MORRIS WILNER, ESQ. (CA Bar No. 352708)
DETAINED
WILNER & O'REILLY, APLC
5473 Kearny Villa Rd. Suite 230
San Diego, CA 92123
Telephone: 619.981.9627
Facsimile: 858.746.5085
Email: maza@wilneroreilly.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

Felizberto CAPITA-WILSON

Petitioner,

v.

MARKWAYNE MULLIN, Secretary of the Department of Homeland Security, TODD BLANCHE, Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

Case No. '26CV4530 AGS BJW

PETITION FOR WRIT OF HABEAS CORPUS

[Filed concurrently with Ex Parte Motion for Temporary Restraining Order and Order to Show Cause; Notice of Related Case per Civ. L.R. 40.1(f)]

I. INTRODUCTION

1. Petitioner Felizberto Capita-Wilson has been held in civil immigration detention at the Otay Mesa Detention Center since February 10, 2026. He has no criminal convictions. *See* **TAB D, The March 10, 2026 disposition of the Midvale Justice Court, Salt Lake County, Utah.** No immigration judge, no immigration officer, and no court has ever determined that he is a danger to the community or a risk of flight. He seeks a writ of habeas corpus under 28 U.S.C. § 2241.

2. Petitioner entered the United States in December 2022 at the age of sixteen, with his parents. He entered without inspection and was apprehended. The Department of Homeland Security ("DHS") did not detain him. It released him on a grant of parole under section 212(d)(5) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1182(d)(5), and placed him in removal proceedings under INA § 240, 8 U.S.C. § 1229a. He and his family applied for asylum. *See* **TAB A, Petitioner's Parole.** He then lived at liberty in this country for more than three years, appearing as required and prosecuting his claim.

3. On February 10, 2026, U.S. Immigration and Customs Enforcement ("ICE") re-detained Petitioner in Utah and transferred him to Otay Mesa. On June 3, 2026, an immigration judge denied relief and ordered him removed to Angola. Petitioner timely appealed. *See* **TAB B, The immigration judge's June 3, 2026 decision, removal order, and proof of appeal.** That appeal remains pending before the Board of Immigration

Appeals ("Board"), and the removal order is not administratively final. 8 C.F.R. § 1003.6(a).

4. On July 23, 2026, Petitioner sought a custody redetermination. The immigration judge denied it — not because Petitioner is dangerous, and not because he is a flight risk, but because the judge concluded he had *no authority* to consider bond at all. On his view, Petitioner remains an "applicant for admission" subject to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b), more than three years after DHS released him into the interior. The sole authority for that conclusion is *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

5. That is wrong as a matter of statutory interpretation, and courts in this District have said so repeatedly. Petitioner is detained under 8 U.S.C. § 1226(a). He is entitled to an individualized custody determination, and his detention without one is not authorized by law.

6. Independently, DHS released Petitioner and permitted him to live in the community for more than three years. That created a protected liberty interest, which Respondents extinguished in February 2026 without notice, without stated reasons, and without any opportunity to be heard.

7. And independently again, Petitioner's detention — approaching six months, with a Board appeal pending and no realistic prospect of removal to Angola — has become unreasonably prolonged under the Due Process Clause.

8. Petitioner previously filed a petition without counsel. *See Capita-Wilson v. Blanche*, No. 26-cv-3664-TWR-DDL (S.D. Cal.). On July 2, 2026, the Court denied it

because Petitioner, proceeding pro se, had framed his claim under *Zadvydas v. Davis*, 533 U.S. 678 (2001), and was not subject to a final order of removal. *See* **TAB E, The docket and July 2, 2026 minute order in No. 26-cv-3664-TWR-DDL.** He is still not. Petitioner therefore does not renew that claim, and asserts no claim under 8 U.S.C. § 1231. This petition rests on different grounds entirely, none of which was presented or adjudicated before.

II. JURISDICTION AND VENUE

9. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1331. *See Zadvydas*, 533 U.S. at 687–88; *Demore v. Kim*, 538 U.S. 510, 516–17 (2003).

10. Section 1252(g) does not bar review. The Supreme Court has read that provision narrowly, confining it to "three discrete actions" — the decision or action to commence proceedings, adjudicate cases, or execute removal orders. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999); *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). A challenge to the lawfulness and duration of detention is none of those. This Court so held last week on materially identical arguments. *Tran v. Mullin*, No. 26-cv-3135-RSH-GC, ECF No. 6, at 2–3 (S.D. Cal. July 29, 2026).

11. Section 1226(e) is likewise no obstacle. It bars review of the Attorney General's *discretionary judgment*, but not challenges to "the statutory framework that permits [a noncitizen's] detention without bail." *Demore*, 538 U.S. at 517. Petitioner does not ask this Court to review a discretionary custody call; he contends none was ever made. Sections 1252(a)(5) and (b)(9) do not apply because Petitioner does not challenge his

removal order, and § 1252(f)(1) limits only class-wide injunctive relief, not individual habeas.

12. This petition is not barred as second or successive. The gatekeeping provisions of 28 U.S.C. § 2244(b) apply by their terms to applications under § 2254. The prior petition was dismissed and without any merits adjudication. In all events, the claims presented here arise from the immigration judge's July 23, 2026 ruling and from the accrued length of confinement, and could not have been raised in June 2026.

13. Venue is proper. Petitioner is confined at the Otay Mesa Detention Center, 7488 Calzada de la Fuente, San Diego, California 92154, within this District, and his immediate custodian is within this Court's jurisdiction. *Rumsfeld v. Padilla*, 542 U.S. 426, 442–43 (2004). This action is related to No. 26-cv-3664-TWR-DDL within the meaning of Civil Local Rule 40.1(f); a Notice of Related Case is filed concurrently.

III. PARTIES

14. Petitioner FELIZBERTO CAPITA-WILSON is a native and citizen of Angola, A# [redacted], confined at the Otay Mesa Detention Center. He appears through counsel.

15. Respondent MARKWAYNE MULLIN is the Secretary of the U.S. Department of Homeland Security and is responsible for the administration and enforcement of the immigration laws of the United States, including the policies and practices governing the detention of noncitizens at Otay Mesa Detention Center. He is sued in his official capacity only.

16. Respondent TODD BLANCHE is the Attorney General of the United States and is responsible for the Executive Office for Immigration Review, including the immigration courts and the Board of Immigration Appeals. He is sued in her official capacity only. Respondent TODD M. LYONS is the Acting Director of U.S. Immigration and Customs Enforcement and is responsible for the detention and removal operations of ICE nationwide, including at Otay Mesa Detention Center. He is sued in his official capacity only.

17. Respondent JOSEPH FREDEN is the Acting Field Office Director of the San Diego Field Office of ICE Enforcement and Removal Operations and is responsible for ICE detention operations within San Diego and Imperial Counties, including at Otay Mesa Detention Center. He is sued in his official capacity only.

18. Respondent CHRISTOPHER LAROSE is the Warden of Otay Mesa Detention Center and is the immediate custodian with day-to-day responsibility for Petitioner's physical confinement. As Petitioner's immediate custodian, he is the proper respondent for purposes of this habeas petition. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004). He is sued in his official capacity only.

IV. Statement of Facts

A. EXHAUSTION IS EXCUSED

19. Section 2241 imposes no statutory exhaustion requirement. *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). Any such obligation is prudential and may be waived

where administrative remedies are inadequate or futile, or where irreparable injury would result. *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004); *Singh v. Ashcroft*, 362 F.3d 1164, 1169 (9th Cir. 2004).

20. Petitioner did present his custody request to the agency, and the immigration judge denied it for want of authority. The ruling rests entirely on *Matter of Yajure Hurtado*, a published decision of the Board itself. Asking the Board to disavow its own precedent is the paradigm of a futile gesture. The Board also cannot adjudicate the constitutional claims presented here. *Padilla-Padilla v. Gonzales*, 463 F.3d 972, 977 (9th Cir. 2006).

TAB C, The immigration judge's July 23, 2026 custody order.

21. *Leonardo v. Crawford*, 646 F.3d 1157, 1160–61 (9th Cir. 2011), is inapposite. *Leonardo* involved review of the *outcome* of an individualized bond determination — a discretionary, fact-bound decision the Board reviews as a matter of course. Petitioner received no such determination. The immigration judge made no finding on danger, none on flight risk, and none on conditions of release. What Petitioner presses is a legal question about the source of detention authority and a constitutional claim about its duration.

22. Each additional day of unlawful detention is a completed and unremediable deprivation of liberty. *Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017).

B. Entry, Release, and Three Years at Liberty

23. Petitioner was born in Angola. In December 2022, at age sixteen, he entered the United States without inspection in the company of his parents and was apprehended by immigration authorities.

24. DHS elected not to detain him. On or about December 10, 2022, DHS released Petitioner on parole under INA § 212(d)(5), 8 U.S.C. § 1182(d)(5), and issued a Notice to Appear placing him in removal proceedings under INA § 240.

25. Petitioner and his family applied for asylum. From December 2022 until February 2026 — more than three years — Petitioner lived at liberty in the United States. He appeared as required. He complied with the conditions of his release. Respondents took no step to re-detain him.

C. Re-Detention and the Dismissed Criminal Case

26. In early 2026, local authorities in Salt Lake County, Utah arrested Petitioner following a dispute at his parents' home. He was never convicted. On March 10, 2026, the Midvale Justice Court, Salt Lake County, Utah, dismissed all charges. *See* **TAB D, The March 10, 2026 disposition of the Midvale Justice Court, Salt Lake County, Utah.**

27. On February 10, 2026, ICE took Petitioner into custody in Utah and transferred him to the Otay Mesa Detention Center, where he has been confined continuously since. Respondents conceded that custody date in their return in No. 26-cv-3664-TWR-DDL.

28. Respondents did not provide Petitioner notice of the reasons for terminating his release, did not identify any changed circumstance, and did not afford him any opportunity to contest the determination before a neutral decisionmaker.

D. The Removal Order, the Pending Appeal, and the Denial of Any Custody Determination

29. On June 3, 2026, an immigration judge denied Petitioner's applications for relief and protection and ordered him removed to Angola. Petitioner timely appealed to the Board. As of July 25, 2026, that appeal remained pending. The removal order is therefore not administratively final, and its execution is stayed. 8 C.F.R. § 1003.6(a).

30. On July 23, 2026, Immigration Judge Mark Sameit denied Petitioner's request for a custody redetermination. The order states that "the evidence indicates that the respondent entered the country without inspection and thus is an applicant for admission under INA section 235(a)(1) and subject to mandatory detention under INA section 235(b)(1)(B)(iii)(IV)," citing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and noting that the *Maldonado Bautista* orders had been stayed by the Ninth Circuit. Petitioner reserved appeal; that appeal is due August 24, 2026.

31. The immigration judge made no finding that Petitioner is a danger to the community, no finding that he is a flight risk, and no finding as to any conditions that might assure his appearance. No adjudicator has ever made such a finding.

E. Duration, Conditions, and the Absence of Any Prospect of Removal

32. Petitioner has been detained since February 10, 2026 — approximately six months as of the filing of this petition — without any custody hearing on the merits.

33. The forward-looking picture is worse. A detained Board appeal "may take months, and any appeal to the Ninth Circuit thereafter may take years.

34. Courts in this District have found that conditions at the Otay Mesa Detention Center are "indistinguishable from penal confinement." *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 773 (S.D. Cal. 2020); *accord Tran*, ECF No. 6, at 7.

35. Petitioner has caused no delay in his removal proceedings.

VI. CLAIMS FOR RELIEF

COUNT ONE — Petitioner Is Detained Under 8 U.S.C. § 1226(a), Not § 1225(b)(2)(A)

36. Petitioner incorporates the preceding paragraphs.

37. The INA distinguishes the detention of noncitizens seeking admission at the threshold from the detention of noncitizens already present pending removal proceedings. Sections 1225(b)(1) and (b)(2) address "certain aliens seeking admission into the country"; § 1226(a) governs "certain aliens already in the country pending the outcome of removal proceedings." *Jennings*, 583 U.S. at 289.

38. Section 1225(b)(2)(A) applies "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted." The provision speaks to the moment of examination. Petitioner was examined and released in December

2022. For more than three years he has not been seeking admission at any port or checkpoint; he has been living in the United States and litigating an asylum claim.

39. Courts in this District have repeatedly rejected the Government's contrary reading. *See Silvestre-Mendoza v. Noem*, No. 25-cv-3206-RBM-DDL, 2025 WL 3512410, at *1–2 (S.D. Cal. Dec. 8, 2025); *Sanchez Ledesma v. LaRose*, No. 3:26-cv-1974 (S.D. Cal. 2026); *accord Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 484 (S.D.N.Y. 2025); *Rodriguez Vazquez v. Bostock*, No. 3:25-cv-5240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025); *Mosqueda v. Noem*, No. 25-cv-2304-CAS-BFM, 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8, 2025).

40. *Matter of Yajure Hurtado* does not bind this Court. It is an agency adjudication, and the question presented — the best reading of § 1225(b)(2)(A) — is one for an Article III court. Its reasoning was rejected in *Maldonado Bautista v. U.S. Department of Homeland Security*, No. 5:25-cv-1873-SSS-BFM (C.D. Cal.), which held that similarly situated noncitizens are detained under § 1226(a), vacated the underlying DHS interim guidance under the Administrative Procedure Act, and later vacated *Yajure Hurtado* itself.

41. Petitioner acknowledges that the Ninth Circuit stayed those orders pending appeal on March 31, 2026, so that the nationwide class judgment and the vacatur are not presently operative outside the Central District of California. *See Maldonado Bautista v. DHS*, Nos. 25-7958, 26-1044 (9th Cir.). But the ground of that stay supports this action rather than undercutting it. The Ninth Circuit concluded the Government was likely to show that the district court exceeded its jurisdiction by certifying a nationwide class,

because a challenge to mandatory detention necessarily implies the invalidity of confinement and must be pursued through habeas in the district of confinement. *See Trump v. J.G.G.*, 604 U.S. 670, 672 (2025). That is precisely this proceeding. The stay resolved a question of vehicle; it did not endorse *Yajure Hurtado* on the merits.

42. Because Petitioner is detained under § 1226(a), he is entitled to a custody redetermination before an immigration judge. 8 C.F.R. §§ 1003.19, 1236.1(d). He has been denied one on an erroneous view of the law, and his detention is therefore unauthorized.

COUNT TWO — Terminating Petitioner's Release After Three Years Without Notice or a Hearing Violated Due Process

43. Petitioner incorporates the preceding paragraphs.

44. A government decision to release a person from custody carries "an implicit promise," on which the person may rely, that liberty "will be revoked only if they fail to live up to the conditions of release." *Garro Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025) (citation modified) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). "Thus, even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody [he] has a protected liberty interest in remaining out of custody." *Id.*

45. The length of Petitioner's release deepens that interest. Courts have held that extended periods of DHS-sanctioned liberty heighten the constitutional stake. *See Garro*

Pinchi, 792 F. Supp. 3d at 1034 (more than two years). Petitioner lived in the community for more than three years, during which he did nothing to forfeit his release.

46. To the extent Petitioner remained on parole under 8 U.S.C. § 1182(d)(5)(A), its termination required an individualized determination and compliance with the agency's own regulations, 8 C.F.R. § 212.5(e). An agency's departure from its binding regulations is independently unlawful. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267 (1954).

47. Respondents extinguished that interest without notice, without stated reasons, without identifying any changed circumstance, and without any opportunity to be heard. Under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), each factor favors Petitioner: the private interest is physical liberty; the risk of erroneous deprivation is at its maximum where no process at all was afforded; and Respondents have identified no interest served by detaining a person they themselves released and left at liberty for three years. "[D]etention for its own sake, to meet an administrative quota[,] . . . is not a legitimate government interest." *Garro Pinchi*, 792 F. Supp. 3d at 1036.

48. Courts in this District have held that such a deprivation violates due process and that the remedy is release on the conditions of the preexisting release. *Noori v. LaRose*, 807 F. Supp. 3d 1146, 1156 (S.D. Cal. 2025); *Sanchez v. LaRose*, No. 25-cv-2396-JES-MMP, 2025 WL 2770629, at *4–5 (S.D. Cal. Sept. 26, 2025.

COUNT THREE — Prolonged Detention Without Any Individualized Custody Determination Violates the Fifth Amendment

49. Petitioner incorporates the preceding paragraphs. This claim is independent of Counts One and Two and does not depend on which detention statute applies.

50. "Freedom from imprisonment — from government custody, detention, or other forms of physical restraint — lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. That protection extends to noncitizens. *Id.* at 693. *Jennings* held that §§ 1225(b), 1226(a), and 1226(c) do not themselves require periodic bond hearings, but expressly reserved the constitutional question. 583 U.S. at 313.

51. A person detained under § 1225(b) may assert a due process challenge to prolonged mandatory detention without a bond hearing. *Tran*, ECF No. 6, at 4; *Kydyrali*, 499 F. Supp. 3d at 772; *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No. 25-cv-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025). Neither *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), nor *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), holds otherwise. *Thuraissigiam* circumscribes an arriving noncitizen's rights *regarding admission*, not his ability to challenge detention. *A.L. v. Oddo*, 761 F. Supp. 3d 822, 825 (W.D. Pa. 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023). *Mezei* turned on an exclusion determination grounded in national security, a circumstance absent here. *Rosales-Garcia v. Holland*, 322 F.3d 386, 413–14 (6th Cir. 2003); *Lett v. Decker*, 346 F. Supp. 3d 379, 386 (S.D.N.Y. 2018); *Rash v. LaRose*, No. 26-cv-8-LL-DEB, 2026 WL 249324, at *4 (S.D. Cal. Jan. 30, 2026).

52. Courts in this District assess whether detention has become unconstitutionally prolonged under a six-factor test: (1) the total length of detention to date; (2) the likely

duration of future detention; (3) the conditions of detention; (4) delays caused by the detainee; (5) delays caused by the government; and (6) the likelihood that the proceedings will result in a final order of removal. *Tran*, ECF No. 6, at 6; *Kydyrali*, 499 F. Supp. 3d at 773–74; *Banda*, 385 F. Supp. 3d at 1106. Length is the most important factor, but it is neither a threshold nor a safe harbor.

53. ***Length.*** Petitioner has been detained approximately six months without any custody hearing.

54. ***Likely future duration.*** A Board appeal is pending and may take many months; a petition for review would add years. *Thompson*, 2026 WL 1697635, at *3; *Banda*, 385 F. Supp. 3d at 1119. This factor weighs heavily in Petitioner's favor.

55. ***Conditions.*** Petitioner is held at Otay Mesa, where conditions have been found "indistinguishable from penal confinement." *Kydyrali*, 499 F. Supp. 3d at 773; *accord Tran*, ECF No. 6, at 7.

56. ***Delay.*** Petitioner has not caused unnecessary delay.

57. ***Likelihood of a final order.*** An immigration judge has ordered removal, and that appeal is pending. Petitioner does not overstate this factor. But its relevance is to whether detention will soon come to an end, and here it will not: [Respondents hold no travel document for Angola, and a final order would not produce a prompt removal].

58. On balance, Petitioner's detention has become unreasonably prolonged. He is entitled at minimum to a prompt individualized bond hearing at which Respondents must justify continued detention by clear and convincing evidence that he would flee or endanger the community. *Tran*, ECF No. 6, at 8; *Singh v. Holder*, 638 F.3d 1196, 1203

(9th Cir. 2011), *abrogated on other grounds by Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Martinez v. Clark*, 124 F.4th 775, 785–86 (9th Cir. 2024).

VII. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

A. Assume jurisdiction and order Respondents to show cause, on an expedited schedule under 28 U.S.C. § 2243, why the writ should not be granted;

B. On Count One, declare that Petitioner is detained under 8 U.S.C. § 1226(a) and not 8 U.S.C. § 1225(b)(2)(A);

C. On Counts One and Two, grant the writ and order Petitioner released from custody subject only to the conditions of his preexisting release, or on such other reasonable conditions of supervision as the Court may set. *See Noori v. LaRose*, 807 F. Supp. 3d 1146, 1156 (S.D. Cal. 2025); *Sanchez v. LaRose*, 2025 WL 2770629, at *5; *Garro Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1038 (N.D. Cal. 2025); *Munaf v. Geren*, 553 U.S. 674, 693 (2008);

D. On Count Three, and in the alternative to Paragraph C, order Respondents to arrange an individualized bond hearing before an immigration judge within fourteen days, at which Respondents bear the burden of establishing by clear and convincing evidence that Petitioner is a flight risk or a danger to the community, and at which a verbatim record is made;

E. Enjoin Respondents from re-detaining Petitioner without prior notice of the reasons and a pre-deprivation hearing before a neutral decisionmaker;

F. Enjoin Respondents from transferring Petitioner outside this District during the pendency of this action;

G. Award costs and fees under the Equal Access to Justice Act, 28 U.S.C. § 2412; and

H. Grant such other relief as is just and proper.

DATED: August 6, 2026

Respectfully submitted,
WILNER & O'REILLY, APLC

/s/ Morris Jacob Wilner
MORRIS JACOB WILNER
Attorney for Petitioner

Exhibit List

Exhibit A — Petitioner's Parole

Exhibit B — The immigration judge's June 3, 2026 decision, removal order, and proof of appeal

Exhibit C -- The immigration judge's July 23, 2026 custody order

Exhibit D — The March 10, 2026 disposition of the Midvale Justice Court, Salt Lake County, Utah

Exhibit E — The docket and July 2, 2026 minute order in No. 26-cv-3664-TWR-DDL

DECLARATION OF MORRIS JACOB WILNER IN SUPPORT OF PETITION

I, Morris Jacob Wilner, declare:

1. I am an attorney licensed in California and admitted before this Court. I represent Petitioner Felizberto Capita-Wilson. I have personal knowledge of the matters below except where stated on information and belief, and could competently testify to them.

2. This firm did not represent Petitioner in his removal proceedings. The facts stated in the Petition are drawn from the documentary record identified below, from the docket in *Capita-Wilson v. Blanche*, No. 26-cv-3664-TWR-DDL (S.D. Cal.), and from my office's communications with Petitioner.

3. On August 6 2026, I confirmed through the Executive Office for Immigration Review that Petitioner's appeal from the June 3, 2026 removal order was filed and remains pending before the Board. As of July 25, 2026, the appeal was pending.

4. Attached as Exhibits A through E are true and correct copies of: (a) Petitioner's parole; (b) the immigration judge's June 3, 2026 decision, removal order; proof of appeal; (d) the immigration judge's July 23, 2026 custody order; (e) the March 10, 2026 disposition of the Midvale Justice Court, Salt Lake County, Utah; and (f) the docket and July 2, 2026 minute order in No. 26-cv-3664-TWR-DDL.

5. Petitioner is detained at the Otay Mesa Detention Center. Because of the constraints of detained-facility access and the urgency of his continued confinement, a declaration from Petitioner is not available at the time of this filing. Petitioner requests leave to lodge his declaration and a proposed release plan with his traverse.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 6, 2026, at San Diego, California.

Dated: August 6, 2026

/s/ Morris Jacob Wilner
MORRIS JACOB WILNER
Attorney for Petitioner

A

CONTROL Name (Last, First, Middle)						
CAPITA-WILSON, [redacted]						
Birthdate [redacted]	Age 15	Marital Status ☒ Single ☐ Separated ☐ Widowed ☐ Married ☐ Divorced		File Number ELS2312000106 [redacted]		
Sex	Hair	Eyes	Complexion	Height	Weight	Scars or Marks
M	BLK	BRO	MED	63	132	None Visible
U.S. Address/Mail (Number) (Street) (City) (State) (ZIP CODE)						
IN C/O: CAPITA, SABINA JERMIAS [redacted]						
Alien's Telephone #			Date of Action		Location Code	
( )			12/10/2022		ELS	
City, Province (State) and Country of Birth				Country of Citizenship		
CABINDA, CABINDA, ANGOLA				ANGOLA		
Date, Place, Time, and Manner of Last Entry/Attempted Entry				Status at Entry		
12/07/2022, 2015, 20 mile(s) W of CAL, PWA (AFOOT)				PWA Mexico		
Foreign Address/Residence (Number, Street, City, Province/State, Country)						
[redacted]						
Method of Location/Apprehension			(At/Near)		Date & Hour	
PB UNKNOWN			CALEXICO, CA		12/07/2022 2029	

[redacted]

B

An official website of the United States government
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EOIR Automated Case Information

Court Closures Today August 5, 2026

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Home > **CAPITA-WILSON, FELIZBERTO ([redacted])**

Automated Case Information

Name: CAPITA-WILSON, FELIZBERTO | A-Number: [redacted] | Docket Date: 2/10/2026

Next Hearing Information

There are no future hearings for this case.

Court Decision and Motion Information

The immigration judge ordered **REMOVAL.**

DECISION DATE

June 3, 2026

COURT ADDRESS
7488 CALZADA DE LA FUENTE
SAN DIEGO, CA 92154

BIA Case Information

A case appeal was received on **June 25, 2026**. It is currently pending.

ALIEN BRIEF STATUS
No brief due date exists at this time.

DHS BRIEF STATUS
No brief due date exists at this time.

Court Contact Information

If you require further information regarding your case, or wish to file additional documents, please contact the Board of Immigration Appeals.

COURT ADDRESS
OFFICE OF THE CHIEF CLERK
5107 LEESBURG PIKE, SUITE 2000
FALLS CHURCH, VA 22041

PHONE NUMBER

C

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

Respondent Name:
CAPITA-WILSON, FELIZBERTO

To:
CAPITA-WILSON, FELIZBERTO
C/O RODNEY RICHMOND
DHS CUSTODY
SAN DIEGO, CA 92154

A-Number:
[redacted]

Riders:
In Custody Redetermination Proceedings

Date:
07/23/2026

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 evidence indicates that the respondent entered the country without inspection and thus is an applicant for admission under INA section 235(a)(1) and subject to mandatory detention under INA section 235(b)(1)(B)(iii)(IV). Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025). The court notes that the Maldanado Bautista orders were stayed by the 9th Circuit on 6 March 2025. See Maldanado Bautista v. DHS, No 26-1044 (9th Cir., Mar. 6, 2026).

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

☐ Other:

Immigration Judge: SAMEIT, MARK 07/23/2026

Appeal: Department of Homeland Security: ☑ waived ☐ reserved
Respondent: ☐ waived ☑ reserved
Appeal Due: 08/24/2026

Certificate of Service

This document was served:
Via: [M] Mail | [P] Personal Service | [E] Electronic Service | [U] Address Unavailable
To: [P] Alien | [ ] Alien c/o custodial officer | [ ] Alien atty/rep. | [E] DHS
Respondent Name : CAPITA-WILSON, FELIZBERTO | A-Number : [redacted]
Riders:
Date: 07/23/2026 By: Longmire, Emely, Court Staff

D

The Order of the Court is stated below:
Dated: March 10, 2026 09:44:06 AM
/s/ GEORGE VO-DUC
Justice Court Judge

IN THE MIDVALE JUSTICE COURT
SALT LAKE COUNTY, STATE OF UTAH

MIDVALE CITY, Plaintiff, vs. FELIZBERTO WILSON CAPITA, Defendant.	**ORDER TO DISMISS** Case No. 251000713 Honorable GEORGE VO-DUC

This matter comes before the Court on a motion by Plaintiff to dismiss this case. Being fully informed, the Court orders that the charges against the Defendant be dismissed without prejudice.

It is so ordered.

Executed and entered by the Court as indicated by the date and seal at the top

E

Habeas Dockets

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Southern District of California • 3:26-cv-03664

Completed

Capita-Wilson v. Blanche

→ View docket on CourtListener

Case Information

Filed: June 22, 2026

Assigned to: Todd Wallace Robinson

Referred to: David D. Leshner

Nature of Suit: Habeas Corpus - Alien Detainee

Completed: July 02, 2026

Cause: 28:2241fd Petition for Writ of Habeas Corpus (federal)

Last Activity: July 02, 2026

Parties: View All Parties →

Docket Entries

#1	Jun 22, 2026	Petition for Writ of Habeas Corpus against Todd Blanche, Christopher LaRose, Todd Lyons, Markwayne Mullin (Filing fee $ 5, Fee Not Paid, IFP Not Filed.), filed by Felizberto Capita-Wilson. (Attachments: # 1 Civil Cover Sheet)The

new case number is 3:26-cv-3664-TWR-DDL. Judge Todd W. Robinson and Magistrate Judge David D. Leshner are assigned to the case.(ggv) (Entered: 06/24/2026)

Main Document: Petition for Writ of Habeas Corpus Habeas RECAP PACER

#2 Jun 22, 2026 MOTION to Appoint Counsel by Felizberto Capita-Wilson. (ggv) (Entered: 06/24/2026)

Main Document: Appoint Counsel Habeas RECAP PACER

#3 Jun 22, 2026 MOTION for Temporary Restraining Order by Felizberto Capita-Wilson. (ggv) (Entered: 06/24/2026)

Main Document: Temporary Restraining Order Habeas RECAP PACER

#4 Jun 25, 2026 MINUTE ORDER Requiring Response to 1 Petition. Petitioner, who has been detained for 6 months, contends that there is good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future under Zadvydas v. Davis, 533 U.S. 678, 701 (2001). The Court ORDERS Respondents TO SHOW CAUSE on or before July 1, 2026 why the Court should not order Petitioner's immediate release from custody.(All non-registered users served via U.S. Mail Service)(no document attached) (sxm3) (Entered: 06/25/2026)

Jun 25, 2026 Order AND ~Util - Set Deadlines

#5 Jul 01, 2026 Response to Petition

Main Document: Response to Petition Habeas RECAP PACER

#6 Jul 02, 2026 MINUTE ORDER Denying Without Prejudice Petition. In their 5 Return, Respondents explain that Petitioner is not yet subject to a final order of removal. The Court therefore DENIES WITHOUT PREJUDICE the 1 Petition. Petitioner may file a renewed Petition if and when he is subject to a final

order of removal, provided his length of detention since the order of removal became final exceeds the six-month presumptively reasonable removal period under Zadvydas v. Davis, 533 U.S. 678 (2001) and there is no significant likelihood of his removal in the reasonably foreseeable future. The Court also DENIES WITHOUT PREJUDICE Petitioner's 2 Motion to Appoint Counsel and 3 Motion for Temporary Restraining Order. Because Petitioner is pro se, Respondents SHALL SERVE Petitioner with a copy of this Order.(no document attached) (sxm3) (Entered: 07/02/2026)

Jul 02, 2026 Order AND ~Util - Set Deadlines

Parties

Blanche

Party

Capita-Wilson

Party

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Habeas Dockets - IJTI

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