

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

RENALDO CELESTIN,

Petitioner,

-against-

THOMAS DECKER, in his official capacity as Field Office Director of the Immigration and Customs Enforcement (“ICE”) New York City Field Office; DIANE MCCONNELL, in her official capacity as Assistant Field Office Director for the ICE New York City Field Office; U.S. DEPARTMENT OF HOMELAND SECURITY (“DHS”); JOHN F. KELLY, in his official capacity as Secretary of DHS; JEFFERSON BEAUREGARD SESSIONS III, in his official capacity as the Attorney General of the United States; ERIC TAYLOR, in his official capacity as Director of Hudson County Correctional Facility,

Respondents.

Civil Action No.

**PETITION FOR  
WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2241**

**PRELIMINARY STATEMENT**

1. Petitioner, Renaldo Celestin, challenges his detention by Respondents without a bond hearing on the grounds that it violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment to the U.S. Constitution. Mr. Celestin has been held in the custody of Immigration and Customs Enforcement without an individualized bond hearing continuously since October 26, 2016. At his hearing in Immigration Court today, April 4, 2017, Mr. Celestin filed an application for Asylum, Withholding of Removal, and protection under the United Nations Convention Against Torture with the Immigration Court and requested that a merits hearing be scheduled. Mr. Celestin’s case was set for a merits hearing on June 16, 2017.

By the time of Mr. Celestin's merits hearing, he will have been detained without an individualized bond determination at minimum for 233 days. He therefore seeks a writ of habeas corpus ordering Respondents to release him or provide him with a bond hearing.

2. Mr. Celestin is a 25-year old citizen of Haiti with no criminal history. He has never attempted to evade the immigration authorities. To the contrary, Mr. Celestin voluntarily surrendered to U.S. immigration authorities at the U.S.-Mexican border at San Ysidro, California immediately upon arrival to the United States. Mr. Celestin was subsequently interviewed by an Asylum Officer who concluded that Mr. Celestin had a credible fear of torture if he were returned to Haiti because masked men claiming to be the police abducted and beat him to the point of unconsciousness and murdered his brother, with whom he was abducted, in order to steal their family's land. On that basis, instead of being subjected to expedited removal, Mr. Celestin was detained pending removal proceedings, during which an Immigration Judge will adjudicate Mr. Celestin's application for asylum and withholding of removal. *See* 8 U.S.C. § 1225(b)(1)(B)(ii). On March 27, 2017, Mr. Celestin filed a request for release on humanitarian parole to Respondents Decker and McConnell. As of today, that request is still pending.

3. Although Mr. Celestin was initially detained as an "arriving alien" pursuant to 8 U.S.C. § 1225(b), his detention is properly governed by 8 U.S.C. § 1226(a), which authorizes his release on bond, because he passed a credible fear interview. However, even if this Court were to conclude that Mr. Celestin is still detained as an arriving alien pursuant to 8 U.S.C. § 1225(b), it must construe the mandatory provision of that statute as expiring after a period of six months. Such a reading of the statute is required because any other construction, by which Mr. Celestin's current detention could continue indefinitely, would violate his right to due process. This conclusion necessarily follows from the Second Circuit's decision in *Lora v.*

*Shanahan*, which held that “in order to avoid the constitutional concerns raised by indefinite detention, an immigrant detained pursuant to § 1226(c) must be afforded a bail hearing before an immigration judge within six months of his or her detention.” 804 F.3d 601, 616 (2d Cir. 2015). Although the Second Circuit’s holding did not explicitly extend to immigrants held pursuant to § 1225(b), the court’s reasoning is fully applicable to Mr. Celestin. The Second Circuit in *Lora* adopted the reasoning of the Ninth Circuit in *Rodriguez v. Robbins*, which explicitly held that mandatory detention under § 1225(b) must be construed to expire after six months in order for the statute to be constitutional. *Lora*, 804 F.3d at 616 (citing *Rodriguez v. Robbins*, 715 F.3d 1127, 1131 (9th Cir. 2013)).

4. Petitioner seeks a Writ of Habeas Corpus ordering his release or that he promptly be provided with an individualized bond hearing before an Immigration Judge where the government bears the burden of justifying his continued detention. *See Lora*, 804 F.3d at 616.

#### **STATUTORY TEXT**

5. Section 1225(b)(1)(B)(ii) of title 8 of the United States Code provides:

Referral of certain aliens—If the officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.

6. Section 1225(b)(2) of title 8 of the United States Code provides:

Subject to subparagraphs (B) and (C), 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 alien shall be detained for a proceeding under section 1229a of this title.

Subparagraphs (B) and (C) provide for limited exceptions not applicable here.

7. Section 1226(a)(2) of title 8 of the United States Code provides:

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the

Attorney General—(2) may release the alien on—(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole.

8. Section 1182(d)(5)(A) of title 8 of the United States Code provides:

The Attorney General may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

### **PARTIES**

9. Petitioner Renaldo Celestin, a citizen of Haiti, presented himself to the U.S. Customs and Border Patrol near San Ysidro, California on October 26, 2016 seeking asylum. He was detained by the Department of Homeland Security and placed into removal proceedings at the Varick Street Immigration Court in New York, New York. Pending these proceedings, Petitioner is detained at the direction of Respondents at Hudson County Correctional Facility in Kearny, New Jersey and at the Varick Street Detention Center in New York, New York.

10. Respondent Thomas Decker is named in his official capacity as the Director of the New York Field Office for Immigration and Customs Enforcement within the United States Department of Homeland Security. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations, and he supervises Respondent Diane McConnell. As such, he is the legal custodian of Petitioner. Respondent Decker's office is located at 26 Federal Plaza, New York, New York 10278.

11. Respondent Diane McConnell is named in her official capacity as the Assistant Director of the New York Field Office for Immigration and Customs Enforcement within the United States Department of Homeland Security. Her office is located at 26 Federal Plaza, New York, New York 10278. In this capacity, she is the legal custodian of Petitioner.

12. Respondent U.S. Department of Homeland Security (“DHS”) is a cabinet department of the federal government with the primary mission of securing the United States.

13. Respondent John F. Kelly is named in his official capacity as the Secretary of DHS. In this capacity, he is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a); he routinely transacts business in the Southern District of New York; he supervises Respondent Decker; and he is legally responsible for the pursuit of Petitioner’s detention and removal. As such, he is the legal custodian of Petitioner. Respondent Kelly’s office is located in the United States Department of Homeland Security, Washington, District of Columbia 20528.

14. Respondent Jefferson Beauregard Sessions III is named in his official capacity as the Attorney General of the United States. In this capacity, he is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review, pursuant to 8 U.S.C. § 1103(g). He routinely transacts business in the Southern District of New York and is legally responsible for administering Petitioner’s removal proceedings and the standards used in those proceedings. As such, he is the legal custodian of Petitioner. Respondent Sessions’s office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.

15. Respondent Eric Taylor is named in his official capacity as the Director of the Hudson County Correctional Facility. In this capacity, he is the legal custodian of Petitioner.

Respondent Taylor's office is located at Hudson County Correctional Facility, 30-35 Hackensack Avenue, Kearny, New Jersey 07032.

### **JURISDICTION**

16. Petitioner is currently detained in the custody of Respondents. Petitioner is detained pending removal proceedings at Hudson County Correctional Facility at 30-35 Hackensack Avenue, Kearny, New Jersey 07032 and at the Varick Immigration Court at 201 Varick Street, New York, New York, 10014.

17. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. §§ 1131 and 2241, and Article I, § 9, cl. 2 of the United States Constitution; the All Writs Act, 28 U.S.C. § 1651; and the Administrative Procedure Act, 5 U.S.C. § 701. Additionally, the Court has jurisdiction to grant injunctive relief in this case pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201. Petitioner's current detention as enforced by Respondents constitutes a "severe restraint[]" on [Petitioner's] individual liberty," such that Petitioner is "in custody in violation of the . . . laws . . . of the United States." *See Hensley v. Mun. Ct.*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241(c)(3).

18. While only the federal courts of appeals have jurisdiction to review removal orders directly through petitions for review, *see* 8 U.S.C. § 1252(a)(1), (b), the federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

19. No exhaustion requirement applies to the constitutional claims raised in this Petition because the Immigration Court and Board of Immigration Appeals lack jurisdiction to entertain

constitutional challenges. *See Howell v. INS*, 72 F.3d 288, 291 (2d Cir. 1995); *Arango-Aradondo v. INS*, 13 F.3d 610, 614 (2d Cir. 1994); *Matter of Desai*, A037 061 888, 2008 WL 4420039, at \*1 (BIA Sept. 16, 2008) (per curiam) (citing *Matter of Valdovinos*, 18 I & N Dec. 343, 345 (BIA 1982)) (disclaiming authority to rule on constitutionality of 8 U.S.C. § 1226(c)).

20. Regarding Petitioner's statutory claims, neither 8 U.S.C. § 1226(a) nor § 1225(b) contains an exhaustion requirement with respect to challenges to detention. *See Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010); *Garcia v. Shanahan*, 615 F. Supp. 2d 175, 180 (S.D.N.Y. 2009). Moreover, it is well established that where the agency has predetermined a dispositive issue, no further action with the agency is necessary. *See, e.g., Monestime v. Reilly*, 704 F. Supp. 2d 453, 456-57 (S.D.N.Y. 2010) (holding that administrative challenges to a noncitizen's classification under the mandatory detention statute would be futile given the agency's precedent on the issue); *Garcia v. Shanahan*, 615 F. Supp. 2d 175, 180 (S.D.N.Y. 2009) (same). Because the Executive Office for Immigration Review is bound by Board of Immigration Appeals precedent to find that Mr. Celestin is subject to mandatory detention, no further administrative remedies are required.

21. Even assuming *arguendo* that a judicial exhaustion requirement applies to this Petition, which it does not, Petitioner has satisfied the requirement. After being detained at Hudson County Correctional Facility, Petitioner sought release on humanitarian parole from Respondents Decker and McConnell. *See, e.g., Questel v. Green*, No. 16-1637 (MLC), 2016 WL 4744140, at \*4 (D.N.J. Sept. 12, 2016) ("To exhaust his available remedies, an alien detained pursuant to § 1225(b)(2)(A) must seek parole under § 1182(d)(5)(A) by requesting such relief from the Government."). That request is still pending.

## **VENUE**

22. Pursuant to 28 U.S.C. § 2241(d), venue properly lies in the Southern District of New York. Petitioner's pending removal proceedings are taking place within the district at the Immigration Court located at 201 Varick Street, New York, New York 10014 and the petition is being filed on April 4, 2017, when Petitioner is physically present within the district to attend a hearing in his removal proceedings. The place of employment of Respondents Decker and McConnell is located within the district, at 26 Federal Plaza, New York, New York.

## **STATEMENT OF FACTS**

### **A. Mr. Celestin's Background, Arrival in the United States and Credible Fear**

#### **Interview**

23. Mr. Celestin is a 25-year-old citizen of Haiti. He has no criminal record. Mr. Celestin presented himself at the U.S.-Mexico border at San Ysidro, California seeking asylum on October 26, 2016. *See* Record of Determination/Credible Fear Worksheet at 1 (Ex. A); Notice to Appear at 1 (Ex. B). He has been in Respondents' continuous custody since that time.

24. Mr. Celestin arrived at the U.S.-Mexico border on October 26, 2016 and voluntarily surrendered to immigration authorities in San Ysidro, California.<sup>1</sup> *See* Notice to Appear at 1 (Ex. B). He was interviewed by an Asylum Officer on December 13, 2016 who found Mr. Celestin to have a credible fear of torture. *See* Record of Determination/Credible Fear Worksheet at 4 (Ex. A).

25. While Mr. Celestin lived in Gonaïves, Haiti, he and his brother were abducted by masked men claiming to be the police. *See* Record of Determination/Credible Fear Worksheet at 8 (Ex.

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<sup>1</sup> Mr. Celestin entered the United States at the U.S.-Mexico border at San Ysidro, California on October 26, 2016. *See* Record of Determination/Credible Fear Worksheet at 1 (Ex. A). Federal immigration authorities promptly detained Mr. Celestin, and have continued this detention for over five months.



A). Mr. Celestin was beaten to the point of unconsciousness, and his brother, with whom he was abducted, was murdered. *Id.* Mr. Celestin was found by his parents in the woods near his dead brother. *Id.*

26. Mr. Celestin explains that the group of men attacked him and his brother in order to steal their family's land. *Id.* at 8-9. Mr. Celestin and his brother were responsible for working the land and protecting it after their father became disabled. *Id.* The group posed as police officers in order to intimidate them and prevent them from seeking help from the police. *Id.*

27. Mr. Celestin's parents reported the attack and their fears of future violence to the police, but the police refused to offer assistance. *Id.* at 10.

28. After this incident, Mr. Celestin learned that the men had returned to his parent's home to look for him. *Id.* Certain he would be killed if he remained in Haiti, he fled to the Dominican Republic and then on to Brazil. *Id.* at 6, 9.

29. In Brazil, Mr. Celestin faced discrimination based on his race and nationality and was unable to find work. *Id.* at 8. His landlord evicted him because of his race. He finally left Brazil because he witnessed widespread violence against Haitians and feared he could be killed because he is Haitian. *Id.*

30. Mr. Celestin is afraid that if he ever returned to Haiti, he would be killed. *Id.* at 10. He is also afraid to return to Brazil.

31. The Credible Fear Worksheet established that the Asylum Officer believed Mr. Celestin to be testifying credibly regarding his fear of harm and the factual basis therefor. *Id.* Had the Asylum Officer not made that determination, Mr. Celestin would be subject to expedited removal without further review by the immigration courts. *See* 8 U.S.C. § 1225(b)(1)(B)(iii).

However, the determination that he had a credible fear of torture meant that he could remain in the United States while his asylum proceedings were pending. *See* 8 U.S.C. § 1225(b)(1)(B)(ii).

**B. Mr. Celestin's Continued Detention Since October 26, 2016**

32. Mr. Celestin has never been released from custody since he voluntarily surrendered to immigration authorities on October 26, 2016. *See* Record of Determination/Credible Fear Worksheet at 1 (Ex. A). He has been detained for over five months without an individualized bond determination.

33. On March 27, 2017, Mr. Celestin filed a request for parole under 8 U.S.C. § 1182(d)(5)(a) with the Office of Enforcement and Removal Operations, which is overseen by Respondents Decker and McConnell. The parole request contained notarized affidavits from two of Mr. Celestin's cousins, both of whom have lawful status in the United States. These cousins attested to Mr. Celestin's identity and nonviolent character, and stated that if released Mr. Celestin would reside at 512 South 6<sup>th</sup> Street, Fort Pierce, FL 34950. His cousin Cemoy Celestin provided proof of that address including his driver's license and utility bill. The parole request also contained a copy of Mr. Celestin's passport. These affidavits, proof of identity, and proof of address demonstrate that there is no reason for Mr. Celestin's continued detention without an individualized bond determination as he poses neither a danger to the community nor a flight risk. Mr. Celestin's parole request is currently still pending.

34. Mr. Celestin attended a master calendar hearing in Immigration Court on April 4, 2017. He requested a merits hearing, which the Immigration Judge calendared for June 16, 2017.

35. By the time of his merits hearing, Mr. Celestin will have been detained for over seven months without an individualized bond determination.

**CLAIMS FOR RELIEF**

**FIRST CAUSE OF ACTION:  
VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT—  
MR. CELESTIN’S DETENTION IS PROPERLY GOVERNED BY 8 U.S.C. § 1226(a),  
UNDER WHICH HE IS ENTITLED TO AN IMMEDIATE BOND HEARING**

36. Petitioner repeats and realleges the allegations of paragraphs 1 through 35 of this Petition as fully set forth herein.

37. Mr. Celestin’s detention is properly governed by 8 U.S.C. § 1226(a), a discretionary detention statute, and he is therefore entitled to an individualized bond determination hearing immediately. Mr. Celestin is not properly subject to mandatory detention under 8 U.S.C. § 1225(b), as Respondents contend, because he has passed a credible fear interview and commenced removal proceedings.

38. The statute governing detention of arriving aliens, 8 U.S.C. § 1225(b), does not authorize detention of individuals who have commenced removal proceedings. Rather, this statute governs the detention of noncitizens between their time of apprehension at the border—when they could be subjected to expedited removal without further hearing—and the commencement of removal proceedings before an Immigration Judge in Immigration Court. This is made clear by the contrasting statutory provisions governing custody for those who do and do not pass credible fear interviews. For aliens like Mr. Celestin, found to have a credible fear of persecution, the statute directs that “the alien shall be detained for further consideration of the application for asylum.” 8 U.S.C. § 1225(b)(1)(B)(ii). By contrast, individuals who are interviewed and found to have *no* fear of persecution “shall be detained *pending* a final determination of credible fear of persecution *and, if found not to have such a fear, until removed.*” 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (emphasis added).

39. A comparison of the language of these two provisions reveals Congress’s intent to make detention mandatory up until removal in the case of noncitizens who do not have a credible fear of persecution, and only until the commencement of proceedings before a judge, which constitutes “further consideration of the application,” for those who do. *See also* 8 U.S.C. § 1225(b)(2)(A). As explained by the Supreme Court, “where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *Nken v. Holder*, 556 U.S. 418, 430 (2009); *see also Clark v. Martinez*, 543 U.S. 371, 380-81 (2005) (“It is not at all unusual to give a statute’s ambiguous language a limiting construction called for by one of the statute’s applications, even though other of the statute’s applications, standing alone, would not govern the same limitation. . . . If one of them would raise a multitude of constitutional problems, the other should prevail – whether or not those constitutional problems pertain to the particular litigant before the court”).

40. Petitioner’s interpretation of the statute is confirmed by the fact that detention authority undisputedly shifts to § 1226(a) for individuals who have entered without inspection—rather than presenting themselves at a point of entry, as Mr. Celestin did—and passed a credible fear interview. Noncitizens encountered in the United States after entering without inspection are initially held without bond pursuant to § 1225(b)(1)(B)(ii). Under Respondents’ current nationwide practice, the authority for the detention of these individuals shifts to § 1226(a)—a discretionary detention statute—once they pass a credible fear interview, entitling them to a bond hearing. *See In Re X-K-*, 23 I. & N. Dec. 731, 736 (BIA 2005). Yet there is no basis in the statute for distinguishing those individuals from Mr. Celestin, who presented himself to border officials seeking asylum. Indeed, to treat Mr. Celestin’s detention as mandatory and the

detention of a noncitizen who entered without inspection as discretionary, where both have passed credible fear interviews, would not only be counter to the text of the statute, it would subvert border security by *incentivizing* individuals to enter the United States unlawfully, rather than presenting themselves at a port of entry and declaring an intent to seek asylum as Mr. Celestin did.

41. Because his detention is properly governed by 8 U.S.C. § 1226(a), a discretionary detention statute, Mr. Celestin is entitled to an immediate bond hearing.

**SECOND CAUSE OF ACTION:  
VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT—  
8 U.S.C. § 1225(b) DOES NOT AUTHORIZE PROLONGED DETENTION BEYOND A  
BRIEF AND REASONABLE PERIOD**

42. Petitioner repeats and realleges the allegations of paragraphs 1 through 41 of this Petition as fully set forth herein.

43. The statute under which Respondents purport to detain Mr. Celestin, 8 U.S.C. § 1225(b)(2)(A), does not authorize indefinite detention without a bond hearing. As the Second Circuit has held, “It is well-settled that the Fifth Amendment entitles aliens to due process in deportation proceedings.” *Lora v. Shanahan*, 804 F.3d 601, 613 (2d Cir. 2015). This includes excludable and inadmissible aliens. *Zadvydas*, 533 U.S. at 693; *see also Xi v. United States I.N.S.*, 298 F.3d 832, 836 (9th Cir. 2002); *Chi Thon Ngo v. I.N.S.*, 192 F.3d 390, 396 (3d Cir. 1999), *amended* (Dec. 30, 1999); *Rosales-Garcia v. Holland*, 322 F.3d 386, 410 (6th Cir. 2003) (*en banc*) (“If excludable aliens were not protected by even the substantive component of constitutional due process, as the government appears to argue, we do not see why the United States government could not torture or summarily execute them”). The due process limitation on detention without bond set forth in *Lora v. Shanahan* for noncitizens held pursuant to 8. U.S.C. § 1226(c) is therefore equally applicable to noncitizens like Mr. Celestin, held under §

1225(b)(2)(A), and the statute must be construed to authorize detention no longer than six months without an individualized bond determination. *See, e.g., Rodriguez v. Robbins*, 715 F. 3d 1127, 1144 (9th Cir. 2013); *Ricketts v. Simonse*, No. 16 CIV. 6662 (LGS), 2016 WL 7335675, at \*4 (S.D.N.Y. Dec. 16, 2016); *Arias v. Aviles*, No. 15-CV-9249 (RA), 2016 WL 3906738, at \*10 (S.D.N.Y. July 14, 2016); *Saleem v. Shanahan*, No. 16-CV-808 (RA), 2016 WL 4435246, at \*5 (S.D.N.Y. Aug. 22, 2016); *Ahad v. Lowe*, No. 1:16-CV-01864, 2017 WL 66829, at \*2 (M.D. Pa. Jan. 6, 2017); *Bautista v. Sabol*, 862 F. Supp. 2d 375, 379-381 (M.D. Pa. 2012); *Alaka v. Elwood*, 225 F. Supp. 2d 547, 559 (E.D. Pa. 2002); *Maldonado v. Macias*, 150 F. Supp. 3d 788 (W.D. Tex. 2015).

44. In *Lora*, the Second Circuit held that in order to be constitutional, the statute at issue in that case authorizing mandatory detention, 8 U.S.C. § 1226(c), must be construed as limiting that detention to no more than six months. 804 F.3d at 615-16 (a “bright-line” approach limiting detention to six months “affords more certainty and predictability,” “avoids the random outcomes resulting from individual habeas litigation” where some detainees are represented by counsel and some are not and helps to mitigate the “real-life consequences for immigrants and their families” of indefinite detention). At the expiration of that period of mandatory detention, the noncitizen is entitled to an individualized bond determination before an Immigration Judge, at which the government bears the burden of proving by clear and convincing evidence that the noncitizen poses a flight risk or a danger to the community. *Id.* at 613. As the *Lora* court noted, every federal circuit to have considered the issue has agreed. *Id.* at 614; *see Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 233 (3d Cir. 2011) (“when detention becomes unreasonable, the Due Process Clause demands a hearing, at which the Government bears the burden of proving that continued detention is necessary to fulfill the purposes of the detention statute”);

*Rodriguez*, 715 F.3d at 1138; *Ly v. Hansen*, 351 F.3d 263, 268 (6th Cir. 2003); *see also Reid v. Donelan*, 991 F. Supp. 2d 275, 279 (D. Mass. 2014); *Uritsky v. Ridge*, 286 F. Supp. 2d 842, 846-47 (E.D. Mich. 2003).

45. The only federal circuit to have addressed the constitutionality of mandatory detention under § 1225(b) has held that, like detention under § 1226(c), the government’s mandate to detain individuals without bond must be construed as “implicitly time-limited” in order to comport with due process. *Rodriguez*, 715 F. 3d at 1144. In *Rodriguez*, which was relied upon heavily by the Second Circuit in *Lora*, the Ninth Circuit held that in order for the statute to comply with due process, “the mandatory provisions of § 1225(b) simply expire at six months, at which point the government’s authority to detain the alien would shift to § 1226(a), which is discretionary and which we have already held requires a bond hearing.” *Id.* (citing *Casas-Castrillon v. Dep’t of Homeland Sec.*, 535 F.3d 942, 948 (9th Cir. 2008)); *see also Nadarajah v. Gonzales*, 443 F.3d 1069, 1076 (9th Cir. 2006) (holding that 8 U.S.C. § 1225(b)(2)(A) does not authorize indefinite detention).

46. Several district courts have agreed with the Ninth Circuit that “for the purposes of analyzing indefinite detention” there is “no effective difference” between § 1225(b)(2) and § 1226(c). *Bautista*, 862 F. Supp. 2d at 380 n.5; *see also Ricketts*, No. 16 CIV. 2016 WL 7335675 at \*4, *Arias*, 2016 WL 3906738 at \*10; *Saleem*, 2016 WL 4435246 at \*5; *Alaka*, 225 F. Supp. 2d at 559; *Ahad*, No. 2017 WL 66829 at \*2; *Maldonado*, 150 F. Supp. 3d at 799-800.

47. The issue of whether noncitizens are entitled to a bond hearing within six months of his or her detention is currently under review by the Supreme Court in the pending case of *Jennings v. Rodriguez*, Case No. 15-1204. Holding this action in abeyance pending a decision in *Jennings*

is not appropriate given Mr. Celestin's substantial liberty interest at stake and that the government will suffer no prejudice from proceeding with this action.

48. Because the constitutional limitations set forth in *Lora* for detention under § 1226(c) apply with equal force to detention under § 1225(b), the statute must be construed to contain an equivalent limitation. Because Mr. Celestin will be detained for over the six months deemed permissible in *Lora*, he is entitled to an immediate individualized hearing at which the government bears the burden of showing that his detention is reasonable and justified.

**THIRD CAUSE OF ACTION:  
VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT—  
8 U.S.C. § 1225(b) AS APPLIED TO MR. CELESTIN  
VIOLATES HIS RIGHT TO DUE PROCESS**

49. Petitioner repeats and realleges the allegations of paragraphs 1 through 47 of this Petition as fully set forth herein.

50. Indefinite mandatory detention under 8 U.S.C. § 1225(b) is unconstitutional as applied to Mr. Celestin because, like the plaintiff in *Lora*, “it is certain that... his total period of detention” will exceed six months and because the cursory discretionary review process afforded by Respondents does not vindicate his right to due process. *Lora*, 804 F.3d at 606 n.11.

51. If prolonged detention under 8 U.S.C. § 1226(c) without a bond hearing violates a detainee's right to due process, *see id.* at 606, so too does prolonged detention under 8 U.S.C. § 1225(b) without a bond hearing. *Rodriguez*, 715 F.3d at 1142-44. Mr. Celestin has been detained at present for over five months. His next appearance in Immigration Court will take place on June 16, 2017, at which point he will have been detained for over seven months. Because it is almost certain that even on June 16, 2017 his removal case will not conclude, his period of detention is likely to extend far beyond seven months. *Cf. Lora*, 804 F.3d at 606



(finding that Mr. Lora’s period of detention would inevitably be longer than six months and granting petition when he had only been detained for 5.5 months).

52. Moreover, the discretionary detention review which individuals detained under § 1225(b) may seek pursuant to 8 U.S.C. § 1182(d)(5)(A) does not meet the requirements of due process. *See Rodriguez*, 715 F.3d at 1144 (“the discretionary parole system available to § 1225(b) detainees is not sufficient to overcome the constitutional concerns raised by prolonged mandatory detention” because it is “purely discretionary and its results are unreviewable by IJs,” and determinations are not based on whether the alien poses a flight or risk or a danger to the community) (citations omitted).

53. Under 8 U.S.C. § 1182(d)(5)(A), the Attorney General may “in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States.” 8 U.S.C.A. § 1182(d)(5)(A); *see also* 8 C.F.R. 212.5(b) (further restricting parole to limited categories including juveniles, pregnant women and witnesses in criminal cases). However, the parole statute—which does not require any showing that the detainee is either a flight risk or a danger—falls far short of the due process required for noncitizens subjected to mandatory detention. *Lora*, 804 F.3d at 616 (requiring a bond hearing before an immigration judge at which “the detainee must be admitted to bail unless the government establishes by clear and convincing evidence that the immigrant poses a risk of flight or a risk of danger to the community”); *see also Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (holding that the government “must prove by clear and convincing evidence that an alien is a flight risk or a danger to the community to justify denial of bond” given “the substantial liberty interest at stake”); *Leslie v. Att’y Gen. of U.S.*, 678 F.3d 265, 267 n.2 (3d Cir. 2012)

(rejecting as a procedurally inadequate bond hearing a “post order custody review” conducted by DHS, at which neither the detainee nor counsel was present and no hearing was held); *Diop*, 656 F.3d at 231 (§ 1226(c) only authorizes detention for “a reasonable amount of time, after which the authorities must make an individualized inquiry into whether detention is still necessary to fulfill the statute’s purposes of ensuring that an alien attends removal proceedings and that his release will not pose a danger to the community”); *Boumediene v. Bush*, 553 U.S. 723, 792 (2008) (rejecting an internal government review process as a constitutionally inadequate substitute for habeas corpus).

54. Indeed, in *Lora*, the Second Circuit was careful to allocate the burden in a constitutionally adequate bond proceeding to the government, and to hold that if the government fails to meet its burden to show that the detainee is a flight risk or danger to the community then the detainee “*must* be admitted to bail.” 804 F.3d at 616 (emphasis added). An internal custody review, of the sort afforded to Mr. Celestin, is not held before a neutral Immigration Judge; the detainee and his or her attorney are not present; no hearing is held; and no explanation need be offered for denial. This wholly discretionary, unreviewable procedure does not satisfy the requirements of due process. *Rodriguez*, 715 F.3d at 1144.

55. Moreover, the unreviewable parole procedure does not hew to the purpose of the detention statute. The purposes of civil immigration detention are to ensure the appearance of noncitizens at future hearings and to mitigate danger to the community pending the completion of removal. See *Demore v. Kim*, 538 U.S. at 532-33 (Kennedy, J., concurring); *Zadvydas v. Davis*, 533 U.S. at 690-91. Yet the requirements of 8 U.S.C.A. § 1182(d)(5)(A) are far more stringent.

56. Mr. Celestin's case illustrates the inadequacy of the parole procedure. The ample documentation of his identity and address, if released, show he is neither a flight risk or a danger. Yet he remains detained without any right to an individualized determination as to whether his detention serves any purpose.

57. For the reasons set forth above, Mr. Celestin's continued detention under 8 U.S.C. § 1225(b) without a bond hearing violates his right to due process. However, the Court may avoid reaching this constitutional issue by construing § 1225(b) to contain an implicit reasonableness limitation, as the Second Circuit has done with respect to 8 U.S.C. § 1226(c). *Lora*, 804 F.3d at 616.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

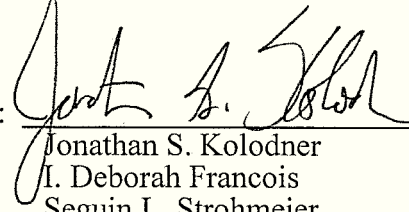
- 1) Assume jurisdiction over this matter;
- 2) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately on his own recognizance or under parole, bond, or reasonable conditions of supervision, or, in the alternative, ordering Respondents to provide Petitioner with a constitutionally adequate, individualized hearing before an Immigration Judge at which Respondents bear the burden of establishing that his continued detention is justified on the basis of either flight risk or a prospective danger to the community;
- 3) Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other statute; and
- 4) Grant such further relief as the Court deems just and proper.

Dated: New York, New York  
April 4, 2017

Respectfully submitted,

CLEARY GOTTlieb STEEN & HAMILTON LLP

By:



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*Attorneys for Petitioner Renaldo Celestin*

## **EXHIBIT A**

Department of Homeland Security  
U.S. Citizenship and Immigration Services

# Record of Determination/Credible Fear Worksheet

NYC	ZNK		CE EST
District Office Code	Asylum Office Code	Alien's File Number	Alien's Last/ Family Name
MOLLOY	CONNOR	HAITI	
Asylum Officer's Last Name	Asylum Officer's First Name	Alien's Nationality	

*All statements in italics must be read to the applicant*

## SECTION I:

## INTERVIEW PREPARATION

1. 10/26/16 Date of arrival [MM/DD/YY]
2. 10/26/16 Date of detention [MM/DD/YY]
3. 12/13/16 Date of AO orientation [MM/DD/YY]
4. 12/13/16 Date of interview [MM/DD/YY]
5. ☒ Applicant received and signed Form M-444 and relevant *pro bono* list on 12/13/16
6. ☒ Applicant received and signed Form M-444 and relevant *pro bono* list on 12/13/16
7. ☒ Applicant received and signed Form M-444 and relevant *pro bono* list on 12/13/16
8. ☒ Applicant received and signed Form M-444 and relevant *pro bono* list on 12/13/16
9. ☒ Applicant received and signed Form M-444 and relevant *pro bono* list on 12/13/16
10. Does applicant have consultant(s)? ☒ Yes ☐ No
11. If yes, consultant(s) name, address, telephone number and relationship to applicant  
SEMAW CELESTIN FLORIDA  
COUSIN
12. Persons present at the interview (check which apply):
13. ☒ Consultant(s)
14. ☒ Other(s), list: TELEPHONIC INTERPRETER
15. ☐ No one other than applicant and asylum officer
16. Language used by applicant in interview: CR
17. LL 200857 ☒ Yes ☐ No
18. Interpreter Service, Interpreter ID Number. ☐ Yes ☒ No
19. Interpreter Service, Interpreter ID Number. ☐ Yes ☒ No
20. ☒ Interpreter was not changed during the interview
21. ☐ Interpreter was changed during the interview for the following reason(s):
22. ☐ Applicant requested a female interpreter replace a male interpreter, or vice versa
23. ☐ Applicant found interpreter was not competent
24. ☐ Applicant found interpreter was not neutral
25. ☐ Officer found interpreter was not competent
26. ☐ Officer found interpreter was not neutral
27. ☐ Bad telephone connection
28. ☒ Asylum officer read the following paragraph to the applicant at the beginning of the interview:

*The purpose of this interview is to determine whether you may be eligible for asylum or protection from removal to a country where you fear persecution or torture. I am going to ask you questions about why you fear returning to your country or any other country you may be removed to. It is very important that you tell the truth during the interview and that you respond to all of my questions. This may be your only opportunity to give such information. Please feel comfortable telling me why you fear harm. U.S. law has strict rules to prevent the disclosure of what you tell me today about the reasons why you fear harm. The information you tell me about the reasons for your fear will not be disclosed to your government, except in exceptional circumstances. The statements you make today may be used in deciding your claim and in any future immigration proceedings. It is important that we understand each other. If at any time I make a statement you do not understand, please stop me and tell me you do not understand so that I can explain it to you. If at any time you tell me something I do not understand, I will ask you to explain.*

Alien's File Number: [REDACTED]

**SECTION II:****B. JGRA, C INFO, MAING**2.1 **CELESTIN**

Last Name/ Family Name (ALL CAPS)

2.2 **RENALDO**

2.3

First Name

Middle Name

2.4 [REDACTED] 92

2.5

Gender ☒ Male ☐ Female

Date of birth [MM/DD/YY]

2.6 **SELIM SAMBA - ALIAS IN COLOMBIA**

Other names and dates of birth used

2.7 **HAITI**

2.8

**HAITI**

Country of birth

Country (countries) of citizenship (list all)

2.9 **LA GONAIVES**

Address prior to coming to the U.S. (List Address, City/Town, Province, State, Department and Country).

2.10 **HAITIAN**

2.11

**CHRISTIAN-  
PROTESTANT**

2.12

**CREOLE**

Applicant's race or ethnicity

Applicant's religion

All languages spoken by applicant

2.13 Marital status: ☒ Single ☐ Married ☐ Legally separated ☐ Divorced ☐ Widowed2.14 Did spouse arrive with applicant? ☐ Yes ☒ No2.15 Is spouse included in applicant's claim? ☐ Yes ☒ No

2.16 If currently married (including common law marriage) list spouse's name, citizenship, and present location (if with applicant, provide A-Number):

2.17 Children: ☐ Yes ☒ No

2.18 List any children (Use the continuation section to list any additional children):

Date of birth (MM/DD/YY)	Name	Citizenship	Present location (if w/PA, list A-Numbers)	Did child arrive with PA?	Is child included in PA's claim?
				<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No



Alien's File Number: [REDACTED]

- 2.19 Does applicant claim to have a medical condition (physical or mental), or has the officer observed any indication(s) that a medical condition exists? If YES, answer questions 2.20 and 2.21 and explain below. ☐ Yes ☒ No

2.20 Has applicant notified the facility of medical condition? ☐ Yes ☐ No

2.21 Does applicant claim that the medical condition relates to torture? ☐ Yes ☐ No

- 2.22 Does the applicant have a relative, sponsor or other community ties, including spouse or child already listed above? ☒ Yes ☐ No

2.23 If YES, provide information on relative or sponsor (use continuation section, if necessary):

SEMAW CELESTIN

COUSIN

Name

Relationship

FLORIDA

Address

Telephone Number

☐ Citizen ☒ Le Permanent Resident ☐ Other

**SECTION III:****CREDIBLE FEAR INTERVIEW**

The following notes are not a verbatim transcript of this interview.

These notes are recorded to assist the individual officer in making a credible fear determination and the supervisory asylum officer in reviewing the determination.

There may be areas of the individual's claim that were not explored or documented for purposes of this threshold screening.

The asylum officer must elicit sufficient information related to both credible fear of persecution and credible fear of torture to determine whether the applicant meets the threshold screening. Even if the asylum officer determines in the course of the interview that the applicant has a credible fear of persecution, the asylum officer must still elicit any additional information relevant to a fear of torture. Asylum officers are to ask the following questions and may use the continuation sheet if additional space is required. If the applicant replies YES to any question, the asylum officer must ask follow-up questions to elicit sufficient details about the claim in order to make a credible fear determination.

- 3.1 a. Have you or any member of your family ever been mistreated or threatened by anyone in any country to which you may be returned? ☒ Yes ☐ No

See Q&amp;A

- b. Do you have any reason to fear harm from anyone in any country to which you may be returned?

☒ Yes ☐ No

See Q&amp;A

- c. If YES to questions a and/or b, was it or is it because of any of the following reasons? (Check each of the following boxes that apply).

☐ Race ☐ Religion ☐ Nationality ☐ Membership in a particular social group ☐ Political Opinion  
No nexus

Alien's File Number: [REDACTED]

- 4.2 ☒ At the conclusion of the interview, the asylum officer must read the following to applicant:

If the U.S. Citizenship and Immigration Services determines you have a credible fear of persecution or torture, your case will be referred to an immigration court, where you will be allowed to seek asylum or withholding of removal based on fear of persecution or withholding of removal under the Convention Against Torture. The Field Office Director in charge of this detention facility will also consider whether you may be released from detention while you are preparing for your hearing. *If the asylum officer determines that you do not have a credible fear of persecution or torture, you may ask an Immigration Judge to review the decision. If you are found not to have a credible fear of persecution or torture and you do not request review, you may be removed from the United States as soon as travel arrangements can be made. Do you have any questions?*

A: No

- 4.3 ☒ At the conclusion of the interview, the asylum officer must read a summary of the claim, consisting of the responses to Questions 3.1 a-c and information recorded in the Additional Information/Continuation section, to applicant.

\*\*\*Typed Question and Answer (Q&A) interview notes and a summary and analysis of the claim must be attached to this form for all negative credible fear decisions. These Q&A notes must reflect that the applicant was asked to explain any inconsistencies or lack of detail on material issues and that the applicant was given every opportunity to establish a credible fear.

#### SECTION IV:

#### CREDIBLE FEAR FINDINGS

##### A. Credible Fear Determination:

##### Credibility

- 4.1 ☒ There is a significant possibility that the assertions underlying the applicant's claim could be found credible in a full asylum or withholding of removal hearing.
- 4.2 ☐ Applicant found not credible because (check boxes 4.3-4.5, which apply):
- 4.3 ☐ Testimony was internally inconsistent on material issues.
- 4.4 ☐ Testimony lacked sufficient detail on material issues.
- 4.5 ☐ Testimony was not consistent with country conditions on material issues.

##### Nexus

- 4.6 ☐ Race 4.7 ☐ Religion 4.8 ☐ Nationality 4.9 ☐ Membership in a Particular Social Group

(Define the social group):

- 4.10 ☐ Political Opinion 4.11 ☐ Coercive Family Planning (CFP) 4.12 ☒ No Nexus

##### Credible Fear Finding

- 4.13 ☐ Credible fear of persecution established.
- OR
- 4.14 ☒ Credible fear of torture established.
- OR
- 4.15 ☐ Credible fear of persecution NOT established and there is not a significant possibility that the applicant could establish eligibility for withholding of removal or deferral of removal under the Convention against Torture.

##### B. Possible Bars:


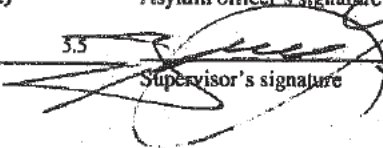
- 4.16 ☐ Applicant could be subject to a bar(s) to asylum or withholding of removal (check the box(es) that applies and explain on the continuation sheet):
- 4.17 ☐ Particularly Serious Crime 4.18 ☐ Security Risk 4.19 ☐ Aggravated Felon
- 4.20 ☐ Persecutor 4.21 ☐ Terrorist 4.22 ☐ Firmly Resettled
- 4.23 ☐ Serious Non-Political Crime Outside the United States
- 4.24 ☒ Applicant does not appear to be subject to a bar(s) to asylum or withholding of removal.

Alien's File Number: [REDACTED]

## C. Identity:

- 4.25 ☒ Applicant's identity was determined with a reasonable degree of certainty (check the box(es) that applies):
- 4.26 ☒ Applicant's own credible statements. (If testimony is credible overall, this will suffice to establish the applicant's identity with a reasonable degree of certainty).
- 4.27 ☐ Passport which appears to be authentic.
- 4.28 ☐ Other evidence present: y applicant or in an cant's file List):
- 4.29 ☐ Applicant's identity was not determined with a reasonable degree of certainty. (Explain on the continuation sheet.)

## SECTION V: ASYLUM OFFICER / SUPERVISOR NAMES AND SIGNATURES

5.1	<u>MOLLOY, CONNOR ZNK269</u> Asylum officer name and ID CODE (print)	5.2	 Asylum officer's signature	5.3	<u>12/13/16</u> Decision date
5.4	<u>LEIGH, FRANCIS</u> Supervisory asylum officer name	5.5	 Supervisor's signature	5.6	<u>DEC 13 2016</u> Date supervisor approved decision

## ADDITIONAL INFORMATION/CONTINUATION

## Interpreter Info

Language: Creole	ID #: LL 200857	Start: 10:32am
------------------	-----------------	----------------

APSO	INTERPRETER
Do you swear to faithfully translate from Creole to English and English to Creole?	Yes.
Do you swear to keep everything you hear today confidential and remain neutral, and to inform me if you are no longer able to neutral?	Yes.

nterpreter, please introduce yourself to the applicant.

## INTRODUCTION

APSO	APPLICANT
Good morning, my name is Officer Molloy, and I'll be conducting the interview today. You're talking to me today because you expressed a fear of returning to Haiti. Are you still afraid to return?	I cannot go back to Haiti. If I do I will die.
The interview today is going to be in two parts. In the first part I will ask you some basic questions so I can fill out paperwork for you. The second part is more like a conversation, where I will ask you about why you left your country.	
Is Creole your native language?	Yes.
Did you have a chance to read th -444?	e"
Do you have any questions about the process before we begin?	I had some questions.
Go on.	Things what I saw on the paper, I



Alien's File Number: [REDACTED]

	can talk about everything that happened to me in my country why I cannot go back.
I'm sorry, was that a question?	No.
Do you have any questions for me after reading this form?	I went from my country to Brazil, I had a lot of difficulty when I was in my country I almost died - I had to go to Brazil.
We are going to talk about that later. Right now I only want to know if you have any questions about what you read.	I don't have any questions to ask, but there are some things I see on the form that I don't know what they mean, that I don't understand.
Like what? I'll explain anything you ask.	Something for me to take a decision if I want to go back home. A nationality, I am Haitian.
Are you asking for an explanation of something? I don't understand.	No, I am not asking for that, since I came for the judgement today. I am just waiting for you to ask me so I can tell you.
Okay, then I need you to sign this form, confirming that you received this information.	
I'm also going to give you a list of attorneys in the area that may represent you for free.	But there are certain things on the paper that I do not understand.
So please tell me what you don't understand so that I have an opportunity to explain it to you.	One thing that I understand on the paper is that it says if I was persecuted in my country, and then it says deportation and I don't understand the rest.
<b>Credible Fear process summarized for the applicant.</b>	
<b>Applicant interrupted and said he wants to progress with the interview and end the explanation of the Credible Fear process.</b>	
Do you have an attorney?	No.
It's important that you know that you have the right to have an attorney.	But I don't have money to pay for a lawyer.
This is why we give you this list of lawyers who may work for free.	Okay.
Would you like to reschedule so you can try to get an attorney? Or do you want to move forward today without one?	I will do it without a lawyer.
Do you have anyone else you would like to call to put on the line during your interview?	Somebody to put next to me?
You have the right to call somebody so they can listen to the interview, if you want to do that.	I don't have a problem with that.
Do you want me to call somebody?	Yeah, you can call someone.
This is not something for me. This is for you, if you want to call somebody.	Yes, I have someone here.
Do you want me to call them?	It's not a problem, you can call

Allen's File Number: [REDACTED]

Do you want to call them?	them.
What is their name?	Yes.
How do you know this person?	Semaw Celestin
What is his phone number?	He is my cousin
Do you know his address?	<span style="background-color: black; color: black;">[REDACTED]</span>
Do you know if he is a citizen, a legal permanent resident, or something else?	I don't have the address, but he told me he's in Florida.
<i>Applicant's cousin Semaw Celestin put on phone as a consultant for interview.</i>	Permanent resident.
Now the interpreter will read you a short paragraph about the interview.	
<b>INTERPRETER READS (1.28) TO APPLICANT</b>	
I would now like to place you under oath. Do you swear to tell the truth, the whole truth and nothing but the truth?	Yes. I swear in the name of god to tell the truth.
Do you have any medical condition that we should know about?	No

*Note: The following notes are not verbatim, they are recorded to assist the officer in making a CF determination and the SAPSO in reviewing the determination.*

**BIOGRAPHIC INFO**

APSO	APPLICANT
What is your complete name?	See I-870
What is your date of birth?	See I-870
Have you ever used any other names or dates of birth?	See I-870
Where you born in Haiti?	See I-870
What was your address when you last lived in Haiti?	See I-870
What is your race or ethnicity?	See I-870
What is your religion?	See I-870
Do you speak any other languages besides Creole fluently?	See I-870
What is your marital status?	See I-870
Do you have any children?	See I-870
Do you have any family or friends in the U.S. whom we could contact if we need to reach you?	See I-870
Have you ever lived for an extended period of time in another country besides Haiti and Brazil?	Besides Haiti and Brazil, no.
Is this the first time you've ever been to the US?	Yes.

Alien's File Number: [REDACTED]

Why did you leave Brazil?	I spent 1 year and three months there, I could not find work. It was difficult to pay rent and find food, life was very hard. I left the country and got on the road to come to the United States.
Do you have any fear of returning to Brazil?	Because when I was looking for work, they told me they couldn't hire me because I am Black, and the Haitian people were causing Brazil to have a crisis.
Would you be harmed if you are returned to Brazil?	I have fear of returning because I looked for work, everywhere I go, they would tell me to get out, because I was black they wouldn't hire me, I was in fear, where I was sleeping, the landlord came and said to get out because I'm black, I came to the country, and I was in fear because I don't know what is in those people's hearts when they tell me those kind of things.
You didn't really answer if you would be harmed or not.	Yes.
You do fear you would be harmed?	Yes I am in fear of returning to Brazil because in the neighborhood they were killing Haitians.

### INTERVIEW

Now I'm going to ask some questions about why you left your country

### PAST

APSO	APPLICANT
Why are you seeking protection in the United States?	I was at my mom and dad's house. I was with my older brother. Some guys came into the house wearing black things over their heads. They said we were under arrest. They took me and my brother out to their car. They drove us around, then took my brother out, into the woods, and they killed him with machetes, guns, and knives.
Go on.	After they killed my brother they took me to the same spot where my brother was. They beat me up, cut my face and head. I still have scars. They beat me up badly. They left me and went to my mom's house to get my mom, but my mom escaped.
Go on.	So my mom went to the neighbors house, to escape them. When my parents went to the police, they didn't know where we were. They went out looking and found me in the woods. But my brother was already dead, stabbed with machetes.
What did you do after this?	When I came to I found myself in the hospital.



Alien's File Number: [REDACTED]

Continue.	<p>Sir I can show you these are all the scars that I endured when they beat me up and cut me.  <i>[shows officer scarring on face]</i>          When I came to I found myself in the hospital. Then I went to my dad's mother's house, then they came back to my house looking for me.          My mom called my dad's father who was living on the border of Santo Domingo. My dad's father came and got me and went to Santo Domingo with me.</p>
Did you ever return to Haiti after this?	No.
Did you ever hear from these people who attacked you before or after your attack, at any time in your life?	My mother said that they still come around. They talk. They say, where is the one who didn't die, who we didn't kill. If we were to find him, we will have the dogs eat him in the woods.
Who were these people?	Those are thieves that go around stealing people's lands, people's stuff. They have a base in the woods.
Why did they say that you were under arrest?	Because my dad has the land, and they want to take the land from him. My dad is not very mobile or active anymore. He has problems with his lower back. So it's usually me and my brother who work the land. So they wanted the land from us, from my dad.
Did they attack you so you would give them the land, or to make your dad give them the land?	They kill my brother because my brother was the oldest one, you know what I mean, they thought if I get rid of him first, they thought it would be easy for them to get the land.
Why didn't they kill you?	By the grace of god. I thank god. They beat me up. I was injured.
How would this attack on you help them get the land?	The thieves or me?
They attacked you because they wanted the land, right?	Yes.
So how would that attack help them get the land?	As with my brother because he was the one doing most of the work with my dad. That is why he was beat up and killed. Then they beat me up.
Will you please listen closely.	
How does them hurting you, help them get the land?	In Haiti that is what they do. They kill him, they beat me up, because we were the ones that were there with my parents and they wanted to take the lands. They make fake papers.
Did the thieves attack you so that your father would give them the land?	They did it so that they could take it. They took it, my dad couldn't do anything.
Did the thieves attack you so that they could take your land from you?	Yes.
Have you ever been harmed by any other person at any time in your life in Haiti?	Except those people who almost kill me, no one else.

Allen's File Number: [REDACTED]**WFF**

Do you think you will be hurt if you return to Haiti?	Yes, they would kill me.
The thieves you've already been talking about?	Yes. They would know that I would go back on the land.
Could you please list all the motives the thieves would have to harm you if you went back to Haiti.	First of all, they beat me up and killed my brother. Then they went back to my house to look for me, they didn't find me.
That's not what I asked. I asked you to list all of the reasons the thieves would have to harm you if you returned to Haiti.	The reason they would kill me when they said they arrested me before, and then now. They would know that I would go back and call them into justice for the land.
Why did they keep using the word "arrest?" Did those people work for the police?	No. That is what they do. They say that to frighten you so you don't go for help or intimidation.
So these people have nothing to do with the police?	No.

**CAT**

Did you tell the police that those people attacked you?	the police said they didn't have guards in the cars to come out. The justice of the peace did the report regarding the dead body.
Did you tell the police that you were in danger?	Yes. The justice of the peace made a report and saw the dead body and saw where I was when they beat me up. But the police said they did not have guards in the cars to come out.
But you were afraid that you were going to be killed, so why didn't the police come to protect you?	That is just the way it is in Haiti. You could be dying and you call the police for help and they won't come help you.
How do you know that that is true?	When that happened to me we called the police and the police said they had no gas in the car.
Have you ever heard of someone calling the police for help that the police did not help?	Yes, yes
Please tell me about that.	My neighbors, they broke into the house, the neighbors called for help, the police said the guards in the cars are done for the day and they cannot come out anymore.
Do you have any reason to fear harm from the police or the government?	I don't have anything to do with the government. But if I were to go back to where I came from, my life would be wasted.
Have you ever seen the police doing anything corrupt?	No.

**Other nexus**

I understand you fear you would be harmed by these thieves. But I would also like to ask you a few questions to see if you would be harmed for any other specific reason.	No.
Do you fear harm in Haiti from anyone who isn't those thieves - from a different person?	
Do you fear you would be harmed in Haiti because of your Baptist religion?	No.



Alien's File Number: [REDACTED]

Do you fear you would be harmed in Haiti because you belong to any group that people think is different from everyone else?	No.
Do you fear you would be harmed in Haiti because of your political opinions?	No.
Besides what we've talked about, anyone else in Haiti ever mistreated you in any way?	No.

**Bar questions**

Have you ever served in the military or received military training?	No.
Have you ever harmed anyone for any reason?	No.
Have you ever committed a crime in any country?	No.
Have you ever been convicted of a crime in any country?	No.
Have you ever committed an armed act or an act that could be considered a terrorist act?	No.
Have you ever been a member of an armed group or a group that could be considered a terrorist group?	No.
Have you ever provided any type of support, like food, housing, money, weapons transportation, to a person or group who commits armed acts?	No.

**Previous statements**

After you were detained, an officer asked if you would be harmed in Haiti and you said no. Can you explain that?	When I was on the border of CA and MX someone was asking me questions, they didn't give me a chance to explain the harm I endured, they just had me say yes or no. my mother's name.
So if you could just say yes and no, why didn't you say yes instead of no.	What about your mother and father, whether you are married, whether you have children, yes or no. you come to the united states.
But when they asked if you would be harmed in Haiti you said no. Please explain that.	It is possible that I didn't understand the person because they were speaking Spanish, but if they had asked if any harm came to me I would say yes and explain. That person was the one who had me sign all the paper.

Those are all of the questions I have for you. Is there anything else that you would like to add?	No.
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**INTERPRETER READS (3.2) TO APPLICANT.**

Do you have any questions about that?	No.
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**APSO summarized the case to the applicant as required by section 3.3.**

You stated that you were accosted by a group of thieves. They killed your brother and beat you severely because they wanted your land. After this they came looking for you and you fled Haiti. You fear you would be killed in Haiti by these thieves. You believe the police would acquiesce to this harm, because previously you made the police aware of the danger you faced and they breached their legal duty to intervene. Because of this, you fear the police would do the same thing in the future and you would be killed.

Is that all correct?	Yes
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End: 12:24pm

## **EXHIBIT B**

U.S. Department of Homeland Security  
Immigration and Customs Enforcement

Notice to EOIR: Alien Address

Date: 12/16/16

To: Office of the Immigration Judge, EOIR  
201 Varick St  
New York, NY 10014

From: ICE ERO  
201 Varick St., Suite 1219  
New York, NY 10014

Respondent: Celestin, Renaldo

A Number: [REDACTED]

This is to notify you that this respondent is:

☐ Currently incarcerated by federal, state or local authorities. A charging document has been served on the respondent and an Immigration Detainer-Notice of Action by ICE (Form I-247) has been filed with the institution shown below. He/she is incarcerated at:

His/her anticipated release date is.

☒ Detained by ICE on November 16, 2016 at:  
Hudson County Jail  
30-35 Hackensack Avenue  
Kearny, NJ 07032

☐ Detained by ICE and transferred on

☐ Released from ICE custody on the following condition(s):

- ☐ Order of Supervision or Own Recognizance (Form I-220A)
- ☐ Bond in the amount of *Enter Dollar Amount of Respondent's Bond*
- ☐ Removed, Deported, or Excluded
- ☐ Other

RECEIVED  
IMMIGRATION COURT  
201 VARICK STREET  
NEW YORK, NY  
16 DEC 19 PM 2:59  
U.S. DEPT. OF JUSTICE

PLAnet

Upon release from ICE custody, the respondent reported his/her address and telephone number would be:

☐ I hereby certify that the respondent was provided an EOIR-33 Form and notified that they must inform the Immigration Court of any further change of address.

ICE Official: J. Ragoonath. DO



## DEPARTMENT OF HOMELAND SECURITY

## NOTICE TO APPEAR

In removal proceedings under section 240 of the Immigration and Nationality Act:

File No: [REDACTED]

In the Matter of:

Respondent: CELESTIN, Renaldo

currently residing at:

c/o: DHS ICE, Hudson County Correctional Facility, 30-35 South Hackensack Avenue, Kearny, NJ  
07032

201-386-5600 x5084

(Number, street, city and ZIP code)

- ☒ You are an arriving alien.
- ☐ You are an alien present in the United States who has not been admitted or paroled.
- ☐ You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States.
2. You are a native of Haiti and a citizen of Haiti.
3. You applied for admission to the United States at the San Ysidro, CA, Port of Entry on or about 10/25/2016.
4. You did not then possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (Act), as amended, as immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

- ☒ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- ☒ Section 235(b)(1) order was vacated pursuant to: ☒ 8 CFR 208.30(f) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

Varick Street Immigration Court, 201 Varick Street, Room 1140, New York, NY 10014

(Complete Address of Immigration Court, including Room Number, if any)

On To Be Determined at To Be Determined to show why you should not be removed from the United States based on the charge(s)  
(Date) (Time)

set forth above.

Supervisory Asylum Officer

Date:

DEC 13 2016

(Signature and Title of Issuing Officer)

Lyndhurst, NJ  
(City and State)

**Notice to Respondent**

**Warning:** Any statement you make may be used against you in removal proceedings.

**Alien Registration:** This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

**Representation:** If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

**Conduct of the hearing:** At the time of your hearing, you should bring with you any affidavits or other documents, which you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear and that you are inadmissible or removable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of departure voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

**Failure to appear:** You are required to provide the DHS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the Department of Homeland Security immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

**Mandatory Duty to Surrender for Removal:** If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at <http://www.ice.gov/contact/ero>, as directed by DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act (the Act).

**U.S. Citizenship Claims:** If you believe you are a United States citizen, please advise DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

**Request for Prompt Hearing**

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office of Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before:

(Signature and Title of Immigration Officer)

(Signature of Respondent)

**Certificate of Service**

This Notice To Appear was served on the respondent by me on DEC 13 2016, in the following manner and in compliance with section 239(a)(1) of the Act.

☒ in person ☐ by certified mail, return receipt # \_\_\_\_\_ requested ☐ by regular mail

☒ Attached is a credible fear worksheet.

☒ Attached is a list of organizations and attorneys which provide free legal services.

The alien was provided oral notice, in the Spanish language, of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

(Signature of Respondent, if Personally Served)

(Signature and Title of Immigration Officer)