Alejandro Monsalve
CA SBN 324958
Alex Monsalve Law Firm, PC
240 Woodlawn Ave., Suite 9
Chula Vista, CA 91910
(619) 777-6796
Counsel for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EDVIN ORLANDO MARTINEZ LOPEZ

Petitioner

v.

Kristi NOEM, Secretary, U.S. Department of Homeland Security; et al.,

Case No.: No.: 25-cv-2717 JES-AHG

Judge: Hon. James E. Simmons Jr

PETITIONER'S TRAVERSE TO RESPONDENT'S RETURN

INTRODUCTION

Petitioner Edvin Orlando Martínez Lopez respectfully submits this Traverse in response to Respondents' Return.

Mr. Martínez Lopez is a Guatemalan national who was unlawfully detained and placed in custody under the wrong statutory framework. As alleged in the original Petition, the Department of Homeland Security ("DHS") misclassified his custody under INA § 235(b), even though he was arrested in the interior of the United States and therefore, at most, could have been detained under § 236(a), which provides for an individualized bond hearing.

The new factual disclosures contained in the Government's Return confirm and strengthen that claim. DHS's own records—including the Form I-213 narrative—reveal that ICE agents stopped Mr. Martínez Lopez's vehicle in Massachusetts on September 8, 2025, while

conducting "Operation Patriot," a field action targeting a *different individual*. Without a judicial or administrative warrant, and without making the statutory findings required by 8 U.S.C. § 1357(a)(2), agents questioned and detained him solely on the basis of perceived ethnicity and later issued a Form I-200 the following day in an attempt to retroactively justify the arrest.

This new evidence demonstrates that DHS never lawfully obtained custody of Mr. Martínez Lopez under § 1357(a)(2), and thus its subsequent reliance on § 235(b) was without statutory authority. Because DHS's misclassification followed an arrest that failed to satisfy the statutory prerequisites for custody, it deprived Mr. Martínez Lopez of the procedural protections guaranteed by the Due Process Clause of the Fifth Amendment. His detention, if valid at all, can arise only under § 236(a), which requires an individualized bond hearing before a neutral decisionmaker. The Government's own evidence therefore confirms that DHS's classification and continued detention are unlawful and inconsistent with both statutory and constitutional safeguards.

JURISDICTION

A. 8 U.S.C. § 1252(b)(9): Does Not Bar Habeas Review of Collateral Custody Challenges

Respondents contend that this Court lacks jurisdiction because Petitioner's custody "arises from" removal proceedings and therefore falls within § 1252(b)(9). That argument fails.

Throughout their Return, Respondents rely extensively on *Chavez v. Noem*, No. 3:25-cv-02325 (S.D. Cal. Sept. 24, 2025). Yet the *Chavez* court rejected a jurisdictional argument virtually identical to the one advanced here, holding that § 1252(b)(9) "poses no jurisdictional bar" where the petitioner "was not asking for review of an order of removal, challenging the decision to detain them in the first place or to seek removal, nor challenging any part of the process by which their removability will be determined." (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018)). As *Chavez* further explained, "detention pursuant to § 1225(b)(2) may occur during—but remains independent of—the removal proceedings."

Petitioner does not challenge DHS's decision to commence removal proceedings, to adjudicate removability, or to exercise its general discretion to detain. Rather, he challenges the

statutory and constitutional authority under which that detention was classified—specifically, DHS's unlawful designation of his custody as arising under INA § 235(b) instead of § 236(a). This misclassification deprived him of the bond hearing Congress mandated for interior arrests. That challenge concerns the legal framework governing custody, not DHS's discretionary choice to detain or pursue removal. The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and the Ninth Circuit in *Gonzalez v. ICE*, 975 F.3d 788 (9th Cir. 2020), both recognized that § 1252(b)(9) does not bar such claims, because they "challenge the statutory or constitutional basis of detention rather than the decision to remove."

Labeling such a claim "creative" does not transform a collateral statutory challenge into a request for review of a removal order. *Jennings* explicitly cautioned that § 1252(b)(9) cannot be read so broadly as to encompass every dispute "in any way connected to deportation proceedings." *Id.* at 293. Because this petition contests the authority under which DHS asserts custody, not the validity of any removal order or charging decision, it lies squarely outside § 1252(b)(9)'s reach.

Accordingly, § 1252(b)(9) does not deprive this Court of jurisdiction to review this habeas petition, which presents a collateral statutory and constitutional challenge to DHS's unlawful custody classification—not to the initiation or conduct of removal proceedings.

B. 8 U.S.C. § 1252(g): Does Not Apply to DHS's Misclassification of Custody

Respondents further contend that § 1252(g) deprives this Court of jurisdiction because Petitioner's detention "stems from ICE's decision to commence removal proceedings." That argument misstates both the scope of § 1252(g) and the nature of Petitioner's claim.

In *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999), the Supreme Court held that § 1252(g) applies only to three discrete actions the Attorney General may take—commencing proceedings, adjudicating cases, or executing removal orders—and does not extend to "the many other decisions or actions that may be part of the deportation process." The Court expressly rejected reading § 1252(g) as a blanket jurisdictional bar over all claims tangentially related to removal.

Here, Petitioner does not challenge DHS's decision to commence removal proceedings, nor any act to adjudicate or execute a removal order. Rather, he challenges the legality of DHS's initial seizure and subsequent custody classification—a collateral issue wholly independent of any decision to initiate or pursue removal. The record demonstrates that ICE agents stopped and detained him without a judicial or administrative warrant, and that DHS later issued a Form I-200 the following day in an attempt to retroactively justify the arrest. This habeas petition contests that unlawful seizure and the agency's later misclassification of custody under INA § 235(b), which together deprived Petitioner of his statutory right to a bond hearing under § 236(a).

Courts have consistently held that § 1252(g) does not bar review of such collateral challenges to custody or detention authority. See *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (holding that § 1252(g) does not preclude habeas review of statutory detention claims); *Chavez v. Noem*, No. 3:25-cv-02325 (S.D. Cal. Sept. 24, 2025), slip op. at 5 ("Petitioners' detention pursuant to § 1225(b)(2) may be during—but is nonetheless independent of—the removal proceedings.").

As in *Chavez*, the Government's invocation of § 1252(g) fails because this habeas claim arises not from any decision to commence, prosecute, or execute removal proceedings, but from DHS's unlawful custody framework—an error antecedent to and independent of the removal process itself.

Accordingly, § 1252(g) does not divest this Court of jurisdiction to review Petitioner's claim, which challenges DHS's unlawful seizure and misclassification of custody rather than any discretionary removal decision.

EXHAUSTION

Respondents argue that Petitioner failed to exhaust administrative remedies by not pursuing a bond redetermination before an Immigration Judge or appealing to the Board of Immigration Appeals ("BIA"). That contention is misplaced. The *Chavez v. Noem* court, which Respondents themselves rely upon, rejected a nearly identical argument. It held that exhaustion

in this context is prudential, not jurisdictional, and that prudential exhaustion is waived where resort to the agency would be futile.

The same reasoning applies here—and even more compellingly so, because Petitioner actually sought a bond redetermination and was denied solely on jurisdictional grounds. On September 29, 2025, Immigration Judge Eugene Robinson (Otay Mesa Immigration Court) denied Petitioner's bond request, citing *Matter of Yajure-Hurtado*, 28 I&N Dec. 299 (BIA 2021), as the sole basis for ineligibility. The order explicitly notes:

> *"Denied, because Matter of Yajure-Hurtado applies to this case. But for, IJ finds Respondent does not present danger and would set bond at $1,500 in this case."*

That ruling demonstrates that pursuing administrative remedies was not merely futile in theory—it was futile in practice. The Immigration Judge expressly found that Petitioner was not a danger to the community and would otherwise qualify for bond, but concluded that *Yajure-Hurtado* compelled denial for lack of jurisdiction. Immigration Judges are bound by that precedent under 8 C.F.R. § 1003.1(g)(1). As a result, any further appeal to the BIA would have been equally futile, since the BIA itself decided *Yajure-Hurtado* and has not limited or overruled it.

Respondents' citations to *Castro–Cortez v. INS*, 239 F.3d 1037 (9th Cir. 2001), *Leonardo v. Crawford*, 646 F.3d 1157 (9th Cir. 2011), *Alvarado v. Holder*, 759 F.3d 1121 (9th Cir. 2014), and *Tijani v. Holder*, 628 F.3d 1071 (9th Cir. 2010), are inapposite. Those cases addressed exhaustion in the context of direct petitions for review or removal challenges, where exhaustion is statutory and jurisdictional. By contrast, this habeas petition arises under 28 U.S.C. § 2241 and challenges only the legal basis of custody, not a removal order.

The controlling Ninth Circuit authority is *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017), which holds that exhaustion is prudential and may be waived when "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). That is precisely the situation here: the

Immigration Judge's decision and *Yajure-Hurtado* itself confirm that administrative remedies were both unavailable and futile.

Accordingly, prudential exhaustion should be deemed waived or excused because Petitioner not only pursued available remedies but also demonstrated their futility—his request for bond was denied solely due to an erroneous custody classification that this Court is now asked to review.

ARGUMENT

A. DHS Never Acquired Lawful Custody Because the Vehicle Stop and Detention Violated Statutory Prerequisites

The Fourth Amendment establishes the constitutional limits within which immigration officers must operate when conducting interior enforcement actions. Those limits are reflected in 8 U.S.C. § 1357(a)(2) and its implementing regulation, 8 C.F.R. § 287.8(c), which restrict warrantless arrests to circumstances involving both probable cause and a likelihood of escape. A vehicle stop by law enforcement constitutes a "seizure" for Fourth Amendment purposes and, correspondingly, triggers these statutory safeguards. See *Delaware v. Prouse*, 440 U.S. 648, 653 (1979); *United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975).

According to the Form I-213 narrative, ICE's "Operation Patriot" field team was conducting an operation on September 8, 2025, at 1500 Broadway, Massachusetts, in search of a *different individual*. When a "*Hispanic male matching the target's description*" exited the location and entered a silver Ford E-150 van, officers conducted a vehicle stop nearby. Upon approach, the officers identified themselves as ICE agents, at which point the driver handed over a photo identification bearing the name Edvin Orlando Martínez-López, clearly proving he was not the person named on the original warrant. Nevertheless, ICE agents proceeded to question him about his citizenship and legal status, and when he stated that he was a citizen of Guatemala who had entered the United States illegally, he was taken into custody "without incident."

Nothing in the record suggests that officers observed a traffic violation or had independent reasonable suspicion of unlawful activity before initiating the stop. The description

in the I-213—"*a Hispanic male matching the target's description*"—is generic, race-based, and untethered to any specific or articulable facts. Such reliance on ethnic appearance contravenes the standards incorporated into § 1357(a)(2) and its implementing regulations, which require particularized probable cause and prohibit arbitrary or pretextual seizures. See *Brignoni-Ponce*, 422 U.S. at 886–87; *United States v. Montero-Camargo*, 208 F.3d 1122, 1134 (9th Cir. 2000) (en banc).

Nor does ICE's invocation of "Operation Patriot" alter that analysis. The government's own settlement in *Castañon Nava v. DHS*, No. 2:17-cv-13706 (N.D. Ill. 2022), and the Court's October 7, 2025 enforcement order, confirm that interior enforcement actions must comply with the statutory and regulatory limits that mirror Fourth Amendment principles—requiring individualized suspicion and contemporaneous documentation of probable cause and exigency. ICE's *post-hoc* issuance of a Form I-200 the following day cannot retroactively supply the statutory findings missing at the time of arrest.

The record therefore demonstrates that ICE's actions failed to satisfy the statutory prerequisites for a lawful seizure under § 1357(a)(2). That statutory defect—compounded by the lack of individualized suspicion reflected in the constitutional standards—tainted every subsequent stage of custody, including questioning, arrest, and detention. See *INS v. Delgado*, 466 U.S. 210, 217 (1984) (confirming that civil immigration enforcement remains subject to constitutional and statutory constraints), reaffirmed in *Gonzalez v. ICE*, 975 F.3d 788, 818 (9th Cir. 2020).

Because ICE officers lacked any lawful basis to stop Mr. Martínez-López's vehicle, the initial seizure failed to meet the statutory prerequisites of 8 U.S.C. § 1357(a)(2), which incorporate the same individualized-suspicion principles recognized in constitutional case law. The absence of those statutory findings—probable cause and likelihood of escape—renders the ensuing arrest and detention unlawful from their inception. DHS therefore never acquired lawful custody and could not properly invoke either § 235(b) or § 236(a) to sustain continued detention. Accordingly, DHS's failure to comply with § 1357(a)(2)'s mandatory prerequisites deprived

Petitioner of liberty without the process required by law, in violation of the Due Process Clause of the Fifth Amendment..

B. The Arrest and Resulting Custody Demonstrate DHS's Noncompliance with § 1357(a)(2)

Even assuming *arguendo* that the initial stop satisfied constitutional standards, the ensuing arrest independently violated the statutory prerequisites of § 1357(a)(2) because DHS failed to make the contemporaneous findings Congress requires before a warrantless interior arrest. The implementing regulation, 8 C.F.R. § 287.8(c)(2)(ii), mandates documentation of both (1) probable cause of removability and (2) likelihood of escape before a warrant can be obtained. No such findings appear in the Form I-213 or any contemporaneous record.

ICE's issuance of a Form I-200 one day later cannot retroactively cure this omission; as courts have repeatedly recognized, "a warrant obtained after a seizure cannot legalize an arrest already made." *United States v. Guzman-Padilla*, 573 F.3d 865, 876 (9th Cir. 2009). The failure to comply with § 1357(a)(2) renders the arrest and detention *ultra vires*.

This statutory noncompliance directly supports Petitioner's original claim that DHS's custody classification violated the Fifth Amendment's Due Process Clause. The agency's disregard of § 1357(a)(2)'s procedural safeguards—intended to protect against arbitrary detention—deprived Petitioner of the process Congress prescribed and the Constitution guarantees.

C. Pattern and Precedent: *Castañon Nava* and *Caceres*

The *Castañon Nava v. Department of Homeland Security*, No. 1:18-cv-03757 (N.D. Ill. 2022) settlement and the Court's 2025 Memorandum Opinion and Order Enforcing Key Holdings are highly persuasive here. In *Nava*, DHS admitted that warrantless interior arrests and vehicle stops conducted without pre-existing judicial or administrative warrants—and without individualized findings of probable cause and likelihood of escape—violate 8 U.S.C. § 1357(a)(2), 8 C.F.R. § 287.8(c), and the constitutional principles those provisions embody. DHS further

agreed to implement nationwide reforms requiring officers to contemporaneously document both probable cause and exigency before executing any warrantless arrest in the interior.

Mr. Martínez-López's arrest mirrors precisely the pattern condemned in *Nava*: he was stopped in the interior, targeted by mistake, questioned despite that known mistake, and arrested without any statutory predicate. The *post-hoc* issuance of a Form I-200 one day later is exactly the type of "papering-over" of unlawful conduct that the *Nava* court identified as incompatible with § 1357(a)(2) and the agency's own regulatory safeguards.

Although *Nava* arose in another district, it remains persuasive authority demonstrating that DHS has long been on notice of these statutory limits yet continues to disregard them. As the Supreme Court recognized in *United States v. Caceres*, 440 U.S. 741, 752–53 (1979), an agency's failure to follow its own rules can render its conduct constitutionally unreasonable. The government cannot selectively invoke the detention provisions of the INA while ignoring the statutory prerequisites that define the lawful scope of its authority.

This institutional pattern reinforces that Mr. Martínez-López's seizure and detention were not isolated errors but part of a broader practice of unlawful enforcement already condemned by federal courts. Under *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and *Gonzalez v. ICE*, 975 F.3d 788, 818 (9th Cir. 2020), habeas courts retain jurisdiction to remedy detentions that rest on custody "not authorized by statute or law."

D. The Government Misreads INA §§ 235 and 236

Even if this Court were to assume, *arguendo*, that the initial stop and arrest were lawful —which they were not—the Government's continued detention of Mr. Martínez-López without the possibility of a bond hearing is independently unlawful because DHS misapplied the statutory framework governing custody. The Immigration and Nationality Act establishes two distinct detention authorities: § 235(b), which applies to individuals encountered during inspection or immediately upon unlawful entry, and § 236(a), which governs arrests and custody of individuals already present in the United States. By classifying Mr. Martínez-López's post-

arrest detention under § 235(b), DHS has conflated these distinct statutory schemes and denied him the individualized bond hearing Congress expressly provided under § 236(a).

Respondents contend that Petitioner is subject to mandatory detention under INA § 235(b) because he is an "applicant for admission." That argument fails on both the facts and the law. Petitioner was not encountered at a port of entry, during inspection at the border, or among individuals intercepted near the international boundary. Rather, he was arrested in the interior of the United States by ICE officers who, after unlawfully detaining him, elected to place him into custody under the wrong statutory provision.

The plain text of § 235(b)(2) applies only when "an immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). That statutory trigger—an inspection and determination by an examining officer—never occurred here. Mr. Martínez-López's arrest was not the result of a border inspection or immediate post-entry encounter but followed an interior enforcement action that falls under §§ 236 and 287.

Detention following an interior arrest—long after entry—arises, if at all, under § 236(a), not § 235(b). The Supreme Court has confirmed that § 236(a) governs detention of noncitizens already present in the United States, whereas § 235(b) applies only to those encountered during inspection or seeking entry at the border. *Jennings v. Rodriguez*, 583 U.S. 281, 297–303 (2018); see also *Matter of M-S-*, 27 I&N Dec. 509 (BIA 2019) (acknowledging that § 236(a) governs post-entry detention).

Under that framework, an interior arrest—whether or not supported by a valid warrant—does not transform the arrestee into an "applicant for admission" subject to mandatory custody under § 235(b). To hold otherwise would erase the statutory distinction between border and interior enforcement that Congress deliberately preserved.

E. DHS's Sudden Reinterpretation Contradicts Nearly Three Decades of Consistent Policy

For nearly thirty years following the 1996 amendments to the INA under IIRIRA, both the legacy INS and, later, DHS uniformly applied § 235(b) detention authority only to arriving aliens or individuals apprehended shortly after crossing the border—not to those arrested in the interior after unlawful entry. During this period—spanning multiple administrations—the government consistently treated interior arrests of noncitizens already present in the United States as governed by § 236, even when they had entered without inspection.

Only beginning around July 8, 2025, after an internal memorandum began circulating within ICE field offices, did DHS start to reinterpret the definitional clause in § 235(a)(1) as extending "applicant for admission" status to all EWIs, regardless of the time or place of apprehension—a reinterpretation that was later reinforced by the BIA's decision in *Matter of Yajure-Hurtado*.

This abrupt shift—made without statutory amendment, rulemaking, or public notice—contradicts nearly three decades of consistent agency practice and constitutes an arbitrary and capricious departure from settled policy. Such a reinterpretation is entitled to considerably less deference and should be rejected. See *INS v. Cardoza-Fonseca*, 480 U.S. 421, 446 n.30 (1987) ("An agency interpretation of a relevant provision which conflicts with the agency's earlier interpretation is 'entitled to considerably less deference' than a consistently held agency view.").

F. The *Chavez v. Noem* Order Did Not Resolve the Statutory Question Presented Here

Respondents cite *Chavez v. Noem*, No. 3:25-cv-02325 (S.D. Cal. Sept. 24, 2025), apparently to suggest that the court's denial of a temporary restraining order supports their position that Petitioner's detention is properly governed by § 235(b). That reliance is misplaced. The *Chavez v. Noem* order denied only temporary relief and did not reach—let alone resolve—the underlying statutory question of whether DHS's detention authority arose under § 235(b) or § 236(a).

Its brief reference to competing interpretations occurred solely in the context of assessing preliminary relief, not as a definitive ruling on the statutory issue. A denial of a temporary

restraining order is neither a ruling on the merits nor a binding determination of law. See *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) ("The findings of fact and conclusions of law made by a court granting or denying a preliminary injunction are not binding at trial on the merits.").

By contrast, the court in *Ramiro Chavez Valdovinos v. Noem*, No. 25-cv-2439-TWR (KSC) (S.D. Cal. Sept. 25, 2025) (Hon. Todd W. Robinson), directly addressed the statutory question in a materially similar context. There, the court held that § 1252's jurisdiction-stripping provisions do not bar habeas review, that exhaustion would be futile in light of *Yajure-Hurtado*, and that detention following an interior arrest pursuant to a Form I-200 is governed by § 236(a), not § 235(b). The court granted the petition in part and ordered an individualized bond hearing under § 236(a) within fourteen days, expressly directing that Respondents may not deny bond on the ground that § 235(b)(2) mandates detention.

Accordingly, the *Chavez v. Noem* order provides no controlling or persuasive authority on the question presented here. The statutory issue before this Court—whether a noncitizen arrested in the interior of the United States may be denied a bond hearing through DHS's post-hoc reclassification of custody under INA § 235(b)—was never decided in *Chavez v. Noem* and therefore offers no support for Respondents' position.

CONCLUSION

For the foregoing reasons, the Department of Homeland Security's own records confirm that Petitioner was stopped and detained in the interior of the United States without a contemporaneous warrant or the statutory findings required by 8 U.S.C. § 1357(a)(2). That unlawful seizure was later compounded by DHS's erroneous classification of his custody under INA § 235(b)—a provision reserved for individuals encountered at or near the border during inspection—rather than under § 236(a), which governs interior arrests and guarantees an individualized bond hearing.

This misclassification, not the underlying arrest, forms the core of the present challenge. By invoking § 235(b), DHS deprived Petitioner of the statutory and constitutional protections

that Congress expressly afforded to individuals apprehended within the United States. His detention, if valid at all, arises under § 236(a), which requires a bond hearing before a neutral decisionmaker.

This petition presents a collateral challenge to the legal basis of custody, not to the Government's discretion to commence or pursue removal proceedings. Accordingly, this Court retains jurisdiction under 28 U.S.C. § 2241, as confirmed by *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Exhaustion is prudential, not jurisdictional, and would be futile in light of *Matter of Yajure-Hurtado*, which forecloses administrative relief on these grounds.

For these reasons, Petitioner respectfully requests that this Court grant the writ of habeas corpus, declare that DHS's classification of his custody under § 235(b) is unlawful, and that he is detained under § 236(a). Petitioner further requests that the Court order his immediate release on the $1,500 bond amount identified by the Immigration Judge in the September 29, 2025 order, or, in the alternative, direct DHS to provide an individualized bond hearing under INA § 236(a) before an Immigration Judge, consistent with the procedural safeguards recognized in *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006)..

Respectfully submitted,

/s/ Alejandro J. Monsalve, Esq. CA SBN 324958
Alex Monsalve Law Firm, PC
240 Woodlawn Ave, Suite 9
Chula Vista, CA 91910
Phone: (619) 777-6796
Email: info@alexmonsalvelawfirm.com
Counsel for Petitioner

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