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

10 **MARCELA ESTHER VICENTE-SAZO**

Case No.: 3:26-cv-02029-BAS-VET

11 Petitioner

12 v.

Judge: Hon. Cynthia Bashant

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

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

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17 **I. Introduction**

18 Petitioner challenges the legality of her continued detention following an interior arrest
19 nearly five years after her entry into the United States and long after her release from
20 immigration custody. This Petition presents a narrow threshold question: whether the
21 Department of Homeland Security may detain an individual under INA § 235(b) after releasing
22 her into the United States and allowing her to live at liberty for years, or whether such detention
23 must instead proceed, if at all, under INA § 236(a) with access to a bond hearing.

24 Petitioner, Marcela Esther Vicente-Sazo, is a citizen of Guatemala who entered the
25 United States without inspection on or about March 23, 2021. Shortly after her entry, she was
26 encountered by immigration authorities, processed, and released from custody. DHS thus elected
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1 not to maintain her in inspection-stage detention and instead permitted her to reside at liberty in
2 the United States. Petitioner thereafter lived in the community for nearly five years.

3 On or about January 26, 2026, Petitioner was arrested in the interior of the United States
4 following a traffic stop and transferred to the custody of U.S. Immigration and Customs
5 Enforcement. She is now detained without having received any individualized custody
6 determination.

7 Her continued detention rests solely on Respondents' assertion that INA § 235(b) applies,
8 notwithstanding DHS's prior decision to release her and her extended period of liberty in the
9 United States. This detention—without lawful authority and without access to a bond hearing—
10 constitutes an ongoing deprivation of her physical liberty.

11 Respondents' Return does not meaningfully contest the question presented. Although
12 Respondents assert that Petitioner is subject to mandatory detention under § 235(b), they
13 expressly acknowledge that courts in this District have repeatedly rejected that position in
14 materially indistinguishable circumstances and concede that those decisions control the outcome
15 here. Respondents therefore do not oppose the Petition and defer to this Court on the appropriate
16 relief.

17 That concession is significant. Courts in this District have consistently held that
18 individuals who were released from custody and later apprehended in the interior of the United
19 States are subject to detention, if at all, under § 236(a), not § 235(b), and are therefore entitled to
20 an individualized custody determination. Respondents identify no intervening authority that
21 would justify a departure from that settled line of decisions.

22 Nor do Respondents provide any individualized justification for Petitioner's continued
23 detention. Instead, they offer only a generalized legal position while expressly declining to
24 oppose relief in this case. Respondents fail to satisfy their burden in a habeas proceeding to
25 affirmatively establish any lawful basis for detention.

26 Because Respondents fail to distinguish controlling precedent, fail to establish a lawful
27 basis for detention under § 235(b), and effectively concede that this case is governed by prior
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1 decisions of this Court, the Court should grant the Petition for Writ of Habeas Corpus and order
2 Petitioner's immediate release.

3 **II. Respondents Fail to Identify Any Lawful Basis for Detention**

4 In a habeas proceeding challenging the legality of detention, Respondents bear the burden
5 of establishing a valid statutory basis for custody. That burden requires more than conclusory
6 assertions; it requires Respondents to demonstrate that Petitioner's detention is authorized under
7 the governing statutory framework and supported by the facts of this case. Respondents fail to
8 meet that burden.

9 The Return does not identify any lawful basis for detaining Petitioner under INA §
10 235(b). Respondents assert, without addressing the dispositive facts of this case, that Petitioner is
11 subject to mandatory detention. But that assertion does not address the dispositive facts that
12 Petitioner was encountered by immigration authorities shortly after her entry in March 2021,
13 released from custody, and thereafter lived at liberty in the United States for nearly five years
14 before being re-arrested in the interior of the country following a traffic stop.

15 Respondents do not explain how the inspection-stage detention framework of § 235(b)
16 can apply to an individual who was released from custody and later apprehended in the interior
17 of the United States long after entry. Nor do they identify any statutory provision authorizing
18 DHS to reclassify such an individual as an "applicant for admission" for purposes of mandatory
19 detention years after release. Instead, Respondents rely on a generalized legal position divorced
20 from the factual posture of this case.

21 Indeed, Respondents expressly acknowledge that "the facts in this case are not materially
22 distinguishable" from prior cases in this District addressing the same issue, and further state that
23 they do not oppose the petition and defer to the Court on the appropriate relief. Those cases have
24 consistently rejected the application of § 235(b) to individuals who, like Petitioner, were released
25 from custody and later re-detained in the interior. Respondents identify no intervening authority
26 that would justify a different result here.

1 Nor do Respondents provide any individualized justification for Petitioner’s continued
2 detention. They do not contend that Petitioner poses a danger to the community or a flight risk,
3 nor do they identify any changed circumstances warranting re-detention after a prolonged period
4 of liberty. The absence of any individualized determination further underscores that Respondents
5 have not established a lawful basis for custody.

6 Because Respondents fail to identify any statutory authority that permits detention under
7 § 235(b) in these circumstances, and fail to justify Petitioner’s continued confinement through
8 any individualized assessment, Respondents fail to satisfy their burden to affirmatively establish
9 any lawful basis for detention. The Court should grant the Petition for Writ of Habeas Corpus.

10 **III. This Court Has Already Rejected Respondents’ Detention Theory in**
11 **Materially Indistinguishable Circumstances**

12 This Court has already considered and rejected the legal basis underlying Respondents’
13 detention theory in materially indistinguishable circumstances. The position underlying
14 Respondents’ assertion of detention—advanced in this and similar cases—is that a noncitizen
15 who is present in the United States without admission or parole remains an “applicant for
16 admission” under INA § 1225(a)(1), and therefore may be subjected to mandatory detention
17 under INA § 235(b), even after being released from custody and later re-arrested in the interior
18 of the United States.

19 This Court has repeatedly rejected that interpretation. In multiple recent decisions, the
20 Court has held that noncitizens who were released from custody and later re-detained in the
21 interior of the United States are not subject to mandatory detention under § 235(b), and that such
22 detention must instead proceed, if at all, under § 236(a). See, e.g., *Jacinto Rodriguez v. LaRose*,
23 No. 26-cv-00693-BAS-DEB (S.D. Cal. Feb. 17, 2026).

24 In doing so, the Court has explained that § 1225 governs individuals who are in the
25 process of seeking admission at or near the border, whereas § 1226 governs individuals who
26 have been arrested within the United States. Applying § 1225 to individuals who have already
27 been released and are later re-detained in the interior would disregard the statutory framework

1 and render § 1226 largely superfluous. See *Contreras-Albino v. Noem*, No. 25-cv-02965-BAS-
2 BLM (S.D. Cal. Nov. 25, 2025).

3 This Court has further recognized that continued detention under those circumstances is
4 unlawful and has granted habeas relief, ordering either a bond hearing under § 236(a) or release
5 from custody depending on the procedural posture of the case. See *De Loera Lopez v. LaRose*,
6 No. 26-cv-00851-BAS-BLM (S.D. Cal. Feb. 24, 2026).

7 The same posture is present here. Petitioner was encountered by immigration authorities,
8 released from custody, and permitted to reside at liberty in the United States for nearly five years
9 before being re-detained in the interior. Respondents again assert detention under § 235(b), while
10 acknowledging that controlling authority rejects that position and declining to oppose relief.

11 Respondents identify no intervening authority that would justify a departure from this
12 Court's prior rulings. In these circumstances, adherence to that precedent is warranted, and
13 Petitioner's continued detention cannot be sustained.

14 **IV. Petitioner's Detention Is Governed by INA § 236(a), Not INA § 235(b)**

15 The INA distinguishes between inspection-stage detention under § 235 and post-entry
16 detention under § 236(a). Section 235 applies to individuals encountered at or near the border
17 during the admission process, while § 236(a) governs the arrest and detention of individuals who
18 have already entered the United States and are later taken into custody pending removal
19 proceedings.

20 This case falls squarely within § 236(a). Petitioner entered the United States, was
21 encountered and released from custody, and thereafter lived at liberty in the United States for an
22 extended period before being re-arrested in the interior of the country. That posture—release
23 followed by a later interior arrest—is governed by § 236(a), not § 235(b).

24 Nothing in the statutory scheme permits DHS to apply § 235(b) to an individual who was
25 previously released from custody and later apprehended in the interior of the United States years
26 after entry. Respondents do not identify any provision authorizing such a reclassification.

1 Consistent with this Court’s prior decisions, detention in these circumstances must
2 proceed, if at all, under § 236(a), which provides for discretionary detention and an
3 individualized custody determination. See, e.g., *Jacinto Rodriguez v. LaRose*, No. 26-cv-00693-
4 BAS-DEB (S.D. Cal. Feb. 17, 2026); *Contreras-Albino v. Noem*, No. 25-cv-02965-BAS-BLM
5 (S.D. Cal. Nov. 25, 2025).

6 Because Petitioner was released from custody and later re-detained in the interior, §
7 235(b) does not apply, and Respondents lack a lawful basis to detain her under that provision.

8 **V. Petitioner’s Continued Detention Violates the Due Process Clause**

9 The Fifth Amendment prohibits the government from depriving any person of liberty
10 without due process of law. Freedom from physical restraint lies at the core of the liberty interest
11 protected by the Due Process Clause, and civil immigration detention must be authorized by law
12 and reasonably related to a legitimate governmental purpose.

13 Here, Petitioner’s detention is not merely procedurally deficient—it is unlawful. As set
14 forth above, Respondents have failed to identify any lawful basis for detaining Petitioner under
15 INA § 235(b), and their Return acknowledges that this case is not materially distinguishable
16 from others in which courts in this District have rejected that position, while declining to oppose
17 relief. Because Petitioner’s detention rests on an improper statutory framework and is
18 unsupported by any individualized justification, it cannot be sustained.

19 Petitioner was previously released from custody and permitted to reside at liberty in the
20 United States for an extended period before being re-arrested in the interior of the country. That
21 prior release reflects that the government did not consider Petitioner a danger to the community
22 or a flight risk. Yet Respondents have identified no changed circumstances that would justify
23 revoking that liberty.

24 Nor have Respondents provided any constitutionally adequate process. Petitioner has not
25 been afforded a meaningful opportunity to challenge her continued detention before a neutral
26 decisionmaker, and Respondents rely solely on an incorrect statutory classification to justify
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1 continued confinement. Detention under an inapplicable statutory framework, without lawful
2 authority and without individualized process, constitutes an arbitrary deprivation of liberty.

3 Under these circumstances, continued detention violates the Due Process Clause. Because
4 Respondents lack lawful authority to detain Petitioner and have provided no constitutionally
5 adequate process, the appropriate remedy is immediate release.

6 **VI. Petitioner Is Suffering Immediate and Irreparable Harm**

7 Petitioner is suffering ongoing and irreparable harm as a direct result of her continued
8 unlawful detention. The loss of physical liberty, even for minimal periods of time, constitutes
9 irreparable injury. Each additional day of detention prolongs a deprivation that cannot be
10 remedied after the fact.

11 Petitioner was previously released from custody and permitted to reside at liberty in the
12 United States before being re-detained in the interior of the country. Her continued detention—
13 without lawful authority and without access to any individualized custody determination—has
14 resulted in a complete deprivation of that liberty.

15 This is a present and continuing injury. Each day of continued detention compounds the
16 harm and further entrenches an unlawful restraint on Petitioner's freedom.

17 Because Petitioner's detention is unlawful and ongoing, judicial intervention is required.
18 The continuing deprivation of liberty strongly supports granting the requested relief, including
19 Petitioner's immediate release.

20 **VII. Immediate Release Is the Appropriate Remedy**

21 Where detention lacks statutory authority and results in an ongoing deprivation of liberty,
22 the appropriate remedy is immediate release. Habeas corpus exists to secure release from
23 unlawful custody, not to permit its continuation while the government attempts to cure defects
24 after the fact.

25 As set forth above, Respondents have failed to identify any lawful basis for detaining
26 Petitioner under INA § 235(b), and their Return acknowledges that this case is materially
27 indistinguishable from others in which courts have rejected that position, while declining to

1 oppose relief. Because Petitioner’s detention rests on an improper statutory framework and is
2 unsupported by any individualized justification, it cannot be sustained.

3 Courts, including this Court, have granted habeas relief in materially indistinguishable
4 circumstances where noncitizens were released from custody and later re-detained in the interior
5 of the United States without lawful authority. In such cases, courts have recognized that
6 continued detention is unlawful and that habeas relief must be effective in remedying that
7 violation.

8 Permitting continued detention while Respondents attempt to provide additional process
9 would improperly prolong an unlawful deprivation of liberty. Where detention itself is
10 unauthorized, a post-deprivation hearing cannot cure the defect. Where detention lacks statutory
11 authority, a post-detention bond hearing cannot cure the resulting unlawful deprivation of liberty.
12 Even if Petitioner were to receive a bond hearing, she would already have suffered the very
13 injury this petition seeks to prevent—namely, her unlawful detention. Accordingly, a bond
14 hearing is not an adequate remedy, and immediate release is required.

15 Accordingly, the Court should grant the writ of habeas corpus and order Petitioner’s
16 immediate release from custody.

17 In the alternative, should the Court decline to order immediate release, Petitioner
18 respectfully requests that the Court order a prompt custody hearing before an Immigration Judge
19 pursuant to INA § 236(a), at which Respondents bear the burden of establishing, by clear and
20 convincing evidence, that continued detention is necessary to prevent flight or danger to the
21 community.

22 **VIII. Conclusion**

23 For the foregoing reasons, Respondents have failed to establish any lawful basis for
24 Petitioner’s continued detention. Detention under INA § 235(b) cannot be sustained where, as
25 here, Petitioner was previously released from custody, resided at liberty in the United States, and
26 was later re-detained in the interior without statutory authority or individualized justification.

