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

ALBERTO DIAZ MARTINEZ,

Petitioner

v.

CHRISTOPHER LaROSE,, et al.,

Case No.: 1:26-cv-03406-LL-MSB

**PETITIONER'S REPLY TO
RESPONDENTS' RETURN TO
PETITION FOR WRIT OF
HABEAS CORPUS**

I. Introduction

Petitioner challenges DHS's classification of his custody under INA § 235(b) following an interior arrest nearly nineteen years after his entry into the United States. This case does not involve an arriving noncitizen encountered at the border, a recent entrant apprehended shortly after crossing, or an individual undergoing front-end inspection under INA § 235. Petitioner entered the United States without inspection in or about June 2007 and thereafter resided continuously in the United States for nearly nineteen years before being taken into immigration custody. He was never encountered by immigration authorities at or near the time of entry, was never subjected to inspection, expedited removal proceedings, credible fear screening, or any form of initial processing under INA § 235, and was instead arrested during a routine traffic stop in Fort Myers, Florida on or about April 24, 2026.

1 The question presented is narrow: whether DHS may invoke INA § 235(b)'s mandatory
2 detention framework for the first time against a noncitizen who entered without inspection nearly
3 nineteen years ago, was never processed under INA § 235 at or near the border, and was later
4 arrested in the interior of the United States during a routine traffic stop. Petitioner maintains that
5 it may not.

6 Respondents, however, do not meaningfully defend detention under INA § 235(b). Rather
7 than attempt to justify the application of that provision to Petitioner's circumstances,
8 Respondents expressly acknowledge prior orders from this District directing bond hearings under
9 8 U.S.C. § 1226(a) in materially similar cases and state that they do not oppose an order directing
10 such a hearing here.

11 That concession is significant. The Petition challenges Respondents' classification of
12 Petitioner's custody under INA § 235(b) and alleges that any detention authority must arise, if at
13 all, under INA § 236(a). Respondents no longer dispute that Petitioner is entitled to relief
14 requiring a bond hearing under § 1226(a). Thus, the central issue presented by the Petition has
15 effectively been resolved in Petitioner's favor.

16 Under these circumstances, Respondents have failed to identify any lawful basis for
17 continuing to detain Petitioner under the framework previously used to deny him access to a
18 custody determination. Respondents do not contend that Petitioner is properly detained under
19 INA § 235(b), do not identify any individualized basis for continued detention, and do not argue
20 that Petitioner poses a danger to the community or a risk of flight. Instead, Respondents request
21 only that any bond hearing be conducted within fourteen days.

22 Petitioner respectfully submits that no further factual development is necessary.
23 Respondents have abandoned the sole detention theory challenged in the Petition and have
24 identified no material factual or legal dispute requiring resolution. Because Petitioner is not
25 lawfully detained under INA § 235(b), and because Respondents fail to identify any alternative
26 basis justifying continued detention under the framework actually imposed upon him, the
27 Petition should be granted.

1 The appropriate remedy is immediate release from custody. Habeas corpus exists to
2 remedy unlawful detention, and Respondents have failed to establish any lawful basis for
3 continuing Petitioner's confinement under the detention authority challenged in this action. In
4 the alternative, should the Court decline to order immediate release, Petitioner respectfully
5 requests a prompt individualized custody hearing pursuant to INA § 236(a), at which
6 Respondents bear the burden of establishing by clear and convincing evidence that continued
7 detention is necessary to prevent flight or danger to the community.

8 **II. Respondents Fail to Identify Any Lawful Basis for Continued Detention**

9 In a habeas proceeding challenging the legality of detention, Respondents bear the burden
10 of establishing a lawful basis for custody. That burden requires more than a request for
11 alternative relief. Respondents must identify a valid statutory basis authorizing Petitioner's
12 continued detention. They fail to do so here.

13 The Petition challenges Respondents' classification of Petitioner's custody under INA §
14 235(b). Petitioner alleges that he entered the United States in or about June 2007, resided
15 continuously in the country for nearly nineteen years, was never encountered by immigration
16 authorities at or near the border, was never subjected to inspection or expedited removal
17 proceedings, and was ultimately arrested during a routine traffic stop in Fort Myers, Florida on
18 April 24, 2026. Under those circumstances, Petitioner contends that detention—if lawful at all—
19 must proceed under INA § 236(a), not INA § 235(b).

20 Respondents do not meaningfully dispute those facts. Nor do they attempt to defend the
21 application of INA § 235(b) to Petitioner's circumstances. Instead, Respondents expressly
22 acknowledge prior decisions from this District directing bond hearings under 8 U.S.C. § 1226(a)
23 in materially similar cases and state that they do not oppose an order directing such a hearing
24 here.

25 That concession confirms Petitioner's central claim and eliminates any basis for
26 continuing to defend detention under INA § 235(b). The sole detention framework challenged in
27 the Petition is INA § 235(b). By declining to defend detention under that provision and by
28

1 expressly agreeing that Petitioner is entitled to relief under INA § 236(a), Respondents
2 effectively abandon the legal basis previously used to deny Petitioner access to an individualized
3 custody determination.

4 Equally significant, Respondents identify no individualized basis justifying continued
5 detention. They do not contend that Petitioner poses a danger to the community. They do not
6 contend that Petitioner presents a risk of flight. They do not identify any facts demonstrating that
7 continued physical detention is necessary pending completion of removal proceedings. Instead,
8 Respondents rely exclusively on a request that any bond hearing occur within fourteen days.

9 Respondents therefore fail to establish that Petitioner's continued detention under the
10 framework challenged in this action is lawful. Having abandoned the applicability of INA §
11 235(b), and having identified no individualized basis warranting continued confinement,
12 Respondents fail to carry their burden of justifying Petitioner's ongoing detention.

13 Under these circumstances, the Court should grant the Petition.

14 **III. Respondents' Concession Confirms the Petition's Central Claim**

15 The central claim presented in the Petition is straightforward: Petitioner is not lawfully
16 detained under INA § 235(b), and any detention authority must arise, if at all, under INA §
17 236(a). The relief requested in the Petition therefore includes an order directing that Petitioner's
18 custody be treated as governed by INA § 236(a) rather than INA § 235(b).

19 Respondents no longer dispute that proposition. Rather than defend detention under INA
20 § 235(b), Respondents expressly acknowledge that Petitioner is entitled to a bond hearing
21 pursuant to 8 U.S.C. § 1226(a) and do not oppose entry of such an order.

22 That concession resolves the principal legal dispute presented in this action. If Petitioner
23 is entitled to a bond hearing under § 1226(a), then Respondents necessarily concede that the
24 detention framework challenged in the Petition cannot be sustained as applied to Petitioner.
25 Respondents cannot simultaneously maintain that detention properly arises under INA § 235(b)
26 while agreeing that Petitioner is entitled to relief available only under INA § 236(a).

Moreover, Respondents identify no factual or legal distinction that would justify denying relief. They do not contend that Petitioner was encountered at or near the border. They do not contend that Petitioner was subjected to inspection, expedited removal proceedings, or any other form of processing under INA § 235. They do not dispute that Petitioner resided in the United States for nearly nineteen years before his arrest in Fort Myers, Florida. Nor do they identify any individualized circumstance that would distinguish Petitioner from the other long-term interior detainees for whom courts have ordered relief.

Accordingly, Respondents' concession confirms the Petition's central claim: Petitioner is not properly detained under the detention framework challenged in this action and is entitled to habeas relief.

IV. Immediate Release Is the Appropriate Remedy

Where detention lacks a lawful statutory basis, the traditional remedy afforded through habeas corpus is release from custody. Habeas corpus exists to secure freedom from unlawful restraint, not to permit the continuation of detention while the government attempts to justify custody under a different legal theory after the fact.

As set forth above, Respondents have failed to establish that Petitioner's detention under INA § 235(b) is lawful. More significantly, Respondents no longer attempt to defend detention under that provision. Instead, Respondents expressly acknowledge that Petitioner is entitled to a bond hearing pursuant to 8 U.S.C. § 1226(a) and do not oppose entry of such an order.

That concession confirms that the detention framework challenged in the Petition cannot be sustained. Yet despite abandoning the applicability of INA § 235(b), Respondents continue to seek authority to detain Petitioner for an additional fourteen days before any custody determination occurs. Respondents identify no statutory provision authorizing such continued detention and identify no individualized basis justifying Petitioner's ongoing confinement.

Respondents do not contend that Petitioner poses a danger to the community. They do not contend that Petitioner presents a risk of flight. They do not identify any conduct warranting continued detention. Nor do they dispute that Petitioner entered the United States in or about

1 June 2007, resided continuously in the country for nearly nineteen years, was never encountered
2 by immigration authorities at or near the border, and was ultimately taken into immigration
3 custody following a routine traffic stop in Fort Myers, Florida.

4 The absence of any individualized justification is particularly significant. Respondents
5 seek continued physical detention of a person who has already been deprived of his liberty under
6 a detention framework they no longer defend, yet they identify no factual basis demonstrating
7 why that detention should continue for even one additional day.

8 Under these circumstances, immediate release is the appropriate remedy. Respondents
9 have failed to establish that Petitioner's continued detention under INA § 235(b) is lawful, have
10 abandoned the sole detention theory challenged in the Petition, and have failed to identify any
11 individualized basis warranting continued confinement. Because Respondents have not carried
12 their burden of justifying ongoing detention, the writ should issue and Petitioner should be
13 immediately released from custody.

14 In the alternative, should the Court decline to order immediate release, Petitioner
15 respectfully requests that the Court order a prompt custody hearing pursuant to INA § 236(a)
16 within seven days of the Court's order, require Respondents to bear the burden of establishing by
17 clear and convincing evidence that continued detention is necessary to prevent flight or danger to
18 the community, prohibit reliance upon INA § 235(b) as a basis for detention, and order
19 Petitioner's release if such hearing is not timely provided.

20 V. Conclusion

21 For the foregoing reasons, Respondents have failed to establish any lawful basis for
22 Petitioner's continued detention. Respondents no longer defend detention under INA § 235(b),
23 the sole detention framework challenged in the Petition, and instead expressly acknowledge that
24 Petitioner is entitled to relief under 8 U.S.C. § 1226(a). Respondents further identify no
25 individualized basis justifying Petitioner's continued confinement, do not contend that Petitioner
26 poses a danger to the community or a risk of flight, and identify no facts demonstrating that
27 continued physical detention is necessary pending completion of removal proceedings.

1 Under these circumstances, habeas relief is warranted. Petitioner respectfully requests
2 that the Court grant the Petition for Writ of Habeas Corpus and order his immediate release from
3 custody.

4 In the alternative, should the Court decline to order immediate release, Petitioner
5 respectfully requests that the Court order a prompt custody hearing pursuant to INA § 236(a)
6 within seven days of the Court's order, require Respondents to bear the burden of establishing by
7 clear and convincing evidence that continued detention is necessary to prevent flight or danger to
8 the community, prohibit reliance upon INA § 235(b) as a basis for detention, and order
9 Petitioner's release if such hearing is not timely provided.

10 Petitioner further requests such other and further relief as the Court deems just and
11 proper.

12 Respectfully submitted,

13 /s/ Alejandro J. Monsalve, Esq. CA SBN 324958

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