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

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| **RAMIRO PEREZ-VELAZQUEZ,**<br>Petitioner<br>v.<br>**Kristi NOEM**, Secretary, U.S. Department of Homeland Security; et al., | Case No.:25-cv-03073-CAB-MMP<br><br>**Judge: Hon. Cathy Ann Bencivengo**<br><br>**PETITIONER'S TRAVERSE TO RESPONDENT'S RETURN** |

## INTRODUCTION

Petitioner, Ramiro Perez-Velásquez, respectfully submits this Traverse in response to Respondents' Return. As set forth in the First Amended Petition, Petitioner challenges both (1) the Department of Homeland Security's unlawful custody classification under INA § 235(b), which exceeds statutory authority and violates the Due Process Clause of the Fifth Amendment, and (2) the unconstitutional stop and arrest that resulted in his detention, in violation of the Fourth Amendment. Petitioner was arrested in the interior of the United States without reasonable suspicion or lawful cause, placed directly into removal proceedings under INA § 240, and is therefore detained under INA § 236(a). Respondents' insistence on treating him as an "applicant for admission" under § 235(b) rests on an incorrect legal premise, deprives him of a

statutorily mandated individualized bond hearing, and perpetuates the constitutional violations that began with the unlawful seizure itself.

Respondents fail to demonstrate that DHS lawfully invoked INA § 235(b). Petitioner was arrested in the interior—long after any alleged entry—and placed directly into proceedings under § 240. Under these circumstances, § 236(a) governs his detention. Section 236(a) is the statutory framework Congress established for interior apprehensions and expressly provides for an individualized custody hearing before an Immigration Judge. Nothing in § 235(b) authorizes DHS to reclassify a noncitizen who is already present in the United States as an "applicant for admission" for purposes of mandatory detention, and Respondents offer no lawful basis for doing so here.

Multiple recent decisions within this District have rejected DHS's reliance on § 235(b) to detain long-settled residents apprehended in the interior. See *Chavez Valdovinos v. Noem*, No. 3:25-cv-02439-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.); *Lucas-Miguel v. Noem*, No. 3:25-cv-03022-RSH-JLB (S.D. Cal. Nov. 2025) (Huie, J.); *Fernando-Barrueta v. Noem*, No. 3:25-cv-02670-LL-SBC (S.D. Cal. Nov. 21, 2025) (Lopez, J.); *Chiapot Perez v. Noem*, No. 3:25-cv-03161-JES-VET (S.D. Cal. Nov. 2025) (Simmons, J.); *Contreras-Albino v. Noem*, No. 25-cv-02965-BAS-BLM (S.D. Cal. Nov. 25, 2025) (Bashant, C.J.); and *Ramirez-Rivera v. Noem*, No. 3:25-cv-03072-RBM-DEB (S.D. Cal. Nov. 26, 2025) (Montenegro, J.).

1 Each of these cases—also litigated by undersigned counsel—reached the same
2 conclusion: DHS may not invoke § 235(b) to detain individuals apprehended in the interior,
3 often years after entry, and such detention must proceed, if at all, under § 236(a).
4 This consensus is now anchored by the decision of the Chief Judge of this District, who
5 held that § 1225(b)(2) cannot be used to detain long-settled residents arrested inside the United
6 States and that DHS's July 8, 2025 Interim Guidance is inconsistent with the statutory structure
7 and decades of agency practice. See *Contreras-Albino v. Noem*, No. 25-cv-02965 (S.D. Cal.
8 Nov. 25, 2025) (Bashant, C.J.).
9 This uniform view is further reinforced by the Central District of California, which has
10 issued both a merits ruling and certified a nationwide class challenging the same DHS policy at
11 issue here. In *Maldonado Bautista v. Garland*, No. 2:25-cv-06347-SSS-KS (C.D. Cal. Nov. 20,
12 2025), the court granted partial summary judgment, holding that § 1225(b)(2) applies only to
13 individuals undergoing inspection by an examining immigration officer, and that DHS may not
14 reclassify long-settled residents arrested in the interior as § 235(b) "applicants for admission."
15 The court concluded that the July 8, 2025 Interim Guidance unlawfully expands § 235(b) and
16 would, if accepted, improperly render § 236 a nullity.
17 The same court has also certified a nationwide Bond Eligible Class, confirming that
18 DHS's July 8, 2025 policy is not an isolated or officer-level determination but a uniform,
19 system-wide practice applied to all noncitizens who entered without inspection and were arrested
20 in the interior. See *Maldonado Bautista v. Garland*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.
21 2025) (Order Granting Class Certification). The court found the policy appropriate for class-wide
22 adjudication under Rule 23(b)(2) and reaffirmed that detention of interior arrestees is governed
23 exclusively by § 236(a), not § 235(b).
24 Together, these rulings make clear that DHS's July 8, 2025 reinterpretation is unlawful,
25 structurally incoherent, and inconsistent with decades of statutory practice—further underscoring
26 that Respondents' position here is untenable.
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Petitioner's continued confinement under § 235(b)—without any opportunity for an individualized custody hearing before an Immigration Judge—violates the Fifth Amendment's guarantee of due process and perpetuates detention under a statutory provision that does not apply to him. Because DHS's reliance on § 235(b) is contrary to the text, structure, and purpose of the INA, and because Petitioner has been denied the procedural protections Congress afforded to individuals apprehended in the interior, he respectfully requests that this Court grant the writ of habeas corpus and order his immediate release. In the alternative, Petitioner asks that the Court 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 contend that § 1252(b)(9) strips this Court of jurisdiction because Petitioner's detention is connected to removal proceedings. That position is inconsistent with controlling precedent. Petitioner does not challenge DHS's decision to initiate removal proceedings, the charges filed, or the discretionary choice to detain. He challenges only the statutory and constitutional authority under which DHS has classified his custody—specifically, DHS's designation of him as detained under INA § 235(b) rather than § 236(a). This is a collateral challenge to the legal basis of custody, not to any aspect of the removal proceedings themselves.

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), made clear that § 1252(b)(9) does not bar such claims. Both courts emphasized that § 1252(b)(9) applies only to direct challenges to removal proceedings and cannot be expanded to cover every matter "in any way connected" to immigration enforcement. *Jennings*, 583 U.S. at 293. A challenge to the statutory framework DHS invokes to justify detention falls outside that channeling provision because it does not seek review of any removal determination, but instead contests the legal authority the agency claims to exercise.

This Court has allowed materially similar habeas petitions raising the same threshold custody-classification issue to proceed. Those rulings recognize that when a petitioner challenges only the statutory basis of detention—as opposed to the initiation, adjudication, or execution of removal proceedings—the claim falls squarely within the Court's habeas jurisdiction under 28 U.S.C. § 2241.

Respondents also mischaracterize the nature of Petitioner's claim. Petitioner is not disputing removability or contesting DHS's enforcement discretion. The sole question presented is whether DHS may lawfully classify an interior arrestee as detained under § 235(b), a provision applicable only to applicants for admission, rather than under § 236(a), which governs interior arrests. That question is distinct from, and collateral to, the removal process. As *Jennings* explains, § 1252(b)(9) does not bar review of challenges to "the statutory framework that permits [the noncitizen's] detention." 583 U.S. at 295.

Accordingly, Respondents' reliance on § 1252(b)(9) is misplaced. This Court retains jurisdiction to review Petitioner's collateral statutory and constitutional challenge to DHS's custody classification.

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

Respondents further argue that 8 U.S.C. § 1252(g) deprives this Court of jurisdiction on the theory that Petitioner's detention "stems from ICE's decision to commence removal proceedings." That argument 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 (1999), the Supreme Court held that § 1252(g) applies only to three discrete actions—commencing proceedings, adjudicating cases, or executing removal orders—and cautioned that the statute does not extend to "the many other decisions or actions that may be part of the deportation process." *Id.* at 482. The Court rejected the notion that § 1252(g) acts as a broad jurisdiction-stripping provision covering all matters tangentially related to removal.

Petitioner raises no challenge to DHS's decision to initiate removal proceedings, nor to any action to adjudicate or execute a removal order. Instead, he challenges the statutory authority DHS asserts as the basis for his continued confinement—specifically, DHS's decision to classify him under INA § 235(b), a provision applicable only to applicants for admission, rather than under § 236(a), which governs interior arrests. That statutory misclassification concerns the legality of the custody framework itself, not any discretionary enforcement decision protected by § 1252(g).

Courts in this District have repeatedly permitted materially similar habeas petitions to proceed, recognizing that a challenge to the statutory framework invoked to justify detention is collateral to removal and falls outside § 1252(g). See, e.g., *Garcia Magadan v. Noem*, No. 25-cv-2889-JES-KSC (S.D. Cal. Nov. 5, 2025); *Martinez Lopez v. Noem*, No. 25-cv-2717-JES-AHG (S.D. Cal. Oct. 30, 2025); *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; *Maceda-Garcia v. Noem*, No. 25-cv-2968-JO-JLB; and *Maravilla Amaya v. Noem*, No. 25-cv-2892-BTM-DEB. These cases recognize that a petition challenging the statutory framework asserted as the basis for detention raises a collateral issue outside the narrow scope of § 1252(g).

The same conclusion applies here. Petitioner does not seek to halt removal, to challenge his removability, or to interfere with any of the actions protected by § 1252(g). He seeks only review of the legal authority DHS relies upon to detain him. Because that issue does not fall within the three discrete actions identified in AADC, § 1252(g) does not divest this Court of jurisdiction.

## EXHAUSTION

Exhaustion is not a jurisdictional prerequisite to habeas review under 28 U.S.C. § 2241, particularly where the petitioner raises a purely legal or constitutional question and where no adequate administrative remedy exists. *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). Both circumstances are present here.

Further administrative review would be futile in light of the Board of Immigration Appeals' published decision in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). In that decision, the Board held that individuals who entered without inspection are detained under INA § 235(b)(2)(A) and that Immigration Judges lack jurisdiction to conduct bond hearings under § 236(a). Under this nationwide interpretation, the immigration courts cannot grant the relief Petitioner seeks—an individualized custody hearing under § 236(a)—nor can they review or correct DHS's custody-classification decision.

The Ninth Circuit has long recognized that exhaustion is prudential and 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." *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). That standard is met here. Because the immigration courts lack authority to provide any meaningful review of DHS's custody classification under § 235(b), requiring Petitioner to pursue additional administrative steps would serve no purpose.

Recent decisions within this District involving the same statutory question have likewise concluded that exhaustion is unnecessary where a petitioner challenges the legal basis of DHS's custody determination and where *Yajure-Hurtado* forecloses any possibility of administrative relief. See, e.g., *Garcia Magadan v. Noem*, No. 25-cv-2889-JES-KSC (S.D. Cal. Nov. 5, 2025); *Martinez Lopez v. Noem*, No. 25-cv-2717-JES-AHG (S.D. Cal. Oct. 30, 2025).

Petitioner's claim raises a pure question of law that immigration courts lack authority to resolve, and any further administrative process would be futile given the Board's binding interpretation in *Yajure-Hurtado*. Accordingly, exhaustion should be excused.

## ARGUMENT

### A. The Government Misreads INA §§ 235 and 236

Respondents argue that Petitioner is subject to mandatory detention under INA § 235(b) because he is an "applicant for admission." The statutory text and structure, however, foreclose

1 that interpretation. Petitioner was apprehended well within the interior of the United States, long
2 after his entry and continuous residence. He was not encountered at a port of entry, during
3 inspection, or engaged in any affirmative act of seeking admission.
4 Section 235(b)(2)(A) applies only when "an immigration officer determines that an alien
5 seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)
6 (2)(A) (emphasis added). The present-tense wording presupposes an inspection setting—an
7 encounter at or near the border involving a person actively seeking admission. Interior arrestees,
8 already living in the country, do not fall within this statutory category.
9 By contrast, INA § 236(a) governs the detention of individuals "arrested on a warrant"
10 within the United States. The Supreme Court and the Board have repeatedly affirmed this
11 boundary: § 236(a) applies to noncitizens already present in the United States, § 235(b) applies
12 only to those encountered during inspection or while seeking admission.
13 *Jennings v. Rodriguez*, 583 U.S. 281, 297–303 (2018); *Matter of M-S-*, 27 I&N Dec. 509
14 (BIA 2019). Collapsing these provisions would eliminate the distinct statutory regimes Congress
15 created for interior enforcement and border processing.
16 Courts throughout this District have uniformly applied this distinction. See *Garcia*
17 *Magadan v. Noem*, No. 25-cv-2889-JES-KSC (S.D. Cal. Nov. 5, 2025); *Martinez Lopez v. Noem*,
18 No. 25-cv-2717-JES-AHG (S.D. Cal. Oct. 30, 2025); as well as the additional cases listed in the
19 Introduction (*Valdovinos*, *Medina-Ortiz*, *Esquivel-Ipina, Mendez Chavez, Fernando-Barrueta,*
20 *Maceda-Garcia, Maravilla Amaya, Lucas-Miguel, Chiapot Perez*). Each concluded that § 235(b)
21 cannot be applied to individuals arrested in the interior years after entry.
22 Most notably, the Chief Judge of this District recently held that § 1225(b)(2)(A) "cannot
23 be reconciled with the statutory text" when applied to interior arrests and that DHS's July 8,
24 2025 Interim Guidance is inconsistent with "decades of prior statutory interpretation and
25 practice." *Contreras-Albino v. Noem*, No. 25-cv-02965-BAS-BLM (S.D. Cal. Nov. 25, 2025).
26 Chief Judge Bashant emphasized that adopting DHS's position would improperly render § 236
27 superfluous.
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1 A neighboring district reached the same conclusion in granting partial summary
2 judgment. *Maldonado Bautista v. Garland*, No. 2:25-cv-06347-SSS-KS (C.D. Cal. Nov. 20,
3 2025). Days later, that court certified a nationwide Bond Eligible Class, confirming that DHS's
4 July 8, 2025 custody-classification directive is a uniform, system-wide policy and that detention
5 of interior arrestees is governed exclusively by § 236(a). *Maldonado Bautista v. Garland*, No.
6 5:25-cv-01873-SSS-BFM (C.D. Cal. 2025).

7 Taken together, these decisions form a consistent and compelling body of authority
8 demonstrating that § 235(b) does not apply to long-settled residents apprehended in the interior.
9 Because Petitioner took no affirmative step to seek admission and was arrested well inside the
10 United States, his custody arises under § 236(a), entitling him to an individualized bond hearing
11 before a neutral Immigration Judge.

12 **B. DHS's Misclassification of Custody Violates the Fifth Amendment's**
13 **Procedural Due Process Requirements**

14 The Fifth Amendment requires that immigration detention occur pursuant to fair
15 procedures and under a lawful statutory framework. Even setting aside the statutory argument
16 addressed above, DHS's actions violate due process because Petitioner has been deprived of the
17 procedural protections Congress expressly created for individuals arrested inside the United
18 States.

19 Congress made a deliberate choice: individuals arrested in the interior receive
20 individualized custody determinations, while individuals undergoing inspection may be subject
21 to mandatory hold. Those two tracks carry entirely different procedural safeguards.

22 By classifying Petitioner—an interior arrestee—as if he were an applicant for admission,
23 DHS placed him in a mandatory detention scheme that Congress designed only for border-
24 inspection scenarios. This decision stripped Petitioner of procedures the INA guarantees to
25 interior arrestees, including: access to a neutral Immigration Judge with jurisdiction to review
26 custody; an individualized assessment of flight risk and danger; the ability to present evidence
27 and seek release under § 236(a).

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Due process prohibits the government from imposing a more restrictive detention regime by administrative fiat, particularly where Congress prescribed specific procedures for the individual's actual circumstances. The Constitution does not permit DHS to convert an interior-arrest case into a border-processing case simply by labeling it so.

Courts within this District have recognized that misclassification of custody raises serious due process concerns, because it results in detention under a statutory regime that provides fewer procedural safeguards than Congress authorized for similarly situated individuals. The constitutional injury here is not the arrest itself—it is the denial of the procedural protections Congress guaranteed to interior arrestees.

Petitioner does not challenge DHS's ability to detain him under the correct statute. He challenges DHS's use of a statutory procedure that does not apply to him, which deprives him of the constitutionally required process for any deprivation of liberty. For this reason as well, continued detention under § 235(b) violates the Fifth Amendment.

## C. Petitioner's Fourth Amendment Claim Is Cognizable in Habeas Because His Ongoing Detention Flows Directly From an Unconstitutional Seizure

Petitioner also challenges the constitutionality of the stop and arrest that resulted in his current confinement. Respondents incorrectly assert that this claim is unreviewable and that habeas corpus cannot reach it. Both arguments misunderstand the nature of the violation and the scope of habeas review. Petitioner does not seek suppression of evidence or termination of removal proceedings; he challenges a present restraint on liberty that flows from an unlawful seizure.

### 1. The Stop Lacked Reasonable Suspicion

DHS's own Form I-213 confirms that agents stopped the vehicle solely because they believed the driver "was attempting to lose the law enforcement vehicle" after making two turns. The report identifies no traffic violation, no moving violation, no criminal conduct, and no immigration-related facts supporting a lawful investigatory stop.

Ambiguous driving—such as turning onto side streets—cannot establish reasonable suspicion. See *United States v. Montero-Camargo*, 208 F.3d 1122, 1130–34 (9th Cir. 2000) (en banc).

Under *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975), Border Patrol may conduct a roving patrol stop only where agents can point to specific, articulable facts that reasonably indicate an immigration violation. Here, the I-213 describes no such facts, and instead makes clear that agents initiated an "immigration inspection" without any lawful basis to suspect the vehicle, the driver, or its passengers of wrongdoing.

**2. Petitioner Was a Passenger and Cannot Be Seized Without Individualized Suspicion**

Petitioner was a passenger, not the driver. Under *Brendlin v. California*, 551 U.S. 249, 258–59 (2007), passengers are "seized" for Fourth Amendment purposes during a vehicle stop.

Although a passenger is seized incident to the stop, officers may not prolong the encounter, expand it into an immigration inquiry, or detain the passenger beyond the scope of the stop without independent reasonable suspicion. See *Rodriguez v. United States*, 575 U.S. 348, 354–57 (2015).

The Form I-213 identifies no suspicion whatsoever as to Petitioner individually. He was questioned, detained, and arrested solely because agents initiated an immigration inspection unsupported by any legal basis.

**3. Habeas Corpus Is the Proper Avenue to Challenge Ongoing Detention Stemming From an Unlawful Arrest**

Respondents' reliance on *INS v. Lopez-Mendoza* is misplaced. *Lopez-Mendoza* concerns the exclusionary rule in removal proceedings, not habeas challenges to ongoing unconstitutional detention.

Petitioner does not seek suppression of evidence or termination of removal proceedings. He challenges his current physical custody, which is the direct product of an unlawful seizure. A habeas petition is the proper vehicle for challenging a present restraint on liberty imposed as a result of an unconstitutional arrest. See *Manuel v. City of Joliet*, 580 U.S. 357, 365–66 (2017).

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**4. Section 1252(b)(9) Does Not Bar Review of a Fourth Amendment Challenge to Detention**

Petitioner does not challenge the initiation or adjudication of removal proceedings. He challenges only the unconstitutional seizure and the ongoing detention flowing from that seizure —issues that are collateral to removal and therefore lie outside the scope of § 1252(b)(9). See *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018); *Gonzalez v. ICE*, 975 F.3d 788, 810–12 (9th Cir. 2020).

**CONCLUSION**

For the reasons set forth above, Petitioner's arrest occurred well within the interior of the United States, long after his entry. His custody therefore falls under INA § 236(a), not § 235(b). DHS's reliance on § 235(b) was contrary to the statutory framework Congress enacted and deprived Petitioner of the individualized custody determination required under § 236(a).

This habeas petition challenges the legal basis for Petitioner's detention—not DHS's discretionary decision to initiate or pursue removal proceedings. Petitioner challenges both (1) DHS's statutory misclassification of his custody under § 235(b), and (2) the continued detention flowing from an unconstitutional seizure. These claims are collateral to removal and fall squarely within this Court's jurisdiction under 28 U.S.C. § 2241, as recognized in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and subsequent Ninth Circuit authority.

Because Petitioner's detention is governed by § 236(a), he is entitled to an individualized custody determination before a neutral Immigration Judge. Accordingly, Petitioner respectfully requests that the Court grant the writ of habeas corpus and order his immediate release. In the alternative, Petitioner asks that the Court declare DHS's reliance on § 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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