

Leslie Cabrera
ABOGADOS W
4700 Millenia Blvd., Suite 500
Orlando, FL 32839
Phone: 305-507-7442
leslie@abogadosw.com
Attorney for Petitioner

DETAINED

**UNITED STATES DISTRICT COURT SOUTHERN DISTRICT
OF FLORIDA MIAMI, FL**

)
ACOSTA GARCIA, YOSMAY)
)
Petitioner,)
)
)
v.)
)
)
Field Office Director, U.S.)
Immigration and Customs)
Enforcement)
)
Respondent.)

CASE No.: 1:26cv20793

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

**UNITED STATES DISTRICT COURT SOUTHERN DISTRICT
OF FLORIDA MIAMI, FL**

_____)
ACOSTA GARCIA, YOSMAY)
)
Petitioner,)
)
v.)
)
Field Office Director, U.S.)
Immigration and Customs)
Enforcement)
)
Respondent.)
_____)

CASE No.: 1:26cv20793

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

COMES NOW, Yosmay Acosta Garcia, Petitioner, by and through undersigned counsel, and respectfully petitions this Honorable Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241.

AS GROUNDS, Petitioner states as follows:

1. Petitioner's full name is Yosmay Acosta Garcia. Petitioner is currently being held by U.S. Immigration and Customs Enforcement (ICE) at Krome North Service Processing Center.
2. Petitioner is an alien, present in the United States who arrived on April 4, 2022.
3. Petitioner was then given an Alien Number, XXXXXXXXXX, and allowed entry by CBP authorities on with an Order of Release on Recognizance (I-220A) pursuant to INA subsection §236.

4. On or around July 30, 2022, Petitioner filed an application for asylum, withholding of removal, and protection under the Convention Against Torture.
5. Petitioner was detained by ICE officers without a warrant of arrest. Since October 27, 2025, Petitioner has been held in continuous immigration detention at Krome North Service Processing Center without bond.
6. On December 16, 2025, Petitioner filed a Motion for Bond Hearing before the Miami Immigration Court. On December 17, 2025, the Immigration Judge denied the Motion for Bond Hearing, finding that the Court lacked jurisdiction to conduct a bond hearing because Petitioner is an applicant for admission under INA § 235(b).

First, the petitioner states that he is entitled to a *Writ of Habeas Corpus* on because the Immigration Judge improperly dismissed his matter on October 27, 2025; even through said motion to dismiss was made in violation of notice and timeliness requirements in the Immigration Court's Practice Manual. See IJ Order dated 10/27/2025. "Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required." *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). DHS is not following their own procedures by orally moving to dismiss in violation of multiple basic notice rules. Consequently, the lack of proper notice and proper timing is denying Respondent the opportunity to address the matters asserted in the Motion with their counsel. And denying Counsel the ability to conduct the proper researcher, both in law and *res* in order to properly oppose the substance of the Motion.

7. The *second* ground for this petition is that Petitioner asserts that he is entitled to a bond hearing under INA § 236(a) because he is detained pending a decision on his removal

status, not under a valid final order. The BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) has been found to be in error, and a misinterpretation of the INA by multiple Federal Courts. Most recently a District Court in California issued declaratory relief holding in *Lazaro Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873 (C.D. Cal. Nov. 20, 2025) that §1226(a) is the proper governing authority for noncitizens already in the country, and such individuals are entitled to bond hearings. The Court held that “[an] expansive interpretation of ‘applicants for admission’ would effectively nullify a portion of the INA through the DHS’s legislative or interpretive exercise of power.” *Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM, slip op. at 16. The Federal Court’s interpretation of the statute is on point. Petitioner in this matter is similarly situated to the plaintiffs in *Maldonado Bautista*. Like those plaintiffs, Petitioner was not held in continuous custody as an “arriving alien” at the border but was processed and released into the interior of the United States on his own recognizance (Form I-220A) over three years ago.

8. The government’s current attempt to classify him as an “applicant for admission” subject to mandatory detention under INA § 235(b)(2) ignores his lengthy physical presence and prior release, effectively stripping him of the due process rights afforded to those detained within the U.S. interior. As the District Court elucidated, “there must be an appreciable or meaningful distinction between § 1225 and § 1226,” and permitting DHS to detain settled individuals under the mandatory provisions of § 1225 would render the bond hearing protections of § 1226(a) superfluous. Consequently, because Petitioner is not an arriving alien but a noncitizen present in the United States and has the right to be placed in removal proceedings pursuant to INA § 240, or to continue his

adjustment of status or application for asylum with USCIS, he is properly subject to the discretionary detention authority of INA § 236(a) and must be afforded an individualized bond hearing before an Immigration Judge.

9. The *third* ground for this petition is that both Respondent as a class member and the government are parties to the District Court's decision in *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *1 (C.D. Cal. Nov. 25, 2025) which certified a nationwide class membership. "Nothing in Rule 23 ... limits the geographical scope of a class action that is brought in conformity with that Rule." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). As such, the full effects of res judicata are binding. "Under elementary principles of prior adjudication a judgment in a properly entertained class action is binding on class members in any subsequent litigation." *Smith v. Bayer Corp.*, 564 U.S. 299, 313 (2011). The District Court's declaratory judgment conclusively determines that Bond Eligible Class members like Respondent are detained under 8 U.S.C. § 1226(a); are not subject to mandatory detention under § 1225(b)(2); and are entitled to consideration for release on bond by immigration officers and, if not released, a custody redetermination hearing before an immigration judge, thereby precluding DHS from re-litigating or re-characterizing Respondent's detention status in this proceeding.
10. The *fourth* ground for this petition is centered on Equitable Estoppel. "[T]he government may be subject to equitable estoppel in an immigration case if, in addition to meeting the traditional elements of estoppel, 'it has engaged in affirmative misconduct' and the 'potential injustice to [the person asserting estoppel] outweighs the possibility of damage to the public interest.'" *Manta v. Mukasey*, 263 F. App'x 626,

628 (9th Cir. 2008) “Equitable estoppel requires an ‘admission, statement, or act inconsistent with [a] later claim.’” *Seattle Pac. Indus. v. S3 Holding LLC*, 831 F. App’x 814, 817 (9th Cir. 2020). The Government’s actions here constitute a distinct pattern of affirmative misconduct. Specifically, by initially issuing the Form I-220A and placing Petitioner in standard removal proceedings under INA § 240, the Government affirmatively recognized his status as an alien present in the United States. To subsequently move to dismiss those proceedings without proper notice, in a procedural manner which violates the Immigration Court Practice Manual, and then arbitrarily reclassify Petitioner as subject to expedited removal without meeting the statutory requirements, represents a gross procedural irregularity. These cumulative acts, which have unlawfully deprived Petitioner of his rightful bond hearing, are inconsistent with the Government’s prior determinations and sufficiently egregious to establish affirmative misconduct. Consequently, this Honorable Court must equitably estop the Government from asserting that the Petitioner is now subject to mandatory detention under INA § 235(b).

11. The *final* ground for this petition is that Form I-220A is an Order of Release on Recognizance issued pursuant to INA § 236, not INA § 235. Release under INA § 236 places an alien in removal proceedings under INA § 240, thereby entitling the alien to a bond hearing before an Immigration Judge pursuant to 8 C.F.R. § 1003.19. The issuance of Form I-220A constitutes a formal acknowledgment by the Department of Homeland Security that Petitioner was processed and released into the interior of the United States, an action that legally effectuates an arrest and release under the discretionary authority of INA § 236(a). See 8 C.F.R. § 236.1(c)(10). By releasing

Petitioner on recognizance with a Notice to Appear, DHS implicitly made a custody determination under § 236, opting for conditional release rather than mandatory detention. This custody determination vests the Immigration Judge with jurisdiction to redetermine custody status and grant bond under 8 C.F.R. § 1003.19(a). To now argue that Petitioner is subject to mandatory detention under INA § 235(b) contradicts the government's own prior administrative action of releasing him on recognizance, effectively attempting to revoke a status, release under § 236, that has already been conferred and relied upon for over three years.

12. Futility of Administrative Exhaustion. Petitioner has not appealed the bond denial to the BIA because doing so is futile. Petitioner has not appealed the Immigration Judge's bond denial to the Board of Immigration Appeals because doing so would be futile. The BIA has already issued a binding precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which categorically forecloses bond jurisdiction for individuals in Petitioner's specific legal posture. Requiring Petitioner to exhaust administrative remedies by appealing to a body that has already prejudged the legal issue against him would serve no purpose other than to prolong his unlawful detention. See *McCarthy v. Madigan*, 503 U.S. 140, 148, 112 S. Ct. 1081, 1088 (1992) (administrative exhaustion is not required where the agency has predetermined the issue).
13. Petitioner's subsequent detention on October 27, 2025, without a warrant of arrest, nor a bond hearing, is and remains unlawful.

WHEREFORE, Petitioner requests that this Honorable court grants this Petition for Habeas Corpus and order his release from the detention facility, or in the alternative order

the Immigration Court to conduct a bond hearing on this matter.

Respectfully submitted,

Leslie Cabrera

Leslie Cabrera, Esq.
Attorney for Respondent
Abogados W
4700 Millenia Blvd, Ste 500
Orlando, FL, 32839
Email:
leslie@abogadosw.com
Phone: (305) 507-7442

Date: February 6, 2026

TAB B

U.S. Department of Homeland Security

Order of Release on Recognizance

Name: YOSMAY ACOSTA GARCIA

File # _____
Date: _____
Even _____

You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions:

You must report for any hearing or interview as directed by the Department of Homeland Security or the Executive Office for Immigration Review.

You must surrender for removal from the United States if so ordered.

You must report in (writing) (person) to _____
(Name and Title of Case Officer)
at _____ on _____ at _____
(Location of DHS Office) (Day of each week or month) (Time)

If you are allowed to report in writing, the report must contain your name, alien registration number, current address, place of employment, and other pertinent information as required by the officer listed above.

You must not change your place of residence without first securing written permission from the immigration officer listed above.

You must not violate any local, State, or Federal laws or ordinances.

You must assist the Department of Homeland Security in obtaining any necessary travel documents.

Other: _____

See attached sheet containing other specified conditions (Continue on separate sheet if required)

NOTICE: Failure to comply with the conditions of this order may result in revocation of your release and your arrest and detention by the Department of Homeland Security.



COLIN K LANE
Date: 2022.04.07 14:16:59 -07:00
0770479724.CBP

(Signature of DHS Official)

COLIN LANE
ACTING/PATROL AGENT IN CHARGE

(Printed Name and Title of Official)

Alien's Acknowledgment of Conditions of Release on Recognizance

I hereby acknowledge that I have (read) (had interpreted and explained to me in the SPANISH language) and understand the conditions of my release as set forth in this order. I further understand that if I do not comply with these conditions, the Department of Homeland Security may revoke my release without further notice.

ALBERTO I. FLORES
ALBERTO I FLORES
Date: 2022.04.07 10:04:59 -07:00
0207682526.CBP
(Signature of Immigration Officer Serving Order)

(Signature of Alien)

04/07/2022
(Date)

Cancellation of Order

I hereby cancel this order of release because: The alien failed to comply with the conditions of release.

The alien was taken into custody for removal.

(Signature of Immigration Officer Canceling Order)

(Date)

TAB C

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [Redacted]

File No: [Redacted]

In the Matter of:

Event No: [Redacted]

YOSMAY ACOSTA GARCIA

Respondent:

[Redacted Address]

(Number, street, city, state and ZIP code)

(Area code and phone number)

- You are an arriving alien.
- You are an alien present in the United States who has not been admitted or paroled.
- You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of CUBA and a citizen of CUBA ;
3. You arrived in the United States at or near SAN LUIS, AZ , on or about April 4, 2022 ;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

- This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- Section 235(b)(1) order was vacated pursuant to: 8CFR 208.30 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

333 SOUTH MIAMI AVE, STE 700 Miami FL US 33130

(Complete Address of Immigration Court, including Room Number, if any)

on a date to be set at a time to be to show why you should not be removed from the United States based on the

(Date)

(Time)

charge(s) set forth above.

COLIN LANE

COLIN K LANE

Date: 2022.04.07 10:40:07-00
Acting/Patrol Agent in Charge
07/04/1972 CBP

(Signature and Title of Issuing Officer) (Sign in Ink)

Date: April 07, 2022

San Diego, California

(City and State)

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at <http://www.ice.gov/contact/ero>, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before:

(Signature of Respondent) (Sign in ink)

BORDER PATROL AGENT

Date: 04/07/2022

(Signature and Title of Immigration Officer) (Sign in ink)

Certificate of Service

This Notice To Appear was served on the respondent by me on April 07, 2022, in the following manner and in compliance with section 239(a)(1) of the Act.

- in person by certified mail, returned receipt # _____ requested by regular mail
- Attached is a credible fear worksheet.
- Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.



(Signature of Respondent if Personally Served) (Sign in ink)

ALBERTO I. FLORES, BORDER PATROL AGENT
Date: 2022-04-07 10:08:02 -07:00
0201682576 CHP

(Signature and Title of officer) (Sign in ink)