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

11 ABEBE MENGISTU,  
12  
13 Petitioner,  
14  
15 v.  
16 PATRICK DIVVER, et al.,  
17 Respondents.

Case No.: 25-cv-3812 AGS MSB

**RETURN TO HABEAS PETITION**

28

1 Petitioner has filed a habeas petition solely to “to seek enforcement of [his] rights as  
2 [a] member[] of the Bond [Eligible] Class certified in *Maldonado Bautista v. Santacruz*,  
3 No. 5:25-CV-01873-SSS-BFM (C.D. Cal.)” ECF No. 1 at ¶ 1. Specifically, the petition  
4 contains a single cause of action alleging Petitioner is entitled to an individualized bond  
5 hearing because he is a member of the “Bond Eligible Class” defined in *Bautista. Id.* at ¶  
6 27. Petitioner is not a member of the Bond Eligible Class, however, rendering his habeas  
7 petition legally infirm.

8 On November 25, 2025, the *Baustista* court certified a nationwide class of detained  
9 noncitizens, which the *Baustista* court described as the “Bond Eligible Class.” *Bautista*,  
10 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). To be a member of the Bond Eligible Class,  
11 a person must (1) have entered the United States without inspection, (2) not have been  
12 apprehended upon arrival, and (3) not be detained under 8 U.S.C. § 1126(c), 8 U.S.C. §  
13 1125(b)(1) or 8 U.S.C. § 1231 at the time the Department of Homeland Security made its  
14 initial custody determination. *Id.* at \*9.

15 Here, Petitioner entered the United States east of the Otay Mesa Port of Entry on or  
16 about September 8, 2025. *See* Form I-213, attached as Exhibit A. He was apprehended  
17 almost immediately, placed in expedited removal proceedings, and then placed in § 1229a  
18 removal proceedings after receiving a positive credible fear determination. *See* Notice to  
19 Appear, attached as Exhibit B. In connection with those proceedings, Petitioner’s next  
20 hearing is scheduled for February 4, 2026. In the meantime, Petitioner is mandatorily  
21 detained under 8 U.S.C. § 1225(b)(1). *See* 8 U.S.C. § 1125(b)(1)(B)(ii) (“If the officer  
22 determines at the time of the interview that an alien has a credible hear of persecution . . .  
23 the alien shall be detained for further consideration of the application for asylum.”).

24 Given these facts, Petitioner is not a member of the Bond Eligible Class because he  
25 has been detained since his initial apprehension under 8 U.S.C. § 1125(b)(1) and remains  
26 detained under that statute at the present time. Accordingly, Petitioner’s habeas petition is  
27 legally infirm and should be denied. *See Rodriguez v. Jeffreys, et al.*, No. 8:25CV714, 2025  
28

1 WL 3754411, \*16 (D. Neb. Dec. 29, 2025) (rejecting *Bautista* as basis for relief and  
2 denying habeas petition because, among other things, “there is ‘a bright-line rule’  
3 applicable in [these] circumstances”) (citations omitted); *see also Shahin v. Noem*, No. 25-  
4 cv-2496-AGS-KSC, ECF No. 12 (S.D. Cal. Dec. 23, 2025) (finding similarly situated  
5 petitioner detained under 8 U.S.C. § 1225(b)(1) and not entitled to a bond hearing).

6  
7 DATED: January 6, 2026


ADAM GORDON  
United States Attorney

8  
9 *s/ Michael Garabed*  
MICHAEL A. GARABED  
Assistant United States Attorney  
Attorneys for Respondents

U.S. Department of Homeland Security

Subject ID: [REDACTED]

Record of Deportable/Inadmissible Alien

Family Name (CAPS) <b>MENGISTE, ABEBE ALEMNEW</b>		First	Middle	[REDACTED]	
Country of Citizenship <b>ETHIOPIA</b>	Passport Number and Country of Issue	[REDACTED]		Height	Weight
U.S. Address <b>IN DHS CUSTODY</b>		File Number		Occupation <b>LABORER</b>	
Date, Place, Time, and Manner of Last Entry <b>09/08/2025, 1200, 8 mile(s) E of OTM, PMA(AFOOT)</b>		Passenger Boarded at		Scars and Marks <b>None Indicated</b>	
Number, Street, City, Province (State) and Country of Permanent Residence <b>NONE LIDETA, ADDIS ABABA, ETHIOPIA</b>		Date of Birth		F.B.I. Number	
Date of Birth		Age: [REDACTED]	Date of Action <b>09/09/2025</b>	Location Code <b>SDC/BRF</b>	
City, Province (State) and Country of Birth <b>LIDETA, ADDIS ABABA, ETHIOPIA</b>		AR <input checked="" type="checkbox"/>	Form: (Type and No.) Lifted <input type="checkbox"/> Not Lifted <input type="checkbox"/>		
NIV Issuing Post and NIV Number		Social Security Account Name			
Date Visa Issued		Social Security Number			
Immigration Record <b>NEGATIVE</b>		Criminal Record <b>None Known</b>			
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate)			Number and Nationality of Minor Children		
Father's Name, Nationality, and Address, if Known <b>See Narrative</b>		Mother's Present and Maiden Names, Nationality, and Address, if Known <b>See Narrative</b>			
Monies Due/Property in U.S. Not in Immediate Possession <b>None Claimed</b>		Fingerprinted? <input type="checkbox"/> Yes <input type="checkbox"/> No	Systems Checks <b>See Narrative</b>	Charge Code Word(s) <b>I7A1</b>	
Name and Address of (Last)(Current) U.S. Employer		Type of Employment	Salary	Employed from/to	
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)		[REDACTED]			
FINS #: [REDACTED]		I77 #: [REDACTED]		DNA Envelope #: [REDACTED]	
[REDACTED]		[REDACTED]		[REDACTED]	
		Left Index Print		Right Index Print	
<b>CREDIBLE FEAR CLAIM</b>					
ARREST COORDINATES:					
Latitude: 32.564505					
Longitude: -116.800533					
CONSEQUENCE DELIVERY SYSTEM:					
Classification: FIRA					
Alien has been advised of communication privileges		09/09/2025 14:04:16 0785541851.CBP		 Date: 2025.09.09 14:04:16 0785541851.CBP <b>Border Patrol Agent</b> (Signature and Title of Immigration Officer)	
Distribution:		Received: (Subject and Documents) (Report of Interview)			
TO FILE		Officer: [REDACTED]			
TO SECTOR		on: September 09, 2025 at 0628 (time)			
TO STATION		Disposition: Expedited Removal with Credible Fear			
		Examining Officer: [REDACTED] (A) Supervisory Border Patrol Agent			

U.S. Department of Homeland Security

Continuation Page for Form I213

Alien's Name MENGISTE, ABEBE ALEMNEW	File Number <del>XXXXXXXXXX</del> Event No: <del>XXXXXXXXXX</del>	Date 09/09/2025
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FATHER NAME AND ADDRESS:

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 Nationality:ETHIOPIA AMENGISEU, ALEMNEW  
 NONE  
 LIDETA, ADDIS ABABA, ETHIOPIA

MOTHER NAME AND ADDRESS:

-----  
 Nationality:ETHIOPIA ADANE, WUBENSH  
 NONE  
 LIDETA, ADDIS ABABA, ETHIOPIA

RECORDS CHECKED:

-----  
 CIS Negative  
 ABIS Negative  
 EARM Negative  
 NCIC Negative  
 NGI Negative  
 TECS Negative

Other Family/Associates Not in Event:

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 Father, AMENGISEU, ALEMNEW, ETHIO  
 Mother, ADANE, WUBENSH, ETHIO

CONSULATE NOTIFICATION:

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 THE SUBJECT WAS NOTIFIED OF THEIR RIGHT TO COMMUNICATE WITH A CONSULAR OFFICER FROM THEIR COUNTRY AS PER ARTICLE 36(1) (b) OF THE VIENNA CONVENTION ON CONSULAR RELATIONS. THE SUBJECT INDICATED THAT THEY UNDERSTOOD THIS RIGHT BUT DECLINED TO SPEAK WITH SOMEONE AT THIS TIME.

NARRATIVE:



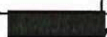



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 On September 8, 2025, Abebe Alemnew MENGISTE was encountered by Border Patrol Agent [REDACTED] within the Brown Field Station's area of responsibility. The area where this occurred is located approximately eight miles east of the Otay Mesa Port of Entry, located in Otay Mesa, California, and approximately a quarter mile north of the United States-Ethiopia International Boundary.

Signature [REDACTED] Date: 2025.09.09 14:04:22 -0700 0785541851.CBP	Title Border Patrol Agent
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U.S. Department of Homeland Security

Continuation Page for Form

I213

Alien's Name <b>MENGISTE, ABEBE ALEMNEW</b>	File Number  Event No: 	Date <b>09/09/2025</b>
<p>During the encounter with Agent  MENGISTE claimed to be a citizen and national of Ethiopia. MENGISTE was then taken into custody and transported to the Brown Field Station for further processing.</p> <p>At the station, MENGISTE' biographical and biometric information was submitted into the Department of Homeland Security (DHS) processing systems. These systems, along with record checks, revealed MENGISTE has no prior immigration and criminal records, or wants and warrants.</p> <p>MENGISTE was issued immigration and criminal reference numbers as annotated on page one of DHS Form I-213.</p> <p>Protocols were followed in compliance with the Customs and Border Protection (CBP) National Standards on Transport, Escort, Detention, and Search (TEDS) policy.</p> <p>On September 9, 2025, at 7:00 a.m., Border Patrol Agent  advised MENGISTE, in the Amharic language through free text translation, of his right to speak with a consular officer of Ethiopia in accordance with Article 36 of the Vienna Convention on Consular Relations. MENGISTE acknowledged that he understood these rights and declined to speak with a consular officer of Ethiopia.</p> <p>In processing, MENGISTE freely admitted to being a citizen and national of Ethiopia - not in possession of any valid immigration documents that would allow him to legally enter, pass through, or remain in the United States. Additionally, MENGISTE admitted to illegally entering the United States on September 8, 2025, at/near Otay Mesa, California, without presenting himself to an immigration officer for inspection at a CBP designated port of entry (see DHS Form I-867A). Furthermore, MENGISTE requested an asylum hearing for his case. Based on the information provided, MENGISTE does not appear to derive or acquire U.S. citizenship.</p> <p>MENGISTE did express fear or concern about being removed from the United States or would be harmed if returned to Ethiopia (see DHS Form I-867B).</p> <p>MENGISTE was found to be inadmissible under Section 212(a)(7) of the Immigration &amp; Nationality Act (INA) and under Section 235(b)(1) of the INA.</p> <p>MENGISTE was served with DHS Forms I-296, I-860, and provided M444 Tear Sheet/Raices class member. MENGISTE was also provided with a list of pro bono legal service providers.</p> <p>MENGISTE is currently being held at the Department of Homeland Custody pending his asylum hearing case.</p>		
Signature  Date: 2025.09.09 14:04:25 -0700 0785541851.CBP 	Title <b>Border Patrol Agent</b>	

DEPARTMENT OF HOMELAND SECURITY  
**NOTICE TO APPEAR**

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

File No: 

In the Matter of:

Respondent: ABEBE ALEMNEW MENGISTE currently residing at:  
OTAY MESA DETENTION CENTER, 7488 CALZADA DE LA FUENTE, SAN DIEGO CA, 92154-0000  
(Number, street, city, state and ZIP code) (Area code and phone number)

- 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 Ethiopia and a citizen of Ethiopia;
3. You entered the United States at an unknown location on or about September 8, 2025;
4. You did not then possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document;
5. You were not then admitted or paroled after inspection by an Immigration Officer.

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 an 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.

Section 212(a)(6)(A)(i) of the Act, as amended, as an alien present in the United States without being admitted or paroled, or who has arrived in the United States at any time or place other than as designated by the Attorney General.

- 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:  8CFR 208.30  8CFR 235.3(b)(5)(iv)

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

7488 Calzada de la Fuente, San Diego, CA 92154

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

on 10/06/2025 at 8:30 AM to show why you should not be removed from the United States based on the  
(Date) (Time)

charge(s) set forth above.  Supervisory Asylum Officer  
(Signature and Title of Issuing Officer)

Date: 9/25/2025 San Diego, California  
(City and State)

EOIR - 1 of 40

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 in 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 that 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. Including that you are inadmissible or removable. 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 voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/I-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS 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/oro, as directed by the 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 your 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.

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

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Upon information and belief, the language that the alien understands is AMHARIC

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for 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 of Respondent)
Date:
(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on 09-25-25, in the following manner and in compliance with section 239(a)(1) of the Act.

- X in person
X Attached is a credible fear worksheet.
X Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the ENGLISH 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 officer)

EOIR - 2 of 40

**Authority:**

The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

**Purpose:**

You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

**Routine Uses:**

For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at <https://www.dhs.gov/system-records-notices-sorn>. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at <https://www.justice.gov/opcl/doj-systems-records>. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

**Disclosure:**

Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.