GC

Hon.: _____

PETITION FOR WRIT OF
HABEAS CORPUS AND
MEMORANDUM OF
POINTS
AND AUTHORITIES

EMERGENCY REQUEST
FOR
IMMEDIATE RELEASE OR,
IN THE
ALTERNATIVE, FOR A
PROMPT
INDIVIDUALIZED
CUSTODY
HEARING

Petitioner Neissa Philostene, by and through undersigned counsel, respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 challenging her ongoing immigration detention at Otay Mesa Detention Center. **Petitioner requests immediate release** because she has now been detained for approximately nine months without bond, without any individualized custody determination by a neutral adjudicator, and without any finding that she is a danger to the community or a flight risk. **Her continued civil detention is unlawful and unconstitutional.**

Petitioner lawfully presented herself at the San Ysidro Port of Entry on September 17, 2024 pursuant to a CBP One appointment, expressed fear of return, passed a credible fear interview, and was paroled into the United States under class of admission DT. DHS then placed her in

removal proceedings under INA § 240. On July 8, 2025, however, DHS took Petitioner into custody and moved to dismiss her proceedings. Since then, she has remained detained continuously. Her detention has become prolonged, punitive in effect, and disconnected from any legitimate custody purpose. She asks this Court to order her **immediate release** so she may continue litigating her asylum case outside detention.

JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in custody in violation of the Constitution and laws of the United States.
2. This Court also has jurisdiction under 28 U.S.C. § 1331 because this action arises under federal law, including the Immigration and Nationality Act (“INA”), the Administrative Procedure Act (“APA”), and the Fifth Amendment to the United States Constitution.
3. Venue is proper in the Southern District of California under 28 U.S.C. § 1391(e) because Petitioner is detained at Otay Mesa Detention Center in San Diego County and the challenged custody decisions are being carried out in this District.
4. Habeas jurisdiction remains available to challenge the statutory and constitutional basis for immigration detention. See *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001).

PARTIES

5. Petitioner NEISSA PHILOSTENE is a native and citizen of Haiti who is presently detained at Otay Mesa Detention Center.
6. Respondent CHRISTOPHER J. LAROSE is sued in his official capacity as the Warden of Otay Mesa Detention Center and is Petitioner’s immediate custodian.
7. Respondent THE SAN DIEGO FIELD OFFICE DIRECTOR, U.S. Immigration and Customs Enforcement, is sued in his or her official capacity because that office oversees local enforcement and custody decisions affecting Petitioner.
8. Respondent TODD BLANCHE is sued in his official capacity as Acting Attorney General of the United States.
9. Respondent MARKWAYNE MULLIN is sued in his official capacity as Secretary of the U.S. Department of Homeland Security.

STATEMENT OF FACTS

10. Petitioner is a 23-year-old Haitian woman who fled Haiti after severe threats, sexual violence, and gang persecution tied to political actors. She fears persecution, torture, and death if returned.
11. On September 17, 2024, Petitioner lawfully presented herself at the San Ysidro Port of Entry in California pursuant to a scheduled CBP One appointment and immediately expressed a fear of return to Haiti.
12. After the credible fear process, an asylum officer found that Petitioner demonstrated a significant possibility of establishing eligibility for asylum or related protection. DHS then paroled her into the United States under parole category “DT” and issued her an I-94 reflecting an admit-until date in 2026.
13. DHS issued Petitioner a Notice to Appear on September 17, 2024 and placed her in removal proceedings under INA § 240. Petitioner timely filed her Form I-589 and pursued her asylum case diligently.
14. Petitioner complied with all requirements imposed by DHS and the immigration court. She maintained her address, retained counsel, participated in proceedings, and was never accused of criminal conduct, dangerousness, absconding, or any violation of release conditions.

15. On July 8, 2025, DHS moved to dismiss Petitioner's § 240 proceedings and took her into custody. She has remained continuously detained since that date.
16. As of this filing, Petitioner has been detained for approximately nine months without bond, without any individualized custody determination by a neutral adjudicator, and without any finding that she is a danger to the community or a flight risk.
17. Petitioner's detention is civil, but it is penal in effect. She is confined in a locked detention facility, separated from family and community, and significantly impaired in her ability to prepare and present her asylum case.
18. Petitioner has no criminal history, no disciplinary record of significance in detention, and strong incentives to appear for all proceedings because she is actively pursuing protection in the United States.
19. Petitioner seeks immediate release so that she may continue litigating her asylum case outside detention and with meaningful access to counsel and evidence.

LEGAL STANDARD

Freedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Immigration detention therefore must rest on a valid statutory basis and must comport with the Constitution.

The Ninth Circuit has recognized that prolonged immigration detention requires robust procedural protections, including a neutral decisionmaker and a meaningful opportunity to contest confinement. See *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011).

Where detention becomes prolonged and no individualized custody determination has been provided, habeas relief is appropriate. This Court has authority to order release where continued detention is unlawful. See *Zadvydas*, 533 U.S. at 687–88.

COUNT I

PROLONGED DETENTION WITHOUT AN INDIVIDUALIZED CUSTODY HEARING VIOLATES THE FIFTH AMENDMENT

20. Petitioner re-alleges and incorporates by reference paragraphs 1 through 19 as though fully set forth herein.
21. Petitioner has now been detained for approximately nine months. During that time, she has not received an individualized bond hearing before a neutral adjudicator empowered to order her release.
22. The government has never established that Petitioner is dangerous. It has never established that she is a flight risk. Instead, she remains detained categorically, without a meaningful opportunity to challenge the need for continued confinement.
23. That prolonged detention, without a neutral custody determination and without a finding that detention is necessary to serve a legitimate governmental purpose, violates procedural due process.

COUNT II

CONTINUED DETENTION IS ARBITRARY, EXCESSIVE, AND NOT IN ACCORDANCE WITH LAW

24. Petitioner re-alleges and incorporates by reference paragraphs 1 through 23 as though fully set forth herein.
25. Petitioner was lawfully processed after presenting at a port of entry, passed a credible fear interview, and was paroled into the United States. She then pursued asylum through the process DHS itself placed her in.

26. DHS later took Petitioner into custody and has continued detaining her for months even though she has complied with legal requirements, has no criminal history, and has strong incentives to appear.
27. Continued detention on this record is arbitrary and capricious. It lacks an individualized explanation for why release, parole, supervision, or other less restrictive alternatives would be insufficient in Petitioner's case.
28. Because Petitioner's detention has become prolonged and unjustified, immediate release is warranted.

COUNT III

**CONTINUED DETENTION INTERFERES WITH PETITIONER'S ABILITY TO
PRESENT HER ASYLUM CLAIM**

29. Petitioner re-alleges and incorporates by reference paragraphs 1 through 28 as though fully set forth herein.
30. Petitioner is actively seeking asylum, withholding of removal, and protection under the Convention Against Torture. Her liberty is not merely an abstract interest; detention materially impairs her ability to gather evidence, consult with counsel, prepare testimony, and present a coherent claim for protection.
31. Where detention has already stretched for approximately nine months and directly undermines the fairness of the underlying protection proceedings, habeas relief is necessary to prevent ongoing prejudice and irreparable harm.

PRAYER FOR RELIEF

- Issue a writ of habeas corpus ordering Petitioner's immediate release from custody;
- Declare that Petitioner's continued detention without an individualized custody determination violates the Constitution and laws of the United States;
- Award such other and further relief as the Court deems just and proper.

Respectfully submitted,
/s/ Wismick Saint-Jean
Wismick Saint-Jean, Esq.
Attorney for Petitioner