**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**

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| **WHITMAN PIRTO,** Petitioner, | |
| v. | **PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241** |
| **WARDEN OF GLADES DETENTION FACILITY DAVID HARDIN,** in his official capacity; | **Case No.** |
| **ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT TODD M. LYONS,** in his official capacity. | |
| Respondents. | |

## INTRODUCTION

1. This is a petition for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner, Whitman Pirto, is a 20 year old Venezuelan national who entered the US on January 6, 2024. He was paroled from custody by the Department of Homeland Security on February 20, 2024.

2. On May 10, 2024, Petitioner timely filed an affirmative asylum application with the San Antonio Immigration Court. The application remains pending, and prior to the detention the Petitioner was scheduled for an immigration court hearing on October 22, 2026. He was detained by Immigration and Customs Enforcement (ICE) when he attended an appointment at the ICE office in Miami Lakes, FL on October 7, 2025.

3. He is currently detained by Respondents at the Glades County Detention Center in Moore Haven, Florida under [redacted]. He has no criminal record.

4. Petitioner is not eligible for a bond under the recently-decided Board of Immigration Appeals (BIA) decision *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). He is asking this Court to order defendants to grant him a bond hearing where he can demonstrate that he is neither a flight risk nor a danger to the community (has no arrest record), as required by *Matter of Patel*, 16 I&N Dec. 600 (B.I.A. 1978).

5. *Matter of Yajure Hurtado,* decided September 5, 2025, overturned 30 years of established law, regulations and immigration court practice. Petitioner believes the decision is based on administration policy, not the law, and is part of the current administration's push to detain and deport illegal aliens.

6. The recent BIA decision is erroneous, violates the Immigration and Nationality Act (INA), the Due Process Clause of the Fifth Amendment to the United States Constitution, and international law, of which the US is signatory, relating to the treatment of asylees.

7. 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.

**JURISDICTION AND VENUE**

8. This Court has jurisdiction over this petition pursuant to 28 U.S.C. § 2241, which grants federal courts the authority to hear habeas corpus petitions from individuals held in custody in violation of the Constitution or laws of the United States. Jurisdiction is also proper under 28 U.S.C. § 1331.

9. Venue is proper in the Middle District of Florida pursuant to 28 U.S.C. § 2241(d) because Petitioner is detained at Glades County Detention Center within this judicial district.

**PARTIES**

10. Petitioner **Whitman Pirto** ([redacted]) is a citizen of Venezuela and is currently detained by Respondents at the Glades County Detention Center in Moore Haven, Florida.

11. Respondent **David Hardin** is the Warden of Glades County Detention Center who has direct supervisory authority over Petitioner's detention. He is sued in his official capacity.

12. Respondent **Todd M. Lyons** is the Acting Director of U.S. Immigration and Customs Enforcement (ICE) and is sued in his official capacity.

**FACTUAL ALLEGATIONS**

13. Petitioner is a 20 year old native and citizen of Venezuela. He first entered the U.S. with his mother on January 6, 2024, without inspection, at Del Rio Texas. He was released from custody under parole by ICE on February 20, 2024, and affirmatively filed for asylum with the San Antonio Immigration Court on May 10, 2024. He was detained at a scheduled ICE appointment in Miami Lakes, FL on Oct. 7, 2025.

14. Mr. Pirto is not a danger to the community, as he has no criminal record.

15. Petitioner is not eligible for a bond hearing before an immigration judge under the recently-decided Board of Immigration Appeals (BIA) decision *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

**LEGAL CLAIMS**

**COUNT I: VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT**

16. Petitioner re-alleges and incorporates by reference the preceding paragraphs.

17. 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.

18. *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.

19. 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.

20. 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."

21. 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").

22. 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.

23. 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.

24. 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.

25. 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).

**COUNT II: VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT, AND INTERNATIONAL LAW**

26. Petitioner re-alleges and incorporates by reference the preceding paragraphs.

27. 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.*

28. 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.*

29. 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," *Zadvydus*, 533 YS at 691.

30. To avoid serious constitutional problems, courts have consistently read an implicit reasonableness limitation into immigration detention statutes. The INA does not authorize arbitrary detention.

31. Given Petitioner's pending asylum claim and lack of any criminal history, his continued detention is statutorily unreasonable and therefore unlawful.

32. 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.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner Whitman Pirto respectfully requests that this Court:

A. Assume jurisdiction over this matter; B. Issue a Writ of Habeas Corpus ordering Respondents to justify the legality of Petitioner's detention; C. 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 *Matter of Patel,* 16 I&N Dec. 600 (B.I.A. 1978). the procedure in effect prior to the September 5, 2025 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) decision. D. Award Petitioner his reasonable attorneys' fees and costs; and E. Grant such other and further relief as this Court may deem just and proper.

Dated: October 27, 2025

Respectfully submitted,

/s/ Robert Sheldon

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