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

MATEO CONTRERAS-ALBINO

Petitioner

v.

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

Case No.:25-cv-02965 BAS-BLM

Judge: Hon. Cynthia Bashant

PETITIONER'S TRAVERSE TO RESPONDENT'S RETURN

INTRODUCTION

Petitioner, Mateo Contreras-Albino, 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) (Robinson, J.); *Esquivel-Ipina v. Noem*, No. 25-

cv-2672-JLS (BLM) (S.D. Cal. Oct. 24, 2025) (Sammartino, J.); *Mendez Chavez v. Noem*, No. 25-cv-2818-DMS-SBC (S.D. Cal. Oct. 31, 2025) (Sabraw, J.); *Medina-Ortiz v. Noem*, No. 25-cv-2819-DMS-MMP (S.D. Cal. Oct. 30, 2025) (Sabraw, J.); *Martinez Lopez v. Noem*, No. 25-cv-2717-JES-AHG (S.D. Cal. Oct. 30, 2025) (Sammartino, J.); *Garcia Magadan v. Noem*, No. 25-cv-2889-JES-KSC (S.D. Cal. Nov. 5, 2025) (Simmons, J.); *Maceda-Garcia v. Noem*, No. 25-cv-2968-JO-JLB (S.D. Cal. Nov. 13, 2025) (Ohta, J.); and *Maravilla Amaya v. Noem*, No. 25-cv-2892-BTM-DEB (S.D. Cal. Nov. 13, 2025) (Moskowitz, J.)—each litigated by undersigned counsel, the record here confirms that DHS has again invoked § 235(b) to detain a long-settled resident apprehended in the interior, contrary to law and contrary to multiple recent decisions by other judges in this District and in other districts, including *Bethancourt Soto v. Soto*, No. 25-cv-16200 (D.N.J. Oct. 22, 2025) (O'Hearn, J.); *Tumba Huamani v. Francis*, No. 25-cv-8110 (S.D.N.Y. Nov. 4, 2025) (Liman, J.); *Bethancourt Martinez v. Wray*, No. 25-cv-1187-SKO (E.D. Cal. Oct. 3, 2025) (Oberto, M.J.); and *Gomez Cabrera v. Wray*, No. 25-cv-5240-TMC (W.D. Wash. Oct. 28, 2025) (Christensen, J.)—each rejecting DHS's nationwide July 8, 2025 re-classification policy and holding that long-settled noncitizens arrested in the interior are properly detained, if at all, under § 236(a), not § 235(b).

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 on the $3,000 bond previously authorized by the Immigration Judge, or, in the alternative, direct DHS to provide a new individualized bond hearing under § 236(a) before a neutral adjudicator, 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. As detailed in the Introduction, multiple courts in this District have held that § 1252(b)(9) does not bar habeas review of 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—remain properly subject to habeas jurisdiction.

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 repeatedly rejected the government's reliance on § 1252(g) in this exact context. See, e.g., *Valdovinos v. Noem*, *Esquivel-Ipina v. Noem*, *Mendez Chavez v. Noem, Medina-Ortiz v. Noem, Martinez Lopez v. Noem, Garcia Magadan v. Noem, Maceda-Garcia v. Noem, and Maravilla Amaya v. Noem,* as cited in the Introduction. Each of these courts found that § 1252(g) does not bar habeas review of DHS's custody misclassification under § 235(b).

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

Exhaustion is excused here because any additional administrative process would be futile. Petitioner already sought and obtained bond relief before the Immigration Judge, who granted release on a $3,000 bond after finding that § 236(a) governed Petitioner's custody. DHS appealed. The Board of Immigration Appeals then reversed the IJ solely on the basis of *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025)—holding that individuals who entered without inspection must be detained under § 235(b)(2)(A) and that Immigration Judges therefore lack jurisdiction to issue bond under § 236(a).

No further administrative remedy exists because the Board has already foreclosed bond jurisdiction under § 236(a) through its application of *Yajure-Hurtado* to Petitioner's case.

The Ninth Circuit's controlling rule in *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017), is directly on point: exhaustion may be excused where "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, numerous federal courts within this District have repeatedly recognized that exhaustion is excused in these circumstances. See the cases cited in the Introduction.

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). In both cases, the court emphasized that § 235(b) applies only when a noncitizen takes an affirmative step 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.

Similarly, as Judge Moskowitz recently held in *Maravilla Amaya v. Noem*, No. 25-cv-2892-BTM-DEB (S.D. Cal. Nov. 13, 2025), *Matter of Yajure-Hurtado* must be rejected because it is inconsistent with the statutory text of §§ 1225 and 1226. Section 1225 'deals extensively with arriving noncitizens who are actively seeking admission,' not long-settled residents apprehended in the interior.

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. As noted in the previously cited cases, numerous courts throughout this District have uniformly rejected this new approach.

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

In their Return, 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 appropriate remedy would be a bond hearing—confirms that the only live dispute is the legal classification of Petitioner's custody. That issue is a pure question of law, properly reviewable in habeas under 28 U.S.C. § 2241. Respondents further concede that,

should the Court determine § 1226(a) governs, Petitioner would be entitled to a new individualized bond hearing before an Immigration Judge, underscoring that the sole dispute concerns the statutory basis of 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 this 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 the habeas decisions cited in the Introduction.

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 pursuant to the $3,000 bond previously authorized by the Immigration Judge. The IJ already determined—after a full evidentiary hearing—that Petitioner satisfied the requirements for release under INA § 236(a), and that bond decision was reversed by the Board solely because of *Matter of Yajure-Hurtado*, not due to any factual concerns regarding danger or flight risk.

In the alternative, Petitioner requests that the Court declare DHS's custody 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

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