

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-CV-25763-RKA

FIDENCIO FLORES,)
Petitioner,)
)
CHARLES PARRA, IN HIS OFFICIAL)
CAPACITY AS ASSISTANT FIELD OFFICE)
DIRECTOR IN CHARGE OF KROME)
DETENTION CENTER, et al.,)
Respondents.)
_____ /

PETITIONER'S REPLY

1. Petitioner Fidencio Flores, through undersigned counsel, respectfully submits this Reply to Respondents' Response In Opposition To The Petition For Writ Of Habeas Corpus. He once again 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 nor a flight risk, in accordance with the law and the correct procedure which was in effect prior to the September 5, 2025 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) decision (See Exhibit A). In the alternative, this Court should order the immediate release of Petitioner from US Immigration and Customs Enforcement custody.
2. Petitioner, is a 58 year old Mexican national who entered the US in July, 1984, over 40 years ago. He is married to a US Citizen, and has four US Citizen children and two US citizen step-children, ranging in age from 19 to 38. He has arrests but no criminal convictions. His wife filed a petition for his permanent residency, which was approved by

USCIS. He is eligible for and has applied for Cancellation of Removal in Immigration Court.

EXHAUSTION OF REMEDIES

3. The Petitioner did not request a bond in immigration court, as stated by Respondents, because this would be an act of complete futility. Immigration Judges are required to follow Board of Immigration of Appeals precedent decisions. No Immigration Judge would consider that they have jurisdiction to issue a bond, as the Petitioner is subject to mandatory detention under the new Board of Immigration Appeals decision *Matter of Yajure Hurtado*. Petitioner may as well apply for US citizenship, as he has the same likelihood of success.

THE JURISDICTION OF THIS COURT

4. The jurisdiction-stripping arguments set forth by Respondents have been considered and rejected many times by the US Supreme Court in seminal cases, for example, *Zadvydas v. Davis*, 533 U.S. 578, 690 (2001), *Boumediene v. Bush*, 553 U.S. 723 (2008); and *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Petitioner is not here complaining about a discretionary denial of a bond, or asking to review his removal from the US. Instead, **he is contesting his statutory and constitutional right to a hearing, any hearing, to contest his civil detention**, which is clearly a core right embedded in the US Constitution since its establishment, which has not been and could not be limited by statute.

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT

5. 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.
6. *Matter of Yajure Hurtado*, decided by the BIA September 5, 2025, held for the first time since the law was changed in 1997 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.
7. **This radical, illogical new interpretation argued by Respondents would include Petitioner, who has lived in the US since 1984, is married to a US citizen and has four US citizen children, as a person arriving in the US, contrary to any concept of logical statutory interpretation or common sense.** It would overturn 30 years of established, non-controversial interpretation. It seems obvious that Petitioner was apprehended inside the US and is not arriving to the US or seeking admission to the country and should therefore be subject to the law for those in the US not those seeking admission at the border.
8. 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.
9. 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."
 10. 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").
 11. 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.

12. 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.
13. 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.
14. 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

15. The Fifth Amendment's Due Process Clause provides that no **person** (emphasis added) 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 (not yet in the US) has been allowed because they do not have constitutional protection, See *Jennings, supra*.
16. 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.*
17. 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.
18. To avoid serious constitutional problems, courts have consistently read an implicit reasonableness limitation into immigration detention statutes. The INA does not authorize arbitrary detention.

LOPER-BRIGHT

19. 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 Flores 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 nor 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 Honorable Court should find that Petitioner is neither a danger to the community nor a flight risk, and order his immediate release from ICE custody.

Dated: December 26, 2025

Respectfully submitted,

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