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

11 **RODOLFINA GUTIERREZ AQUINO**

Case No.: 25-cv-3534-CAB-AHG

12 Petitioner

13 v.

14 **CHRISTOPHER J. LAROSE, et al.,**

Judge: Hon. Cathy Ann Bencivengo

15 Respondents

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

16 **INTRODUCTION**

17 Petitioner, Rodolfina Gutierrez Aquino, respectfully submits this Traverse in response to
18 Respondents' Return. Petitioner challenges the Department of Homeland Security's continued
19 detention under INA § 235(b) rather than § 236(a), contending that this misclassification exceeds
20 statutory authority and violates the Due Process Clause of the Fifth Amendment.

21 Respondents fail to show that DHS lawfully invoked § 235(b). Petitioner was arrested
22 within the interior of the United States—long after her entry—and therefore falls under § 236(a),
23 which governs interior apprehensions and provides for bond eligibility before an Immigration
24 Judge.

25 Multiple recent decisions within this District have rejected DHS's reliance on § 235(b) to
26 detain long-settled residents apprehended in the interior. See *Valdovinos v. Noem*, No. 25-cv-
27

1 2439-TWR (KSC) (S.D. Cal. Sept. 25, 2025) (Robinson, J.); *Esquivel-Ipina v. Noem*, No. 25-cv-
2 2672-JLS (BLM) (S.D. Cal. Oct. 24, 2025) (Sammartino, J.); *Mendez Chavez v. Noem*, No. 25-
3 cv-2818-DMS-SBC (S.D. Cal. Oct. 31, 2025) (Sabraw, J.); *Medina-Ortiz v. Noem*, No. 25-cv-
4 2819-DMS-MMP (S.D. Cal. Oct. 30, 2025) (Sabraw, J.); *Martinez Lopez v. Noem*, No. 25-cv-
5 2717-JES-AHG (S.D. Cal. Oct. 30, 2025) (Simmons, J.); *Garcia Magadan v. Noem*, No. 25-cv-
6 2889-JES-KSC (S.D. Cal. Nov. 5, 2025) (Simmons, J.); *Maceda-Garcia v. Noem*, No. 25-cv-
7 2968-JO-JLB (S.D. Cal. Nov. 13, 2025) (Ohta, J.); *Maravilla Amaya v. Noem*, No. 25-cv-2892-
8 BTM-DEB (S.D. Cal. Nov. 13, 2025) (Moskowitz, J.); *Lucas-Miguel v. Noem*, No. 3:25-cv-
9 03022-RSH-JLB (S.D. Cal. Nov. 2025) (Huic, J.); *Fernando-Barrueta v. Noem*, No. 3:25-cv-
10 02670-LL-SBC (S.D. Cal. Nov. 21, 2025) (Lopez, J.); and *Chiapot Perez v. Noem*, No. 3:25-cv-
11 03161-JES-VET (S.D. Cal. Nov. 2025) (Simmons, J.). Each of these cases resulted in the same
12 conclusion: DHS may not invoke § 235(b) to detain individuals apprehended in the interior years
13 after entry, and such custody must proceed, if at all, under § 236(a).

14 Petitioner's continued confinement under § 235(b), without any bond hearing before an
15 Immigration Judge, violates the Due Process Clause of the Fifth Amendment and perpetuates
16 detention under an inapplicable statutory framework.

17 Because DHS's reliance on § 235(b) is contrary to law, Petitioner respectfully requests
18 that this Court grant the writ of habeas corpus and order Respondents to classify Petitioner's
19 detention under INA § 236(a) and provide her with an individualized bond hearing before an
20 Immigration Judge, consistent with *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006), or grant such
21 other relief as the Court deems just and proper.

22 **JURISDICTION**

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

24 Respondents argue that this Court lacks jurisdiction because, in their view, Petitioner's
25 custody arises from removal proceedings and thus falls within § 1252(b)(9). That argument fails.

26 Petitioner does not challenge DHS's decision to commence removal proceedings or to
27 exercise its discretion to detain. Rather, she challenges the statutory and constitutional authority

1 under which that detention was classified—specifically, DHS’s unlawful designation of her
2 custody as arising under INA § 235(b) instead of § 236(a). This misclassification deprived her of
3 the bond hearing Congress mandated for interior arrests.

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

9 Because this petition contests the authority under which DHS asserts custody—not the
10 validity of any removal order or charging decision—it remains properly before this Court.

11 Other judges within the Southern District of California have reached the same
12 conclusion. As detailed in the Introduction, multiple courts in this District have held that §
13 1252(b)(9) does not bar habeas review of collateral challenges to DHS’s custody classification
14 under § 235(b). These rulings confirm that claims challenging only the statutory basis of
15 detention—like Petitioner’s—remain properly subject to habeas jurisdiction.

16 Respondents also mischaracterize Petitioner’s claim. Petitioner does not challenge DHS’s
17 discretionary “decision to detain” or its decision to commence removal proceedings. The sole
18 issue presented is under which statutory authority that detention was classified—whether under
19 INA § 235(b), which applies only to applicants for admission apprehended at or near the border,
20 or under § 236(a), which governs interior arrests.

21 This distinction is critical. Petitioner is not contesting whether she may be detained, but
22 how DHS may lawfully exercise that detention authority. Such a claim is collateral to the
23 removal process and falls squarely within the scope of habeas review. As *Jennings* explained, §
24 1252(b)(9) does not bar challenges to “the statutory framework that permits [the alien’s]
25 detention,” as opposed to challenges to the discretionary decision to detain. *Jennings*, 583 U.S. at
26 295.

1 Accordingly, Respondents' reliance on § 1252(b)(9) and § 1252(g) is misplaced, as
2 Petitioner's claim concerns the legal basis and classification of custody, not the initiation,
3 adjudication, or execution of removal proceedings.

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

5 Respondents further contend that § 1252(g) deprives this Court of jurisdiction because
6 Petitioner's detention "stems from ICE's decision to commence removal proceedings." That
7 contention misstates both the scope of § 1252(g) and the nature of Petitioner's claim.

8 In *Reno v. American-Arab Anti-Discrimination Committee* ("AADC"), 525 U.S. 471, 482
9 (1999), the Supreme Court held that § 1252(g) applies only to three discrete actions the Attorney
10 General may take—commencing proceedings, adjudicating cases, or executing removal orders—
11 and does not extend to "the many other decisions or actions that may be part of the deportation
12 process." The Court expressly rejected reading § 1252(g) as a blanket jurisdictional bar over all
13 claims tangentially related to removal.

14 Here, Petitioner does not challenge DHS's decision to initiate removal proceedings, nor
15 any action to adjudicate or execute a removal order. Rather, she challenges DHS's
16 misapplication of detention authority—specifically, its decision to classify her under INA §
17 235(b) instead of § 236(a). That statutory misclassification is a collateral issue wholly
18 independent of any discretionary enforcement decision and goes to the legal basis of custody
19 itself.

20 Courts across this District—including multiple recent decisions cited in the Introduction
21 —have repeatedly rejected DHS's reliance on § 1252(g) in this exact context. See *Valdovinos v.*
22 *Noem*, No. 25-cv-2439-TWR (KSC); *Esquivel-Ipina v. Noem*, No. 25-cv-2672-JLS (BLM);
23 *Mendez Chavez v. Noem*, No. 25-cv-2818-DMS-SBC; *Medina-Ortiz v. Noem*, No. 25-cv-2819-
24 DMS-MMP; *Martinez Lopez v. Noem*, No. 25-cv-2717-JES-AHG; *Garcia Magadan v. Noem*,
25 No. 25-cv-2889-JES-KSC; *Maceda-Garcia v. Noem*, No. 25-cv-2968-JO-JLB; *Maravilla Amaya*
26 *v. Noem*, No. 25-cv-2892-BTM-DEB; *Lucas-Miguel v. Noem*, No. 3:25-cv-03022-RSH-JLB;
27 *Fernando-Barrueta v. Noem*, No. 3:25-cv-02670-LL-SBC; and *Chiapot Perez v. Noem*, No.

1 3:25-cv-03161-JES-VET. In each, the Court held that § 1252(g) does not bar habeas review
2 where the petitioner challenges DHS's legal authority to classify interior arrestees under §
3 235(b), rather than any discretionary decision to commence proceedings, adjudicate cases, or
4 execute a removal order.

5 Accordingly, § 1252(g) does not divest this Court of jurisdiction to review Petitioner's
6 claim, which challenges DHS's unlawful custody classification—not any discretionary
7 enforcement decision.

8 EXHAUSTION

9 Exhaustion is excused here because any additional administrative process would be futile.
10 Although habeas petitioners are generally required to exhaust available administrative remedies,
11 exhaustion is not a jurisdictional prerequisite to review under 28 U.S.C. § 2241. Where, as here,
12 a petitioner raises a purely legal challenge and no adequate administrative remedy exists,
13 exhaustion is not required.

14 Petitioner did not receive a bond hearing before the Immigration Judge because the
15 Immigration Judge expressly declined jurisdiction pursuant to *Matter of Yajure-Hurtado*, 29 I&N
16 Dec. 216 (BIA 2025), concluding that Petitioner was detained under INA § 235(b). As a result of
17 that jurisdictional ruling, Petitioner was never afforded an opportunity to seek bond under INA §
18 236(a).

19 No further administrative remedy exists. Once the Immigration Judge concluded that he
20 lacked bond jurisdiction pursuant to *Matter of Yajure-Hurtado*, there was no administrative
21 mechanism through which Petitioner could challenge her custody classification or obtain bond
22 consideration. Any attempt to pursue further administrative relief would therefore be futile.

23 The Ninth Circuit's controlling rule in *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir.
24 2017), applies directly here. Exhaustion may be excused where "administrative remedies are
25 inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture,
26 irreparable injury will result, or the administrative proceedings would be void." (quoting *Laing*

1 v. *Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). That is precisely the situation presented in this
2 case.

3 Lastly, numerous federal courts within this District have repeatedly recognized that
4 exhaustion is excused in these circumstances. See the cases cited in the Introduction.

5 Accordingly, the Court should find that exhaustion is not required. Petitioner’s claim
6 raises a purely legal challenge to the statutory basis of her detention that cannot be resolved
7 through existing administrative channels, and further pursuit of administrative remedies would
8 be futile given the Immigration Judge’s jurisdictional ruling and the Board’s precedent in *Matter*
9 *of Yajure-Hurtado*.

10 ARGUMENT

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

12 Respondents incorrectly assert that Petitioner is detained under INA § 235(b) as an
13 “applicant for admission.” That argument fails both legally and factually. Petitioner was
14 apprehended within the interior of the United States, long after her entry and continuous
15 residence; she was not encountered at a port of entry, during inspection, or near the international
16 boundary.

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

20 Detention following an interior apprehension—long after entry—falls under § 236(a), not
21 § 235(b). The Supreme Court has confirmed that § 236(a) governs custody of noncitizens already
22 present in the United States, whereas § 235(b) applies only to those encountered during
23 inspection or while seeking admission. *Jennings v. Rodriguez*, 583 U.S. 281, 297–303 (2018);
24 *Matter of M-S-*, 27 I&N Dec. 509 (BIA 2019). Treating interior arrestees as “applicants for
25 admission” collapses the clear statutory distinction Congress deliberately preserved.

26 Courts within the Southern District of California have repeatedly recognized that
27 “seeking admission” requires an affirmative act by the noncitizen—such as presenting at a port

1 of entry for inspection or formally applying for admission—and does not include individuals
2 who, like Petitioner, have long resided in the country without taking any such step. As
3 recognized in *Garcia Magadan v. Noem*, No. 25-cv-2889-JES-KSC (S.D. Cal. Nov. 5, 2025),
4 and *Medina-Ortiz v. Noem*, No. 25-cv-2819-DMS-MMP (S.D. Cal. Oct. 30, 2025), individuals
5 arrested in the interior of the United States are properly detained under INA § 236(a), not §
6 235(b). In both cases, the court emphasized that § 235(b) applies only when a noncitizen takes an
7 affirmative step to seek admission—such as presenting at a port of entry for inspection—and
8 does not extend to long-term residents apprehended years after entry.

9 Similarly, as Judge Moskowitz held in *Maravilla Amaya v. Noem*, No. 25-cv-2892-BTM-
10 DEB (S.D. Cal. Nov. 13, 2025), *Matter of Yajure-Hurtado* must be rejected because it is
11 inconsistent with the statutory text of §§ 1225 and 1226. Section 1225 “deals extensively with
12 arriving noncitizens who are actively seeking admission,” not long-settled residents apprehended
13 in the interior.

14 That reasoning applies squarely here. Petitioner was apprehended in the interior of the
15 United States after years of residence and took no affirmative act to seek admission. She
16 therefore cannot lawfully be treated as an “applicant for admission.”

17 On December 18, 2025, the United States District Court for the Central District of
18 California entered final judgment in *Maldonado Bautista v. Noem*, No. 5:25-cv-01873 (C.D.
19 Cal.), addressing the same statutory detention question presented here. In that decision, the court
20 concluded that the Department of Homeland Security’s policy of detaining noncitizens
21 apprehended in the interior of the United States under INA § 235(b) is inconsistent with the
22 statutory framework Congress enacted and vacated the Department of Homeland Security’s July
23 8, 2025 Interim Guidance purporting to authorize such detention. That final judgment post-dates
24 Respondents’ Return in this case and confirms that DHS’s reliance on § 235(b) to detain interior
25 arrestees—like Petitioner—lacks statutory support.

1 Accordingly, DHS's reliance on § 235(b) to detain Petitioner is contrary to statute and
2 Due Process. Her custody is governed by § 236(a), entitling her to an individualized bond
3 hearing before a neutral Immigration Judge.

4 CONCLUSION

5 For the foregoing reasons, Petitioner's arrest occurred in the interior of the United States
6 —long after her entry—placing her custody within INA § 236(a), not § 235(b). DHS's
7 designation of her custody under § 235(b) is contrary to the statutory framework Congress
8 enacted and unlawfully deprived her of eligibility for an individualized bond hearing under §
9 236(a).

10 This habeas petition challenges the legal basis and classification of Petitioner's custody—
11 not DHS's discretionary decision to initiate or pursue removal proceedings. Because DHS lacks
12 statutory authority to detain individuals apprehended in the interior of the United States under
13 INA § 235(b), Petitioner's continued confinement under that provision is unlawful. Her custody,
14 if lawful at all, arises under INA § 236(a), which requires an individualized custody
15 determination by a neutral Immigration Judge.

16 Accordingly, Petitioner respectfully requests that the Court grant the writ of habeas
17 corpus and declare that DHS lacks statutory authority to classify Petitioner's detention under
18 INA § 235(b). Petitioner further requests that the Court order DHS to classify her detention
19 under INA § 236(a) and provide her with an individualized bond hearing consistent with *Matter*
20 *of Guerra*, 24 I&N Dec. 37 (BIA 2006), or grant such other relief as the Court deems just and
21 proper.

22 If the Court concludes that oral argument would not assist the decisional process,
23 Petitioner respectfully requests that the Court vacate the hearing and resolve the matter on the
24 written submissions.

25 Respectfully submitted,

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