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

**MANUEL RAMIREZ-RIVERA**

Case No.: 3:25-cv-03072-RBM-DEB

Petitioner

v.

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

**Judge:**  
**Hon. Ruth Bermudez Montenegro**

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

**INTRODUCTION**

Petitioner, Manuel Ramirez-Rivera, 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 have rejected DHS’s reliance on § 235(b) to detain long-settled residents apprehended in the interior. See *Valdovinos v. Noem*, No. 25-cv-

1 2439-TWR (KSC) (S.D. Cal. Sept. 25, 2025) (Robinson, J.); *Esquivel-Ipina v. Noem*, No. 25-cv-  
2 2672-JLS (BLM) (S.D. Cal. Oct. 24, 2025) (Sammartino, J.); *Mendez Chavez v. Noem*, No. 25-  
3 cv-2818-DMS-SBC (S.D. Cal. Oct. 31, 2025) (Sabraw, J.); *Medina-Ortiz v. Noem*, No. 25-cv-  
4 2819-DMS-MMP (S.D. Cal. Oct. 30, 2025) (Sabraw, J.); *Martinez Lopez v. Noem*, No. 25-cv-  
5 2717-JES-AHG (S.D. Cal. Oct. 30, 2025) (Simmons, J.); *Garcia Magadan v. Noem*, No. 25-cv-  
6 2889-JES-KSC (S.D. Cal. Nov. 5, 2025) (Simmons, J.); *Maceda-Garcia v. Noem*, No. 25-cv-  
7 2968-JO-JLB (S.D. Cal. Nov. 13, 2025) (Ohta, J.); *Maravilla Amaya v. Noem*, No. 25-cv-2892-  
8 BTM-DEB (S.D. Cal. Nov. 13, 2025) (Moskowitz, J.); *Lucas-Miguel v. Noem*, No. 3:25-cv-  
9 03022-RSH-JLB (S.D. Cal. Nov. 2025) (Huie, J.); and *Fernando-Barrueta v. Noem*, No. 3:25-  
10 cv-02670-LL-SBC (S.D. Cal. Nov. 21, 2025) (Lopez, J.); and *Chiapot Perez v. Noem*, No. 3:25-  
11 cv-03161-JES-VET (S.D. Cal. Nov. 2025) (Simmons, J.). Each of these cases—also litigated by  
12 undersigned counsel—resulted in the same conclusion: DHS may not invoke § 235(b) to detain  
13 individuals apprehended in the interior years after entry, and such custody must proceed, if at all,  
14 under § 236(a).

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

18 Because DHS’s reliance on § 235(b) is contrary to law, Petitioner respectfully requests  
19 that this Court grant the writ of habeas corpus and order his immediate release on the \$6,500  
20 bond previously authorized by the Immigration Judge, or, in the alternative, direct DHS to  
21 provide a new individualized bond hearing under § 236(a) before a neutral adjudicator,  
22 consistent with *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

### 23 JURISDICTION

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

25 Respondents argue that this Court lacks jurisdiction because, in their view, Petitioner’s  
26 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, he challenges the statutory and constitutional authority  
3 under which that detention was classified—specifically, DHS’s unlawful designation of his  
4 custody as arising under INA § 235(b) instead of § 236(a). This misclassification deprived him  
5 of 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 he 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]

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, he challenges DHS’s misapplication  
26 of detention authority—specifically, its decision to classify him under INA § 235(b) instead of §  
27

1 236(a). That statutory misclassification is a collateral issue wholly independent of any  
2 discretionary enforcement decision and goes to the legal basis of custody itself.

3 Courts across this District—including multiple recent decisions cited in the Introduction  
4 —have repeatedly rejected DHS’s reliance on § 1252(g) in this exact context. See *Valdovinos v.*  
5 *Noem*, No. 25-cv-2439-TWR (KSC); *Esquivel-Ipina v. Noem*, No. 25-cv-2672-JLS (BLM);  
6 *Mendez Chavez v. Noem*, No. 25-cv-2818-DMS-SBC; *Medina-Ortiz v. Noem*, No. 25-cv-2819-  
7 DMS-MMP; *Martinez Lopez v. Noem*, No. 25-cv-2717-JES-AHG; *Garcia Magadan v. Noem*,  
8 No. 25-cv-2889-JES-KSC; *Maceda-Garcia v. Noem*, No. 25-cv-2968-JO-JLB; *Maravilla Amaya*  
9 *v. Noem*, No. 25-cv-2892-BTM-DEB; *Lucas-Miguel v. Noem*, No. 3:25-cv-03022-RSH-JLB;  
10 *Fernando-Barrueta v. Noem*, No. 3:25-cv-02670-LL-SBC; and *Chiapot Perez v. Noem*, No.  
11 3:25-cv-03161-JES-VET. In each, the Court held that § 1252(g) does not bar habeas review  
12 where the petitioner challenges DHS’s legal authority to classify interior arrestees under §  
13 235(b), rather than any discretionary decision to commence proceedings, adjudicate cases, or  
14 execute a removal order.

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

### 18 EXHAUSTION

19 Exhaustion is excused here because any additional administrative process would be futile.  
20 Petitioner already sought and obtained bond relief before the Immigration Judge, who granted  
21 release on a \$6,500 bond after finding that § 236(a) governed Petitioner’s custody. DHS  
22 appealed. The Board of Immigration Appeals then reversed the IJ solely on the basis of *Matter of*  
23 *Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025)—holding that individuals who entered without  
24 inspection must be detained under § 235(b)(2)(A) and that Immigration Judges therefore lack  
25 jurisdiction to issue bond under § 236(a).

26 No further administrative remedy exists because the Board has already foreclosed bond  
27 jurisdiction under § 236(a) through its application of *Yajure-Hurtado* to Petitioner’s case.

1 The Ninth Circuit’s controlling rule in *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir.  
2 2017), is directly on point: exhaustion may be excused where “administrative remedies are  
3 inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture,  
4 irreparable injury will result, or the administrative proceedings would be void.” (quoting *Laing*  
5 *v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). That is precisely the situation here.

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

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

## 12 ARGUMENT

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

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

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

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

1 Courts within the Southern District of California have repeatedly reaffirmed that § 235(b)  
2 applies only when a noncitizen takes an affirmative step to seek admission—such as presenting  
3 at a port of entry for inspection or filing an application for admission or adjustment of status.  
4 Long-settled residents apprehended in the interior do not fall within § 235(b). See *Garcia*  
5 *Magadan v. Noem*, No. 25-cv-2889-JES-KSC (S.D. Cal. Nov. 5, 2025); *Medina-Ortiz v. Noem*,  
6 No. 25-cv-2819-DMS-MMP (S.D. Cal. Oct. 30, 2025).

7 As Judge Linda Lopez held in *Fernando-Barrueta v. Noem*, 25-cv-02670-LL-SBC (S.D.  
8 Cal. Nov. 21, 2025), reading § 235(b)(2) to cover anyone present without admission “ignores the  
9 statutory language requiring active, present-tense conduct” and renders the phrase “seeking  
10 admission” superfluous. The court also emphasized that applying § 235(b) to interior arrestees  
11 would contradict Congress’s 2025 amendments to § 1226(c), which expressly assume that  
12 noncitizens “present without admission or parole” are ordinarily detained under § 236(a) unless  
13 they fall within specific criminal categories. Because Petitioner, like the habeas petitioner in  
14 *Fernando-Barrueta*, was arrested years after entering the country and took no affirmative step to  
15 seek admission, DHS’s reliance on § 235(b) is contrary to the statutory text, agency history, and  
16 the structural design of §§ 1225 and 1226.

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

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

25 Accordingly, DHS’s reliance on § 235(b) to detain Petitioner is contrary to statute and  
26 Due Process. His custody is governed by § 236(a), entitling him to an individualized bond  
27 hearing before a neutral Immigration Judge.

1 **B. DHS’s Sudden Reinterpretation Contradicts Nearly Three Decades of**  
2 **Consistent Policy**

3 For nearly three decades following enactment of the Illegal Immigration Reform and  
4 Immigrant Responsibility Act of 1996 (“IIRIRA”), the government consistently applied INA §  
5 235(b) detention authority only to arriving noncitizens or those apprehended immediately after  
6 crossing the border. By contrast, individuals arrested in the interior—long after entry—were  
7 uniformly detained under INA § 236(a) and afforded bond eligibility. This longstanding practice  
8 spanned multiple administrations of both political parties and reflected the plain statutory  
9 distinction Congress drew between “applicants for admission” encountered at or near the border  
10 and individuals already present within the United States.

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

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

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

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

3 **C. Respondents’ Own Concessions and Prior Adverse Rulings Undermine**  
4 **Their Position**

5 In their Return, Respondents themselves acknowledge that courts within this District  
6 have repeatedly rejected the same § 1225(b) argument they advance here. Their fallback position  
7 —that if § 1226(a) applies, the appropriate remedy would be a bond hearing—confirms that the  
8 only live dispute is the legal classification of Petitioner’s custody. That issue is a pure question  
9 of law, properly reviewable in habeas under 28 U.S.C. § 2241. Respondents further concede that,  
10 should the Court determine § 1226(a) governs, Petitioner would be entitled to a new  
11 individualized bond hearing before an Immigration Judge, underscoring that the sole dispute  
12 concerns the statutory basis of custody.

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

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

22 Although Respondents invoke *Chavez v. Noem*, courts in this District have declined to  
23 apply *Chavez* in cases involving individuals apprehended in the interior after years of residence.  
24 Judges have distinguished *Chavez* on that basis and have applied the statutory text of § 235(b)  
25 consistent with long-standing practice. Judge Lopez, for example, explained that DHS’s  
26 interpretation “cannot be reconciled with the statutory text,” and Judge Bashant similarly noted  
27 that applying § 235(b) to interior arrests “ignores the statutory scheme in its entirety.” These

1 decisions confirm that *Chavez* does not control where, as here, DHS apprehended a long-term  
2 resident in the interior and now seeks to impose § 235(b)'s detention framework retroactively.

3 Together, these rulings reflect a consistent and persuasive line of authority within the  
4 Southern District of California holding that DHS may not invoke § 235(b) to detain individuals  
5 apprehended in the interior of the United States years after entry. Respondents' Return provides  
6 no basis—let alone a persuasive one—for this Court to depart from the uniform decisions already  
7 issued in this District.

8 **CONCLUSION**

9 For the foregoing reasons, Petitioner's arrest occurred in the interior of the United States  
10 —long after his entry—placing his custody within INA § 236(a), not § 235(b). DHS's  
11 designation of his custody under § 235(b) was contrary to law and deprived him of the bond  
12 hearing guaranteed under § 236(a).

13 This misclassification, not the arrest, lies at the core of this habeas challenge. By  
14 invoking § 235(b), DHS denied Petitioner the statutory and constitutional protections Congress  
15 afforded to individuals arrested in the United States. His custody, if lawful at all, arises under §  
16 236(a), which requires an individualized bond hearing before a neutral Immigration Judge.

17 This petition challenges the legal basis of custody—not DHS's discretionary decision to  
18 initiate or pursue removal. Accordingly, this Court retains jurisdiction under 28 U.S.C. § 2241,  
19 as recognized in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and in multiple recent decisions  
20 within this District.

21 Petitioner respectfully requests that the Court grant the writ of habeas corpus and order  
22 his immediate release on the \$6,500 bond previously authorized by the Immigration Judge.

23 In the alternative, Petitioner requests that the Court declare DHS's custody classification  
24 under § 235(b) unlawful, hold that he is detained under § 236(a), and direct DHS to provide an  
25 individualized bond hearing consistent with *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

26 Respectfully submitted,

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