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8 UNITED STATES DISTRICT COURT
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
10

11 SELVIN JAHIR CASERES MORAN) CASE:3:26-CV-03580-RBM-MSB
12 PETITIONER,)
13 V.) TRAVERSE: REPLY TO
14) RETURN
15)
16 IMPERIAL DETENTION FACILITY)
17 DEFENDANT.)
18)
19)
20)
21)
22)
23)
24)
25)

26 **PETITIONER'S TRAVERSE TO RESPONDENTS' RETURN**

27 Petitioner files this Traverse in reply to
28 Respondents' Return. Respondents maintain that
29 Petitioner is detained under 8 U.S.C. § 1225(b)(2).
30 However, Respondents also acknowledge that courts in
31 this District have repeatedly rejected that position
32 under the same or similar facts and, on that basis,
33 Respondents do not oppose the Petition and defer to
34 the Court on the appropriate relief.
35

36 Petitioner respectfully submits that the Petition
37 be granted. The record before the Court supports
38 treatment under 8 U.S.C. § 1226(a), not § 1225(b)(2).
39

1 DHS's operative charging document places Petitioner in
2 § 240 removal proceedings as a respondent present in
3 the United States who has not been admitted or
4 paroled. It does not classify him as an arriving
5 alien. Further, Respondents' own exhibit does not
6 support their mandatory-detention position; it is not
7 the charging document and, in fact, states that
8 Petitioner was taken into custody as authorized by
9 section 236 of the INA.

10 I

11 THE OPERATIVE CHARGING DOCUMENT IS THE NOTICE TO
12 APPEAR, NOT RESPONDENTS' EXHIBIT

13 Respondents rely on Exhibit 1 to argue that
14 Petitioner is subject to mandatory detention under §
15 1225(b)(2). That exhibit, which is Form I-200, is not
16 the operative charging document in Immigration Court.
17 The operative charging document is the Notice to
18 Appear (NTA). The NTA placed Petitioner in removal
19 proceedings under § 240 of the INA. The NTA does not
20 designate Petitioner as an arriving alien. Instead, it
21 identifies him as an alien present in the United
22 States who has not been admitted or paroled.

23 DHS cannot place Petitioner into § 240 proceedings
24 as a non-arriving respondent, then rely on a separate
25 custody exhibit to deny him all access to an
Immigration Judge custody redetermination. The

1 question before this Court is not whether DHS may use
2 Exhibit 1 as an evidentiary record. The question is
3 what statutory authority governs Petitioner's present
4 civil detention while he is in § 240 proceedings.

5 II

6 RESPONDENTS' OWN EXHIBIT DOES NOT ESTABLISH §
7 1225(b)(2) CUSTODY

8 Respondents' Return states that Petitioner entered
9 the United States at or near Hidalgo, Texas, on or
10 about May 30, 2021, was apprehended almost
11 immediately, and is therefore detained under §
12 1225(b)(2). But the exhibit submitted with the Return
13 does not establish that conclusion. The exhibit is
14 dated in May 2026 and concerns Petitioner's custody in
15 2026. It references an alleged entry date of May 30,
16 2021, but it does not establish that Petitioner was
17 apprehended upon arrival in 2021.

18 If Respondents contend there was a 2021
19 apprehension, prior NTA, or other custody record
20 controlling this case, they did not provide that
21 document with the Return. More importantly,
22 Respondents' Exhibit 1 states that Petitioner is
23 "liable to being taken into custody as authorized by
24 section 236 of the Immigration and Nationality Act."
25 Section 236 corresponds to 8 U.S.C. § 1226, the
ordinary pre-removal detention statute that provides

1 for custody redetermination. Respondents cannot rely
2 on an exhibit that invokes section 236 while asking
3 this Court to treat Petitioner as categorically bond-
4 ineligible under § 1225(b)(2).

5 III

6 THE NTA AND CURRENT CASE POSTURE SUPPORT § 1226(a)

7 BOND ELIGIBILITY

8 The NTA confirms Petitioner is in § 240 removal
9 proceedings and does not mark him as an arriving
10 alien. DHS's own custody exhibit also references
11 section 236 authority. Because section 236 corresponds
12 to 8 U.S.C. § 1226, Petitioner's current detention
13 posture supports custody redetermination under §
14 1226(a), not categorical detention under § 1225(b)(2).

15 Respondents' position would allow DHS to use a §
16 1225(b)(2) label to deny a bond hearing even where the
17 operative NTA and custody exhibit point to § 240
18 proceedings and section 236 custody. That result is
19 inconsistent with the record and with the repeated
20 decisions in this District granting bond-hearing
21 relief under similar facts.

22 IV

23 THE MALDONADO-BAUTISTA CLASS-MEMBERSHIP DISPUTE DOES

24 NOT DEFEAT RELIEF

1 Respondents argue Petitioner is not a member of
2 the Maldonado-Bautista Bond Eligible Class because
3 they claim he was apprehended "almost immediately"
4 upon arrival.

5 The record shows Petitioner is in § 240
6 proceedings, is not designated as an arriving alien on
7 the NTA, and was taken into custody under an exhibit
8 that references section 236 authority. The exhibit
9 Respondents submitted is a Form I-200 dated May 5,
10 2026. Petitioner is an alien present in the United
11 States that was not admitted or paroled and entered
12 the country on or about May 30, 2021. There was no
13 document submitted involving custody of Petitioner in
14 2021 in Respondent's Return.

15 Therefore, even if the Court does not resolve the
16 Maldonado-Bautista class issue, the Court may grant
17 relief because Petitioner's current detention posture
18 supports a § 1226(a) bond hearing.

19 V

20 RESPONDENTS DO NOT OPPOSE RELIEF

21 Respondents expressly acknowledge that courts in
22 this District have repeatedly rejected the
23 government's § 1225(b)(2) position under the same or
24 similar facts. Respondents further state that if the
25 Court adheres to those prior decisions, the government

1 does not oppose the Petition and defers to the Court
2 on the appropriate relief.

3 Accordingly, Petitioner respectfully requests that
4 the Court grant the Petition.
5

6 **CONCLUSION**

7 For the foregoing reasons, Petitioner respectfully
8 requests that the Court grant the Petition and order
9 Respondents to provide Petitioner with an Immigration
10 Judge bond hearing governed by 8 U.S.C. § 1226(a)
11 within fourteen (14) days, or within any shorter
12 deadline the Court deems appropriate.

13
14 Alternatively, Petitioner requests release from
15 custody under reasonable conditions.
16
17

18 Date: 6/24/2026

Respectfully Submitted,

19
20 /s/ Joseph Mbacho
21 JOSEPH MBACHO, Esq.
22 Attorney for Petitioner
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