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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JUAN CARLOS APARICIO SANCHEZ

Petitioner

v.

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

Case No.:25-cv-03068 JLS-MMP

Judge: Hon. Janis L. Sammartino

PETITIONER'S TRAVERSE TO RESPONDENT'S RETURN

INTRODUCTION

Petitioner, Juan Carlos Aparicio Sanchez, respectfully submits this Traverse in response to Respondents' Return. Respondents' Return incorrectly identifies this case as 25-cv-2396-JES-MMP; the correct docket number is 25-cv-03068-JLS-MMP, as reflected on the Court's docket. 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 this Court has previously decided in *Esquivel-Ipina v. Noem*, No. 25-cv-2672-JLS (BLM) (S.D. Cal. Oct. 24, 2025), DHS may not rely on INA § 235(b) to detain a long-settled noncitizen apprehended in the interior. Multiple judges within this District have reached the same conclusion, including Judge Robinson in *Valdovinos v. Noem,* No. 25-cv-2439-TWR (KSC) (S.D. Cal. Sept. 25, 2025); Judge Sabraw in *Mendez Chavez v. Noem*, No. 25-cv-2818-DMS-SBC (S.D. Cal. Oct. 31, 2025) and *Medina-Ortiz v. Noem*, No. 25-cv-2819-DMS-MMP (S.D. Cal. Oct. 30, 2025); Judge Simmons in *Garcia Magadan v. Noem*, No. 25-cv-2889-JES-KSC (S.D. Cal. Nov. 5, 2025); Judge Ohta in *Maceda-Garcia v. Noem*, No. 25-cv-2968-JO-JLB (S.D. Cal. Nov. 13, 2025); and Judge Moskowitz in *Maravilla Amaya v. Noem*, No. 25-cv-2892-BTM-DEB (S.D. Cal. Nov. 13, 2025)—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). All of these cases were litigated by undersigned counsel.

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.

This Court has already rejected Respondents' jurisdictional arguments in this precise context. In *Esquivel-Ipina v. Noe*m, No. 25-cv-2672-JLS (BLM) (S.D. Cal. Oct. 24, 2025), this Court held that neither § 1252(b)(9) nor § 1252(g) bars habeas review of a noncitizen's challenge to DHS's custody classification under INA § 235(b). Other judges within the Southern District of California have reached the same conclusion. As detailed in the Introduction, multiple courts have held that § 1252(b)(9) does not bar habeas review of collateral challenges to DHS's custody classification where the petitioner does not seek review of any removal order or removal proceeding.

Respondents fundamentally mischaracterize Petitioner's claim. Petitioner does not challenge DHS's discretionary "decision to detain," nor does he contest the initiation of removal proceedings. The sole issue presented is which statutory authority governs his detention—INA § 235(b), which applies only to applicants for admission apprehended at or near the border, or § 236(a), which governs interior arrests.

That distinction is dispositive. Petitioner is not arguing that DHS cannot detain him at all; he is arguing that DHS lacks authority to detain him under § 235(b). This is a challenge to the legal framework governing his detention, not to removal proceedings themselves. As *Jennings v. Rodriguez* makes clear, § 1252(b)(9) does not bar challenges to "the statutory framework that permits [a noncitizen's] detention," 583 U.S. 281, 295 (2018), where the petitioner is not seeking

review of a removal order, the decision to remove, or the process by which removability will be adjudicated.

Accordingly, Respondents' reliance on § 1252(b)(9) and § 1252(g) is misplaced. Petitioner does not challenge the initiation, adjudication, or execution of removal proceedings, but rather the legal basis upon which DHS claims authority to detain him. Habeas jurisdiction properly lies.

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.

This Court has already rejected the government's reliance on 8 U.S.C. § 1252(g) in this precise context, in *Esquivel-Ipina v. Noem*. Other judges in this District have reached the same conclusion. See, e.g., *Valdovinos 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 decisions holds 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

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.

Exhaustion is not jurisdictional in this context. 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.

Numerous federal courts in this District—including this Court in prior custody-misclassification habeas cases—have repeatedly recognized that exhaustion is excused under these exact circumstances. See the cases cited in the Introduction.

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

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). This Court reached the same conclusion in *Esquivel-Ipina*, holding that a noncitizen "not encountered at a port of entry, during inspection at the border, or among individuals intercepted near the international boundary" is not an applicant for admission under § 1225(b) and is entitled to a bond hearing under § 1226(a).

Likewise, the other courts within the Southern District of California identified in the Introduction have repeatedly reaffirmed 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 encompass individuals who, like Petitioner, have lived in the United States for years without taking any such step. As those decisions make clear, long-settled noncitizens arrested in the interior are properly detained, if at all, under INA § 236(a), not § 235(b), because § 235(b) applies only where a noncitizen affirmatively seeks admission at or near the border.

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.

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 an 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. 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,

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