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

EMANUEL MACEDA-GARCIA

Petitioner

v.

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

Case No.:25-cv-02968-JO-JLB

Judge: Hon. Jinsook Ohta

PETITIONER'S SUPPORTING FILING IN SUPPORT OF HABEAS PETITION

INTRODUCTION

Petitioner Emanuel Maceda-Garcia respectfully submits this Supporting Filing, as ordered by the Court, in support of his Petition for Writ of Habeas Corpus. This action challenges the Department of Homeland Security's unlawful classification and detention of Petitioner under INA § 235(b), even though he was arrested in the interior of the United States after residing here since 2008. By treating Petitioner as an "applicant for admission," DHS acted contrary to statutory authority and deprived him of the procedural protections guaranteed to individuals detained under INA § 236(a).

On August 22, 2025, Immigration Judge Mark Sameit of the Otay Mesa Immigration Court conducted a full custody redetermination hearing, found that Petitioner posed no danger to

the community, and granted release on an $8,500 bond. The Department immediately filed a Form EOIR-43 to appeal that decision.

On September 5, 2025, the Board of Immigration Appeals issued *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that the plain language of INA § 235(b)(2)(A) divests Immigration Judges of jurisdiction to conduct bond hearings for individuals who entered without inspection

Five days later, on September 10, 2025, Immigration Judge Mark Sameit issued a written Bond Memorandum explaining the jurisdictional reasoning underlying his prior custody order and acknowledging the impact of *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). In that memorandum, Judge Sameit expressly stated that, at the time of the August 22, 2025 bond hearing, the Court correctly exercised jurisdiction under INA § 236(a) in accordance with binding Ninth Circuit precedent—citing *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (rejecting the theory that any applicant for admission remains in a "continuing application for admission" until adjudicated by an immigration officer) and *United States v. Gambino-Ruiz*, 91 F.4th 981, 989 (9th Cir. 2024) (noting that *Torres* "merely rejected the view that an alien remains in a perpetual state of applying for admission").

However, Judge Sameit further noted that the Board's subsequent decision in *Yajure-Hurtado*—issued after the August 22 hearing—interpreted § 235(b) as divesting Immigration Judges of jurisdiction to conduct bond hearings for individuals present in the United States without admission. Citing that new Board precedent, the Immigration Judge reluctantly concluded that he no longer possessed jurisdiction to redetermine custody and effectively vacated his prior bond decision, notwithstanding his earlier finding that Mr. Maceda-Garcia posed no danger to the community and could safely be released on an $8,500 bond with appropriate supervision.

Petitioner's continued detention rests entirely on that misclassification. The statutory text, long-standing DHS practice, and multiple recent orders from this District—including *Garcia Magadan v. Noem*, No. 25-cv-02889 (JES/AHG), and *Martinez Lopez v. Noem*, No. 25-cv-02717

(JES/AHG)—confirm that interior arrests fall under INA § 236(a) and are subject to individualized bond review.

Because DHS continues to detain Petitioner under the wrong statute, his custody is unlawful and violates the Due Process Clause of the Fifth Amendment.

Petitioner therefore asks this Court to declare that his detention is governed by INA § 236(a) and to order his immediate release under the $8,500 bond previously set by the Immigration Judge, or, in the alternative, to direct DHS to provide a new bond hearing under INA § 236(a) within ten days.

JURISDICTION

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

As in other previous cases, Respondents may argue that this Court lacks jurisdiction because Petitioner's custody "arises from" removal proceedings and therefore falls within § 1252(b)(9). That argument fails.

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 individuals arrested in the interior of the United States.

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." *Jennings* 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..

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

As in prior habeas cases raising identical issues, Respondents may again contend that 8 U.S.C. § 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 narrow scope of § 1252(g) and the nature of Petitioner's collateral custody challenge.

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 in this District 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); *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).

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 OF ADMINISTRATIVE REMEDIES

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).

Petitioner's claim presents a pure question of law—whether the Department of Homeland Security ("DHS") lawfully classified his custody under INA § 235(b) rather than § 236(a). On August 22, 2025, Immigration Judge Mark Sameit conducted a custody redetermination hearing and granted Petitioner's release on an $8,500 bond, finding that he posed no danger to the community. On September 5, 2025, the Board of Immigration Appeals issued *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that individuals who entered without inspection are detained under § 235(b)(2)(A) and that Immigration Judges lack bond jurisdiction over such cases. Five days later, on September 10, 2025, Judge Sameit issued a Bond Memorandum vacating his prior decision in light of the Board's new ruling.

Given that the BIA itself issued *Matter of Yajure-Hurtad*o, further administrative remedies are unavailable and any attempt to exhaust would be futile. Neither the Immigration Court nor the Board retains authority to review or correct DHS's initial custody designation once the Board has held that § 235(b) governs all individuals who entered without inspection. As a result, there exists no administrative mechanism through which Petitioner could obtain relief on this issue.

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, as here, petitioners 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 resolve.

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 Emanuel Maceda-Garcia is subject to mandatory detention under INA § 235(b) because he is an "applicant for admission." That argument fails on both the law and the undisputed facts. Petitioner was apprehended in the interior of the United States after residing here continuously since 2008. 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). "Seeking admission" requires an affirmative act evidencing a request for admission—such as presenting at the border for inspection or otherwise applying for admission —and does not encompass individuals who, like Petitioner, have been living within the United States for many years without taking any such step.

Detention following an interior arrest—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 long-term residents like Petitioner as "applicants for admission" collapses the statutory distinction Congress deliberately preserved between arriving aliens and those already inside the country.

Several courts within the Southern District of California have now rejected DHS's misapplication of INA § 235(b) in a growing line of habeas decisions—all adjudicated favorably to petitioners represented by undersigned counsel—holding that § 236(a) governs the custody of

individuals apprehended in the interior of the United States. See *Mendez Chavez v. Noem*, No. 25-cv-02818-DMS-SBC (S.D. Cal. Oct. 31, 2025); *Medina-Ortiz v. Noem*, No. 25-cv-02819-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 of these courts granted habeas relief, concluding that DHS may not invoke § 235(b) to detain individuals who were apprehended years after entering and residing openly in the United States, and ordering either a bond hearing under § 236(a) or immediate release.

These rulings—issued by several judges within this District—reflect a clear and consistent interpretation of the statutory framework: the Department's post-*Matter of Q. Li* expansion of § 235(b) to cover long-term residents is unsupported by the statute and inconsistent with due process. Petitioner Emanuel Maceda-Garcia's situation is materially indistinguishable from the petitioners in those cases: he was detained years after his entry and long-term residence in the United States, without ever presenting himself for inspection or otherwise "seeking admission." His custody must therefore proceed under § 236(a), which authorizes discretionary release on bond or conditional parole.

Accordingly, DHS's reliance on § 235(b) to detain Petitioner is contrary to both the statute and fundamental fairness. His detention is governed by § 236(a), entitling him to an individualized bond hearing before an Immigration Judge.

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 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 detained under INA § 236(a) and afforded bond eligibility. This practice, followed by administrations of both parties, reflected the plain statutory distinction 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 approach. Around July 8, 2025, an internal directive instructed ICE officers to classify all noncitizens who entered without inspection (EWIs) as "applicants for admission," regardless of when or where they were arrested. This unprecedented expansion of § 235(b) authority was later echoed in *Matter of Yajure-Hurtado* and implemented through unpublished field guidance never subjected to notice-and-comment procedures.

This abrupt departure from decades of consistent agency interpretation has been rejected by multiple courts within the Southern District of California—including *Esquivel-Ipina v. Noem*, No. 25-cv-2672 JLS (BLM) (S.D. Cal. Oct. 24, 2025); *Mendez Chavez v. Noem*, No. 25-cv-02818 DMS-SBC (S.D. Cal. Oct. 31, 2025); *Medina-Ortiz v. Noem*, No. 25-cv-02819 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 recognizing that DHS's reclassification of long-settled residents as "applicants for admission" conflicts with the statutory text, legislative history, and the agency's prior practice.

Such an unexplained shift is entitled to little, if any, deference. INS v. Cardoza-Fonseca, 480 U.S. 421, 446 n.30 (1987). Because DHS's new position contradicts both statutory structure and decades of settled policy, its application to Mr. Maceda-Garcia's custody is arbitrary, capricious, and unlawful.

CONCLUSION

For the foregoing reasons, Petitioner's apprehension occurred within the interior of the United States—long after his entry—placing his custody squarely 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 holding that § 236(a) governs custody for individuals arrested in the interior. Exhaustion is prudential, not jurisdictional, and is excused where, as here, administrative remedies are futile in light of *Matter of Yajure-Hurtado*.

For these reasons, Petitioner respectfully requests that this Court grant the writ of habeas corpus, declare DHS's classification of his custody under § 235(b) unlawful, hold that he is detained under § 236(a), and direct DHS to release Petitioner within 48 hours upon posting the $8,500 bond already set by the Immigration Judge on August 22, 2025, or, in the alternative, to provide Petitioner with a new 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,

/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 7, 2025