U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

January 16, 2026

By ECF
Hon. Edgardo Ramos
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Sembene v. Joyce, et al.*, No. 26 Civ. 322 (ER)

Dear Judge Ramos:

This Office represents the respondents in the above-referenced habeas corpus matter. I write respectfully to respond to the Court's questions as set forth in the Court's Order to Answer dated January 14, 2026 (ECF No. 4), as follows:

a. whether Petitioner was, as the Petition alleges, *see* Doc. 1 ¶ 3, located in the Southern District of New York at the time that the Petition was filed and, if not, what District Petitioner was in at the time of filing and whether the Petition should be immediately transferred to that District, *see, e.g., Öztürk v. Hyde*, 136 F.4th 382, 391-92 (2d Cir. 2025); *Khalil v. Joyce*, 771 F. Supp. 3d 268 (S.D.N.Y. 2025);

a. Response: Petitioner was in the Southern District of New York when the Petition was filed. Thus, venue is proper.

b. Petitioner's current place of detention, and a contact person who can facilitate prospective counsel's access to Petitioner;

b. Response: Petitioner is currently detained at Delaney Hall Detention Facility, located at 451 Doremus Avenue, Newark, New Jersey 07105. Information regarding detainee access at the facility can be found at the following website: https://www.ice.gov/detain/detention-facilities/delaney-hall-detention-facility.

c. the statutory provision(s) under which Respondents assert the authority to detain Petitioner;

c. Response: Respondents assert that the statutory authority governing Petitioner's detention is 8 U.S.C § 1225(b)(2)(A).

d. whether Respondents would consent to issuance of the writ—subject to preservation of Respondents' arguments for appeal;

d. Response: Respondents do not consent to the issuance of the writ; however, they acknowledge that the facts and legal issues presented in the instant case are not materially distinguishable from those presented in the Court's decision in *Liu v. Almovodar*, 25-cv-9256 (ER). Based on information this Office has obtained from ICE thus far, Petitioner unlawfully entered the United States on January 25, 2025, near Brownsville, Texas, and was soon thereafter arrested by U.S. Customs and Border Protection. Petitioner was served with a Notice to Appear, and was released on January 28, 2025, on an Order of Recognizance. On January 13, 2026, Petitioner was arrested by ICE in the Bronx and subsequently transported to 26 Federal Plaza for processing.[1] The primary legal issue in this case is whether the statutory authority for Petitioner's detention is pursuant to 8 U.S.C. § 1226(a), as Petitioner argues, or 8 U.S.C. § 1225(b)(2)(A), as ICE argues. The Court resolved this identical issue in *Liu*, and while Respondents respectfully disagree with the Court's decision in that case, Respondents acknowledge that the *Liu* decision would control the result in this case if the Court adheres to its prior decision.[2]

e. why Petitioner is not a member of the nationwide certified bond eligible class in *Bautista v. Santacruz*, No. 25-cv-01873(SSS)(BFM), 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025); *see also* Doc. 1 ¶ 60.

e. Response: The "bond eligible" class certified in *Bautista* consists of the following:

> All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

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[1] ICE records also indicate that on December 18, 2025, the New York City Police Department arrested Petitioner and charged him with Statute Trademark Counterfeiting in the Second Degree; however, as of the next day those charges appear to have been dropped.

[2] The government is aware that this Court has directed petitioners in other cases to submit fee applications under the Equal Access to Justice Act ("EAJA") before judgment is entered. Respectfully, such applications are premature until after the period to appeal expires. Under EAJA, a party seeking a fee award must submit its application "within thirty days of final judgment in the action." 28 U.S.C. § 2412(d)(1)(B). A "final judgment" is "a judgment that is final and not appealable." 28 U.S.C. § 2412(d)(2)(G). That provision has been interpreted to mean that the "EAJA clock begins to run after the time to appeal that 'final judgment' has expired." *Melkonyan v. Sullivan*, 501 U.S. 89, 96 (1991) (finding an EAJA application was premature when it was filed prior to entry of a "final judgment"); *see also, e.g.*, *United States v. 27.09 Acres of Land*, 1 F.3d 107, 111 (2d Cir. 1993) ("The record on this appeal reflects neither entry of a final judgment, nor the docketing of a settlement order or any order terminating this action. . . . Thus, it appears that no 'final judgment' for EAJA purposes was ever entered in this action. The Association's EAJA application was therefore premature and the district court lacked jurisdiction to decide it."). Thus, an EAJA fee application is not proper until after the time to appeal a final judgment expires.

Bautista, 2025 WL 3288403, at *1. Petitioner was apprehended on January 25, 2025 by the U.S. Border Patrol while attempting to enter the United States through the southern border. Accordingly, he was "apprehended upon arrival" and is not a member of the class defined in *Bautista*.

f. a copy of any final order of removal; and

f. Response: Petitioner is not subject to a final removal order.

g. any information regarding the procedural posture of any pending Department of Homeland Security or Executive Office for Immigration Review proceedings.

g. Response: Petitioner's removal proceedings are pending, and he currently has a master calendar hearing scheduled for September 18, 2026 at 26 Federal Plaza, though his hearing will be rescheduled to a sooner date once his case is reassigned on the detained docket.

* * *

Based on the foregoing responses, and in the interest of conserving judicial resources and expediting the Court's consideration of this case, Respondents do not believe that an additional submission from Respondents to the Court is necessary. If, however, the Court believes that a response from Respondents is required, counsel will file such submission by the date set forth in the Court's order.

We thank the Court for its attention to this matter.

Respectfully submitted,

JAY CLAYTON
United States Attorney for the
Southern District of New York

By: */s/ Kathleen M. Lewis*
KATHLEEN M. LEWIS
Assistant United States Attorney
Telephone: (212) 637-2728
Email: kathleen.lewis@usdoj.gov

cc: Alioune Sembene
A221052432
Delaney Hall Detention Facility
451 Doremus Avenue
Newark, NJ 07105