UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FIDENCIO FLORIES
Petitioner,

v.

ASSISTANT FIELD OFFICE DIRECTOR IN CHARGE OF KROME DETENTION CENTER, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, CHARLES PARRA, IN HIS OFFICIAL CAPACITY, et al,
Respondents.
_____/

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

Case No.

INTRODUCTION

1. This is a petition for a writ of habeas corpus under 28 U.S.C. § 2241. Petitioner, Fidencio Flores, is a 58 year old Mexican national who entered the US in 1984 at the age of 17. He is currently detained by Respondents at the Krome Detention Center in Miami, FL under A# [redacted]. He has a US Citizen wife and an I-130 marriage petition was approved by US Citizenship and Immigration Service on 9/6/2023. He has four US citizen children and two US citizen step-children. He has been arrested but 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 where he can demonstrate that he is not a flight

risk nor a danger to the community, as required by the law prior to the recent BIA decision by *Matter of Patel,* 16 I&N Dec. 600 (B.I.A. 1978).

3. *Matter of Yajure Hurtado,* decided September 5, 2025, overturned 30 years of established immigration court practice which had allowed for bond hearings for non-criminal aliens arrested in the US. The decision did not result from any change in the law. Petitioner believes the recent BIA decision is based on this administration's policy to detain and deport aliens, not the law.

4. The recent 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 at Krome Detention Center within this judicial district.

PARTIES

8. Petitioner **Fidencio Flores** is a citizen of Mexico and is currently detained by Respondents at the Krome Detention Center in Miami, Florida.

9. Respondent **Charles Parra** is the assistant field office director in charge of Krome Detention Center, US Immigration and Customs Enforcement (ICE) and has direct supervisory authority over Petitioner's detention. He is sued in his official capacity.

10. 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

11. Petitioner is a 58 year old Mexican national who entered the US in 1984 at the age of 17, crossing the US border at Texas.

12. Petitioner has lived in the US for 40 years, has a US citizen spouse, Maria, who has health problems, four US citizen children and two US citizen step children, and had stable employment as a landscaper prior to his arrest and detention by Respondents.

13. He is eligible for and applied for Cancellation of Removal to adjust his legal status in the US to permanent resident. He has every reason to appear at his future immigration court hearings to obtain this form of relief from deportation. As a result, he is not a flight risk. He has prior arrests but no criminal convictions, so he is not a danger to the community.

14. Without an order from this Court, Respondents cannot grant Petitioner 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), which is binding on immigration judges.

LEGAL CLAIMS

COUNT I: VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT

1. Petitioner re-alleges and incorporates by reference the preceding paragraphs.
2. 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.
3. *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.
4. 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.

5. 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."

6. 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").

7. 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.

8. Additionally, the INA's statutory structure also makes clear that § 236 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.

9. 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.

10. The statutory history also supports a limited reading of § 235(b)'s reach. 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). 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.

COUNT II: VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

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

12. 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** (not just citizens) within the United States, regardless of immigration status. The detention of arriving aliens has been allowed because they do not have constitutional protection until they enter the country, *Jennings, supra.*

13. 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.*

14. 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.

15. To avoid serious constitutional problems, courts have consistently read an implicit reasonableness limitation into immigration detention statutes. The INA does not authorize arbitrary detention. Given Petitioner's pending Cancellation of Removal claim

and lack of any criminal history, his continued detention is statutorily unreasonable and therefore unlawful.

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. In the alternative, order Respondent's to release Petitioner from their custody; and E. Grant such other and further relief as this Court may deem just and proper.

Dated: December 9, 2025

Respectfully submitted,

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