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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

VICTORINO MENDEZ CHAVEZ

Petitioner

v.

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

Case No.:25-cv-2818-DMS-SBC

Judge: Hon. Dana M. Sabraw

PETITIONER'S TRAVERSE TO RESPONDENT'S RETURN

INTRODUCTION

Petitioner, Victorino Mendez-Chavez, respectfully submits this Traverse in response to Respondents' Return. Petitioner challenges the Department of Homeland Security's continued detention under INA § 235(b) rather than § 236(a), asserting that this classification exceeds statutory authority and violates the Due Process Clause of the Fifth Amendment.

Respondents' Return fails to demonstrate that DHS correctly identified the statutory authority governing Petitioner's custody, despite the undisputed fact that he was apprehended within the United States long after entry. Instead, DHS's position repeats arguments that have been rejected in multiple recent decisions within the Southern District of California—including *Esquivel-Ipina v. Noem*, No. 25-CV-2672 JLS (BLM) (S.D. Cal. Oct. 24, 2025), and *Valdovinos v. Noem*, No. 25-CV-2439 TWR (KSC) (S.D. Cal. Sept. 25, 2025)—and appears to rely on

substantially identical boilerplate reasoning that those courts have already found unpersuasive. In those and other decisions, judges in this District have held that noncitizens apprehended in the interior cannot be lawfully detained under 8 U.S.C. § 1225(b) and are instead subject to custody under § 1226(a), with the attendant right to an individualized bond hearing.

As in *Esquivel-Ipina* and *Valdovinos*, the record here shows that Petitioner was apprehended long after entering and residing within the United States, yet DHS nonetheless classified him as an "applicant for admission" and placed him in custody under INA § 235(b). Because the same statutory and constitutional defects identified in those cases are present here, Petitioner's continued detention without access to an individualized bond hearing exceeds DHS's lawful authority and warrants immediate judicial relief..

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). Although *Chavez* was addressed at the temporary restraining order stage and the case remains pending, the court nonetheless expressly noted that § 1252(b)(9) poses no jurisdictional bar to challenges contesting the legal basis of detention. 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.

Other judges within the Southern District of California have reached the same conclusion. In *Esquivel-Ipina* and *Valdovinos*, the courts held that § 1252(b)(9) does not bar habeas jurisdiction over collateral challenges to DHS's custody classification under § 235(b). These rulings reinforce that Petitioner's claim, which challenges only the statutory basis of his detention, remains properly before this Court.

Finally, even the *Chavez* order on which Respondents rely supports this conclusion. The court expressly recognized that custody under § 1225(b)(2) "may occur during—but remains independent of—the removal proceedings," confirming that § 1252(b)(9) poses no jurisdictional bar to collateral statutory challenges like this one.

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 classification of his custody under the wrong statutory authority—a collateral issue wholly independent of any decision to initiate or pursue removal. This habeas petition contests DHS's unlawful designation of Petitioner's custody under INA § 235(b), which deprived him of the bond hearing Congress mandated for individuals apprehended within the United States 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); *Esquivel-Ipina v. Noem*, No. 25-CV-2672 JLS (BLM) (S.D. Cal. Oct. 24, 2025); and *Valdovinos v. Noem*, No. 25-CV-2439 TWR (KSC) (S.D. Cal. Sept. 25, 2025) (slip op.) (both reaffirming that collateral habeas review remains available to contest DHS's misclassification of custody under § 235(b)).

As in *Chavez v. Noem*, No. 3:25-cv-02325 (S.D. Cal. Sept. 24, 2025), 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 custody classification 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 26, 2025, Immigration Judge Meghan Heesch (Otay Mesa Immigration Court) denied Petitioner's bond request, citing *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), as the exclusive basis for ineligibility.

That ruling demonstrates that pursuing administrative remedies was not merely futile in theory—it was futile in practice. The Immigration Judge found she lacked jurisdiction based solely on *Yajure-Hurtado*, and 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 issued *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 involved exhaustion in the context of direct petitions for review or challenges to removal orders, where exhaustion is statutory and jurisdictional. This habeas petition, by contrast, arises under 28 U.S.C. § 2241 and challenges only the legal basis of custody—not any 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 bond request was denied solely due to DHS's erroneous custody classification under INA § 235(b).

ARGUMENT

A. The Government Misreads INA §§ 235 and 236

Respondents incorrectly assert that Petitioner is subject to mandatory detention under INA § 235(b) because he is an "applicant for admission." That argument fails on the law and on the undisputed facts. Petitioner was apprehended well after entering and residing in the United States; he was not encountered at a port of entry, during inspection, or near the international boundary.

The plain text of § 235(b)(2)(A) 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). Courts have held that "seeking admission" requires an affirmative act evidencing a request for admission—such as presenting at the border for inspection or applying for admission or adjustment of status—and does not include individuals who, like Petitioner, have been residing in the country without taking any such affirmative step. See, e.g., *Mosqueda v. Noem*, No. 25-CV-2304 CAS (BFM), 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *11–16 (D. Nev. Sept. 17, 2025); *Valdovinos v. Noem*, No. 25-CV-2439 TWR (KSC) (S.D. Cal. Sept. 25, 2025).

Detention following an interior arrest—well after his initial entry—falls under § 236(a), not § 235(b). The Supreme Court has confirmed that § 236(a) governs custody of noncitizens already present in the United States, whereas § 235(b) applies only to those encountered during inspection or while seeking admission. *Jennings v. Rodriguez*, 583 U.S. 281, 297–303 (2018);

Matter of M-S-, 27 I&N Dec. 509 (BIA 2019). Treating interior arrestees as "applicants for admission" collapses the statutory distinction Congress deliberately preserved.

Courts within the Southern District of California have recently reaffirmed that boundary. In *Esquivel-Ipina v. Noem,* No. 25-CV-2672 JLS (BLM) (S.D. Cal. Oct. 24, 2025), the court held that individuals arrested in the interior are properly detained under § 236(a), not § 235(b), and emphasized that § 235(b) applies only when the noncitizen takes an affirmative act to seek admission. That reasoning applies here. Mr. Mendez-Chavez has lived in the United States for years, took no such affirmative act, and thus cannot lawfully be treated as an "applicant for admission."

Accordingly, DHS's reliance on § 235(b) to detain Petitioner is contrary to statute and due process. His custody is governed by § 236(a), entitling him to an individualized bond hearing.

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

For nearly three decades after Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the government consistently applied INA § 235(b) detention authority only to arriving noncitizens or those apprehended immediately after crossing the border. By contrast, individuals arrested in the interior—long after their entry—were uniformly detained under INA § 236(a) and afforded bond eligibility. This longstanding practice spanned multiple administrations of both political parties and reflected the plain statutory distinction Congress drew between "applicants for admission" encountered at or near the border and individuals already present within the United States.

Only in mid-2025 did DHS abruptly reverse that interpretation. Around July 8, 2025, an internal memorandum circulated within ICE field offices instructed officers to classify all noncitizens who entered without inspection (EWIs) as "applicants for admission," regardless of the time, place, or circumstances of arrest. This unprecedented expansion of § 235(b) detention

authority was later adopted by the BIA in Matter of *Yajure-Hurtado* and operationalized through field guidance never subjected to public rulemaking or notice-and-comment procedures.

This reinterpretation marks an abrupt and unjustified break from nearly three decades of consistent agency interpretation. As the courts in *Esquivel-Ipina v. Noe*m, and *Chavez Valdovinos v. Noem*, observed, DHS's recent reclassification of long-settled residents as "applicants for admission" conflicts with the statutory text, legislative history, and prior agency construction of the INA. Such a sudden and unexplained departure from established interpretation is entitled to little, if any, deference. I*NS 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.").

Because DHS's new position contradicts both statutory structure and decades of consistent policy, its application to Petitioner's custody is arbitrary, capricious, and unlawful.

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

Respondents cite *Chavez v. Noem*, No. 3:25-cv-02325-CAB-SBC (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* order denied only temporary relief at the TRO stage and did not reach—let alone resolve—the underlying statutory question of whether DHS's detention authority arose under § 235(b) or § 236(a).

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 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.

Similarly, in *Esquivel-Ipina v. Noem*, No. 25-cv-2672-JLS (BLM) (S.D. Cal. Oct. 24, 2025) (Hon. Janis L. Sammartino), the court reaffirmed that noncitizens arrested in the interior are not "applicants for admission" under § 235(b) absent a positive act seeking entry, and therefore fall within the custody framework of § 236(a). That decision further recognized that DHS's recent reinterpretation of § 235(b) contravenes longstanding statutory and agency practice.

CONCLUSION

For the foregoing reasons, Petitioner's apprehension occurred within the interior of the United States—long after his entry—placing his custody within the framework of INA § 236(a), not § 235(b). DHS's subsequent designation of his custody under § 235(b)—a provision reserved for individuals encountered at or near the border during inspection—was contrary to law and deprived Petitioner of the bond hearing guaranteed under § 236(a).

This statutory misclassification, not the underlying arrest itself, forms the core of the present challenge. By invoking § 235(b), DHS denied Petitioner the statutory and constitutional protections Congress expressly afforded to individuals apprehended within the United States. His detention, if lawful at all, arises under § 236(a), which mandates an individualized bond hearing before a neutral Immigration Judge.

This petition raises a collateral challenge to the legal basis of custody—not to DHS's discretionary decision to initiate or pursue removal proceedings. Accordingly, this Court retains jurisdiction under 28 U.S.C. § 2241, as recognized in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and in multiple recent decisions within this District, including *Esquivel-Ipina v. Noem*,

No. 25-CV-2672-JLS (BLM) (S.D. Cal. Oct. 24, 2025), and *Chavez Valdovinos v. Noem*, No. 25-CV-2439-TWR (KSC) (S.D. Cal. Sept. 25, 2025). Exhaustion is prudential, not jurisdictional, and is excused where, as here, administrative remedies are futile in light of *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025).

For these reasons, Petitioner respectfully requests that this Court grant the writ of habeas corpus and order his immediate release. In the alternative, Petitioner requests that the Court declare DHS's classification of his custody under § 235(b) unlawful, hold that he is detained under § 236(a), and direct DHS to provide an individualized bond hearing under § 236(a) before a neutral Immigration Judge, consistent with *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006), which shall not be denied or precluded on the basis of any asserted custody classification.

Respectfully submitted,

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