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

ELIUT MARAVILLA AMAYA

Petitioner

v.

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

Case No.:25-cv-02892 BTM-DEB

Judge: Hon. Barry Ted Moskowitz

PETITIONER'S TRAVERSE TO RESPONDENT'S RETURN

INTRODUCTION

Petitioner, Eliut Maravilla Amaya, 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), contending that this misclassification exceeds statutory authority and violates the Due Process Clause of the Fifth Amendment.

Respondents fail to show that DHS lawfully invoked § 235(b). Petitioner was arrested within the interior of the United States—long after his entry—and therefore falls under § 236(a), which governs interior apprehensions and provides for bond eligibility before an Immigration Judge.

As in other recent decisions within this District—including *Valdovinos v. Noem*, No. 25-cv-2439-TWR (KSC) (S.D. Cal. Sept. 25, 2025); *Esquivel-Ipina v. Noem*, No. 25-cv-2672-JLS

(BLM) (S.D. Cal. Oct. 24, 2025); *Mendez Chavez v. Noem*, No. 25-cv-2818-DMS-SBC (S.D. Cal. Oct. 31, 2025); *Medina-Ortiz v. Noem*, No. 25-cv-2819-DMS-MMP (S.D. Cal. Oct. 30, 2025); *Martinez Lopez v. Noem*, No. 25-cv-2717-JES-AHG (S.D. Cal. Oct. 30, 2025); and Garcia *Magadan v. Noem*, No. 25-cv-2889-JES-KSC (S.D. Cal. Nov. 5, 2025)—each litigated by undersigned counsel, the record here confirms that DHS once again invoked § 235(b) to detain a long-settled resident arrested in the interior, contrary to law and multiple recent decisions by other judges in this District.

Petitioner's continued confinement under § 235(b), without any bond hearing before an Immigration Judge, violates the Due Process Clause of the Fifth Amendment and perpetuates detention under an inapplicable statutory framework.

Because DHS's reliance on § 235(b) is contrary to law, Petitioner respectfully requests that this Court grant the writ of habeas corpus and order his immediate release, or, in the alternative, direct DHS to provide an individualized bond hearing under § 236(a), consistent with *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

JURISDICTION

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

Respondents argue that this Court lacks jurisdiction because, in their view, Petitioner's custody arises from removal proceedings and thus falls within § 1252(b)(9). That argument fails.

Petitioner does not challenge DHS's decision to commence removal proceedings or to exercise its 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.

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 made clear 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." *Jennings* also 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 remains properly before this Court.

Other judges within the Southern District of California have reached the same conclusion. In *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), 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 confirm that claims challenging only the statutory basis of detention—like Petitioner's—are properly subject to habeas review.

Respondents also mischaracterize Petitioner's claim. Petitioner does not challenge DHS's discretionary "decision to detain" or its decision to commence removal proceedings. The sole issue presented is under which statutory authority that detention was classified—whether under INA § 235(b), which applies only to applicants for admission apprehended at or near the border, or under § 236(a), which governs interior arrests.

This distinction is critical. Petitioner is not contesting whether he may be detained, but how DHS may lawfully exercise that detention authority. Such a claim is collateral to the removal process and falls squarely within the scope of habeas review. As *Jennings* explained, § 1252(b)(9) does not bar challenges to "the statutory framework that permits [the alien's] detention," as opposed to challenges to the discretionary decision to detain. *Jennings*, 583 U.S. at 295.

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."

Accordingly, Respondents' reliance on § 1252(b)(9) and § 1252(g) is misplaced, as Petitioner's claim concerns the legal basis and classification of custody, not the initiation, adjudication, or execution 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 contention misstates both the scope of § 1252(g) and the nature of Petitioner's claim.

In *Reno v. American-Arab Anti-Discrimination Committee* ("AADC"), 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 initiate removal proceedings, nor any action to adjudicate or execute a removal order. Rather, he challenges DHS's misapplication of detention authority—specifically, its decision to classify him under INA § 235(b) instead of § 236(a). That statutory misclassification is a collateral issue wholly independent of any discretionary enforcement decision and goes to the legal basis of custody itself.

Courts in this District have consistently rejected the government's reliance on § 1252(g) in identical contexts, see *Valdovinos v. Noem*, No. 25-cv-2439-TWR (KSC) (S.D. Cal. Sept. 25, 2025); *Esquivel-Ipina v. Noem*, No. 25-cv-2672-JLS (BLM) (S.D. Cal. Oct. 24, 2025); *Mendez Chavez v. Noem*, No. 25-cv-2818-DMS-SBC (S.D. Cal. Oct. 31, 2025); *Medina-Ortiz v. Noem*, No. 25-cv-2819-DMS-MMP (S.D. Cal. Oct. 30, 2025); *Martinez Lopez v. Noem*, No. 25-cv-2717-JES-AHG (S.D. Cal. Oct. 30, 2025); and Garcia *Magadan v. Noem*, No. 25-cv-2889-JES-

KSC (S.D. Cal. Nov. 5, 2025). Each court found that § 1252(g) does not bar habeas review of DHS's custody misclassification under § 235(b).

Finally, even 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 custody classification—not any discretionary enforcement decision..

EXHAUSTION

Although habeas petitioners generally must exhaust available administrative remedies, exhaustion is not a jurisdictional prerequisite to review under 28 U.S.C. § 2241—particularly where the petitioner raises a purely legal or constitutional question and no adequate administrative remedy exists. See *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).

Given the Board of Immigration Appeals' decision in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), any further administrative remedy would be futile. In *Yajure-Hurtado*, the Board held that individuals who entered without inspection are detained under § 235(b)(2)(A) and that Immigration Judges lack bond jurisdiction over such cases. Once the Board adopted that interpretation, no Immigration Court retained authority to conduct a bond hearing.

Even the very case Respondents rely upon—*Chavez v. Noem*—held that exhaustion in this context is prudential, not jurisdictional, and that prudential exhaustion may be excused where resort to the agency would be futile.

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.

Lastly, several federal courts within this District have repeatedly recognized that exhaustion is excused in these circumstances. See *Esquivel-Ipina v. Noem*, No. 25-CV-2672 JLS (BLM) (S.D. Cal. Oct. 24, 2025); *Valdovinos v. Noem*, No. 25-CV-2439 TWR (KSC) (S.D. Cal. Sept. 25, 2025). In those cases, all litigated by undersigned counsel, petitioners only challenged DHS's unlawful invocation of § 235(b) for individuals arrested in the interior of the United States—an issue the agency itself lacks jurisdiction to determine.

Accordingly, the Court should find that exhaustion is not required. Petitioner's claim raises a purely legal question that cannot be addressed through existing administrative channels, and further pursuit of administrative remedies would be futile given the Board's own precedent in *Matter of Yajure-Hurtado*.

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 both legally and factually. Petitioner was apprehended within the interior of the United States, long after his entry and continuous residence; 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).

Detention following an interior apprehension—long after 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 clear statutory distinction Congress deliberately preserved.

Courts within the Southern District of California have recently reaffirmed that boundary. Courts have consistently held that "seeking admission" requires an affirmative act by the noncitizen—such as presenting at a port of entry for inspection or formally applying for admission or adjustment of status—and does not include individuals who, like Petitioner, have long resided in the country without taking any such step. As recognized in *Garcia Magadan v. Noem*, No. 25-cv-2889-JES-KSC (S.D. Cal. Nov. 5, 2025), and *Medina-Ortiz v. Noem*, No. 25-cv-2819-DMS-MMP (S.D. Cal. Oct. 30, 2025), individuals arrested in the interior of the United States are properly detained under INA § 236(a), not § 235(b). Both courts emphasized that § 235(b) applies only when a noncitizen takes an affirmative act to seek admission—such as presenting at a port of entry for inspection—and does not extend to long-term residents apprehended years after entry. That reasoning applies squarely here. Petitioner was apprehended in the interior of the United States after years of residence and took no affirmative act to seek admission. He therefore 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 before a neutral Immigration Judge.

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

For nearly three decades following enactment of 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 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 directive circulated within ICE field offices instructing 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 echoed in *Matter of Yajure-Hurtado*, and operationalized through unpublished field guidance that was never subjected to public rulemaking or notice-and-comment procedures.

This reinterpretation represents a sudden and unjustified break from nearly three decades of consistent agency understanding. Multiple judges within the Southern District of California have already recognized that DHS's post-2025 reclassification of long-settled residents as "applicants for admission" conflicts with the statutory text, legislative history, and the agency's own prior construction of the INA. See, e.g., *Medina-Ortiz v. Noem*, No. 25-cv-2819-DMS-MMP (S.D. Cal. Oct. 30, 2025); *Garcia Magadan v. Noem*, No. 25-cv-2889-JES-KSC (S.D. Cal. Nov. 5, 2025).

An unexplained departure from such an established interpretation is entitled to little, if any, deference. *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.").

Because DHS's new position contradicts both the 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' characterization of *Chavez v. Noem*, No. 3:25-cv-02325 (S.D. Cal. Sept. 24, 2025), is inaccurate. The *Chavez* court did not "find" that all individuals who entered without inspection are "applicants for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Rather, the court denied a request for temporary injunctive relief, expressly holding that the petitioners had not demonstrated a likelihood of success on the merits. In doing so, the court merely recited the statutory definition of "applicant for admission" in § 1225(a)(1); it made

no factual findings or legal determinations applying § 1225(b)(2) to noncitizens apprehended in the interior—let alone to long-term residents.

Respondents' assertion that this issue was "found by the district court in *Chavez*" is inaccurate and misleading. The court's discussion merely acknowledged the Government's argument and recited the statutory text. At most, *Chavez* noted the definition of "applicant for admission"; it made no factual findings or legal determinations applying § 1225(b)(2) to noncitizens apprehended in the interior. The decision contains no analysis of long-settled EWIs or the interplay between §§ 1225(b) and 1226(a).

Because *Chavez* never reached the merits, its reasoning carries no precedential or persuasive weight on the jurisdictional and statutory questions now before this Court. The Government's reliance on that case as authoritative support for its position misstates the record and should be disregarded.

D. The Government Misinterprets the Scope and Legislative Intent of the Laken Riley Act

The Government mischaracterizes the Laken Riley Act's scope. Congress passed the Laken Riley Act to address the release of noncitizens who entered the United States without inspection and were detained under § 236(a). The legislative record makes clear that the amendment's target population was entry-without-inspection (EWI) noncitizens — not individuals who overstayed visas or lawful permanent residents in removal proceedings.

The legislative text, summaries, and floor debates show that lawmakers were responding to a single, well-defined concern: the release of noncitizens who entered illegally — those "present in the United States without being admitted or paroled." That phrase, drawn verbatim from § 1182(a)(6)(A), identifies the entry-without-inspection (EWI) population.

1. Statutory Target: Persons "Without Being Admitted or Paroled"

The amendment added § 1226(c)(1)(E), requiring mandatory detention for any noncitizen who

> (i) is inadmissible under § 1182(a)(6)(A), (6)(C), or (7), and

(ii) is charged with or convicted of certain theft- or assault-related crimes.

By choosing inadmissibility grounds, Congress signaled that the Act applied to those never admitted. A visa overstay, by contrast, is deportable under § 237(a)(1)(B), not inadmissible under § 212(a)(6)(A). If Congress had intended to cover overstays or lawful permanent residents, it would have referenced § 237, not § 212. The deliberate choice of § 1182(a)(6)(A) therefore isolates the EWI class as the intended target.

2. Legislative Descriptions Used EWI-Specific Language

Both the Congressional Budget Office and Congress.gov summaries of H.R. 7511 (the Laken Riley Act) describe the affected population using the same terminology that defines entry without inspection under 8 U.S.C. § 1182(a)(6)(A).

- **The CBO Cost Estimate provides:**

  > "H.R. 7511 would require Immigration and Customs Enforcement (ICE) to detain any alien (non-U.S. national) who is present in the United States without being lawfully admitted and has been charged with or convicted of burglary, theft, larceny, or shoplifting."[1]

- **Likewise, the Congress.gov page titled "All Information (Except Text) for H.R. 7511 — Laken Riley Act" explains:**

  > Under this bill, DHS must detain an individual who (1) is unlawfully present in the United States or did not possess the necessary documents when applying for admission; and (2) has been charged with, arrested for, convicted for, or admits to having committed acts that constitute the essential elements of burglary, theft, larceny, or shoplifting.[2]

---

1 Congressional Budget Office, Cost Estimate for H.R. 7511 (Mar. 5, 2024), available at https://www.cbo.gov/system/files/2024-03/hr7511.pdf

2 Congress.gov, All Information (Except Text) for H.R. 7511 — Laken Riley Act, https://www.congress.gov/bill/118th-congress/house-bill/7511/all-info

Neither summary references visa overstays, lawful permanent residents, or any class of previously admitted noncitizens. Both instead describe individuals "unlawfully present" or "without being lawfully admitted," language that mirrors the statutory definition of inadmissibility under § 1182(a)(6)(A). Congress therefore framed the amendment as targeting entry without inspection (EWI) — confirming that it sought to restrict the release of non-admitted entrants, not to redefine the custody of visa overstays or previously admitted aliens.

3. Floor Statements Focused Exclusively on Illegal Entry

Statements from the March 7, 2024 House floor debate on the Laken Riley Act confirm that Congress's focus was on individuals who entered the United States illegally, not visa overstays or lawful residents. Representative after representative described the measure as addressing illegal entry and release of criminal aliens, not technical violations of lawful status. For example:

- **Rep. Dan Bishop (R-NC)** — Bill Sponsor

  "This legislation requires ICE to issue detainers and take custody of illegal aliens who commit crimes like theft, burglary, and larceny." Cong. Rec. H1013 (Mar. 7, 2024).[3]

- **Rep. Dan Bishop (R-NC)** —

  "The action we announce today in support of this legislation is a signal to all Americans that we will no longer tolerate reckless policies that release criminal illegal aliens back into our communities." *Id.* H1013.

- **Rep. Steve Scalise (R-LA)** —

  "The bill before us would require this administration to detain illegal aliens who commit theft, burglary, larceny, or shoplifting, something it simply refuses to do." *Id.* H1013.

---

3 See Congressional Record, House of Representatives, Mar. 7, 2024, pp. H1012–H1014, available at https://www.congress.gov/118/crec/2024/03/07/170/41/CREC-2024-03-07-pt1-PgH1013-4.pdf

- **Rep. Tom Tiffany (R-WI)**

  "Laken Hope Riley was a beautiful soul taken too soon from her loving family by an illegal migrant who was detained and then released back into our country in 2022." *Id.* H1012.

- **Rep. Mike Collins (R-GA)**

  "We need to send a message to the President that we will not stand for his administration's decision to release people who cross our borders illegally and then commit crimes against Americans."*Id.* H1014.

Every statement links the bill to border crossers and unlawful entrants. Not one mentions overstays or LPRs in removal. The legislative record therefore forecloses the Government's implication that Congress acted with those groups in mind.

4. Legislative Logic: Limiting Bond for EWIs under § 236

At the time of debate, most noncitizens apprehended inside the United States after entering illegally were detained under § 236(a) — and thus eligible to seek bond — except those already subject to mandatory detention under § 236(c) for specified criminal or national-security grounds. Congress viewed that bond eligibility as the problem the Act was meant to fix. By enacting § 236(c)(1)(E), Congress expanded § 236(c) to include a new mandatory-detention category — entry-without-inspection (EWI) individuals charged with certain theft- or assault-related offenses — thereby removing bond discretion for that limited class. Congress does not legislate redundantly. The fact that lawmakers saw a need to eliminate bond for this group proves they understood EWIs apprehended in the interior to fall under § 236, not § 235. The Act's very existence presupposes that these individuals had bond eligibility that Congress sought to withdraw, confirming that § 236(a) — not § 235(b) — governs custody for interior arrests.

In sum, the statutory cross-references, legislative summaries, and floor debates all converge on one point: the Laken Riley Act was designed to close a perceived "loophole" allowing release of EWIs detained under § 236(a). It was not directed at visa overstays or

lawful permanent residents in removal. By carving out a new mandatory-detention subparagraph within § 236(c), Congress implicitly reaffirmed that § 236(a) governs custody for the remaining EWI population. The Government's contrary reading contradicts both the statutory text and the legislative intent Congress publicly declared.

E. Respondents' Own Concessions and Prior Adverse Rulings Undermine Their Position

Respondents themselves acknowledge that courts within this District have repeatedly rejected the same § 1225(b) argument they advance here. Their fallback position—that if § 1226(a) applies, the proper remedy would be a bond hearing—confirms that the only live dispute is the legal classification of Petitioner's custody. This underscores that the question before this Court is a pure question of law, properly within habeas jurisdiction under 28 U.S.C. § 2241.

Moreover, Respondents' own filing recognizes that, should the Court determine § 1226(a) applies, Petitioner would be entitled to a bond hearing before an Immigration Judge — confirming that the only live dispute concerns the legal classification of his custody.

In both *Medina-Ortiz* and *Mendez Chavez*, the courts found the statutory issue so clear that they vacated oral argument, expressly concluding the matters were "suitable for decision without oral argument" because they presented only "questions of law." These orders underscore the growing unanimity within this District: DHS's post-2025 reclassification of long-settled residents as "applicants for admission" under § 1225(b) is legally untenable.

Furthermore, as previously noted, multiple judges within this District have now resolved the same statutory question, each holding that detention following an interior arrest is governed by INA § 236(a), not § 235(b), and granting habeas relief on that basis. See, e.g., *Medina-Ortiz v. Noem*, No. 25-cv-2819-DMS-MMP (S.D. Cal. Oct. 30, 2025); *Garcia Magadan v. Noem*, No. 25-cv-2889-JES-KSC (S.D. Cal. Nov. 5, 2025).

Together, these rulings reflect a consistent and persuasive line of decisions within the Southern District of California holding that DHS may not invoke § 235(b) to detain individuals apprehended in the interior of the United States years after entry.

CONCLUSION

For the foregoing reasons, Petitioner's arrest occurred in the interior of the United States —long after his entry—placing his custody within INA § 236(a), not § 235(b). DHS's designation of his custody under § 235(b) was contrary to law and deprived him of the bond hearing guaranteed under § 236(a).

This misclassification, not the arrest itself, lies at the heart of this habeas challenge. By invoking § 235(b), DHS denied Petitioner the statutory and constitutional protections Congress afforded to individuals apprehended within the United States. His custody, if lawful at all, arises under § 236(a), which requires an individualized bond hearing before a neutral Immigration Judge.

This petition challenges the legal basis of custody—not DHS's discretionary decision to initiate or pursue removal. 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.

Petitioner respectfully requests that the Court grant the writ of habeas corpus and order his immediate release. In the alternative, the Court should declare DHS's classification under § 235(b) unlawful, hold that he is detained under § 236(a), and direct DHS to provide an individualized bond hearing consistent with *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

Dated: November 10, 2025