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

BRADLEI GUTIERREZ VELAZQUEZ,

Case No.:3:25-cv-3273 AGS KSC

Petitioner

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, Bradley Gutierrez Velazquez, 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 Guatemala who entered the United States without inspection in 2019 and has continuously resided in the United States since then. He was arrested in the interior of the United States in Florida while on his way to work, 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 jurisdiction under INA § 236(a) and, on August 12, 2025,

1 granted Petitioner release on a \$6,500 bond after finding that he was apprehended in the interior
2 of the United States rather than at the border. DHS appealed that decision, and the Board of
3 Immigration Appeals vacated the bond order solely on the basis of its newly issued precedent,
4 *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), which reclassifies all individuals who
5 entered without inspection as “applicants for admission,” regardless of the length of their
6 residence in the United States.

7 Multiple recent decisions within this District have rejected DHS’s reliance on § 235(b) to
8 detain long-settled residents apprehended in the interior. See *Valdovinos v. Noem*, No. 25-cv-
9 2439-TWR (KSC) (S.D. Cal. Sept. 25, 2025) (Robinson, J.); *Esquivel-Ipina v. Noem*, No. 25-cv-
10 2672-JLS (BLM) (S.D. Cal. Oct. 24, 2025) (Sammartino, J.); *Mendez Chavez v. Noem*, No. 25-
11 cv-2818-DMS-SBC (S.D. Cal. Oct. 31, 2025) (Sabraw, J.); *Medina-Ortiz v. Noem*, No. 25-cv-
12 2819-DMS-MMP (S.D. Cal. Oct. 30, 2025) (Sabraw, J.); *Martinez Lopez v. Noem*, No. 25-cv-
13 2717-JES-AHG (S.D. Cal. Oct. 30, 2025) (Simmons, J.); *Garcia Magadan v. Noem*, No. 25-cv-
14 2889-JES-KSC (S.D. Cal. Nov. 5, 2025) (Simmons, J.); *Maceda-Garcia v. Noem*, No. 25-cv-
15 2968-JO-JLB (S.D. Cal. Nov. 13, 2025) (Ohta, J.); *Maravilla Amaya v. Noem*, No. 25-cv-2892-
16 BTM-DEB (S.D. Cal. Nov. 13, 2025) (Moskowitz, J.); *Lucas-Miguel v. Noem*, No. 3:25-cv-
17 03022-RSH-JLB (S.D. Cal. Nov. 2025) (Huie, J.); and *Fernando-Barrueta v. Noem*, No. 3:25-
18 cv-02670-LL-SBC (S.D. Cal. Nov. 21, 2025) (Lopez, J.); and *Chiapot Perez v. Noem*, No. 3:25-
19 cv-03161-JES-VET (S.D. Cal. Nov. 2025) (Simmons, J.). Each of these decisions reached the
20 same conclusion: DHS may not invoke § 235(b) to detain individuals apprehended in the interior
21 after a period of residence in the United States, and such custody must proceed, if at all, under §
22 236(a).

23 The same reasoning applies here. DHS again seeks to treat a noncitizen arrested in the
24 interior—years after entry—as an arriving applicant for admission based solely on a past entry
25 without inspection. That theory has been repeatedly rejected as inconsistent with the statutory
26 scheme.

1 Petitioner’s continued detention under § 235(b), pursuant to DHS’s misclassification,
2 without any opportunity for a bond hearing before an Immigration Judge, violates both the
3 Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. Because
4 DHS’s invocation of INA § 235(b) is contrary to law, Petitioner respectfully requests that this
5 Court grant the writ and order Respondents to permit Petitioner to post the bond already granted
6 by the Immigration Judge pursuant to INA § 236(a). In the alternative, Petitioner seeks an order
7 requiring DHS to provide an individualized bond hearing under § 236(a), consistent with *Matter*
8 *of Guerra*, 24 I&N Dec. 37 (BIA 2006).

9 **JURISDICTION**

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

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

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

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

24 Because this petition challenges only the statutory authority under which DHS asserts
25 custody—and not the validity of a removal order or charging decision—it remains properly
26 before this Court. As this Court has already held in prior decisions, § 1252(b)(9) does not bar
27 habeas review of collateral challenges to DHS’s custody classification under § 235(b), and

1 claims contesting only the legal basis of detention fall squarely within the scope of habeas
2 jurisdiction.

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

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

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

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

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

19 In *Reno v. American-Arab Anti-Discrimination Committee* (“AADC”), 525 U.S. 471, 482
20 (1999), the Supreme Court held that § 1252(g) applies only to three discrete actions the Attorney
21 General may take—commencing proceedings, adjudicating cases, or executing removal orders—
22 and does not extend to “the many other decisions or actions that may be part of the deportation
23 process.” The Court expressly rejected reading § 1252(g) as a blanket jurisdictional bar over all
24 claims tangentially related to removal.

25 Here, Petitioner does not challenge DHS’s decision to initiate removal proceedings, nor
26 any action to adjudicate or execute a removal order. Rather, he challenges DHS’s misapplication
27 of detention authority—specifically, its decision to classify him under INA § 235(b) instead of §
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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 within this District have repeatedly rejected the government’s reliance on 8 U.S.C.
4 § 1252(g) in this exact context. In *Aparicio Sanchez v. Noem*, No. 25-cv-3068-JLS (MMP) (S.D.
5 Cal. Nov. 18, 2025), and *Esquivel-Ipina v. Noem*, No. 25-cv-2672-JLS (BLM) (S.D. Cal. Oct.
6 24, 2025), the court held that § 1252(g) does not bar habeas review where, as here, the petitioner
7 challenges “the statutory and constitutional authority under which [detention] was classified,”
8 rather than any decision to commence, adjudicate, or execute removal proceedings. In both
9 cases, the court concluded that a challenge to DHS’s detention classification under § 235(b)
10 presents an independent due process claim outside § 1252(g)’s narrow scope.

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

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

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

21 **EXHAUSTION**

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

1 Exhaustion should be excused here because Petitioner already pursued—and obtained—
2 the only administrative relief that could conceivably address his custody, and that relief was
3 vacated solely due to binding BIA precedent foreclosing any further review.

4 Specifically, Petitioner sought and obtained bond relief from the Immigration Judge on
5 August 12, 2025, after the Immigration Judge correctly determined that Petitioner’s custody was
6 governed by INA § 236(a) and authorized release on a \$6,500 bond. The Immigration Judge
7 found that Petitioner had been apprehended in the interior of the United States and was therefore
8 eligible for custody redetermination under § 236(a). DHS appealed that ruling.

9 After issuing a detailed Bond Memorandum reaffirming § 236(a) jurisdiction, the
10 Immigration Judge’s order was vacated by the Board of Immigration Appeals solely on the basis
11 of *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). In doing so, the Board conclusively
12 determined that Immigration Judges lack jurisdiction to conduct bond hearings for individuals
13 who entered without inspection, regardless of when or where they were arrested.

14 No further administrative remedy exists. The BIA has already applied its own binding
15 precedent to Petitioner’s case, definitively foreclosing bond jurisdiction and eliminating any
16 possibility of relief within the agency. Any attempt to pursue additional administrative steps
17 would be futile because the result is predetermined by *Yajure-Hurtado*.

18 The controlling Ninth Circuit authority confirms that exhaustion is prudential and may be
19 excused where “administrative remedies are inadequate or not efficacious, pursuit of
20 administrative remedies would be a futile gesture, irreparable injury will result, or the
21 administrative proceedings would be void.” *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir.
22 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). That is precisely the
23 situation here.

24 Courts within this District have repeatedly applied this futility principle in materially
25 indistinguishable cases, recognizing that once the BIA adopts and applies *Yajure-Hurtado*.
26 Immigration Judges lack authority to grant bond and exhaustion serves no purpose.

1 Accordingly, exhaustion should be excused. Petitioner raises a purely legal challenge to
2 DHS’s misclassification of custody under INA § 235(b)—a claim that cannot be remedied
3 through the existing administrative process and would be futile in light of the Board’s own
4 binding precedent.

5 **ARGUMENT**

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

7 Respondents incorrectly assert that Petitioner is subject to mandatory detention under
8 INA § 235(b) because he is an “applicant for admission.” That argument fails both legally and
9 factually. Petitioner was apprehended in the interior of the United States while residing and
10 working in the country. He was not encountered at a port of entry, during an inspection process,
11 or near the international boundary.

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

17 Detention following an interior arrest—well after entry—falls under INA § 236(a), not §
18 235(b). The Supreme Court has confirmed that § 236(a) governs the detention of noncitizens
19 already present in the United States, whereas § 235(b) applies to individuals encountered during
20 inspection or while actively seeking admission. *Jennings v. Rodriguez*, 583 U.S. 281, 297–303
21 (2018); *Matter of M-S-*, 27 I&N Dec. 509 (BIA 2019). Treating interior arrestees as perpetual
22 “applicants for admission” collapses the statutory distinction Congress deliberately preserved
23 between §§ 1225 and 1226.

24 Courts within the Southern District of California have repeatedly reaffirmed this
25 boundary. Section 235(b) applies only when a noncitizen takes an affirmative step to seek
26 admission, such as presenting at a port of entry or filing an application for admission or
27 adjustment of status. Individuals apprehended in the interior of the United States after a period of
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1 residence do not fall within § 235(b). See *Garcia Magadan v. Noem*, No. 25-cv-2889-JES-KSC
2 (S.D. Cal. Nov. 5, 2025); *Medina-Ortiz v. Noem*, No. 25-cv-2819-DMS-MMP (S.D. Cal. Oct. 30,
3 2025).

4 As Judge Linda Lopez explained in *Fernando-Barrueta v. Noem*, No. 25-cv-02670-LL-
5 SBC (S.D. Cal. Nov. 21, 2025), reading § 235(b)(2) to cover any noncitizen present without
6 admission “ignores the statutory language requiring active, present-tense conduct” and renders
7 the phrase “seeking admission” superfluous. The court further emphasized that applying § 235(b)
8 to interior arrestees would contradict Congress’s 2025 amendments to INA § 1226(c), which
9 expressly assume that noncitizens “present without admission or parole” are ordinarily detained
10 under § 236(a) unless they fall within narrowly defined criminal categories.

11 Similarly, Judge Moskowitz held in *Maravilla Amaya v. Noem*, No. 25-cv-2892-BTM-
12 DEB (S.D. Cal. Nov. 13, 2025), that Matter of Yajure-Hurtado must be rejected because it is
13 inconsistent with the statutory text and structure of §§ 1225 and 1226. As the court explained, §
14 1225 “deals extensively with arriving noncitizens who are actively seeking admission,” not
15 individuals apprehended in the interior after residing in the United States.

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

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

25 Accordingly, DHS’s reliance on § 235(b) to detain Petitioner is contrary to the INA and
26 the Due Process Clause of the Fifth Amendment. Petitioner’s custody is governed by INA §
27 236(a), entitling him to an individualized bond 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”), DHS and its predecessor agencies
5 consistently treated noncitizens apprehended in the interior of the United States as governed by
6 INA § 236(a), not § 235(b). Under that longstanding framework, individuals arrested after entry
7 —often years later—were placed in removal proceedings under INA § 240 and were eligible for
8 discretionary custody determinations, including bond hearings before Immigration Judges,
9 absent a separate statutory basis for mandatory detention. This practice spanned multiple
10 administrations of both political parties and reflected the statutory distinction Congress drew
11 between noncitizens seeking admission at the border and those already present within the United
12 States.

13 Only in mid-2025 did DHS abruptly depart from that settled interpretation. Around July
14 8, 2025, ICE issued guidance instructing officers to classify all noncitizens who entered without
15 inspection as “applicants for admission,” regardless of the time, place, or circumstances of their
16 arrest. That guidance—and the Board of Immigration Appeals’ subsequent decision in *Matter of*
17 *Yajure-Hurtado*—dramatically expanded § 235(b) detention authority without any intervening
18 statutory amendment, congressional directive, or change in controlling Supreme Court precedent.

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

25 The Chief Judge of this District recently reaffirmed this understanding in *Contreras-*
26 *Albino v. Noem*, No. 25-cv-02965-BAS-BLM (S.D. Cal. Nov. 25, 2025). There, the court
27 recognized that until 2025, DHS consistently applied INA § 236(a) and its regime of

1 discretionary detention and bond review to the vast majority of noncitizens apprehended in the
2 interior, a practice reflected in regulation and long-standing agency operations. The court held
3 that DHS's July 8, 2025 reinterpretation "disregards the plain meaning" of § 1225(b)(2)(A),
4 "disregards the relationship between sections 1225 and 1226," and is "inconsistent with decades
5 of prior statutory interpretation and practice."

6 An unexplained departure from such a longstanding and consistently applied
7 interpretation is entitled to little, if any, deference. See *INS v. Cardoza-Fonseca*, 480 U.S. 421,
8 446 n.30 (1987) (an agency interpretation that conflicts with its prior interpretation is entitled to
9 "considerably less deference than a consistently held agency view"). DHS's sudden attempt to
10 abandon nearly three decades of settled practice therefore cannot lawfully govern Petitioner's
11 custody.

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

16 CONCLUSION

17 For the foregoing reasons, Petitioner was apprehended in the interior of the United States
18 long after his entry and is therefore governed by the detention framework of INA § 236(a), not §
19 235(b). DHS's classification of Petitioner's custody under § 235(b) was contrary to the statutory
20 text, structure, and longstanding agency practice, and unlawfully deprived him of the bond
21 process Congress expressly provided for individuals apprehended in the interior of the United
22 States.

23 The issue before this Court is not the lawfulness of Petitioner's arrest or DHS's
24 discretionary decision to initiate removal proceedings. Rather, it is the legal basis for Petitioner's
25 continued detention. By invoking § 235(b) in lieu of § 236(a), DHS denied Petitioner the
26 statutory and constitutional protections applicable to discretionary detention, including eligibility
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1 for release on bond following an individualized custody determination by a neutral Immigration
2 Judge.

3 Because Petitioner's detention rests on an erroneous legal classification, his continued
4 confinement is unlawful. The Immigration Judge therefore had lawful jurisdiction to redetermine
5 custody and to set bond, and the Board of Immigration Appeals' vacatur of that bond order—
6 issued on DHS's appeal and premised on DHS's reliance on INA § 235(b)—was legally
7 erroneous.

8 Accordingly, Petitioner respectfully requests that this Court grant the writ of habeas
9 corpus and permit him to post the \$6,500 bond previously authorized by the Immigration Judge.
10 In the alternative, Petitioner requests that the Court declare DHS's custody classification under §
11 235(b) unlawful, hold that his detention is governed by INA § 236(a), and direct DHS to provide
12 an individualized bond hearing consistent with *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

13 If, in light of the parties' submissions, the Court concludes that oral argument at the
14 December 12, 2025 hearing scheduled for 2:00 p.m. would not assist the decisional process,
15 Petitioner respectfully requests that the Court vacate the hearing and resolve the matter on the
16 written record.

17 Respectfully submitted,

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25 Dated: December 8, 2025