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

11 **ARNULFO GONZALEZ ARROYO**

12 Petitioner

13 v.

14 **Kristi NOEM**, Secretary, U.S. Department of

15 Homeland Security;

16 **Todd LYONS**, Acting Director, U.S.

17 Immigration and Customs Enforcement;

18 **Patrick DIVVER**, Field Office Director, San

19 Diego Field Office, U.S. Immigration and

20 Customs Enforcement.

21 **Christopher LAROSE**, Senior Warden, Otay

22 Mesa Detention Center;

23 **Sirce OWEN**, Acting Director of the Executive

24 Office for Immigration Review (EOIR),

25 U.S. Department of Justice.

26 **Pamela BONDI**, Attorney General, U.S.

27 Department of Justice.

28 Respondents

Case No.: '25CV2878 GPC AHG

Agency File No: A 

**PETITION FOR WRIT OF  
HABEAS CORPUS AND  
REQUEST FOR ORDER TO  
SHOW CAUSE WITHIN THREE  
DAYS**

## **INTRODUCTION**

1. Petitioner, Arnulfo Gonzalez Arroyo, is a Mexican national who has lived in the United States for more than thirty years, and is currently in DHS custody at the Otay Mesa Detention Center.

2. Petitioner now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have adopted a new interpretation of the Immigration and Nationality Act (INA), recently formalized by the Board of Immigration Appeals (BIA) in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which treats all individuals who entered without inspection as “applicants for admission” subject to mandatory detention under INA § 235(b)(2)(A).

3. The newly adopted interpretation bars noncitizens like Petitioner from seeking release on bond under INA § 236 (8 U.S.C. § 1226) and the procedures provided in 8 C.F.R. §§ 1003.19(a), 1236.1(d).

4. On August 1, 2025, Immigration Judge Paula Dixon, sitting at the Otay Mesa Immigration Court, conducted a bond redetermination hearing. The Department of Homeland Security argued that the Court lacked jurisdiction, asserting that Petitioner was an “applicant for admission” detained under INA § 235(b)(2). Petitioner, through counsel, argued that his detention properly arose under INA § 236(a) because he was arrested in the interior of the United States and has resided here for decades. After hearing arguments, Judge Dixon correctly determined that jurisdiction lay under § 236(a) and granted release on a \$1,500 bond. The Department reserved appeal. See Exhibit 1 (Order of the Immigration Judge).

5. The Department of Homeland Security subsequently filed Form EOIR-43, Notice of Intent to Appeal Custody Redetermination, which automatically stayed the Immigration Judge's bond order pursuant to 8 C.F.R. § 1003.19(i)(2). The appeal remains pending before the Board of Immigration Appeals.

6. Because the BIA itself issued *Matter of Yajure-Hurtado*, any further appeal would be futile. Exhaustion should therefore be excused in this case. See *Singh v. Napolitano*, 649 F.3d

1 899, 900 (9th Cir. 2011) (holding that exhaustion is excused where the administrative remedy is  
2 unavailable or futile).

3 7. Petitioner's continued detention on this basis violates the plain text of the INA,  
4 decades of longstanding agency practice, and the constitutional guarantees of Due Process.

5 8. This habeas petition challenges the government's position that Petitioner is subject to  
6 mandatory custody under INA § 235 (8 U.S.C. § 1225).

7 9. Petitioner seeks a writ of habeas corpus ordering his immediate release on the \$1,500  
8 bond previously authorized by the Immigration Judge, or, in the alternative, a constitutionally  
9 adequate bond hearing before a neutral decisionmaker at which the Government must prove, by  
10 clear and convincing evidence, that continued detention is warranted under the Due Process  
11 Clause of the Fifth Amendment.

#### **JURISDICTION AND VENUE**

10 10. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in the  
11 custody of the Department of Homeland Security within this District and he challenges the  
12 legality of that custody.

13 11. This Court also has jurisdiction under 28 U.S.C. § 1331 because this action arises  
14 under the Constitution and laws of the United States, including the Immigration and Nationality  
15 Act and the Due Process Clause of the Fifth Amendment.

16 12. Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) strips this Court of jurisdiction. Section  
17 1252(g) bars only challenges to the Attorney General's discretionary decisions to "commence  
18 proceedings, adjudicate cases, or execute removal orders," not independent challenges to  
19 unlawful detention. Likewise, § 1252(b)(9) consolidates review of removal orders in the courts  
20 of appeals, but does not foreclose habeas review of detention claims, which are collateral to the  
21 removal proceedings.

22 13. Venue is proper in this District under 28 U.S.C. § 1391(e) because Petitioner is  
23 detained at the Otay Mesa Detention Center, which lies within the jurisdiction of this Court.

## PARTIES

14. Petitioner, Arnulfo Gonzalez Arroyo, is a Mexican national detained at the Otay Mesa Detention Center, in San Diego, California.

15. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security (DHS).

16. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (ICE).

17. Respondent Patrick Divver is the Director of the San Diego Field Office of U.S. Immigration and Customs Enforcement.

18. Respondent Christopher LaRose is the Senior Warden of the Otay Mesa Detention Center.

19. Respondent Sirce Owen is the Acting Director of the Executive Office for Immigration Review (EOIR).

20. Respondent Pamela Bondi is the Attorney General of the United States and the head of the U.S. Department of Justice (DOJ).

21. All Respondents are named in their official capacities.

## LEGAL FRAMEWORK

22. The Immigration and Nationality Act (“INA”), codified at 8 U.S.C. § 1101 et seq., provides multiple detention authorities. For decades, courts, Congress, and agencies have consistently distinguished between two distinct statutory frameworks: INA § 235 (8 U.S.C. § 1225), which governs applicants for admission encountered at or near the border, and INA § 236 (8 U.S.C. § 1226), which governs the arrest and detention of individuals already present in the United States and placed in removal proceedings. The Supreme Court analyzed the interplay between these provisions in *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

23. Section 1225 provides that, for purposes of initial inspection at the border, “an alien who arrives in the United States or is present in this country but has not been admitted, is treated as an applicant for admission.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (quoting 8

1 U.S.C. § 1225(a)(1)). The Court explained that decisions concerning who may enter or remain in  
2 the United States “generally begin at the Nation’s borders and ports of entry, where the  
3 Government must determine whether an alien seeking to enter the country is admissible.” *Id.*  
4 Section 1225(b) governs this inspection and admission process, applying primarily to individuals  
5 encountered at or near the border, subjecting them either to expedited removal under § 1225(b)  
6 (1)—which includes a credible-fear process for those expressing an intent to seek asylum—or to  
7 detention pending a decision on admission under § 1225(b)(2). *Id.* at 297; see also *Dep’t of  
8 Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020).

9 24. By contrast, § 1226(a) governs the detention of individuals who entered years ago and  
10 were later apprehended in the interior, “pending a decision on whether [they are] to be removed  
11 from the United States.” *Jennings*, 583 U.S. at 303. Unlike § 1225, which applies at the border, §  
12 1226(a) authorizes the Attorney General to detain or release such individuals on bond or  
13 conditional parole, except as provided in subsection (c), which applies only to a narrow category  
14 of noncitizens with specified criminal or security-related grounds. *Id.* at 303, 306. Arrests made  
15 pursuant to § 1226(a) are ordinarily executed on administrative warrants, and longstanding  
16 regulations confirm that such individuals are eligible for Immigration Judge bond hearings. See 8  
17 C.F.R. §§ 236.1(c)(8), 236.1(d)(1), 1236.1(d)(1); 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).  
18 Congress further described § 1226(a) as merely a “restatement” of prior detention authority  
19 under former INA § 242(a), confirming its application to interior arrests pending removal. H.R.  
20 Rep. No. 104-469, pt. 1, at 229 (1996).

21 25. For decades, individuals who entered without inspection but resided in the United  
22 States and were later arrested under administrative warrants were consistently treated as subject  
23 to § 1226(a)’s discretionary detention framework. This included those who could not lawfully be  
24 placed in expedited removal because they had been continuously present in the United States for  
25 more than two years, as required by § 1225(b)(1)(A)(iii)(II).

26 26. Only in 2025 did DHS and the BIA begin advancing a contrary interpretation—  
27 asserting that all noncitizens who entered without inspection must be treated as detained under §  
28

1 1225(b)(2). This abrupt shift departed from decades of agency practice and contradicted settled  
2 expectations regarding custody jurisdiction.

3 27. On July 8, 2025, ICE, "in coordination with the Department of Justice," issued  
4 Interim Guidance Regarding Detention Authority for Applicants for Admission. The policy  
5 declared that all noncitizens who entered without inspection would henceforth be subject to  
6 mandatory detention under § 1225(b)(2)(A), regardless of when or where they were apprehended  
7 —even if they had resided in the United States for many years.

8 28. That same interpretation was recently formalized in *Matter of Yajure Hurtado*, a  
9 precedential decision eliminating Immigration Judge jurisdiction to redetermine custody for such  
10 individuals.

11 29. Surprisingly, in January 2025, Congress reaffirmed that 8 U.S.C. § 1226(a), not §  
12 1225(b), governs custody for noncitizens apprehended in the interior. Through the Laken Riley  
13 Act of 2025, Congress amended § 1226(c) to add subparagraph (E), extending mandatory  
14 detention only to a narrow category of individuals who (i) are inadmissible under § 1182(a)(6)–  
15 (7) and (ii) also meet specific criminal-conduct criteria. By creating this limited carve-out,  
16 Congress confirmed that § 1226(a) remains the general detention framework for interior arrests,  
17 and that mandatory detention applies only to the narrow class defined in new § 1226(c)(E). If, as  
18 DHS and the BIA now contend, all such individuals were already subject to mandatory detention  
19 under § 1225(b)(2), Congress's amendment would have been superfluous.

20 **FACTS**

21 30. Petitioner, Arnulfo Gonzalez Arroyo, is a citizen and national of Mexico who entered  
22 the United States without inspection on or about December 1994. He has resided continuously in  
23 this country for more than thirty years, establishing deep family and community ties.

24 31. Petitioner is married to a United States citizen, and together they have three U.S.-born  
25 children. His eldest son has been serving honorably in the United States Army for the past four  
26 years and is currently stationed in Germany.

32. Petitioner is *prima facie* eligible for Cancellation of Removal under INA § 240A(b)

33. On July 9, 2025, after shopping at Home Depot and while driving away, Petitioner was stopped and detained by officers of Immigration and Customs Enforcement (ICE). The officers used two government vehicles to block Petitioner's car and, after confirming his identity, placed him under arrest. Petitioner has remained in DHS custody since that date.

34. Petitioner was thereafter served with a Notice to Appear, and removal proceedings were initiated against him before the Otay Mesa Immigration Court.

35. On September 5, 2025, the Board of Immigration Appeals issued its precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The Board held that all noncitizens who entered without inspection are “applicants for admission” under INA § 235, regardless of how long ago they entered or their family and community ties.

36. The decision eliminated Immigration Judge jurisdiction to conduct custody redeterminations for such individuals.

37. On August 1, 2025, Immigration Judge Paula Dixon, sitting at the Otay Mesa Immigration Court, conducted a bond redetermination hearing. The Department argued that the Court lacked jurisdiction, asserting that Petitioner was an “applicant for admission” detained under INA § 235(b)(2). Through counsel, Petitioner opposed that interpretation and argued that his detention arose under INA § 236(a). After reviewing the record and hearing arguments, the Immigration Judge found that Petitioner had been arrested in the interior, not while arriving at the border, and therefore concluded that jurisdiction properly lay under § 236(a). The Court granted release on a \$1,500 bond, and the Department reserved appeal. See *Exhibit 1* (Order of the Immigration Judge).

38. The Department of Homeland Security filed Form EOIR-43, Notice of Intent to Appeal Custody Redetermination, which automatically stayed the Immigration Judge's bond order pursuant to 8 C.F.R. § 1003.19(i)(2). The appeal remains pending before the Board of Immigration Appeals.

39. Because the BIA itself issued *Matter of Yajure Hurtado*, any further administrative appeal would be futile, and exhaustion should therefore be excused.

40. Absent relief from this Court, Petitioner faces the prospect of unjustifiable and unreasonable prolonged immigration custody without ever receiving an individualized hearing to justify his detention, in violation of the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.

**CLAIM FOR RELIEF**

## COUNT 1

### **Violation of the Immigration and Nationality Act (INA)**

41. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

42. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to grounds of inadmissibility. It does not extend to individuals who entered and remained in the country beyond the two-year limitation Congress established for expedited removal. See 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (authorizing expedited removal only for those “who have not been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility”). Petitioner has lived in the United States since December 1994 and is therefore not lawfully detained under INA § 235(b); to the extent he remains in custody, detention must proceed under INA § 236(a) (8 U.S.C. § 1226(a)), which authorizes release on bond or conditional parole.

43. The application of INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)) to Petitioner unlawfully mandates his continued detention in violation of the INA. Section 235(b)(2) applies only to “applicants for admission” encountered at or near the border—not to individuals who, like Petitioner, entered the United States long ago and were later arrested in the interior. See *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 113 (2020). By treating Petitioner as an applicant for admission rather than a respondent under

1 INA § 236(a) (8 U.S.C. § 1226(a)), DHS and EOIR have acted contrary to the statutory text,  
2 agency precedent, and the limits Congress reaffirmed in the Laken Riley Act of 2025.

3 **COUNT 2**

4 **Violation of the Due Process Clause of the Fifth Amendment**

5 44. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth  
6 herein.

7 45. The Fifth Amendment provides that “[n]o person shall be deprived of life, liberty, or  
8 property, without due process of law.”

9 46. “Freedom from imprisonment—from government custody, detention, or other form of  
10 physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533  
11 U.S. 678, 690 (2001).

12 47. Civil immigration detention is constitutionally permissible only when reasonably  
13 related to legitimate governmental objectives, such as preventing flight risk or protecting the  
14 community. Here, continued detention achieves neither and, consistent with *Zadvydas v. Davis*,  
15 533 U.S. 678, 690 (2001), has ceased to serve a regulatory purpose and instead has become  
16 punitive and violates the Due Process Clause.

17 48. By detaining Petitioner indefinitely under INA § 235(b) and depriving him of any  
18 meaningful opportunity for an individualized bond redetermination hearing before a neutral  
19 decisionmaker—where the Government must prove by clear and convincing evidence that  
20 detention remains necessary—Respondents have violated Petitioner’s rights under the Due  
21 Process Clause of the Fifth Amendment.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Petitioner respectfully requests that this Honorable Court:

24 A) Assume jurisdiction over this matter;  
25 B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this  
26 District while these proceedings are pending;

- 1 C) Issue an Order to Show Cause within three (3) days pursuant to 28 U.S.C. § 2243, requiring
- 2 Respondents to explain the legal basis for Petitioner's continued detention;
- 3 D) Declare that Petitioner is not lawfully detained under INA § 235(b), and that, to the extent
- 4 Petitioner remains in custody, such detention must proceed under INA § 236(a).
- 5 E) Declare that, by depriving Petitioner of any meaningful opportunity to seek release, his
- 6 continued detention violates the Immigration and Nationality Act and the Due Process Clause of
- 7 the Fifth Amendment.
- 8 F) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner forthwith on the
- 9 \$1,500 bond previously authorized by the Immigration Judge, or, in the alternative, to conduct a
- 10 new, constitutionally adequate bond hearing before a neutral decisionmaker at which the
- 11 Government must justify Petitioner's continued detention by clear and convincing evidence;
- 12 G) Grant such other and further relief as the Court deems just and proper.

13 Respectfully submitted,

14 /s/ Alejandro J. Monsalve, Esq. CA SBN 324958

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20 Counsel for Petitioner

21 Dated: October 24, 2025