UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

LUIS ACOSTA,
Petitioner.

V.

FIELD OFFICE DIRECTOR, MIAMI FIELD OFFICE, US IMMIGRATION AND CUSTOMS ENFORCEMENT, GARRETT RIPA, et al.
Respondents.

_____/

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

INTRODUCTION

1. This is a petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241. Petitioner, Luis Acosta, is a 34 year old national from El Salvador who has lived in the US since 2018 and is currently detained by Respondents in Broward County, FL. He is married to a US citizen, has a US citizen son and has no criminal convictions.

2. Petitioner is being held under mandatory detention without eligibility for a bond hearing 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 Respondents to grant him a bond hearing before an immigration judge where he can demonstrate that he is not a flight risk nor a danger to the community.

3. *Matter of Yajure Hurtado*, decided September 5, 2025, overturned 30 years of established immigration court practice. Petitioner believes the decision is based on administration policy to detain and deport illegal aliens, not the law.
4. This BIA decision is erroneous, violates the Immigration and Nationality Act (INA) §235(b) and §236, 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.
5. Under the Supreme Court's recent decision in *Loper Bright v. Raimondo*, federal courts should independently interpret the meaning and scope of §§ 235(b) and 236 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

6. 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.
7. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. § 2241(d) because Petitioner is detained in Broward County, FL which is located within this judicial district.

PARTIES

8. Petitioner, **Luis Acosta**, is a citizen of El Salvador and is currently detained by the Respondents in Broward County, FL..

9. Respondent **Garrett Ripa** is the Field Office Director, South Florida Region, US Immigration And Customs Enforcement, and is sued in his official capacity.

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

FACTUAL ALLEGATIONS

11. Petitioner is a native and citizen of El Salvador. He entered the U.S. without inspection (EWI) in 2018. He was never previously apprehended by immigration authorities and has no criminal record.

12. Petitioner has extensive family ties to the United States. He married his U.S. Citizen (USC) spouse on April 27, 2021 and is the father of a seven-year-old USC son, [redacted] who suffers from asthma. He also has two USC step-children, ages 23 and 20.

13. Petitioner is the beneficiary of an approved family petition filed by his USC spouse, demonstrating a clear path to legal status, which also makes him highly unlikely to be a flight risk.

14. He has a stable employment history, having worked in landscaping and roofing since his arrival in the U.S.

15. Despite his long-term U.S. residency, family ties, lack of criminal history, and approved family petition, Respondents will not grant Petitioner a bond hearing before an

immigration judge while he contests removal from the United States 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

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

16. The Immigration and Nationality Act (INA) establishes two distinct statutory categories for the treatment and detention of noncitizens:

    - Section 235 (8 U.S.C. § 1225): This section governs the admission of aliens who arrive in the U.S. or are at the border seeking relief. It generally requires mandatory detention.
    - Section 236 (8 U.S.C. § 1226): This section applies to aliens who are apprehended within the U.S. (in the interior). It allows for bond hearings for non-criminal aliens who may seek release by demonstrating they are not a danger to the community or a flight risk.

17. The Board of Immigration Appeals (BIA), in its September 5, 2025 decision *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), held for the first time that all aliens who entered the U.S. without authorization are subject to Section 235 mandatory detention, as applicants for admission, regardless of their length of stay or ties to the U.S.

19. Federal courts have consistently held that INA § 236, not § 235(b)(2), authorizes the detention of noncitizens who previously entered without inspection and were apprehended in the interior of the country.

20. There are several reasons why the BIA's expansive interpretation of INA § 235(b)(2) misreads the statute:

    - As the Supreme Court recognized in *Jennings v. Rodriguez*, § 235(b) is concerned "primarily [with those] seeking entry," and is generally imposed "at the Nation's borders and ports of entry".
    - Throughout its text, § 235 refers to "inspections," a term that typically connotes an examination upon or soon after physical entry. This is further supported by citations such as INA § 235 (titled "Inspection by Immigration Officers"); INA §§ 235(b)(1) (referring to "inspections" in the title); and 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"). The statute's text, referring to "inspections" and being concerned "primarily [with those] seeking entry," confirms that § 235(b) has a limited temporal and geographic scope and should be imposed "at the Nation's borders and ports of entry."
    - Consistent with this focus on the moment of physical entry, § 235(b)(2) is limited to those in the process of "seeking admission." Petitioner in this case is patently in the country and not 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 like Petitioner, because they are no longer in the process of arriving in or seeking admission to the United States.

21. The INA's statutory structure confirms 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.

    - 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, the carve-out and recent amendments in § 236(c) would be rendered surplusage.

22. The statutory history also supports a limited reading of § 235(b)'s reach. When Congress amended § 235(b)'s predecessor statute 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 "sweep millions of noncitizens into § 235(b)".

23. Petitioner Luis Acosta entered the U.S. in 2018 and was apprehended by a state trooper in the interior of the U.S. on November 19, 2025—approximately seven years after his entry. He was working at the time of his arrest and was not "in the process of entering or just entered the United States." This factual context places his detention squarely under the jurisdiction of § 236. As a result, the Petitioner, a long-term resident with strong U.S. ties, is not subject to mandatory detention under § 235. He is subject to the provisions of

INA § 236(a), which permits release on bond upon showing that he is not a danger or a flight risk.

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

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

25. 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.

26. 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 only justified in certain "special and narrow non-punitive circumstances," where a compelling justification outweighs the individual's constitutionally protected interest in avoiding physical restraint.

27. The Supreme Court has repeatedly held that non-punitive detention violates the Constitution unless it is strictly limited and accompanied by a prompt individualized hearing before a neutral decisionmaker (*See, e.g., United States v. Salerno*, 481 U.S. 739, 750-51 (1987)).

29. Petitioner Luis Acosta's continued mandatory detention without a hearing is unconstitutional, especially given the lack of any criminal history and his compelling, decade-long commitment to his USC family. His mandatory detention under the BIA's *Matter of Yajure Hurtado* decision serves no legitimate governmental purpose and violates the Fifth Amendment.

31. Furthermore, the US is signatory to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. These treatys, reflecting fundamental norms of liberty, prohibit the arbitrary detention of individuals within the country who are pursuing relief from deportation, reinforcing the need for an individualized assessment of flight risk and danger.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Luis Acosta respectfully requests that this Honorable Court:

A. Assume Jurisdiction over this Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. B. Issue a Writ of Habeas Corpus ordering Respondents to justify the legality of Petitioner's continued detention. C. Order Respondents to immediately hold a bond hearing for the Petitioner before an Immigration Judge, where he can demonstrate that, based on his strong U.S. ties, lack of criminal record, and approved family petition, he is neither a danger to the community nor 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. In the alternative, order Petitioner's immediate release. E. Grant such other and further relief as this Court may deem just and proper.

Dated: November 20, 2025.

Respectfully submitted,

/s/Robert Sheldon, Esq.
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