

1 Alejandro Monsalve
2 CA SBN 324958
3 Alex Monsalve Law Firm, PC
4 240 Woodlawn Ave., Suite 9
5 Chula Vista, CA 91910
6 (619) 777-6796
7 Counsel for Petitioner

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

10 **ELVIS VILLAVICENCIO**

11 Petitioner

12 v.

13 **Christopher LAROSE, Senior Warden, Otay**
14 **Mesa Detention Center; et al.,**

Case No.:25-cv-3461-AGS-SBC

Judge: Hon. Andrew G. Schopler

**PETITIONER'S TRAVERSE TO
RESPONDENT'S RETURN**

17 **INTRODUCTION**

18
19 Petitioner Elvis Villavicencio respectfully submits this Traverse in response to
20 Respondents' Return to the Petition for Writ of Habeas Corpus. In its Order Requiring Response,
21 this Court found that Petitioner's statutory challenge to his detention has sufficient potential
22 merit to warrant a response and noted that functionally identical cases across the country—and
23 within this District—have resulted in habeas relief. Respondents' Return does not meaningfully
24 distinguish those cases, nor does it identify any intervening change in law that would justify a
25 different outcome here.
26
27

1 Petitioner challenges the Department of Homeland Security’s continued detention under
2 INA § 235(b)(2) rather than INA § 236(a), contending that this custody classification exceeds
3 statutory authority and unlawfully deprives him of eligibility for an individualized bond hearing
4 before an Immigration Judge. Petitioner was apprehended in the interior of the United States
5 long after his entry, not at the border, not during inspection, and not while affirmatively seeking
6 admission. Under longstanding statutory interpretation and binding precedent, such detention, if
7 lawful at all, must proceed under INA § 236(a).

8 This Court has already granted habeas relief in materially indistinguishable cases raising
9 the same legal issue. Most recently, in *Torres Velazquez v. Noem*, No. 25-cv-3046-AGS-DEB
10 (S.D. Cal. Dec. 17, 2025), this Court granted the writ and ordered a bond hearing where DHS
11 improperly treated an interior-arrested noncitizen as subject to detention under INA § 235.
12 Likewise, in *Gutierrez Velazquez v. Noem*, No. 25-cv-3273-AGS-KSC (S.D. Cal. Dec. 12, 2025),
13 this Court granted habeas relief and ordered immediate release after concluding that the
14 government’s custody actions violated federal law. Respondents identify no material factual
15 distinction between those cases and the present matter.

16 Moreover, since Respondents filed their Return, the United States District Court for the
17 Central District of California has entered a final judgment in *Lazaro Maldonado Bautista v.*
18 *Noem*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025), declaring that noncitizens
19 apprehended in the interior are detained under INA § 236(a), not INA § 235(b)(2), and vacating
20 DHS’s July 8, 2025 “Interim Guidance Regarding Detention Authority for Applicants for
21 Admission” as unlawful under the Administrative Procedure Act. That final judgment forecloses
22 Respondents’ reliance on the very policy and statutory interpretation they advance here.

23 Respondents thus ask this Court to adopt a detention theory that this Court has already
24 rejected and that another district court has now invalidated through final judgment. Because DHS
25 lacks statutory authority to detain Petitioner under INA § 235(b)(2), and because the controlling
26 legal issue has been resolved on materially identical facts, the Court should grant the writ of
27 habeas corpus.

1 Given the purely legal nature of the dispute, the absence of any factual disagreement, this
2 Court's prior rulings, and the intervening final judgment in *Bautista*, Petitioner respectfully
3 requests that the Court resolve the Petition on the written submissions, vacate the December 30,
4 2025 hearing, and order appropriate relief. At a minimum, the Court should declare that
5 Petitioner's custody is governed by INA § 236(a) and direct DHS to provide an individualized
6 bond hearing before a neutral Immigration Judge consistent with *Matter of Guerra*, 24 I&N Dec.
7 37 (BIA 2006).

8 JURISDICTION

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

10 Section 1252(b)(9) does not bar habeas review of collateral challenges to the statutory
11 authority governing immigration detention. Although § 1252(b)(9) channels judicial review of
12 "questions of law and fact arising from any action taken or proceeding brought to remove an
13 alien" into review of a final order of removal, the Supreme Court has made clear that this
14 provision does not sweep so broadly as to preclude review of claims that are independent of, or
15 collateral to, the removal process. *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018). Challenges
16 to the statutory framework authorizing detention fall outside the scope of § 1252(b)(9) because
17 they do not seek review of a removal order or the conduct of removal proceedings.

18 Here, Petitioner does not challenge the initiation of removal proceedings, the charge of
19 removability, or any future removal order. He challenges only the statutory basis under which
20 DHS asserts authority to detain him—specifically, DHS's classification of his custody under
21 INA § 235(b)(2) rather than INA § 236(a). That claim concerns the legality of detention itself
22 and exists independently of the removal process.

23 This Court has already exercised habeas jurisdiction over materially indistinguishable
24 challenges to DHS's reliance on INA § 235(b) following interior arrests. In *Torres Velazquez v.*
25 *Noem*, No. 25-cv-3046-AGS-DEB (S.D. Cal. Dec. 17, 2025), the Court granted habeas relief and
26 ordered a bond hearing after concluding that detention following an interior arrest is governed by
27 INA § 236(a), not INA § 235(b). Likewise, in *Gutierrez Velazquez v. Noem*, No. 25-cv-3273-

1 AGS-KSC (S.D. Cal. Dec. 12, 2025), the Court exercised habeas jurisdiction and granted relief
2 where the government’s custody actions violated federal law. In both cases, as here, the
3 petitioners challenged DHS’s statutory authority to detain under INA § 235(b), and the Court
4 adjudicated those claims on the merits notwithstanding § 1252(b)(9).

5 Because Petitioner’s claim challenges the legal framework governing his detention—and
6 not the decision to remove him or the conduct of removal proceedings—§ 1252(b)(9) does not
7 apply.

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

9 Section 1252(g) strips jurisdiction only over three discrete actions by the Attorney
10 General: the decision to commence removal proceedings, adjudicate cases, or execute removal
11 orders. *Reno v. American-Arab Anti-Discrimination Committee* (“AADC”), 525 U.S. 471, 482
12 (1999). The Supreme Court made clear that § 1252(g) is not a general jurisdiction-stripping
13 provision and does not extend to “the many other decisions or actions that may be part of the
14 deportation process.” *Id.*

15 Petitioner does not challenge DHS’s decision to commence removal proceedings, the
16 adjudication of removability, or the execution of any removal order. Instead, he challenges
17 DHS’s asserted statutory authority to detain him under INA § 235(b)(2) rather than INA §
18 236(a). That claim concerns the legal basis of detention itself and is collateral to the removal
19 process.

20 This Court has already exercised habeas jurisdiction over materially indistinguishable
21 custody challenges notwithstanding § 1252(g). In *Torres Velazquez v. Noem*, No. 25-cv-3046-
22 AGS-DEB (S.D. Cal. Dec. 17, 2025), the Court granted habeas relief after determining that
23 detention following an interior arrest is governed by INA § 236(a), not INA § 235(b). Likewise,
24 in *Gutierrez Velazquez v. Noem*, No. 25-cv-3273-AGS-KSC (S.D. Cal. Dec. 12, 2025), the Court
25 exercised habeas jurisdiction and granted relief where the government’s custody actions violated
26 federal law. In both cases, the Court necessarily rejected the government’s contention that §
27 1252(g) barred review of challenges to DHS’s custody classification.

1 Because Petitioner’s claim challenges the statutory framework governing his detention—
2 and not any decision to commence proceedings, adjudicate a case, or execute a removal order—§
3 1252(g) does not apply to this action.

4 **EXHAUSTION**

5 Although habeas petitioners are generally expected to exhaust available administrative
6 remedies, exhaustion is not a jurisdictional prerequisite to review under 28 U.S.C. § 2241,
7 particularly where the petitioner raises a purely legal question and no adequate administrative
8 remedy exists. *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).

9 Here, further administrative review would be futile. In *Matter of Yajure-Hurtado*, 29 I&N
10 Dec. 216 (BIA 2025), the Board of Immigration Appeals held that noncitizens who entered
11 without inspection are subject to detention under INA § 235(b)(2)(A) and that Immigration
12 Judges lack jurisdiction to conduct bond hearings in such cases. Once the Board adopted that
13 interpretation, Immigration Judges were divested of authority to grant the relief Petitioner seeks,
14 and no administrative mechanism remained available to challenge DHS’s custody classification.

15 Exhaustion is prudential in this context and may be excused where administrative
16 remedies are inadequate or ineffective, or where pursuit of such remedies would be futile.
17 *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d
18 994, 1000 (9th Cir. 2004)). Because *Yajure-Hurtado* forecloses Immigration Judge bond
19 jurisdiction as a matter of law, no administrative forum exists in which Petitioner could obtain
20 meaningful review of DHS’s asserted detention authority.

21 This Court has already recognized, in prior habeas cases challenging DHS’s reliance on
22 INA § 235(b) following interior arrests, that exhaustion is excused under these circumstances.
23 Where, as here, a petitioner raises a purely legal challenge to the statutory authority governing
24 detention and the agency has definitively resolved the issue against the petitioner’s position,
25 requiring further administrative proceedings would serve no purpose.

1 The same reasoning applies here. Petitioner was apprehended in the interior of the United
2 States after an extended period of residence. He was not encountered at a port of entry, during
3 inspection, or while affirmatively seeking admission. Nor was his arrest connected to any
4 contemporaneous attempt to enter the United States. Under the statutory scheme, such an
5 apprehension does not fall within the inspection-and-admission framework governed by INA §
6 235(b)(2).

7 On December 18, 2025, the United States District Court for the Central District of
8 California entered final judgment in *Maldonado Bautista v. Noem*, No. 5:25-cv-01873 (C.D.
9 Cal.), addressing the same statutory detention question presented here. In that decision, the court
10 concluded that the Department of Homeland Security’s policy of detaining noncitizens
11 apprehended in the interior of the United States under INA § 235(b) is inconsistent with the
12 statutory framework Congress enacted and vacated the Department of Homeland Security’s July
13 8, 2025 Interim Guidance purporting to authorize such detention. That final judgment post-dates
14 Respondents’ Return in this case and confirms that DHS’s reliance on § 235(b) to detain interior
15 arrestees—like Petitioner—lacks statutory support.

16 Accordingly, DHS’s classification of Petitioner’s custody under INA § 235(b)(2) is
17 inconsistent with the structure and operation of the INA. Petitioner’s detention, if lawful at all,
18 arises under INA § 236(a), which entitles him to an individualized bond hearing before a neutral
19 Immigration Judge.

20 **CONCLUSION**

21 For the foregoing reasons, Petitioner was apprehended in the interior of the United States
22 long after his entry. Under the statutory framework, his custody is governed by INA § 236(a),
23 not INA § 235(b). DHS’s classification of his detention under INA § 235(b)(2) is inconsistent
24 with the text and structure of the Immigration and Nationality Act and has unlawfully deprived
25 Petitioner of eligibility for an individualized bond hearing.

1 This habeas petition challenges the legal basis of Petitioner's detention, not DHS's
2 discretionary decision to initiate or pursue removal proceedings. Where, as here, DHS relies on
3 an inapplicable detention provision, continued custody cannot be sustained under INA § 235(b).

4 Consistent with the Court's Order Requiring Response, Respondents were directed to
5 justify continued detention in light of materially indistinguishable authority. Respondents have
6 not identified any intervening change in law, material factual distinction, or legal error that
7 would warrant a departure from this Court's prior rulings on the same statutory issue.

8 Accordingly, the Court should grant the writ of habeas corpus and order appropriate
9 relief. At a minimum, the Court should declare that Petitioner's custody is governed by INA §
10 236(a) and direct DHS to provide an individualized bond hearing before a neutral Immigration
11 Judge consistent with *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

12 Because the issues presented are purely legal and fully briefed, and oral argument would
13 not materially assist the decisional process, Petitioner respectfully requests that the Court vacate
14 the hearing currently scheduled for December 30, 2025, at 2:00 p.m., and resolve the matter on
15 the written submissions.

16 Respectfully submitted,

17
18 /s/ Alejandro J. Monsalve, Esq. CA SBN 324958

19 Alex Monsalve Law Firm, PC

20 240 Woodlawn Ave, Suite 9

21 Chula Vista, CA 91910

22 Phone: (619) 777-6796

23 Email: info@alexmonsalvelawfirm.com

24 Counsel for Petitioner

25 Dated: December 19, 2025