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

11 Aureliano Arrazola,

12 Petitioner,

13 v.

14 Christopher J. LAROSE, in his official  
15 capacity as Warden of Otay Mesa  
16 Detention Center; Patrick DIVVER, in his  
17 official capacity as San Diego Field  
18 Office Director, ICE Enforcement and  
19 Removal Operations; Markwayne  
20 MULLIN, in his official capacity as  
21 Secretary of Homeland Security; U.S.  
22 Department of Homeland Security; Todd  
23 BLANCHE, in his official capacity as  
24 Acting U.S. Attorney General; Executive  
25 Office for Immigration Review,

26 Respondents.

Case No.: '26 CV2852 DMS BJW

Agency File No.:



**PETITION FOR WRIT OF  
HABEAS CORPUS**

## INTRODUCTION

1  
2 1. Petitioner Aureliano Arrazola<sup>1</sup> is in the custody of Respondents at the  
3 Otay Mesa Detention Center. He faces unlawful detention because the Department  
4 of Homeland Security (“DHS”) and Executive Office for Immigration Review  
5 (“EOIR”) have concluded he is subject to mandatory detention.  
6

7 2. Petitioner is a sixty-five-year-old male who has resided in the United  
8 States since 1991. He is alleged to have entered the United States without  
9 inspection. He is not subject to a final order of removal and has no criminal  
10 history in the United States or any other country.  
11

12 3. Respondents arrested Petitioner at approximately 5:30 a.m. on April  
13 27, 2026, while he was driving to work. After arresting Petitioner, Respondents  
14 took him into custody at the Otay Mesa Detention Center and placed him in  
15 removal proceedings pursuant to 8 U.S.C. § 1229a. The DHS has determined that  
16 Petitioner must remain in custody without bond pending completion of his removal  
17 proceedings.  
18  
19

20 4. Furthermore, the Board of Immigration Appeals has issued a decision  
21 holding that immigration judges have no authority to consider bond requests by  
22 individuals who last entered the United States without inspection. *See Matter of*  
23 *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The Board determined that such  
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26 <sup>1</sup> The Department of Homeland Security has erroneously identified Mr. Arrazola as “Aurelio Arrazola” rather than  
27 his true name, Aureliano Arrazola.

1 individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and are  
2 therefore ineligible for release on bond.

3 5. Petitioner's detention without eligibility for bond violates the plain  
4 language of the Immigration and Nationality Act. Individuals alleged to have  
5 entered the United States without inspection are subject to detention under 8  
6 U.S.C. § 1226(a), which allows for release on conditional parole or bond.  
7

8 6. Because Respondents are unlawfully detaining Petitioner without a  
9 bond hearing, the Court should order that Respondents must immediately release  
10 Petitioner.  
11

12 7. Alternatively, the Court should order Petitioner's release unless  
13 Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.  
14

### 15 JURISDICTION

16 8. Petitioner is in the physical custody of Respondents. Petitioner is  
17 detained at the Otay Mesa Detention Center in San Diego, California.  
18

19 9. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas  
20 corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of  
21 the United States Constitution (the Suspension Clause).  
22

23 10. This Court may grant relief pursuant to 28 U.S.C. § 2241, the  
24 Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28  
25 U.S.C. § 1651.  
26

**VENUE**

1  
2 11. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410  
3 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the  
4 Southern District, the judicial district in which Petitioner currently is detained.

5  
6 12. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e)  
7 because Respondents are employees, officers, and agencies of the United States,  
8 and because a substantial part of the events or omissions giving rise to the claims  
9 occurred in the Southern District.  
10

11 **REQUIREMENTS OF 28 U.S.C. § 2243**

12 13. The Court should grant the petition for writ of habeas corpus  
13 “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an  
14 order to show cause is issued, Respondents must file a return “within three days  
15 unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*  
16

17 14. Habeas corpus is “perhaps the most important writ known to the  
18 constitutional law . . . affording as it does a swift and imperative remedy in all  
19 cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).  
20 “The application for the writ usurps the attention and displaces the calendar of the  
21 judge or justice who entertains it and receives prompt action from him within the  
22 four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000)  
23 (citation omitted).  
24  
25  
26

**PARTIES**

1  
2 15. Petitioner Aureliano Arrazola is a resident of Escondido, California.  
3 He is currently in Respondents' custody at the Otay Mesa Detention Center.

4 16. Respondent Christopher J. Larose is employed as the warden of the  
5 Otay Mesa Detention Center, where Petitioner is detained. He has immediate  
6 physical custody of Petitioner. He is being sued in his official capacity.  
7

8 17. Respondent Patrick Divver is the Director of the San Diego Field  
9 Office of ICE's Enforcement and Removal Operations division. As such,  
10 Respondent Divver is Petitioner's immediate custodian and is responsible for  
11 Petitioner's detention and removal. He is named in his official capacity.  
12

13 18. Respondent Markwayne Mullin is the Secretary of the Department of  
14 Homeland Security. He is responsible for the implementation and enforcement of  
15 the Immigration and Nationality Act (INA), and oversees ICE, which is  
16 responsible for Petitioner's detention. He has ultimate custodial authority over  
17 Petitioner and is sued in his official capacity.  
18  
19

20 19. Respondent Department of Homeland Security (DHS) is the federal  
21 agency responsible for implementing and enforcing the INA, including the  
22 detention and removal of noncitizens.  
23

24 20. Respondent Todd Blanche is the Acting Attorney General of the  
25 United States. He is responsible for the Department of Justice. The Executive  
26

1 Office for Immigration Review and the immigration court system it operates are  
2 component agencies of the Department of Justice. He is sued in his official  
3 capacity.

4 21. Respondent Executive Office for Immigration Review (EOIR) is the  
5 federal agency responsible for implementing and enforcing the INA in removal  
6 proceedings, including for custody redeterminations in bond hearings.  
7

8 **LEGAL FRAMEWORK**  
9

10 22. The INA prescribes three basic forms of detention for the vast  
11 majority of noncitizens in removal proceedings.

12 23. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in  
13 standard removal proceedings. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a)  
14 detention are generally entitled to a bond hearing at the outset of their detention,  
15 *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested,  
16 charged with, or convicted of certain crimes are subject to mandatory detention,  
17 *see* 8 U.S.C. § 1226(c).  
18

19 24. Second, the INA provides for mandatory detention of noncitizens  
20 subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent  
21 arrivals seeking admission referred to under § 1225(b)(2).  
22

23 25. Third, the INA also provides for detention of noncitizens who have  
24 been ordered removed, including individuals in withholding-only proceedings, *see*  
25

1 8 U.S.C. § 1231(a)–(b).

2 26. This case concerns the detention provisions at §§ 1226(a) and  
3 1225(b)(2), which were enacted as part of the Illegal Immigration Reform and  
4 Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§  
5 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a)  
6 was most recently amended in 2025 by the Laken Riley Act, Pub. L. No.119-1, 139  
7 Stat. 3 (2025).  
8

9  
10 27. Following the enactment of the IIRIRA, EOIR drafted new  
11 regulations explaining that, in general, people who entered the country without  
12 inspection were not considered detained under § 1225 and that they were instead  
13 detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens;  
14 Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum  
15 Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).  
16

17  
18 28. Thus, in the decades that followed, most people who entered without  
19 inspection and were placed in standard removal proceedings received bond  
20 hearings, unless their criminal history rendered them ineligible pursuant to 8  
21 U.S.C. § 1226(c). That practice was consistent with decades of prior practice, in  
22 which noncitizens who were not deemed “arriving” were entitled to a custody  
23 hearing before an IJ or another hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see*  
24 *also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply  
25  
26  
27  
28

1 “restates” the detention authority previously found at § 1252(a)).

2 29. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new  
3 policy that rejected well-established understanding of the statutory framework and  
4 reversed decades of practice.

5  
6 30. The new policy, entitled “Interim Guidance Regarding Detention  
7 Authority for Applicants for Admission,”<sup>2</sup> claims that all persons who entered the  
8 United States without inspection shall now be subject to mandatory detention  
9 provision under § 1225(b)(2)(A). The policy applies regardless of when a person is  
10 apprehended, and affects those who have resided in the United States for months,  
11 years, and even decades.  
12

13  
14 31. Additionally, on September 5, 2025, the BIA issued a published  
15 decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who  
16 entered the United States without admission or parole are subject to detention  
17 under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.  
18

19 32. Since Respondents adopted their new policies, dozens of federal  
20 courts have rejected their new interpretation of the INA’s detention authorities.  
21 Courts have likewise rejected *Matter of Yajure Hurtado*, finding that the plain text  
22 of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to  
23  
24

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25 <sup>2</sup> Available at  
26 <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>  
27 (last visited May 5, 2026).

1 people like Petitioner. *See, e.g., Cunha v. Freden*, No. 25-3141 (2d Cir. April 28,  
2 2026); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

3 33. Section 1226(a) applies by default to all persons “pending a decision  
4 on whether the [noncitizen] is to be removed from the United States.” These  
5 removal hearings are held under § 1229a, to “decid[e] the inadmissibility or  
6 deportability of a[] [noncitizen].”  
7

8 34. The text of § 1226 also explicitly applies to people charged as being  
9 inadmissible, including those who entered without inspection. *See* 8 U.S.C. §  
10 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by  
11 default, such people are afforded a bond hearing under subsection (a). As the  
12 *Rodriguez Vazquez* court explained, “[w]hen Congress creates ‘specific exceptions’  
13 to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute  
14 generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (*citing Shady*  
15 *Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).  
16  
17  
18

19 35. Section 1226 therefore leaves no doubt that it applies to people who  
20 face charges of being inadmissible to the United States, including those who are  
21 present without admission or parole.  
22

23 36. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry  
24 or who recently entered the United States. The statute’s entire framework is  
25 premised on inspections at the border of people who are “seeking admission” to the  
26  
27  
28

1 United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained  
2 that this mandatory detention scheme applies “at the Nation’s borders and ports of  
3 entry, where the Government must determine whether a[] [noncitizen] seeking to  
4 enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

5  
6 37. Accordingly, the mandatory detention provision of § 1225(b)(2)(A)  
7 does not apply to individuals who have already entered and were residing in the  
8 United States at the time of their apprehension.

9  
10 **CLAIMS FOR RELIEF**

11 **COUNT ONE:**

12 **Violation of the INA**

13  
14 38. Petitioner repeats, re-alleges, and incorporates by reference each and  
15 every allegation in the preceding paragraphs as if fully set forth herein.

16  
17 39. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not  
18 apply to all noncitizens residing in the United States who are subject to the grounds  
19 of inadmissibility.

20  
21 40. As relevant here, 8 U.S.C. § 1225(b)(2) does not apply to those who  
22 previously entered the country and have been residing in the United States prior to  
23 being apprehended and placed in removal proceedings by Respondents. Such  
24 noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), §  
25 1226(c), or § 1231.  
26

1 41. Petitioner is not subject to § 1225(b)(1), § 1226(c), or § 1231. As a  
2 result, the application of § 1225(b)(2) to him unlawfully mandates his continued  
3 detention and violates the INA.

4 **COUNT TWO:**

5 **Violation of the Bond Regulations**

6  
7 42. Petitioner repeats, re-alleges, and incorporates by reference each and  
8 every allegation in the preceding paragraphs as if fully set forth herein.

9  
10 43. In 1997, after Congress amended the INA through IIRIRA, EOIR and  
11 the then-Immigration and Naturalization Service issued an interim rule to interpret  
12 and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and  
13 Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants  
14 for admission, [noncitizens] who are present without having been admitted or  
15 paroled (formerly referred to as [noncitizens] who entered without inspection) will  
16 be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis  
17 added).  
18  
19

20 44. The agencies thus made clear that individuals who had entered  
21 without inspection were eligible for consideration for bond and bond hearings  
22 before IJs under 8 U.S.C. § 1226 and its implementing regulations. These  
23 regulations reflect a contemporaneous agency interpretation of the statute, and are  
24 entitled to deference under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944).  
25  
26

1 45. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy  
2 and practice of applying § 1225(b)(2) to individuals like Petitioner.

3 46. The application of § 1225(b)(2) to Petitioner unlawfully mandates his  
4 continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

5  
6 **COUNT THREE:**

7 **Violation of Due Process**

8 47. Petitioner repeats, re-alleges, and incorporates by reference each and  
9 every allegation in the preceding paragraphs as if fully set forth herein.

10  
11 48. The government may not deprive a person of life, liberty, or property  
12 without due process of law. U.S. Const. amend. V. “Freedom from  
13 imprisonment—from government custody, detention, or other forms of physical  
14 restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v.*  
15 *Davis*, 533 U.S. 678, 694 (2001); *see also Hernandez v. Sessions*, 872 F.3d 976,  
16 988 (9th Cir. 2017) (recognizing due process right to an individualized custody  
17 determination).

18  
19  
20 49. Due process requires that government action be rational and  
21 non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). Due process  
22 also requires notice and “the opportunity to be heard ‘at a meaningful time and in a  
23 meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (*quoting*  
24 *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

1 50. Petitioner has a fundamental interest in liberty and being free from  
2 official restraint.

3 51. Here, Petitioner was detained in an arbitrary manner, not based on a  
4 rational and individualized determination of whether he should be detained based  
5 on the individual facts and circumstances pertaining to whether he was a flight risk  
6 or unlawfully present in the United States. His detention therefore violates his  
7 right to due process.  
8

9 52. Respondents further violated Petitioner's right to due process by  
10 denying him a bond hearing under § 1226(a), to which he is legally entitled, and  
11 asserting that he is subject to mandatory detention under § 1225(b)(2).  
12

13 **PRAYER FOR RELIEF**

14  
15 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 16 a. Assume jurisdiction over this matter;  
17  
18 b. Order Respondents to refrain from transferring Petitioner out of the  
19 jurisdiction of this court during the pendency of these proceedings and  
20 while the Petitioner remains in Respondents' custody;  
21  
22 c. Issue a writ of habeas corpus requiring that Respondents immediately  
23 release Petitioner;  
24

- 1 d. Alternatively, issue a writ of habeas corpus requiring Respondents to
- 2 release Petitioner unless they provide a bond hearing under 8 U.S.C.
- 3 § 1226(a) within seven days;
- 4 e. Award Petitioner attorney’s fees and costs under the Equal Access to
- 5 Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other
- 6 basis justified under law; and
- 7
- 8 f. Grant any other and further relief that this Court deems just and
- 9 proper.
- 10

11 Dated: May 5, 2026

Signature: /s/ Robin M. Nagele  
By: Robin M. Nagele  
Attorney for Petitioner

**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

1 I, Robin M. Nagele, attorney for Petitioner, declare that I am acting on  
2 behalf of Aureliano Arrazola, the person for whose relief the foregoing Petition for  
3 Writ of Habeas Corpus is intended. I have discussed with Petitioner the events  
4 described in the Petition. Based on those discussions, I verify that factual  
5 statements contained in the attached Petition for Writ of Habeas Corpus are true  
6 and correct to the best of my knowledge, information, and belief.  
7  
8  
9

10 Executed on May 5, 2026, in Vista, California.

11  
12 Respectfully submitted,

13 /s/ Robin M. Nagele  
14 Robin M. Nagele  
15 *Attorney for Petitioner*  
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