

Alejandro Monsalve
CA SBN 324958
Alex Monsalve Law Firm, PC
240 Woodlawn Ave., Suite 9
Chula Vista, CA 91910
(619) 777-6796
Counsel for Petitioner

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

JOEL CRUZ-FLORES,

Petitioner

v.

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

Case No.:3:25-cv-03263-JLS-VET

Judge: Hon. Janis L. Sammartino

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

INTRODUCTION

Petitioner, Joel Cruz-Flores, 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 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 has lived in the United States for approximately twenty-five years, since 1999. He was arrested in the interior of the country—near his home in Vista, California—pursuant to an administrative warrant issued under § 236(a), and not while arriving at, or presenting himself for admission at, any port of entry. Consistent with decades of agency practice, the Immigration Judge correctly exercised § 236(a) jurisdiction and granted Petitioner release on a \$1,500 bond

1 on August 18, 2025, after finding that he was plainly an interior arrest case. DHS appealed, and
2 the Board of Immigration Appeals vacated that bond order only because of its newly issued
3 precedent, *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), which reclassifies all
4 individuals who entered without inspection as “applicants for admission,” regardless of how long
5 they have lived in the United States.

6 This Court has already rejected that very theory—twice—on materially indistinguishable
7 facts. In *Aparicio Sanchez v. Noem*, No. 25-cv-3068-JLS (MMP) (S.D. Cal. Nov. 18, 2025), and
8 again in *Esquivel-Ipina v. Noem*, No. 25-cv-2672-JLS (BLM) (S.D. Cal. Oct. 24, 2025), the
9 Court held that DHS may not invoke § 235(b) to detain long-settled noncitizens apprehended in
10 the interior. The Court squarely rejected DHS’s position that an individual who has lived in the
11 United States for years may be treated as an “applicant for admission” subject to mandatory
12 detention under § 235(b) simply because the original entry was without inspection. Instead, the
13 Court held—consistent with every other decision in this District—that interior arrests fall under
14 INA § 236(a), which provides noncitizens with a statutory right to an individualized bond
15 hearing. The same reasoning compels the same result here. DHS once again seeks to treat a long-
16 settled resident as an arriving applicant for admission based solely on an entry decades earlier,
17 and this Court has already twice rejected that theory as unlawful.

18 Petitioner’s continued detention under § 235(b), without any opportunity for a bond
19 hearing before an Immigration Judge, violates both the statutory scheme Congress enacted and
20 the Due Process Clause. Because DHS’s invocation of § 235(b) is contrary to law, Petitioner
21 respectfully asks this Court to grant the writ and order his release on the previously authorized
22 \$1,500 bond or, in the alternative, require DHS to provide an individualized bond hearing under
23 § 236(a), consistent with *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

24 ///

25 ///

26 ///

27 ///

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 therefore falls within § 1252(b)(9). That argument fails.

Petitioner does not challenge DHS’s decision to commence removal proceedings or its discretionary decision to detain. Rather, he contests the statutory and constitutional authority under which DHS has classified that detention—specifically, DHS’s unlawful designation of his custody as arising under INA § 235(b) instead of § 236(a). This misclassification stripped Petitioner of the bond hearing that 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), 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 challenges only the statutory authority under which DHS asserts custody—and not the validity of a removal order or charging decision—it remains properly before this Court. As this Court has already held in prior decisions, § 1252(b)(9) does not bar habeas review of collateral challenges to DHS’s custody classification under § 235(b), and claims contesting only the legal basis of detention fall squarely within the scope of habeas jurisdiction.

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

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

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

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

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

13 In *Reno v. American-Arab Anti-Discrimination Committee* (“AADC”), 525 U.S. 471, 482
14 (1999), the Supreme Court held that § 1252(g) applies only to three discrete actions the Attorney
15 General may take—commencing proceedings, adjudicating cases, or executing removal orders—
16 and does not extend to “the many other decisions or actions that may be part of the deportation
17 process.” The Court expressly rejected reading § 1252(g) as a blanket jurisdictional bar over all
18 claims tangentially related to removal.

19 Here, Petitioner does not challenge DHS’s decision to initiate removal proceedings, nor
20 any action to adjudicate or execute a removal order. Rather, he challenges DHS’s misapplication
21 of detention authority—specifically, its decision to classify him under INA § 235(b) instead of §
22 236(a). That statutory misclassification is a collateral issue wholly independent of any
23 discretionary enforcement decision and goes to the legal basis of custody itself.

24 This Court has already rejected the government’s reliance on § 1252(g) in this exact
25 context. In both *Aparicio Sanchez v. Noem*, No. 25-cv-3068-JLS (MMP) (S.D. Cal. Nov. 18,
26 2025), and *Esquivel-Ipina v. Noem*, No. 25-cv-2672-JLS (BLM) (S.D. Cal. Oct. 24, 2025), this
27 Court held that § 1252(g) does not bar habeas review where, as here, the petitioner challenges

1 “the statutory and constitutional authority under which [detention] was classified,” rather than
2 any decision to commence, adjudicate, or execute removal proceedings. In both cases, the Court
3 concluded that a challenge to DHS’s detention classification under § 235(b) is an independent
4 due process claim outside § 1252(g)’s narrow scope.

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

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

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

15 EXHAUSTION

16 Although habeas petitioners generally must exhaust available administrative remedies,
17 exhaustion is not a jurisdictional prerequisite to review under 28 U.S.C. § 2241—particularly
18 where the petitioner raises a purely legal or constitutional question and no adequate
19 administrative remedy exists. See *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).

20 Given the Board of Immigration Appeals’ decision in *Matter of Yajure-Hurtado*, 29 I&N
21 Dec. 216 (BIA 2025), any further administrative remedy would be futile. In *Yajure-Hurtado*, the
22 Board held that individuals who entered without inspection are detained under § 235(b)(2)(A)
23 and that Immigration Judges lack bond jurisdiction over such cases. Once the Board adopted that
24 interpretation, no Immigration Court retained authority to conduct a bond hearing.

25 The controlling Ninth Circuit authority is *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th
26 Cir. 2017), which holds that exhaustion is prudential and may be waived when “administrative
27 remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile

1 gesture, irreparable injury will result, or the administrative proceedings would be void.” (quoting
2 *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). That is precisely the situation here.

3 This Court has already applied this exact futility principle in two materially
4 indistinguishable cases. In *Aparicio Sanchez v. Noem*, No. 25-cv-3068-JLS (MMP) (S.D. Cal.
5 Nov. 18, 2025), and again in *Esquivel-Ipina v. Noem*, No. 25-cv-2672-JLS (BLM) (S.D. Cal.
6 Oct. 24, 2025), this Court held that exhaustion is excused where a petitioner challenges DHS’s
7 custody classification under § 235(b) and the BIA’s binding precedent (*Yajure-Hurtado*)
8 forecloses any meaningful administrative relief. In both cases, the Court recognized that the BIA
9 is obligated to apply *Yajure-Hurtado* and therefore cannot grant the relief sought, making
10 exhaustion futile as a matter of law.

11 Other judges in this District have reached the same conclusion in identical § 235(b)
12 misclassification cases, further underscoring the futility of pursuing administrative remedies.

13 Accordingly, exhaustion is not required here. Petitioner raises a purely legal challenge to
14 DHS’s misclassification of custody under § 235(b)—a claim that cannot be remedied through the
15 existing administrative process and would be futile in light of the Board’s own precedent.

16 ARGUMENT

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

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

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

26 Detention following an interior apprehension—long after entry—falls under § 236(a), not
27 § 235(b). The Supreme Court has confirmed that § 236(a) governs custody of noncitizens already
28

1 present in the United States, whereas § 235(b) applies only to those encountered during
2 inspection or while seeking admission. *Jennings v. Rodriguez*, 583 U.S. 281, 297–303 (2018);
3 *Matter of M-S-*, 27 I&N Dec. 509 (BIA 2019). Treating interior arrestees as “applicants for
4 admission” collapses the clear statutory distinction Congress deliberately preserved.

5 This Court has already reaffirmed this statutory boundary in two materially
6 indistinguishable cases. In *Aparicio Sanchez v. Noem*, No. 25-cv-3068-JLS (MMP) (S.D. Cal.
7 Nov. 18, 2025), and *Esquivel-Ipina v. Noem*, No. 25-cv-2672-JLS (BLM) (S.D. Cal. Oct. 24,
8 2025), this Court held that § 235(b) applies only when an individual is encountered at or near the
9 border while seeking admission. In both cases, the Court rejected DHS’s contention that long-
10 term residents arrested in the interior could be treated as applicants for admission subject to
11 mandatory detention under § 235(b). Instead, the Court concluded that interior arrests fall under
12 § 236(a), which provides for discretionary detention and an individualized bond hearing.

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

17 Each of these decisions reaffirms the same statutory boundary: § 235(b) applies only to
18 noncitizens who affirmatively seek admission at the border, not to long-settled residents arrested
19 years after entering the country.

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

23 **B. DHS’s Sudden Reinterpretation Contradicts Nearly Three Decades of** 24 **Consistent Policy**

25 For nearly three decades following enactment of the Illegal Immigration Reform and
26 Immigrant Responsibility Act of 1996 (“IIRIRA”), the government consistently applied INA §
27 235(b) detention authority only to arriving noncitizens or those apprehended immediately after

1 crossing the border. By contrast, individuals arrested in the interior—long after entry—were
2 uniformly detained under INA § 236(a) and afforded bond eligibility. This stable interpretation
3 spanned multiple administrations of both political parties and reflected the plain statutory
4 distinction Congress drew between “applicants for admission” encountered at or near the border
5 and individuals already present within the United States.

6 Only in mid-2025 did DHS abruptly reverse that interpretation. On or around July 8,
7 2025, ICE issued internal guidance instructing officers to classify all noncitizens who entered
8 without inspection (EWIs) as “applicants for admission,” regardless of the time, place, or
9 circumstances of arrest. This unprecedented expansion of § 235(b) detention authority was
10 subsequently echoed in *Matter of Yajure-Hurtado* and implemented through unpublished field
11 directives that never underwent notice-and-comment rulemaking.

12 This reinterpretation represents a dramatic and unjustified break from nearly three
13 decades of consistent agency practice. This Court has already recognized the inconsistency and
14 rejected the government’s post-2025 reclassification theory. In *Aparicio Sanchez v. Noem*, No.
15 25-cv-3068-JLS (MMP) (S.D. Cal. Nov. 18, 2025), and *Esquivel-Ipina v. Noem*, No. 25-cv-
16 2672-JLS (BLM) (S.D. Cal. Oct. 24, 2025), this Court expressly found that DHS’s sudden
17 reliance on § 235(b) to detain long-settled residents apprehended in the interior conflicts with the
18 statutory framework and decades of uniform agency practice. In both cases, the Court reaffirmed
19 that the longstanding rule—spanning nearly three decades—placed interior arrests under §
20 236(a), not § 235(b), and that DHS’s 2025 reinterpretation was inconsistent with Congress’s
21 structure and intent.

22 Other judges within this District have reached the same conclusion, uniformly rejecting
23 DHS’s new approach as incompatible with statutory text, legislative history, and the agency’s
24 own prior construction of the INA.

25 An unexplained departure from such an established interpretation is entitled to little, if
26 any, deference. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 446 n.30 (1987) (“An agency
27
28

1 interpretation of a relevant provision which conflicts with the agency’s earlier interpretation is
2 entitled to considerably less deference than a consistently held agency view.”).

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

5 **CONCLUSION**

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

10 The misclassification of custody—not the arrest itself—is the issue before this Court. By
11 invoking § 235(b), DHS denied Petitioner the statutory and constitutional safeguards Congress
12 afforded to individuals apprehended within the United States. His custody, if lawful at all, arises
13 under § 236(a), which authorizes release on bond and requires an individualized hearing before a
14 neutral Immigration Judge.

15 This petition challenges only the legal basis of custody—not DHS’s discretionary
16 decision to initiate or pursue removal. Accordingly, this Court retains jurisdiction under 28
17 U.S.C. § 2241, as reaffirmed in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and in this Court’s
18 own recent decisions interpreting the relationship between §§ 235 and 236, including *Aparicio*
19 *Sanchez* and *Esquivel-Ipina*.

20 Because Petitioner’s detention is properly governed by INA § 236(a), the Immigration
21 Judge had lawful jurisdiction to set bond, and DHS’s subsequent reliance on § 235(b) was legally
22 erroneous. Petitioner therefore respectfully requests that the Court grant the writ of habeas
23 corpus and permit him to post the \$1,500 bond previously authorized by the Immigration Judge.
24 In the alternative, Petitioner requests that the Court declare DHS’s classification under § 235(b)
25 unlawful, hold that he is detained under § 236(a), and direct DHS to provide an individualized
26 bond hearing consistent with *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

27 Respectfully submitted,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

/s/ Alejandro J. Monsalve, Esq. CA SBN 324958
Alex Monsalve Law Firm, PC
240 Woodlawn Ave, Suite 9
Chula Vista, CA 91910
Phone: (619) 777-6796
Email: info@alexmonsalvelawfirm.com
Counsel for Petitioner

Dated: December 4, 2025