

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
CASE NO. 2:25-cv-00891

JOSE ERAZO,)
Petitioner,)
)
v.)
)
DAVID HARDIN, in his official capacity as)
Warden of Glades Detention Facility; et al.)
)
)
Respondents.)

PETITION FOR A WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

1. Petitioner, Jose Erazo, respectfully moves this Court for an Emergency Temporary Restraining Order (TRO), ordering Respondents to immediately hold a bond hearing for the Petitioner, where he can demonstrate that he is neither a danger to the community of a flight risk, in accordance with the procedure in effect prior to the September 5, 2025 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) decision. In the alternative, this Court should order the immediate release of Petitioner from US Immigration and Customs Enforcement custody.
2. Petitioner is a native and citizen of Honduras, born on ~~XXXXXXXXXX~~. He first entered the U.S. November 30, 1999 without inspection at the age of 17 and has lived in this country, with one brief absence, for over 25 years.
3. Mr. Erazo is not a danger to the community, as he has no criminal record and a record of stable employment as a roofer.
4. He is not a flight risk, as he lived with his two US citizen children, who are nine and 17 years old, until his arrest by ICE on August 18, 2025. He attended immigration court

proceedings in Miami Immigration Court on May 6, 2025, at which time he was rescheduled for a merits hearing. He has every reason to attend his immigration court hearings as he filed an application for Cancellation of Removal on August 14, 2025, based on hardship his deportation would cause to his US citizen children, one of whom suffers from severe ADHD. He alternatively seeks asylum and Withholding of Removal. A US citizen sponsor, Franklin Cardona, has assured his appearance at immigration court.

5. The Petitioner requested a bond in immigration court, presenting evidence at a September 26, 2025 hearing that he was neither a flight risk nor a danger to the community, as required by *Matter of Patel*, 16 I&N Dec. 600 (B.I.A. 1978). The Immigration Judge did not even consider a bond, however, holding that the Petitioner is subject to mandatory detention and that he lacked jurisdiction under the newly decided Board of Immigration Appeals decision *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (See Exhibit A).

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT

6. The Immigration and Nationality Act (INA) establishes two categories of aliens subject to different treatment. Section 235 (8 U.S.C. § 1225) was created by Congress to govern the admission of aliens who arrive in the US or are at the border, and generally requires mandatory detention while the aliens are seeking relief. Section 236 (8 U.S.C. § 1226) is for aliens who are apprehended within the US and allows for bond hearings for non-criminal aliens, who may seek release from detention by demonstrating to immigration judges that they are not a danger to the community or a flight risk.
7. *Matter of Yajure Hurtado*, decided by the BIA September 5, 2025, held for the first time that all aliens who entered the US without authorization are subject to Section 235 regardless of how long they have been in the US or their family ties.
8. This new interpretation would include Petitioner, who has lived in the US since 1999 and has two US citizen children. It seems obvious that Petitioner was apprehended inside the US and is not arriving to the US or seeking admission to the country.
9. Federal district courts that have recently analyzed which statute covers noncitizens who previously entered without inspection and were apprehended in the interior of the country have consistently found that INA § 236, not § 235(b)(2), authorizes their detention. In so finding, courts have relied on the record evidence and factual circumstances in a noncitizen's immigration proceedings, the text of both provisions, the statutory context and structure, the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and the legislative history of § 235. These Federal Courts have agreed that § 235(b)(2) only reaches individuals who are in the process of entering or who have just entered the United States.

10. There are several reasons why the government's expansive interpretation of INA § 235(b)(2) misreads the statute. As the Supreme Court recognized in *Jennings*, § 235(b) is concerned "primarily [with those] seeking entry," and is generally imposed "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible."
11. Throughout its text, the statute refers to "inspections"—a term which typically connotes an examination upon or soon after physical entry. Many statutory provisions, various regulations and agency precedent discuss "inspection" in the context of admission processes at ports of entry, further supporting the conclusion that § 235 has a limited temporal and geographic scope. See INA § 235 (titled "Inspection by Immigration Officers; INA §§ 235(b)(1) (referring to "inspections" in the title); INA § 235(d)(1) (authorizing immigration officials to search certain conveyances in order to conduct "inspections" where noncitizens "are being brought into the United States").
12. Consistent with this focus on the moment of physical entry, § 235(b)(2) is limited to those in the process of "seeking admission." Similarly, the implementing regulations at 8 C.F.R. § 1.2 address noncitizens who are presently "coming or attempting to come into the United States." The statutory and regulatory text's use of the present and present progressive tenses excludes noncitizens apprehended in the interior, because they are no longer in the process of arriving in or seeking admission to the United States.
13. Additionally, the INA's statutory structure makes clear that § 236 also reaches individuals who have not been admitted and have entered without inspection. For example, Section 236(c) exempts specific categories of noncitizens from the default eligibility to seek release on bond in § 236(a), including noncitizens subject to certain grounds of inadmissibility.
14. Moreover, Congress recently added new mandatory detention grounds to § 236(c) that apply only to noncitizens who have not been admitted, expressly including those who are inadmissible under § 212(a)(6)(A), or (7)—that is, persons who entered without being admitted. If § 236(a) did not apply to inadmissible noncitizens, then the carve out in § 236(c) that refers to inadmissibility and Congress' most recent amendments would all be surplusage.
15. The statutory history also supports a limited reading of § 235(b)'s reach. When Congress amended § 235(b)'s predecessor statute—which authorized detention only of arriving noncitizens—to include individuals who had not been admitted, legislators expressed concerns about recent arrivals to the United States who lacked the documents to remain in the country. There was no suggestion in the legislative history that Congress intended to subject all people present in the United States after an unlawful entry to mandatory detention and thereby transform immigration detention and sweep millions of noncitizens into § 235(b).

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT AND INTERNATIONAL LAW

16. The Fifth Amendment's Due Process Clause provides that no person shall be "deprived of... liberty... without due process of law." This protection applies to all persons within the United States, regardless of immigration status. The detention of arriving aliens has been allowed because they do not have constitutional protection, *Jennings, supra*.
17. Freedom from imprisonment lies at the heart of the liberty protected by habeas corpus, *Zadvydas v. Davis*, 533 U.S. 578, 690 (2001). In civil proceedings, including deportation cases, detention is supposed to be non-punitive; it is justified only in certain "special and narrow non-punitive circumstances, where a special justification, such as harm threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.*
18. The Supreme Court has held repeatedly that non-punitive detention violates the Constitution unless it is strictly limited, which typically means that the detention must be accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure that the imprisonment serves the government's legitimate goals, *See, e.g. United States v. Salerno*, 481 U.S. 739, 750-51 (1987). In the immigration context, the "special justification for detention is two-fold: first preventing danger to the community; and second, ensuring the appearance of the noncitizen at future immigration proceedings," *Zadvydas*, 533 US at 691.
19. To avoid serious constitutional problems, courts have consistently read an implicit reasonableness limitation into immigration detention statutes. The INA does not authorize arbitrary detention.
20. Given Petitioner's pending Cancellation of Removal, asylum and Withholding of Removal claims, lack of any criminal history, and strong family and community ties, his continued detention is statutorily unreasonable and therefore unlawful.
21. The US is signatory to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, both of which prohibit arbitrary detention of asylum seekers.
22. Under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, a federal habeas court should independently interpret the meaning and scope of § 235(b) using the traditional tools of statutory construction. Because the BIA's decision in *Matter of Yajure Hurtado* is a deviation from the agency's long-standing interpretation of §§ 235 and 236; is not guidance issued contemporaneously with enactment of the relevant statutes; and contradicts the statutory interpretations of dozens of federal courts, a habeas court should give it no weight under *Loper*.

WHEREFORE, Petitioner Jose Erazo respectfully requests that this Court:

Order Respondents to immediately hold a bond hearing for the Petitioner, where he can demonstrate that he is neither a danger to the community of a flight risk in accordance with the procedure in effect prior to the September 5, 2025 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) decision. In the alternative, order the immediate release of Petitioner from ICE custody.

Dated: October 8, 2025

Respectfully submitted,

/s/ Robert Sheldon

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Counsel for Petitioner

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Jose Erazo

(b) County of Residence of First Listed Plaintiff Glades

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Robert Sheldon, Esq., 3134 Coral Way, Miami, FL 33145, (786) 435-1714 rsheldon1@hotmail.com

DEFENDANTS

Warden of Glades Detention Facility, David Hardin, In His Official Capacity; Acting Director US Immigration and Customs Enforcement, Todd M. Lyons, In His Official Capacity

County of Residence of First Listed Defendant Glades

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input checked="" type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 2241

Brief description of cause:
 Habeas corpus for alien denied bond hearing

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$**

CHECK YES only if demanded in complaint
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
 10/08/2025

SIGNATURE OF ATTORNEY OF RECORD
 /s/ Robert Sheldon

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____