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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NELSON ENRIQUE GONZALES CENTENO Petitioner v. **Kristi NOEM**, Secretary, U.S. Department of Homeland Security; et al.,	Case No.: 3:25-cv-3036-RSH-AHG **Judge:** **Hon. Robert S. Huie** **PETITIONER'S TRAVERSE TO RESPONDENT'S RETURN**

INTRODUCTION

Petitioner, Nelson Enrique Gonzales Centeno, 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.

Multiple recent decisions within this District—including this Court in *Lucas-Miguel v. Noem*, No. 3:25-cv-03022-RSH-JLB (S.D. Cal. Nov. 2025) (Huie, J.)—have rejected DHS's reliance on § 235(b) to detain long-settled residents apprehended in the interior. See *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) (Simmons, 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.); *Maravilla Amaya v. Noem*, No. 25-cv-2892-BTM-DEB (S.D. Cal. Nov. 13, 2025) (Moskowitz, J.); *Fernando-Barrueta v. Noem*, No. 3:25-cv-02670-LL-SBC (S.D. Cal. Nov. 21, 2025) (Lopez, J.); and *Chiapot Perez v. Noem*, No. 3:25-cv-03161-JES-VET (S.D. Cal. Nov. 2025) (Simmons, J.). In each of these cases—also litigated by undersigned counsel—the Court concluded that DHS may not invoke § 235(b) to detain individuals apprehended in the interior years after entry, and that such custody must proceed, if at all, under § 236(a).

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 $6,500 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 § 1252(b)(9) bars jurisdiction, but this Court has already rejected that exact argument. In *Lucas-Miguel v. Noem*, No. 3:25-cv-03022-RSH-JLB (S.D. Cal. Nov. 21, 2025), this Court held that § 1252(b)(9) "does not present a jurisdictional bar" where the petitioner "challenges the legality of his detention rather than an order of removal or the decision to charge him with being a removable noncitizen." *Id.* at 3–4.

This case is identical in all material respects. As in *Lucas-Miguel*, Petitioner does not contest the initiation of removal proceedings, nor the discretionary decision to detain. He challenges the statutory authority under which DHS classified his custody—specifically, DHS's use of § 235(b) rather than § 236(a). Such a challenge is collateral to the removal process and falls squarely within habeas jurisdiction.

This Court's ruling in *Lucas-Miguel* is fully consistent with *Jennings v. Rodriguez*, 583 U.S. 281 (2018), which held that § 1252(b)(9) does not bar challenges to "the statutory framework that permits detention," and with the Ninth Circuit's decision in *Gonzalez v. ICE*, 975 F.3d 788 (9th Cir. 2020), which recognized habeas jurisdiction over collateral custody challenges. *Chavez v. Noem*, on which Respondents rely, likewise rejected the argument that § 1252(b)(9) bars challenges to the statutory basis of detention.

Because Petitioner challenges only how DHS classified his custody—not the removal proceedings themselves—§ 1252(b)(9) and § 1252(g) do not apply. Under binding Supreme Court precedent and this Court's own prior decision, jurisdiction is proper under 28 U.S.C. § 2241.

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

Respondents further argue that § 1252(g) bars jurisdiction because Petitioner's detention purportedly "stems from ICE's decision to commence removal proceedings." But this Court has already rejected that exact argument. In *Lucas-Miguel v. Noem*, this Court held that § 1252(g) does not bar habeas review where the petitioner challenges "the legality of his detention rather than an order of removal or Respondents' decision to charge him with being a removable

noncitizen." *Lucas-Miguel v. Noem*, No. 3:25-cv-03022-RSH-JLB, slip op. at 3–4 (S.D. Cal. Nov. 21, 2025) (Huie, J.)

That reasoning controls here. Petitioner is not challenging DHS's decision to initiate proceedings, nor any decision to adjudicate or execute a removal order. He challenges only the statutory authority under which DHS classified his custody—whether he is properly detained under § 235(b), which governs applicants for admission at or near the border, or under § 236(a), which governs interior arrests. That question is wholly collateral to the removal process.

This Court's analysis in *Lucas-Miguel* accords with *Reno v. American-Arab Anti-Discrimination Committee* (AADC), 525 U.S. 471, 482 (1999), which held that § 1252(g) applies only to three discrete actions—commencing proceedings, adjudicating cases, and executing removal orders—and does not extend to "the many other decisions or actions that may be part of the deportation process." The statutory misclassification challenged here is none of those three actions.

Courts across this District have reached the same conclusion in materially identical cases. See *Valdovinos v. Noem*, No. 25-cv-2439-TWR (KSC); *Esquivel-Ipina v. Noem*, No. 25-cv-2672-JLS (BLM); *Mendez Chavez v. Noem*, No. 25-cv-2818-DMS-SBC; *Medina-Ortiz v. Noem*, No. 25-cv-2819-DMS-MMP; *Martinez Lopez v. Noem*, No. 25-cv-2717-JES-AHG; *Garcia Magadan v. Noem*, No. 25-cv-2889-JES-KSC; *Maceda-Garcia v. Noem*, No. 25-cv-2968-JO-JLB; *Maravilla Amaya v. Noem*, No. 25-cv-2892-BTM-DEB; *Fernando-Barrueta v. Noem*, No. 3:25-cv-02670-LL-SBC; and *Chiapot Perez v. Noem*, No. 3:25-cv-03161-JES-VET. Each held that § 1252(g) does not bar habeas review where the petitioner challenges DHS's legal authority to classify interior arrestees under § 235(b).

Accordingly, § 1252(g) does not divest this Court of jurisdiction to review Petitioner's claim, which challenges only DHS's legal basis for custody, not any discretionary enforcement decision.

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EXHAUSTION

Exhaustion is not required because any further administrative process would be futile. This Court has already held in *Lucas-Miguel v. Noem* that exhaustion is excused where the petitioner raises a purely legal challenge to the statutory basis of detention and the BIA has already foreclosed relief. See *Lucas-Miguel v. Noe*m, No. 3:25-cv-03022-RSH-JLB, slip op. at 4 (S.D. Cal. Nov. 21, 2025) (Huie, J.).

That is exactly the situation here. Petitioner sought and obtained bond relief from the Immigration Judge on August 4, 2025, after the IJ correctly found that custody lay under INA § 236(a) and authorized release on a $5,000 bond. After issuing a detailed Bond Memorandum reaffirming § 236(a) jurisdiction on September 3, 2025, the IJ's order was appealed by DHS.

On October 17, 2025, the Board of Immigration Appeals vacated the IJ's bond order solely on the basis of *Matter of Yajure-Hurtado*. In doing so, the Board conclusively determined that Immigration Judges lack jurisdiction to issue bond under § 236(a) for individuals who entered without inspection.

No further administrative remedy exists. The BIA has already applied its own binding precedent to this case, eliminating any possibility of relief within the agency. Any attempt to pursue additional administrative steps would be futile because the outcome is predetermined by *Yajure-Hurtado*.

The Ninth Circuit's controlling rule in *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017), confirms that exhaustion is excused where administrative remedies are "inadequate," where pursuing them would be "a futile gesture," or where the claim raises a "purely legal question." (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). Petitioner's claim—whether custody is governed by § 235(b) or § 236(a)—is precisely such a legal question.

Federal courts throughout this District have excused exhaustion in identical habeas challenges involving the same DHS and BIA custody classification. Accordingly, exhaustion is not required. Petitioner challenges only the legal basis of his detention, and further

administrative process would be futile in light of the BIA's binding application of *Matter of Yajure-Hurtado*.

ARGUMENT

A. The Government Misreads INA §§ 235 and 236

Respondents incorrectly assert that Petitioner is subject to detention under INA § 235(b) because he is an "applicant for admission." This Court has already rejected that position. In *Lucas-Miguel v. Noem*, this Court held that § 235(b) applies only to individuals encountered while seeking admission—such as at a port of entry or during inspection—not to long-settled residents apprehended in the interior. *Lucas-Miguel v. Noem*, No. 3:25-cv-03022-RSH-JLB (S.D. Cal. Nov. 2025) (Huie, J.).

Petitioner was apprehended in 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 border. He therefore does not fall within § 235(b)(2)(A), which 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 arrest is governed by § 236(a), not § 235(b). The Supreme Court has confirmed that § 236(a) governs custody of noncitizens already present in the United States, while § 235(b) applies to individuals 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). DHS's attempt to treat interior arrestees as "applicants for admission" collapses the statutory distinction Congress preserved.

Courts across the Southern District of California have repeatedly reaffirmed that § 235(b) applies only where a noncitizen takes an affirmative step to seek admission. See, e.g., *Garcia Magadan v. Noem*, No. 25-cv-2889-JES-KSC (S.D. Cal. Nov. 5, 2025); *Medina-Ortiz v. Noem*, No. 25-cv-2819-DMS-MMP (S.D. Cal. Oct. 30, 2025).

Judge Lopez emphasized this point in *Fernando-Barrueta v. Noem*, No. 25-cv-02670-LL-SBC (S.D. Cal. Nov. 21, 2025), explaining that interpreting § 235(b)(2) to cover anyone present

without admission "ignores the statutory language requiring active, present-tense conduct" and renders the phrase "seeking admission" superfluous. She further noted that applying § 235(b) to interior arrests contradicts Congress's 2025 amendments to § 1226(c), which expressly assume that individuals "present without admission or parole" are ordinarily detained under § 236(a) unless they fall within specific criminal categories.

Similarly, Judge Moskowitz held in *Maravilla Amaya v. Noem*, No. 25-cv-2892-BTM-DEB (S.D. Cal. Nov. 13, 2025), that *Matter of Yajure-Hurtado* is inconsistent with the statutory text because § 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 took no affirmative step to seek admission and was arrested years after entering the United States. He therefore cannot lawfully be treated as an "applicant for admission" under § 235(b).

Accordingly, DHS's reliance on § 235(b) is contrary to statute and Due Process. Because Petitioner's custody is governed by § 236(a), he remains eligible for release on the previously authorized $5,000 bond, and this Court should permit him to post that bond.

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) to arriving noncitizens or individuals apprehended immediately after crossing the border. By contrast, noncitizens 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 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, ICE issued internal guidance instructing officers to classify all noncitizens who entered without

inspection as "applicants for admission," regardless of the time, place, or circumstances of arrest. This unprecedented expansion of § 235(b) detention authority was later formalized in *Matter of Yajure-Hurtado*, and operationalized through unpublished field directives that were never subjected to rulemaking or notice-and-comment procedures.

This reinterpretation represents a sudden and unjustified departure from decades of consistent agency practice. Courts throughout the Southern District of California—including this Court in *Lucas-Miguel v. Noem*—have recognized that DHS's post-2025 reclassification of long-settled residents as "applicants for admission" conflicts with the statutory text, legislative structure, and the agency's own historical understanding of the INA. As reflected in the decisions cited above, these courts have repeatedly rejected DHS's new approach for individuals arrested in the interior.

Lastly, an unexplained deviation from such a longstanding 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 framework 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 acknowledge that courts within this District have repeatedly rejected the same § 1225(b) argument they advance here. Their fallback position—that if § 236(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 § 236(a) governs, Petitioner would be eligible for bond consideration, underscoring that the sole dispute concerns the statutory basis of custody.

Recent decisions within this District—including *Medina-Ortiz*, *Mendez Chavez*, and this Court's own ruling in *Lucas-Miguel v. Noem*—found the statutory question so clear that oral argument was unnecessary. Each court concluded that these cases were "suitable for decision without oral argument" because they presented only "questions of law." These orders collectively reflect the steadily developing consensus that DHS's post-2025 reclassification of long-settled residents as "applicants for admission" under § 1225(b) is legally untenable.

As noted earlier, multiple judges in the Southern District of California have resolved this precise statutory issue, each holding that detention following an interior arrest is governed by § 236(a), not § 235(b), and granting habeas relief on that basis.

Respondents rely heavily on *Chavez v. Noem*, but courts in this District have declined to apply *Chavez* in cases involving individuals apprehended in the interior after years of residence. Judges have distinguished *Chavez* on that basis and have applied the statutory text of § 235(b) consistent with long-standing practice. Judge Lopez, for example, explained that DHS's interpretation "cannot be reconciled with the statutory text," and Judge Bashant similarly noted that applying § 235(b) to interior arrests "ignores the statutory scheme in its entirety." These rulings confirm that *Chavez* does not control where, as here, DHS apprehended a long-term resident in the interior and seeks to impose § 235(b)'s detention framework retroactively.

Together, these decisions provide a consistent and persuasive line of authority within this District holding that DHS may not invoke § 235(b) to detain individuals apprehended in the interior years after entry. Respondents' Return offers no persuasive basis for this Court to depart from the decisions already issued throughout this District.

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, lies at the core of this habeas challenge. By invoking § 235(b), DHS denied Petitioner the statutory and constitutional protections Congress afforded to individuals arrested in the United States. His custody, if lawful at all, arises under § 236(a), which makes him eligible for release on the bond previously authorized by the 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 on the $5,000 bond previously authorized by the Immigration Judge.

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,

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