

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

Gabino Erasto Modesto v. Daniel Brightman, et al.

Erasto Modesto · No. 26-cv-0314-AGS-MMP · Decided January 21, 2026

OPINION

1 UNITED STATES DISTRICT COURT 2 SOUTHERN DISTRICT OF CALIFORNIA 3 Gabino ERASTO MODESTO, Case No.: 26-cv-0314-AGS-MMP 4 Petitioner, ORDER REQUIRING RETURN 5 v. 6 Daniel BRIGHTMAN, et al., 7 Respondents. 8 9 Petitioner Gabino Erasto Modesto seeks a writ of habeas corpus under 28 U.S.C. 10 § 2241 challenging his immigration detention. At this stage, he need only make out a claim 11 that is sufficiently cognizable to warrant a response.

See Rules Governing Section 2254 12 Cases in the United States District Courts, Rule 4 (authorizing summary dismissal “if it 13 plainly appears from the petition and any attached exhibits that the petitioner is not entitled 14 to relief”); *id.*, Rule 1(b) (permitting application of Rules Governing Section 2254 Cases 15 to any “habeas corpus petition”).

In this context, the relevant federal rules permit “summary 16 dismissal of claims that are clearly not cognizable.” *Neiss v. Bludworth*, 114 F.4th 1038, 17 1045 (9th Cir. 2024) (cleaned up). But “as long as a petition has any potential merit, it is 18 not so frivolous or incredible as to justify summary dismissal[.]” *Id.* 19 “In 1999,” Erasto Modesto, a citizen of “Mexico,” entered the United States 20 “without inspection.” (ECF 1, at 3–4.)

Then, on “November 10, 2025,” Immigration and 21 Customs Enforcement officers arrested him and “placed him in removal proceedings” 22 based on a “2012” “Notice to Appear.” (*Id.* at 4.) Petitioner is challenging the government’s 23 decision to subject him to “mandatory detention” under 8 U.S.C. § 1225(b)(2), which 24 applies to applicants for admission. (*Id.* at 7.)

He asserts that his case is instead governed 25 by “8 U.S.C. § 1226(a)” —which authorizes release on bond or conditional parole— 26 because he is not an applicant for admission. (*Id.* at 9.) This statutory misclassification, he 27 argues, renders his detention “unlawful.” (*Id.* at 2.) 28 This challenge has sufficient potential merit to warrant a response. Functionally 1 ||identical cases across the country have been found to have a “likelihood of success on the 2 ||merits” or have resulted in the writ being issued.

See, e.g., *Barco Mercado v. Francis*, 3 || F.Supp.3d.____, No. 25-cv-6582 (LAK), 2025 WL 3295903, at *4(S.D.N.Y. Nov. 26, 4 ||2025) (noting that, in “350” of the “362” opinions to address this issue, the petitioners 5 || “prevailed, either on a preliminary or final basis,” and these cases

were “decided by over 6 || 160 different judges sitting in about fifty different courts”); *Mosqueda v. Noem*, No. 5:25- 7 cv-02304 CAS (BFM), 2025 WL 2591530, at *5 (C.D.

Cal. Sept. 8, 2025) (“[P]etitioners 8 likely to succeed on the merits of their claims because section 1226(a), not section 9 || 1225(b)(2), likely governs their detention.”); *Vazquez v. Feeley*, No. 2:25-cv-01542-RFB- 10 || EJV, 2025 WL 2676082, at *11 (D. Nev. Sept. 17, 2025) (same); *Rodriguez v. Bostock*, 11 || No. 3:25-cv-05240-TMC, 2025 WL 2782499, at *1 (W.D.

Wash. Sept. 30, 2025) (“[T]he 12 ||government’s position belies the statutory text of the INA, canons of statutory 13 ||interpretation, legislative history, and longstanding agency practice.”). 14 Recently, respondents have routinely conceded these claims when brought by 15 petitioners who are members of the Maldonado Bautista class, as plaintiff asserts. (See 16 || ECF 1, at 2.)

So, by Monday, January 26, 2026, the government is ordered to file a brief 17 stating whether it: (1) agrees he is part of that class and (2) intends to concede his right to 18 bond hearing under that authority. If respondents do not concede, they must answer the 19 || petition by January 28, 2026. 20 || Dated: January 21, 2026 2 Hon. rew G. Schopler United States District Judge 23 24 25 26 27 28