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8 UNITED STATES DISTRICT COURT  
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
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11 JAIME DE JESUS P. MENJIVAR ) CASE: 26-CV-03043-CAB-MSB  
12 PETITIONER, )  
13 V. ) TRAVERSE: REPLY TO  
14 ) RETURN  
15 )  
16 IMPERIAL DETENTION FACILITY )  
17 DEFENDANT. )  
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19 )  
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26 **PETITIONER'S TRAVERSE TO RESPONDENTS' RETURN**

27 Petitioner files this Traverse in reply to  
28 Respondents' Return.

29 Respondents argue the Petition should be denied  
30 because an I-213 from 2018 allegedly shows Petitioner  
31 was apprehended upon entry and is therefore subject to  
32 mandatory detention under 8 U.S.C. § 1225(b)(2) with  
33 no Immigration Judge bond jurisdiction. That argument  
34 fails because DHS's operative charging posture and the  
35 actual history of these proceedings show this is a §  
36 240 removal case involving a non-arriving respondent,  
37 not a § 1225 arriving applicant for admission. DHS

1 cannot use a detention label inconsistent with its own  
2 charging document.

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4 I

5 THE 2018 I-213 DOES NOT CONTROL THE DETENTION  
6 AUTHORITY DHS IS USING NOW

7 Respondents rely on a narrative I-213 prepared in  
8 2018. The 2020 Notice to Appear is the operative  
9 charging document for the § 240 removal proceedings in  
10 this case; the 2018 I-213 is an evidentiary record DHS  
11 may rely on, but it is not the charging instrument.  
12 That document (I-213) describes what DHS claims  
13 occurred years ago. The question before this Court is  
14 different: What statutory authority DHS is invoking  
15 now to detain Petitioner while he is in removal  
16 proceedings and being denied any bond hearing.

17 DHS cannot make the detention authority turn  
18 solely on an old narrative exhibit when DHS later  
19 chose to issue a new charging document, Notice to  
20 Appear (NTA), and proceed through the Immigration  
21 Court under § 240.

22 II

23 DHS'S 2020 NTA AND THE IMMIGRATION COURT'S HANDLING OF  
24 THE CASE CONFIRM PETITIONER IS NOT BEING TREATED AS AN  
25 "ARRIVING ALIEN".

1 The NTA does not designate Petitioner as an  
2 arriving alien. See *NTA*. It reflects DHS placed  
3 Petitioner into Immigration Court proceedings as a  
4 respondent "present in the United States" under § 240.  
5 That procedural choice matters because Respondents'  
6 entire § 1225(b)(2) claim depends on treating  
7 Petitioner as an arriving applicant for admission.

8 More importantly, Petitioner actually appeared and  
9 litigated the case in Immigration Court under that  
10 NTA, and the Immigration Judge administratively closed  
11 the case. That history is inconsistent with  
12 Respondents' current attempt to treat Petitioner as a  
13 § 1225(b)(2) arriving alien who is categorically bond-  
14 ineligible. DHS cannot proceed for years in § 240  
15 court posture, obtain administrative closure, then  
16 later re-detain Petitioner and retroactively reframe  
17 him as § 1225 mandatory custody to deny a bond  
18 hearing.

### 19 III

#### 20 RESPONDENTS' "NOT A CLASS MEMBER" ARGUMENT DOES NOT 21 DEFEAT HABEAS RELIEF WHERE DHS IS DENYING ANY CUSTODY 22 REDETERMINATION BASED ON A DISPUTED DETENTION STATUTE

23 Respondents also argue Petitioner is not within  
24 the Maldonado-Bautista class definition because DHS  
25 claims he was apprehended upon arrival. Even if class  
membership were disputed, class definitions are not

1 the legal question here. The Petition challenges DHS's  
2 current denial of any Immigration Judge custody  
3 redetermination based on DHS's asserted detention  
4 statute. Where the record shows DHS itself proceeded  
5 in § 240 non-arriving posture and the Immigration  
6 Court administratively closed the case after  
7 Petitioner appeared, Respondents' reliance on §  
8 1225(b)(2) to deny any bond process is legally and  
9 practically inconsistent with the case posture.

10 Petitioner respectfully requests that the Court  
11 grant the Petition and order Respondents to provide an  
12 Immigration Judge bond hearing governed by 8 U.S.C. §  
13 1226(a) within a deadline set by the Court, or  
14 alternatively order Petitioner released from custody  
15 under appropriate conditions.

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18 Date: 5/26/2026

Respectfully Submitted,

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