

1 Alejandro Monsalve
2 CA SBN 324958
3 Alex Monsalve Law Firm, PC
4 240 Woodlawn Ave., Suite 9
5 Chula Vista, CA 91910
6 (619) 777-6796
7 Counsel for Petitioner

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MARICELA MARTINEZ-MARTINEZ

Petitioner

v.

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

Case No.:25-cv-02975 GPC-VET

Judge: Hon. Gonzalo P. Curiel

**PETITIONER’S TRAVERSE TO
RESPONDENT’S RETURN**

INTRODUCTION

Petitioner, Maricela Martinez-Martinez, 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 her 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-

1 cv-2672-JLS (BLM) (S.D. Cal. Oct. 24, 2025) (Sammartino, J.); *Mendez Chavez v. Noem*, No.
2 25-cv-2818-DMS-SBC (S.D. Cal. Oct. 31, 2025) (Sabraw, J.); *Medina-Ortiz v. Noem*, No. 25-cv-
3 2819-DMS-MMP (S.D. Cal. Oct. 30, 2025) (Sabraw, J.); *Martinez Lopez v. Noem*, No. 25-cv-
4 2717-JES-AHG (S.D. Cal. Oct. 30, 2025) (Sammartino, J.); *Garcia Magadan v. Noem*, No. 25-
5 cv-2889-JES-KSC (S.D. Cal. Nov. 5, 2025) (Simmons, J.); *Maceda-Garcia v. Noem*, No. 25-cv-
6 2968-JO-JLB (S.D. Cal. Nov. 13, 2025) (Ohta, J.); and *Maravilla Amaya v. Noem*, No. 25-cv-
7 2892-BTM-DEB (S.D. Cal. Nov. 13, 2025) (Moskowitz, J.)—each litigated by undersigned
8 counsel, the record here confirms that DHS has again invoked § 235(b) to detain a long-settled
9 resident apprehended in the interior, contrary to law and contrary to multiple recent decisions by
10 other judges in this District and in other districts, including *Bethancourt Soto v. Soto*, No. 25-cv-
11 16200 (D.N.J. Oct. 22, 2025) (O’Hearn, J.); *Tumba Huamani v. Francis*, No. 25-cv-8110
12 (S.D.N.Y. Nov. 4, 2025) (Liman, J.); *Bethancourt Martinez v. Wray*, No. 25-cv-1187-SKO (E.D.
13 Cal. Oct. 3, 2025) (Oberto, M.J.); and *Gomez Cabrera v. Wray*, No. 25-cv-5240-TMC (W.D.
14 Wash. Oct. 28, 2025) (Christensen, J.)—each rejecting DHS’s nationwide July 8, 2025 re-
15 classification policy and holding that long-settled noncitizens arrested in the interior are properly
16 detained, if at all, under § 236(a), not § 235(b).

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

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

24 **JURISDICTION**

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

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

1 Petitioner does not challenge DHS’s decision to commence removal proceedings or to
2 exercise its discretion to detain. Rather, she challenges the statutory and constitutional authority
3 under which that detention was classified—specifically, DHS’s unlawful designation of her
4 custody as arising under INA § 235(b) instead of § 236(a). This misclassification deprived her of
5 the bond hearing Congress mandated for interior arrests.

6 The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and the Ninth Circuit
7 in *Gonzalez v. ICE*, 975 F.3d 788 (9th Cir. 2020), both made clear that § 1252(b)(9) does not bar
8 such claims, because they “challenge the statutory or constitutional basis of detention rather than
9 the decision to remove.” *Jennings* also cautioned that § 1252(b)(9) cannot be read so broadly as
10 to encompass every dispute “in any way connected to deportation proceedings.” *Id.* at 293.

11 Because this petition contests the authority under which DHS asserts custody—not the
12 validity of any removal order or charging decision—it remains properly before this Court.

13 Other judges within the Southern District of California have reached the same
14 conclusion. As detailed in the Introduction, multiple courts in this District have held that §
15 1252(b)(9) does not bar habeas review of collateral challenges to DHS’s custody classification
16 under § 235(b). These rulings confirm that claims challenging only the statutory basis of
17 detention—like Petitioner’s—remain properly subject to habeas jurisdiction.

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

23 This distinction is critical. Petitioner is not contesting whether she may be detained, but
24 how DHS may lawfully exercise that detention authority. Such a claim is collateral to the
25 removal process and falls squarely within the scope of habeas review. As *Jennings* explained, §
26 1252(b)(9) does not bar challenges to “the statutory framework that permits [the alien’s]
27

1 detention,” as opposed to challenges to the discretionary decision to detain. *Jennings*, 583 U.S. at
2 295.

3 Throughout their Return, Respondents rely extensively on *Chavez v. Noem*, No. 3:25-cv-
4 02325 (S.D. Cal. Sept. 24, 2025). Yet the *Chavez* court rejected a jurisdictional argument
5 virtually identical to the one advanced here, holding that § 1252(b)(9) “poses no jurisdictional
6 bar” where the petitioner “was not asking for review of an order of removal, challenging the
7 decision to detain them in the first place or to seek removal, nor challenging any part of the
8 process by which their removability will be determined.” (quoting *Jennings v. Rodriguez*, 583
9 U.S. 281, 294–95 (2018)). As *Chavez* further explained, “detention pursuant to § 1225(b)(2) may
10 occur during—but remains independent of—the removal proceedings.”

11 Accordingly, Respondents’ reliance on § 1252(b)(9) and § 1252(g) is misplaced, as
12 Petitioner’s claim concerns the legal basis and classification of custody, not the initiation,
13 adjudication, or execution of removal proceedings.

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

15 Respondents further contend that § 1252(g) deprives this Court of jurisdiction because
16 Petitioner’s detention “stems from ICE’s decision to commence removal proceedings.” That
17 contention misstates both the scope of § 1252(g) and the nature of Petitioner’s claim.

18 In *Reno v. American-Arab Anti-Discrimination Committee* (“AADC”), 525 U.S. 471, 482
19 (1999), the Supreme Court held that § 1252(g) applies only to three discrete actions the Attorney
20 General may take—commencing proceedings, adjudicating cases, or executing removal orders—
21 and does not extend to “the many other decisions or actions that may be part of the deportation
22 process.” The Court expressly rejected reading § 1252(g) as a blanket jurisdictional bar over all
23 claims tangentially related to removal.

24 Here, Petitioner does not challenge DHS’s decision to initiate removal proceedings, nor
25 any action to adjudicate or execute a removal order. Rather, she challenges DHS’s
26 misapplication of detention authority—specifically, its decision to classify her under INA §
27 235(b) instead of § 236(a). That statutory misclassification is a collateral issue wholly

1 independent of any discretionary enforcement decision and goes to the legal basis of custody
2 itself.

3 Courts in this District have repeatedly rejected the government’s reliance on § 1252(g) in
4 this exact context. See, e.g., *Valdovinos v. Noem*, *Esquivel-Ipina v. Noem*, *Mendez Chavez v.*
5 *Noem*, *Medina-Ortiz v. Noem*, *Martinez Lopez v. Noem*, *Garcia Magadan v. Noem*, *Maceda-*
6 *Garcia v. Noem*, and *Maravilla Amaya v. Noem*, as cited in the Introduction. Each of these courts
7 found that § 1252(g) does not bar habeas review of DHS’s custody misclassification under §
8 235(b).

9 Accordingly, § 1252(g) does not divest this Court of jurisdiction to review Petitioner’s
10 claim, which challenges DHS’s unlawful custody classification—not any discretionary
11 enforcement decision.

12 EXHAUSTION

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

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

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

25 The controlling Ninth Circuit authority is *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th
26 Cir. 2017), which holds that exhaustion is prudential and may be waived when “administrative
27 remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile
28

1 gesture, irreparable injury will result, or the administrative proceedings would be void.” (quoting
2 *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). That is precisely the situation here.

3 Lastly, numerous federal courts within this District have repeatedly recognized that
4 exhaustion is excused in these circumstances. See the cases cited in the Introduction.

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

9 ARGUMENT

10 **A. The Government Misreads INA §§ 235 and 236**

11 Respondents incorrectly assert that Petitioner is subject to mandatory detention under
12 INA § 235(b) because she is an “applicant for admission.” That argument fails both legally and
13 factually. Petitioner was apprehended within the interior of the United States, long after her entry
14 and continuous residence; she was not encountered at a port of entry, during inspection, or near
15 the international boundary.

16 The plain text of § 235(b)(2)(A) applies only when “an immigration officer determines
17 that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8
18 U.S.C. § 1225(b)(2)(A).

19 Detention following an interior apprehension—long after entry—falls under § 236(a), not
20 § 235(b). The Supreme Court has confirmed that § 236(a) governs custody of noncitizens already
21 present in the United States, whereas § 235(b) applies only to those encountered during
22 inspection or while seeking admission. *Jennings v. Rodriguez*, 583 U.S. 281, 297–303 (2018);
23 *Matter of M-S-*, 27 I&N Dec. 509 (BIA 2019). Treating interior arrestees as “applicants for
24 admission” collapses the clear statutory distinction Congress deliberately preserved.

25 Courts within the Southern District of California have recently reaffirmed that boundary.
26 Courts have consistently held that “seeking admission” requires an affirmative act by the
27 noncitizen—such as presenting at a port of entry for inspection or formally applying for

1 admission or adjustment of status—and does not include individuals who, like Petitioner, have
2 long resided in the country without taking any such step. As recognized in *Garcia Magadan v.*
3 *Noem*, No. 25-cv-2889-JES-KSC (S.D. Cal. Nov. 5, 2025), and *Medina-Ortiz v. Noem*, No. 25-
4 cv-2819-DMS-MMP (S.D. Cal. Oct. 30, 2025), individuals arrested in the interior of the United
5 States are properly detained under INA § 236(a), not § 235(b). In both cases, the court
6 emphasized that § 235(b) applies only when a noncitizen takes an affirmative step to seek
7 admission—such as presenting at a port of entry for inspection—and does not extend to long-
8 term residents apprehended years after entry.

9 Similarly, as Judge Moskowitz recently held in *Maravilla Amaya v. Noem*, No. 25-cv-
10 2892-BTM-DEB (S.D. Cal. Nov. 13, 2025), *Matter of Yajure-Hurtado* must be rejected because
11 it is inconsistent with the statutory text of §§ 1225 and 1226. Section 1225 ‘deals extensively
12 with arriving noncitizens who are actively seeking admission,’ not long-settled residents
13 apprehended in the interior.

14 That reasoning applies squarely here. Petitioner was apprehended in the interior of the
15 United States after years of residence and took no affirmative act to seek admission. She
16 therefore cannot lawfully be treated as an “applicant for admission.”

17 Accordingly, DHS’s reliance on § 235(b) to detain Petitioner is contrary to statute and
18 Due Process. Her custody is governed by § 236(a), entitling her to an individualized bond
19 hearing before a neutral Immigration Judge.

20 **B. DHS’s Sudden Reinterpretation Contradicts Nearly Three Decades of** 21 **Consistent Policy**

22 For nearly three decades following enactment of the Illegal Immigration Reform and
23 Immigrant Responsibility Act of 1996 (“IIRIRA”), the government consistently applied INA §
24 235(b) detention authority only to arriving noncitizens or those apprehended immediately after
25 crossing the border. By contrast, individuals arrested in the interior—long after entry—were
26 uniformly detained under INA § 236(a) and afforded bond eligibility. This longstanding practice
27 spanned multiple administrations of both political parties and reflected the plain statutory

1 distinction Congress drew between “applicants for admission” encountered at or near the border
2 and individuals already present within the United States.

3 Only in mid-2025 did DHS abruptly reverse that interpretation. Around July 8, 2025, an
4 internal directive circulated within ICE field offices instructing officers to classify all noncitizens
5 who entered without inspection (EWIs) as “applicants for admission,” regardless of the time,
6 place, or circumstances of arrest. This unprecedented expansion of § 235(b) detention authority
7 was later echoed in *Matter of Yajure-Hurtado*, and operationalized through unpublished field
8 guidance that was never subjected to public rulemaking or notice-and-comment procedures.

9 This reinterpretation represents a sudden and unjustified break from nearly three decades
10 of consistent agency understanding. Multiple judges within the Southern District of California
11 have already recognized that DHS’s post-2025 reclassification of long-settled residents as
12 ‘applicants for admission’ conflicts with the statutory text, legislative history, and the agency’s
13 own prior construction of the INA. As noted in the previously cited cases, numerous courts
14 throughout this District have uniformly rejected this new approach.

15 Lastly, an unexplained departure from such an established interpretation is entitled to
16 little, if any, deference. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 446 n.30 (1987) (“An agency
17 interpretation of a relevant provision which conflicts with the agency’s earlier interpretation is
18 entitled to considerably less deference than a consistently held agency view.”).

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

21 **C. Respondents’ Own Concessions and Prior Adverse Rulings Undermine** 22 **Their Position**

23 In their Return, Respondents themselves acknowledge that courts within this District
24 have repeatedly rejected the same § 1225(b) argument they advance here. Their fallback position
25—that if § 1226(a) applies, the appropriate remedy would be a bond hearing—confirms that the
26 only live dispute is the legal classification of Petitioner’s custody. That issue is a pure question
27 of law, properly reviewable in habeas under 28 U.S.C. § 2241. Respondents further concede that,

1 should the Court determine § 1226(a) governs, Petitioner would be entitled to an individualized
2 bond hearing before an Immigration Judge, underscoring that the sole dispute concerns the
3 statutory basis of custody.

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

9 Furthermore, as previously noted, multiple judges within this District have now resolved
10 this same statutory question, each holding that detention following an interior arrest is governed
11 by INA § 236(a), not § 235(b), and granting habeas relief on that basis. See the habeas decisions
12 cited in the Introduction.

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

16 CONCLUSION

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

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

26 This petition challenges the legal basis of custody—not DHS’s discretionary decision to
27 initiate or pursue removal. Accordingly, this Court retains jurisdiction under 28 U.S.C. § 2241,

1 as recognized in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and in multiple recent decisions
2 within this District.

3 Petitioner respectfully requests that the Court grant the writ of habeas corpus and order
4 her immediate release. In the alternative, the Court should declare DHS's classification under §
5 235(b) unlawful, hold that she is detained under § 236(a), and direct DHS to provide an
6 individualized bond hearing consistent with *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

7 If the Court concludes that oral argument would not aid the decisional process, Petitioner
8 respectfully requests that the Court vacate the hearing and resolve the matter based on the written
9 submissions.

10 Respectfully submitted,

11 /s/ Alejandro J. Monsalve, Esq. CA SBN 324958

12 Alex Monsalve Law Firm, PC

13 240 Woodlawn Ave, Suite 9

14 Chula Vista, CA 91910

15 Phone: (619) 777-6796

16 Email: info@alexmonsalvelawfirm.com

17 Counsel for Petitioner

18 Dated: November 14, 2025