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

FLORENCIO PEREZ MARTINEZ Petitioner v. **Kristi NOEM**, Secretary, U.S. Department of Homeland Security; et al.,	Case No.:25-cv-3492-DMS-AHG **Judge: Hon. Dana M. Sabraw** **PETITIONER'S TRAVERSE TO RESPONDENT'S RETURN**

INTRODUCTION

Petitioner Florencio Perez Martinez respectfully submits this Traverse in response to Respondents' Return to the Petition for Writ of Habeas Corpus. In its Order to Show Cause, this Court directed Respondents to explain why *Mendez Chavez v. Noem*, No. 25-cv-2818-DMS-SBC (S.D. Cal. Oct. 31, 2025), which raises the same legal claims based on substantially similar facts, should not control the outcome of this case. Respondents' Return does not address that question.

Petitioner challenges the Department of Homeland Security's continued detention under INA § 235(b)(2) rather than INA § 236(a), contending that this custody classification exceeds statutory authority and deprives him of eligibility for an individualized bond hearing before an

Immigration Judge. As in *Mendez Chavez* and *Medina-Ortiz v. Noem*, No. 25-cv-02819-DMS-MMP (S.D. Cal. Oct. 30, 2025), Petitioner was apprehended in the interior of the United States long after his entry and was not encountered at the border, during inspection, or while affirmatively seeking admission.

In *Mendez Chavez*, this Court held that long-settled noncitizens apprehended in the interior are not subject to mandatory detention under INA § 235(b)(2) and that such custody, if lawful at all, must proceed under INA § 236(a), which provides for bond eligibility. Likewise, in *Medina-Ortiz*, this Court again held that detention following an interior arrest is governed by INA § 236(a) and granted habeas relief on that basis.

Respondents identify no intervening change in law, no material factual distinction, and no legal error in either decision that would warrant a different result here. Accordingly, Petitioner's continued detention under INA § 235(b)(2) rests on the same statutory interpretation this Court has already rejected.

Because DHS lacks statutory authority to detain Petitioner under INA § 235(b), and because this Court's prior rulings address the precise legal issue presented, the Court should grant the writ of habeas corpus and order appropriate relief. At a minimum, the Court should declare that Petitioner's custody is governed by INA § 236(a) and direct DHS to provide an individualized bond hearing before a neutral Immigration Judge consistent with *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

JURISDICTION

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

Section 1252(b)(9) does not bar habeas review of collateral challenges to the legal basis of immigration detention.

Section 1252(b)(9) channels judicial review of "questions of law and fact arising from any action taken or proceeding brought to remove an alien" into review of a final order of removal. 8 U.S.C. § 1252(b)(9). The Supreme Court has made clear that this provision does not sweep so broadly as to preclude review of claims that are independent of, or collateral to, the

removal process. *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018). Challenges to the statutory authority governing detention fall outside the scope of § 1252(b)(9) because they do not seek review of a removal order or the conduct of removal proceedings.

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

This Court has already recognized that § 1252(b)(9) does not bar jurisdiction over habeas petitions challenging DHS's custody classification under INA § 235(b). See *Medina-Ortiz v. Noem*, No. 25-cv-02819-DMS-MMP (S.D. Cal. Oct. 30, 2025); *Mendez Chavez v. Noem*, No. 25-cv-2818-DMS-SBC (S.D. Cal. Oct. 31, 2025). In those cases, as here, the petitioner challenged continued detention under § 235(b) following an interior arrest, and the Court exercised jurisdiction to resolve the statutory question.

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

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

Section 1252(g) limits judicial review only with respect to three discrete actions by the Attorney General: the decision to commence removal proceedings, adjudicate cases, or execute removal orders. *Reno v. American-Arab Anti-Discrimination Committee* ("AADC"), 525 U.S. 471, 482 (1999). The Supreme Court made clear that § 1252(g) does not operate as a general jurisdiction-stripping provision and does not extend to "the many other decisions or actions that may be part of the deportation process." *Id.*

Petitioner does not challenge DHS's decision to initiate removal proceedings, the adjudication of his removability, or the execution of any removal order. Instead, he challenges the statutory authority under which DHS claims the power to detain him—specifically, DHS's

classification of his custody under INA § 235(b)(2) rather than INA § 236(a). That issue concerns the legal basis of detention itself and is collateral to the removal process.

This Court has already addressed § 1252(g) in this precise context and has exercised jurisdiction over habeas petitions challenging DHS's reliance on INA § 235(b) following interior arrests. See *Medina-Ortiz v. Noem*, No. 25-cv-02819-DMS-MMP (S.D. Cal. Oct. 30, 2025); *Mendez Chavez v. Noem*, No. 25-cv-2818-DMS-SBC (S.D. Cal. Oct. 31, 2025). In those cases, as here, the petitioner challenged continued detention based on DHS's custody classification, and the Court concluded that § 1252(g) did not bar review.

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

EXHAUSTION

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

Here, further administrative review would be futile. In *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board of Immigration Appeals held that individuals who entered without inspection are subject to detention under INA § 235(b)(2)(A) and that Immigration Judges lack jurisdiction to conduct bond hearings in such cases. Once the Board adopted that interpretation, no Immigration Judge retained authority to provide the relief Petitioner seeks.

Exhaustion is prudential in this context and may be excused where administrative remedies are inadequate or ineffective, or where pursuit of such remedies would be futile. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). Because the BIA's decision in *Yajure-Hurtado* forecloses bond jurisdiction as a matter of law, no administrative forum exists in which Petitioner could obtain meaningful review of DHS's custody classification.

This Court has already recognized, in prior custody-misclassification habeas cases, that exhaustion is excused under these circumstances. Where, as here, a petitioner raises a purely legal challenge to the statutory authority governing detention and the agency has definitively resolved the issue against the petitioner's position, further administrative proceedings would serve no purpose.

Accordingly, because Petitioner's claim cannot be addressed through existing administrative channels and further pursuit of administrative remedies would be futile, exhaustion should be excused in this case.

ARGUMENT

The Government Misreads INA §§ 235 and 236

The question presented is whether Petitioner's detention is governed by INA § 235(b)(2) or INA § 236(a). Under the statutory framework, detention under § 235(b) applies to noncitizens who are seeking admission, while § 236(a) governs detention following interior apprehensions of noncitizens already present in the United States.

Section 235(b)(2)(A) provides that "an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, shall be detained" pending removal proceedings. 8 U.S.C. § 1225(b)(2)(A). By its terms, the provision applies in the context of inspection and admission, and presupposes that the noncitizen is affirmatively seeking entry into the United States.

By contrast, INA § 236(a) governs the arrest and detention of noncitizens already present in the United States who are placed in removal proceedings following an interior apprehension. Detention under § 236(a) is discretionary and provides for the possibility of release on bond following an individualized custody determination.

This Court has already applied that statutory distinction in materially indistinguishable cases. In *Medina-Ortiz v. Noem* and *Mendez Chavez v. Noem*, the Court held that noncitizens apprehended in the interior long after entry—who were not encountered at the border, during

inspection, or while seeking admission—are not subject to mandatory detention under § 235(b)(2). Rather, their custody is governed by § 236(a).

That reasoning applies here. Petitioner was apprehended within the interior of the United States after years of residence. He was not encountered at a port of entry, during inspection, or near the international boundary, and he took no affirmative act to seek admission at the time of his arrest. Under the statutory text, he therefore does not fall within the class of "aliens seeking admission" subject to detention under § 235(b)(2).

Accordingly, DHS's classification of Petitioner's custody under INA § 235(b)(2) is inconsistent with the statutory scheme. Petitioner's detention, if lawful at all, arises under INA § 236(a), which entitles him to an individualized bond hearing before a neutral Immigration Judge.

CONCLUSION

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

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

Consistent with the Court's Order to Show Cause, Respondents were directed to explain why *Mendez Chavez v. Noem* should not control this case; Respondents' Return does not provide that explanation. Accordingly, the Court should grant the writ of habeas corpus and order appropriate relief. At a minimum, the Court should declare that Petitioner's custody is governed by INA § 236(a) and direct DHS to provide an individualized bond hearing before a neutral Immigration Judge consistent with *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

Respectfully submitted,

/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

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