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

ROGELIO TORRES VELASQUEZ,
Petitioner

Case No.:3:25-cv-3046 AGS DEB

v.

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

Judge: Hon. Andrew G. Schopler

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

INTRODUCTION

Petitioner, Rogelio Torres Velasquez, respectfully submits this Traverse in response to Respondents’ Return. Petitioner challenges the Department of Homeland Security’s misclassification of his detention authority under INA § 235(b), rather than under the statutory framework that actually governs his case—INA § 236(a). This misclassification exceeds DHS’s lawful authority and violates the Due Process Clause of the Fifth Amendment.

Petitioner is a national of Mexico who entered the United States without inspection in or about 2000 and has resided in the United States for more than two decades. He was arrested in the interior of the United States on August 26, 2025, while exiting a Home Depot, not while arriving at, or presenting himself for admission at, any port of entry. He was already living and

1 working in the United States at the time of his arrest and took no affirmative step to seek
2 admission.

3 Consistent with decades of agency practice and the statutory framework Congress
4 enacted, Petitioner’s custody is governed by INA § 236(a), not § 235(b). Nevertheless, DHS has
5 classified Petitioner as an “applicant for admission” based solely on a decades-old entry without
6 inspection, relying on the Board of Immigration Appeals’ recent decision in *Matter of Yajure-*
7 *Hurtado*, 29 I&N Dec. 216 (BIA 2025). That reinterpretation improperly expands § 235(b)
8 beyond its statutory limits and unlawfully deprives Petitioner of the bond eligibility and
9 procedural protections provided under § 236(a).

10 Multiple recent decisions within this District have rejected DHS’s reliance on § 235(b) to
11 detain individuals apprehended in the interior after a period of residence. See *Valdovinos v.*
12 *Noem*, No. 25-cv-2439-TWR (KSC) (S.D. Cal. Sept. 25, 2025) (Robinson, J.); *Esquivel-Ipina v.*
13 *Noem*, No. 25-cv-2672-JLS (BLM) (S.D. Cal. Oct. 24, 2025) (Sammartino, J.); *Mendez Chavez*
14 *v. Noem*, No. 25-cv-2818-DMS-SBC (S.D. Cal. Oct. 31, 2025) (Sabraw, J.); *Medina-Ortiz v.*
15 *Noem*, No. 25-cv-2819-DMS-MMP (S.D. Cal. Oct. 30, 2025) (Sabraw, J.); *Martinez Lopez v.*
16 *Noem*, No. 25-cv-2717-JES-AHG (S.D. Cal. Oct. 30, 2025) (Simmons, J.); *Garcia Magadan v.*
17 *Noem*, No. 25-cv-2889-JES-KSC (S.D. Cal. Nov. 5, 2025) (Simmons, J.); *Maceda-Garcia v.*
18 *Noem*, No. 25-cv-2968-JO-JLB (S.D. Cal. Nov. 13, 2025) (Ohta, J.); *Maravilla Amaya v. Noem*,
19 No. 25-cv-2892-BTM-DEB (S.D. Cal. Nov. 13, 2025) (Moskowitz, J.); *Lucas-Miguel v. Noem*,
20 No. 3:25-cv-03022-RSH-JLB (S.D. Cal. Nov. 2025) (Huie, J.); and *Fernando-Barrueta v. Noem*,
21 No. 3:25-cv-02670-LL-SBC (S.D. Cal. Nov. 21, 2025) (Lopez, J.); and *Chiapot Perez v. Noem*,
22 No. 3:25-cv-03161-JES-VET (S.D. Cal. Nov. 2025) (Simmons, J.). Each of these decisions
23 reached the same conclusion: DHS may not invoke § 235(b) to detain individuals apprehended in
24 the interior after a period of residence in the United States, and such custody must proceed, if at
25 all, under § 236(a).

26 The same reasoning applies here. DHS again seeks to treat a noncitizen arrested in the
27 interior—years after entry—as an arriving applicant for admission based solely on a past entry

1 without inspection. That theory has been repeatedly rejected as inconsistent with the statutory
2 scheme.

3 Petitioner’s continued detention under § 235(b), without any opportunity for a bond
4 hearing before an Immigration Judge, violates both the Immigration and Nationality Act and the
5 Due Process Clause of the Fifth Amendment. Because DHS’s invocation of INA § 235(b) is
6 contrary to law, Petitioner respectfully requests that this Court grant the writ of habeas corpus
7 and declare that his detention is governed by INA § 236(a), thereby entitling him to an
8 individualized bond hearing before a neutral Immigration Judge consistent with *Matter of*
9 *Guerra*, 24 I&N Dec. 37 (BIA 2006).

10 **JURISDICTION**

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

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

15 Petitioner does not challenge DHS’s decision to commence removal proceedings or its
16 discretionary decision to detain. Rather, he contests the statutory and constitutional authority
17 under which DHS has classified that detention—specifically, DHS’s unlawful designation of his
18 custody as arising under INA § 235(b) instead of § 236(a). This misclassification stripped
19 Petitioner of the bond hearing that Congress mandated for interior arrests.

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

25 Because this petition challenges only the statutory authority under which DHS asserts
26 custody—and not the validity of a removal order or charging decision—it remains properly
27 before this Court. As this Court has already held in prior decisions, § 1252(b)(9) does not bar

1 habeas review of collateral challenges to DHS’s custody classification under § 235(b), and
2 claims contesting only the legal basis of detention fall squarely within the scope of habeas
3 jurisdiction.

4 Respondents also mischaracterize Petitioner’s claim. Petitioner does not challenge DHS’s
5 discretionary “decision to detain” or its initiation of removal proceedings. The sole issue is
6 which statutory provision lawfully governs that detention—INA § 235(b), which applies only to
7 applicants for admission apprehended at or near the border, or INA § 236(a), which governs
8 interior arrests.

9 This distinction is critical. Petitioner does not contest whether he may be detained at all;
10 he contests how DHS may lawfully exercise that detention authority. Such a challenge is
11 collateral to the removal process and lies firmly within habeas jurisdiction. As *Jennings*
12 explained, § 1252(b)(9) does not bar challenges to “the statutory framework that permits [the
13 alien’s] detention,” as opposed to challenges to any discretionary decision to detain. *Id.* at 295.

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

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

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

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

1 Here, Petitioner does not challenge DHS’s decision to initiate removal proceedings, nor
2 any action to adjudicate or execute a removal order. Rather, he challenges DHS’s misapplication
3 of detention authority—specifically, its decision to classify him under INA § 235(b) instead of §
4 236(a). That statutory misclassification is a collateral issue wholly independent of any
5 discretionary enforcement decision and goes to the legal basis of custody itself.

6 Courts within this District have repeatedly rejected the government’s reliance on 8 U.S.C.
7 § 1252(g) in this exact context. In *Aparicio Sanchez v. Noem*, No. 25-cv-3068-JLS (MMP) (S.D.
8 Cal. Nov. 18, 2025), and *Esquivel-Ipina v. Noem*, No. 25-cv-2672-JLS (BLM) (S.D. Cal. Oct.
9 24, 2025), the court held that § 1252(g) does not bar habeas review where, as here, the petitioner
10 challenges “the statutory and constitutional authority under which [detention] was classified,”
11 rather than any decision to commence, adjudicate, or execute removal proceedings. In both
12 cases, the court concluded that a challenge to DHS’s detention classification under § 235(b)
13 presents an independent due process claim outside § 1252(g)’s narrow scope.

14 Other judges in this District have reached the same conclusion. See *Valdovinos v. Noem*,
15 No. 25-cv-2439-TWR (KSC); *Mendez Chavez v. Noem*, No. 25-cv-2818-DMS-SBC; *Medina-*
16 *Ortiz v. Noem*, No. 25-cv-2819-DMS-MMP; *Maceda-Garcia v. Noem*, No. 25-cv-2968-JO-JLB;
17 and *Maravilla Amaya v. Noem*, No. 25-cv-2892-BTM-DEB.

18 These decisions collectively reaffirm that § 1252(g) does not bar habeas review of DHS’s
19 custodial misclassification under § 235(b), because such claims challenge the legality of
20 detention itself—a matter collateral to removal proceedings.

21 Thus, § 1252(g) does not divest this Court of jurisdiction to review Petitioner’s claim,
22 which challenges DHS’s unlawful custody classification—not any discretionary enforcement
23 decision.

24 **EXHAUSTION**

25 Although habeas petitioners generally must exhaust available administrative remedies,
26 exhaustion is not a jurisdictional prerequisite to review under 28 U.S.C. § 2241—particularly
27

1 where the petitioner raises a purely legal or constitutional question and no adequate
2 administrative remedy exists. See *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).

3 Given the Board of Immigration Appeals’ precedential decision in *Matter of Yajure-*
4 *Hurtado*, 29 I&N Dec. 216 (BIA 2025), any further administrative process would be futile. In
5 *Yajure-Hurtado*, the Board held that individuals who entered without inspection are detained
6 under INA § 235(b)(2)(A) and that Immigration Judges therefore lack jurisdiction to conduct
7 bond proceedings under INA § 236(a). Once the Board adopted that interpretation, no
8 Immigration Court retained authority to adjudicate a request for bond in cases such as
9 Petitioner’s.

10 The Ninth Circuit has made clear that exhaustion is prudential and may be excused where
11 “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies
12 would be a futile gesture, irreparable injury will result, or the administrative proceedings would
13 be void.” *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*,
14 370 F.3d 994, 1000 (9th Cir. 2004)). That standard is satisfied here, where the governing agency
15 has conclusively foreclosed the very relief Petitioner would otherwise be required to seek.

16 Numerous federal courts within this District have repeatedly recognized that exhaustion
17 should be excused under these exact circumstances. See the cases cited in the Introduction.

18 Because Petitioner raises a purely legal challenge that cannot be addressed through
19 existing administrative channels—and because further pursuit of administrative remedies would
20 be futile in light of the Board’s own binding precedent in *Matter of Yajure-Hurtado*—exhaustion
21 should be excused.

22 ARGUMENT

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

24 Respondents incorrectly assert that Petitioner is subject to mandatory detention under
25 INA § 235(b) because he is an “applicant for admission.” That argument fails both legally and
26 factually. Petitioner was apprehended in the interior of the United States while residing and
27

1 working in the country. He was not encountered at a port of entry, during an inspection process,
2 or near the international boundary.

3 The plain text of INA § 235(b)(2)(A) applies only when “an immigration officer
4 determines that an alien seeking admission is not clearly and beyond a doubt entitled to be
5 admitted.” 8 U.S.C. § 1225(b)(2)(A). The use of the present-tense phrase “seeking admission”
6 requires an affirmative act—such as presenting at a port of entry for inspection or formally
7 applying for admission—not merely prior unlawful entry.

8 Detention following an interior arrest—well after entry—falls under INA § 236(a), not §
9 235(b). The Supreme Court has confirmed that § 236(a) governs the detention of noncitizens
10 already present in the United States, whereas § 235(b) applies to individuals encountered during
11 inspection or while actively seeking admission. *Jennings v. Rodriguez*, 583 U.S. 281, 297–303
12 (2018); *Matter of M-S-*, 27 I&N Dec. 509 (BIA 2019). Treating interior arrestees as perpetual
13 “applicants for admission” collapses the statutory distinction Congress deliberately preserved
14 between §§ 1225 and 1226.

15 Courts within the Southern District of California have repeatedly reaffirmed this
16 boundary. Section 235(b) applies only when a noncitizen takes an affirmative step to seek
17 admission, such as presenting at a port of entry or filing an application for admission or
18 adjustment of status. Individuals apprehended in the interior of the United States after a period of
19 residence do not fall within § 235(b). See *Garcia Magadan v. Noem*, No. 25-cv-2889-JES-KSC
20 (S.D. Cal. Nov. 5, 2025); *Medina-Ortiz v. Noem*, No. 25-cv-2819-DMS-MMP (S.D. Cal. Oct. 30,
21 2025).

22 As Judge Linda Lopez explained in *Fernando-Barrueta v. Noem*, No. 25-cv-02670-LL-
23 SBC (S.D. Cal. Nov. 21, 2025), reading § 235(b)(2) to cover any noncitizen present without
24 admission “ignores the statutory language requiring active, present-tense conduct” and renders
25 the phrase “seeking admission” superfluous. The court further emphasized that applying § 235(b)
26 to interior arrestees would contradict Congress’s 2025 amendments to INA § 1226(c), which

1 expressly assume that noncitizens “present without admission or parole” are ordinarily detained
2 under § 236(a) unless they fall within narrowly defined criminal categories.

3 Similarly, Judge Moskowitz held in *Maravilla Amaya v. Noem*, No. 25-cv-2892-BTM-
4 DEB (S.D. Cal. Nov. 13, 2025), that *Matter of Yajure-Hurtado* must be rejected because it is
5 inconsistent with the statutory text and structure of §§ 1225 and 1226. As the court explained, §
6 1225 “deals extensively with arriving noncitizens who are actively seeking admission,” not
7 individuals apprehended in the interior after residing in the United States.

8 Courts outside this District have reached the same conclusion. In *Maldonado Bautista v.*
9 *Garland*, No. 2:25-cv-06347-SSS-KS (C.D. Cal. Nov. 20, 2025), the court held that DHS may
10 not invoke § 235(b) to detain noncitizens arrested in the interior after a period of residence, and
11 that § 236(a) supplies the governing statutory authority. Judge Sykes also rejected DHS’s July 8,
12 2025 Interim Guidance, concluding that treating all interior arrests as involving “applicants for
13 admission” improperly rewrites the statute and would render § 236 largely superfluous.

14 That reasoning applies squarely here. Petitioner took no affirmative step to seek
15 admission and was apprehended in the interior of the United States after a period of residence.
16 He therefore cannot lawfully be treated as an “applicant for admission” under INA § 235(b).

17 Thus, DHS’s reliance on § 235(b) to detain Petitioner is contrary to the INA and the Due
18 Process Clause of the Fifth Amendment. Petitioner’s custody is governed by INA § 236(a),
19 entitling him to an individualized bond 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”), DHS and its predecessor agencies
24 consistently treated noncitizens apprehended in the interior of the United States as governed by
25 INA § 236(a), not § 235(b). Under that longstanding framework, individuals arrested after entry
26 —often years later—were placed in removal proceedings under INA § 240 and were eligible for
27 discretionary custody determinations, including bond hearings before Immigration Judges,

1 absent a separate statutory basis for mandatory detention. This practice spanned multiple
2 administrations of both political parties and reflected the statutory distinction Congress drew
3 between noncitizens seeking admission at the border and those already present within the United
4 States.

5 Only in mid-2025 did DHS abruptly depart from that settled interpretation. Around July
6 8, 2025, ICE issued guidance instructing officers to classify all noncitizens who entered without
7 inspection as “applicants for admission,” regardless of the time, place, or circumstances of their
8 arrest. That guidance—and the Board of Immigration Appeals’ subsequent decision in *Matter of*
9 *Yajure-Hurtado*—dramatically expanded § 235(b) detention authority without any intervening
10 statutory amendment, congressional directive, or change in controlling Supreme Court precedent.

11 Courts have correctly rejected this sudden reinterpretation as inconsistent with the INA.
12 Treating all interior arrestees as perpetual applicants for admission collapses the statutory
13 distinction between §§ 235 and 236 and renders § 236(a) largely superfluous. As courts have
14 observed, if § 235(b) applied to any noncitizen who once entered without inspection—no matter
15 how long ago or where they are arrested—Congress’s carefully structured custody scheme for
16 noncitizens already present in the United States would be effectively erased.

17 The Chief Judge of this District recently reaffirmed this understanding in *Contreras-*
18 *Albino v. Noem*, No. 25-cv-02965-BAS-BLM (S.D. Cal. Nov. 25, 2025). There, the court
19 recognized that until 2025, DHS consistently applied INA § 236(a) and its regime of
20 discretionary detention and bond review to the vast majority of noncitizens apprehended in the
21 interior, a practice reflected in regulation and long-standing agency operations. The court held
22 that DHS’s July 8, 2025 reinterpretation “disregards the plain meaning” of § 1225(b)(2)(A),
23 “disregards the relationship between sections 1225 and 1226,” and is “inconsistent with decades
24 of prior statutory interpretation and practice.”

25 An unexplained departure from such a longstanding and consistently applied
26 interpretation is entitled to little, if any, deference. See *INS v. Cardoza-Fonseca*, 480 U.S. 421,
27 446 n.30 (1987) (an agency interpretation that conflicts with its prior interpretation is entitled to

1 “considerably less deference than a consistently held agency view”). DHS’s sudden attempt to
2 abandon nearly three decades of settled practice therefore cannot lawfully govern Petitioner’s
3 custody.

4 Because DHS’s current position contradicts the statutory text, structure, and longstanding
5 agency practice, Petitioner’s detention under INA § 235(b) is unlawful. His custody is governed
6 by INA § 236(a), entitling him to discretionary release and an individualized bond determination
7 by an Immigration Judge.

8 CONCLUSION

9 For the foregoing reasons, Petitioner was apprehended in the interior of the United States
10 long after his entry and therefore falls within the detention framework of INA § 236(a), not §
11 235(b). DHS’s classification of Petitioner’s custody under § 235(b) was contrary to the statutory
12 text, structure, and longstanding agency practice, and unlawfully deprived him of the bond
13 process Congress expressly provided for individuals apprehended in the interior of the United
14 States.

15 The issue before this Court is not the lawfulness of Petitioner’s arrest or DHS’s
16 discretionary decision to initiate removal proceedings. Rather, it is the legal basis for Petitioner’s
17 continued detention. By invoking § 235(b), DHS denied Petitioner the statutory and
18 constitutional protections applicable to detention under § 236(a), including release on bond
19 following an individualized custody determination by a neutral Immigration Judge.

20 Because this Petition challenges only the statutory authority for detention—and not any
21 discretionary custody determination—this Court retains jurisdiction under 28 U.S.C. § 2241. See
22 *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Where, as here, detention rests on an erroneous
23 legal classification, continued confinement is unlawful.

24 Petitioner’s detention is governed by INA § 236(a), and DHS’s reliance on INA § 235(b)
25 to deny bond eligibility is legally erroneous. Petitioner respectfully requests that the Court grant
26 the writ, declare the custody classification unlawful, and order DHS to provide an individualized
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1 bond hearing before an Immigration Judge consistent with Matter of Guerra, 24 I&N Dec. 37
2 (BIA 2006).

3 If, in light of the parties' submissions, the Court concludes that oral argument at the
4 December 17, 2025 hearing scheduled for 10:00 a.m. would not assist the decisional process,
5 Petitioner respectfully requests that the Court vacate the hearing and resolve the matter on the
6 written submissions.

7 Respectfully submitted,

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