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Attorney for Petitioner
BYRON NOE HERRERA AJTUN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BYRON NOE HERRERA AJTUN,

Plaintiff,

v.

CHRISTOPHER J. LAROSE, Senior
Warden, Otay Mesa Detention Center;
DANIEL A. BRIGHTMAN, San Diego
Field Office Director, Immigration and
Customs Enforcement and Removal
Operations ("ICE/ERO"); DAVID J.
VENTURELLA, Senior Official
Performing Duties of Director of
Immigration Customs Enforcement
("ICE"); U.S. Immigration and Customs
Enforcement; MARKWAYNE MULLIN,
Secretary of the Department of
Homeland Security ("DHS"); U.S.
Department of Homeland Security; and
TODD BLANCHE, Acting Attorney
General of the United States,

Respondents.

CASE NO.: '26CV3820 RBM MMP

PETITION FOR WRIT OF HABEAS
CORPUS PURSUANT TO 28 U.S.C.
§2241
REQUEST FOR EXPEDITED ORDER
TO SHOW CAUSE

Petitioner BYRON NOE HERRERA AJTUN, petitions this Court for a writ of habeas corpus under 28 U.S.C. section 2241 to remedy Respondents' detaining him unlawfully, and states as follows:

I. INTRODUCTION

This case presents a single question of statutory authority, whether Petitioner, who entered the United States without inspection in 2010 and was first arrested by Immigration and Customs Enforcement ("ICE") during an interior enforcement operation more than fifteen years later, is detained pursuant to 8 U.S.C. § 1225(b) or 8 U.S.C. § 1226(a).

The answer determines whether Petitioner is entitled to an individualized custody determination before an Immigration Judge.

Petitioner entered the United States in December 2010 and has resided continuously in this country ever since. On June 1, 2026, ICE officers arrested him during an interior enforcement operation in Poway, California. DHS subsequently initiated removal proceedings under § 240 of the Immigration and Nationality Act and charged Petitioner as removable under 8 U.S.C. § 1182(a)(6)(A)(i).

Petitioner promptly requested a custody redetermination hearing before the Immigration Court. The Immigration Judge, however, did not determine that Petitioner poses a danger to the community. Nor did the Immigration Judge determine that Petitioner presents a risk of flight. Instead, relying on *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 751 (BIA 2024), the Immigration Judge concluded

1 that the court lacked jurisdiction to conduct any bond hearing because Petitioner's
2 detention allegedly arises under 8 U.S.C. § 1225(b).

3 Accordingly, no neutral decisionmaker has ever determined whether
4 Petitioner's continued detention is necessary because he poses a danger to the
5 community or a risk of flight. The Immigration Judge denied Petitioner's custody
6 redetermination request solely on jurisdictional grounds.

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8 This Petition does not seek review of a discretionary bond determination.
9 Rather, it challenges the statutory basis for Petitioner's detention. Petitioner
10 contends that because he was arrested during an interior enforcement operation more
11 than fifteen years after entering the United States, his detention is governed by 8
12 U.S.C. § 1226(a), not § 1225(b). As a result, he is entitled to an individualized custody
13 determination before an Immigration Judge.
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16 Recent decisions from this District have recognized that similarly situated
17 petitioners are detained pursuant to § 1226(a) and have ordered individualized bond
18 hearings under that provision. Petitioner respectfully requests the same limited relief
19 here.
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21 Petitioner does not seek immediate release. He seeks only an individualized
22 bond hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226(a), at which
23 the Government bears the burden of demonstrating, by clear and convincing
24 evidence, that Petitioner's continued detention is necessary because he presents
25 either a danger to the community or a risk of flight.
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II. JURISDICTION, VENUE, AND PARTIES

A. Jurisdiction

1. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 because Petitioner is in the custody of the United States Department of Homeland Security and Immigration and Customs Enforcement and challenges the legality of that detention.
2. Petitioner does not seek review of a discretionary custody determination. Rather, Petitioner challenges Respondents' statutory authority to detain him pursuant to 8 U.S.C. § 1225(b) and seeks an order directing Respondents to provide an individualized bond hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226(a).
3. Federal district courts possess jurisdiction under 28 U.S.C. § 2241 to determine whether the Executive has statutory authority to detain an individual and whether that detention comports with federal law and the Constitution.

B. Venue

4. Venue is proper in this District pursuant to 28 U.S.C. § 2241 because Petitioner is presently confined at the Otay Mesa Detention Center in San Diego County, California, which is located within the Southern District of California.

C. Parties

5. Petitioner Byron Noe Herrera Ajtun is a native and citizen of Guatemala who is presently detained by U.S. Immigration and Customs Enforcement ("ICE") at the Otay Mesa Detention Center in San Diego, California.

1 6. Respondent Christopher J. LaRose is the Warden of the Otay Mesa Detention
2 Center and Petitioner's immediate custodian. He is sued in his official capacity.

3 7. Respondent David J. Venturella is the Senior Official Performing Duties of
4 Director of U.S. Immigration and Customs Enforcement. As Senior Official
5 Performing Duties of Director, he is responsible for the administration of ICE and
6 the detention of noncitizens in ICE custody. He is sued in his official capacity.

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8 8. Respondent Daniel A. Brightman is the Field Office Director for ICE Enforcement
9 and Removal Operations, San Diego Field Office. He exercises supervisory
10 authority over Petitioner's detention and custody and is sued in his official
11 capacity.
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13 9. Respondent Markwayne Mullin is the Secretary of the Department of Homeland
14 Security. As Secretary, he is responsible for the administration and enforcement of
15 the immigration laws of the United States and exercises ultimate authority over
16 the detention of noncitizens through the Department of Homeland Security and its
17 component agencies. He is sued in his official capacity.
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20 10. Respondent Todd Blanche is the Acting Attorney General of the United States. As
21 Acting Attorney General, he oversees the Executive Office for Immigration
22 Review, including the Immigration Courts and the Board of Immigration Appeals,
23 which adjudicate custody redetermination proceedings under the Immigration and
24 Nationality Act. He is sued in his official capacity.
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26 **III. FACTUAL ALLEGATIONS**

27 11. Petitioner Byron Noe Herrera Ajtun is a native and citizen of Guatemala.
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1 12. Petitioner entered the United States without inspection on or about December 12,
2 2010. Since that time, he has continuously resided in the United States.

3 13. During his years in the United States, Petitioner established substantial ties to
4 his community and remained continuously present in this country.

5 14. In 2016, Petitioner was convicted of a misdemeanor driving under the influence
6 offense. He successfully completed all terms of probation. He has not been
7 arrested or convicted of any subsequent criminal offense.

8 15. Although Immigration and Customs Enforcement encountered Petitioner in 2016,
9 DHS determined at that time that he did not meet the agency's enforcement
10 priorities and took no immigration enforcement action. Petitioner thereafter
11 remained in the community without further criminal conduct until his arrest on
12 June 1, 2026.

13 16. More than fifteen years after Petitioner's entry into the United States, on June 1,
14 2026, ICE officers arrested Petitioner during an interior enforcement operation in
15 Poway, California. Petitioner was not apprehended at or near the border, nor was
16 he encountered while seeking admission into the United States.

17 17. Following Petitioner's arrest, DHS served him with a Notice to Appear charging
18 him as removable pursuant to Section 212(a)(6)(A)(i) of the Immigration and
19 Nationality Act, 8 U.S.C. § 1182(a)(6)(A)(i), as a noncitizen present in the United
20 States without being admitted or paroled.

21 18. DHS has not charged Petitioner as removable based upon any criminal ground.
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1 19. Following his detention, Petitioner requested an individualized bond hearing
2 before the Immigration Court pursuant to 8 U.S.C. § 1226(a).

3 20. At the custody redetermination hearing, Petitioner argued that his detention is
4 governed by 8 U.S.C. § 1226(a) because he was arrested during an interior
5 enforcement operation more than fifteen years after entering the United States,
6 rather than while seeking admission or immediately following his entry.
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8 21. Counsel objected to the Immigration Judge's conclusion that the court lacked
9 jurisdiction and preserved Petitioner's statutory and constitutional objections for
10 judicial review.
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12 22. The Immigration Judge denied Petitioner's request for a bond hearing solely
13 because she concluded that she lacked jurisdiction under Matter of Yajure-
14 Hurtado, 29 I. & N. Dec. 751 (BIA 2024).
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16 23. The Immigration Judge did not determine that Petitioner presents a danger to the
17 community.
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19 24. The Immigration Judge did not determine that Petitioner presents a risk of flight.
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21 25. Accordingly, no Immigration Judge has ever made an individualized
22 determination that Petitioner's continued detention is necessary.
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24 26. Petitioner remains detained at the Otay Mesa Detention Center.
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IV. CLAIM FOR RELIEF

COUNT ONE

UNLAWFUL DETENTION UNDER 28 U.S.C. § 2241 AND 8 U.S.C. §
1226(a)

27. Petitioner realleges and incorporates by reference paragraphs 1 through 26 as though fully set forth herein.

28. The Immigration and Nationality Act establishes distinct statutory schemes governing the detention of noncitizens. Section 1225 governs applicants for admission during the inspection and admission process, while § 1226 governs the detention of noncitizens pending a decision on whether they are to be removed from the United States.

29. Petitioner does not challenge a discretionary custody determination. Rather, Petitioner challenges Respondents' determination that his detention is governed by 8 U.S.C. § 1225(b), thereby depriving him of any opportunity to obtain an individualized bond hearing before an Immigration Judge.

30. Petitioner entered the United States without inspection in December 2010. He was not apprehended while seeking admission into the United States, nor was he arrested at or near the border. Instead, Respondents arrested Petitioner during an interior enforcement operation more than fifteen years after his entry into the United States and thereafter commenced removal proceedings under section 240 of the Immigration and Nationality Act.

1 31. Under these circumstances, Petitioner's detention is governed by 8 U.S.C. §
2 1226(a).

3 32. In *Beltran v. Noem*, No. 3:25-cv-02650-LL-DEB (S.D. Cal. Nov. 4, 2025), the court
4 concluded that petitioners arrested during interior immigration enforcement
5 operations were detained pursuant to § 1226(a) and ordered individualized bond
6 hearings. In *Nunez-Ramirez v. Marrero*, No. 3:26-cv-03276-LL-GC (S.D. Cal. June
7 18, 2026), the court likewise concluded that § 1226(a) governed the petitioner's
8 detention and ordered Respondents to provide an individualized bond hearing
9 before an Immigration Judge within seven days.
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12 33. Petitioner's circumstances are materially similar. Like the petitioners in *Beltran*
13 and *Nunez-Ramirez*, Petitioner is a long-term resident who was arrested during
14 an interior enforcement operation years after entering the United States. He was
15 not apprehended while seeking admission or immediately after entering the
16 country.
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18 34. The Immigration Judge denied Petitioner's request for a custody redetermination
19 hearing solely because she concluded that *Matter of Yajure-Hurtado*, 29 I. & N.
20 Dec. 751 (BIA 2024), deprived the Immigration Court of jurisdiction. The
21 Immigration Judge made no finding that Petitioner poses a danger to the
22 community or presents a risk of flight. Accordingly, no Immigration Judge has
23 ever conducted the individualized custody determination contemplated by §
24 1226(a).
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1 35. Although the Immigration Judge was required to follow *Matter of Yajure-Hurtado*,
2 this Court is not. Federal courts must exercise their independent judgment in
3 determining the meaning of federal statutes and whether an agency has acted
4 within its statutory authority. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369,
5 144 S. Ct. 2244, 2273 (2024). Accordingly, this Court must independently
6 determine whether Petitioner's detention is governed by 8 U.S.C. § 1225(b) or §
7 1226(a).
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9 36. Once Petitioner's detention is properly recognized as governed by 8 U.S.C. §
10 1226(a), the Fifth Amendment's Due Process Clause requires an individualized
11 custody determination before a neutral decisionmaker. Because no Immigration
12 Judge has ever considered whether Petitioner's continued detention is necessary,
13 due process requires a bond hearing at which Respondents bear the burden of
14 proving by clear and convincing evidence that Petitioner's continued detention is
15 justified because he presents a danger to the community or a risk of flight.
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17 37. Accordingly, Respondents are unlawfully detaining Petitioner under 8 U.S.C. §
18 1225(b). Petitioner's detention is governed by 8 U.S.C. § 1226(a), and this Court
19 should order Respondents to provide Petitioner with an individualized bond
20 hearing before an Immigration Judge consistent with the requirements set forth
21 above.
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23 V. CONCLUSION

24 38. Petitioner has remained in immigration detention without any individualized
25 determination that his continued detention is necessary. The Immigration Judge
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1 denied Petitioner's request for a bond hearing solely because she concluded that
2 the Immigration Court lacked jurisdiction under *Matter of Yajure-Hurtado*.
3 Because Petitioner's detention is governed by 8 U.S.C. § 1226(a), Petitioner
4 respectfully requests that this Court grant the Petition and order Respondents to
5 provide Petitioner with an individualized bond hearing before an Immigration
6 Judge within seven (7) days, at which Respondents bear the burden of proving by
7 clear and convincing evidence that Petitioner's continued detention is justified
8 because he presents a danger to the community or a risk of flight.
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11 12 VI. PRAYER FOR RELIEF

13 WHEREFORE, Petitioner respectfully requests that this Court:

- 14 1. Issue an order to Show Cause directing Respondents to show cause, within
15 seven days, why the Petition for Writ of Habeas Corpus should not be granted.
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- 17 2. Grant the Petition for Writ of Habeas Corpus;
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- 19 3. Determine that Petitioner's detention is governed by 8 U.S.C. § 1226(a);
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- 21 4. Order Respondents to provide Petitioner with an individualized bond
22 hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226(a) within seven (7)
23 days of the Court's Order;
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- 25 5. Order that, at such hearing, Respondents bear the burden of proving by
26 clear and convincing evidence that Petitioner's continued detention is necessary
27 because he presents a danger to the community or a risk of flight;
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1 6. Order that, while this Petition is pending, Respondents shall not transfer
2 Petitioner outside the Southern District of California in a manner that would
3 interfere with this Court's jurisdiction or Petitioner's ability to obtain the relief
4 requested herein without prior notice to the Court and counsel.

5 7. Order Petitioner's release under appropriate conditions of supervision
6 should Respondents fail to provide the required hearing within the time ordered by
7 the Court.
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9 8. Grant such other and further relief as the Court deems just and proper.
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13 Date: June 30, 2026

14 **STERGER LAW GROUP, P.C.**

15 By: /s/ Richard S. Sterger, Esq.

16 Richard S. Sterger, Esq.
17 Attorney for Petitioner
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