

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

GERBER GEOVANNI GARCIA HERNANDEZ

PETITIONER

VS.

CIVIL ACTION NO. 5:25-cv-00145-DCB-RPM

WARDEN RAFAEL VERGARA¹

RESPONDENT

RESPONSE IN OPPOSITION TO EMERGENCY MOTION TO EXPEDITE
CONSIDERATION AND RULING

Petitioner Gerber Geovanni Garcia Hernandez (“Hernandez” or “Petitioner”) is a 22-year-old native and citizen of Guatemala who claims to have entered the United States about five years ago without inspection. *See* Pet. (ECF No. 1) at ¶ 8, 15. On September 29, 2025, Hernandez was arrested by U.S. Immigration and Customs Enforcement (“ICE”) officers. *See* Exh. “E” to Pet. (ECF No. 1). Hernandez is being detained under 8 U.S.C. § 1225(b)(2), which mandates his detention during removal proceedings. He is currently in removal proceedings.

Hernandez filed his habeas petition on December 3, 2025 alleging he should be entitled to a bond hearing under 8 U.S.C. § 1226. Respondent timely responded. *See Response* (ECF No. 8). Petitioner then filed a *Reply* on January 2, 2026. *See* ECF No. 10.

Now, Hernandez seeks expedited consideration of his petition because he has an administrative hearing regarding his request not to be removed scheduled for January 28, 2026. *See Emergency Motion* (ECF No. 11) at ¶ 5. Hernandez’s attempts to prevent his removal through

¹ Per the Order (ECF No. 2) entered December 3, 2025, only Warden Rafael Vergara is the proper respondent to Petitioner’s petition for habeas corpus and all other named respondents were terminated.

the administrative process is not “good cause” to expedite consideration of the issues in his petition. On the contrary, the fact Hernandez’s administrative challenge is still pending is one reason his petition should be denied and dismissed. *See Response* (ECF No. 8) at pp. 6-7 (“failure to exhaust”).

As the Court is aware, there are approximately 50 petitions pending in this district from inadmissible aliens seeking the same or similar relief as Hernandez. All of these cases are assigned to the Honorable Senior District Judge David C. Bramlette for final disposition, with different Magistrate Judges assigned to the various cases. Hernandez has made no showing the upcoming merits hearing at the administrative level in his case should warrant an expedited ruling from Judge Bramlette out of the normal course of disposition of these habeas petitions seeking relief under the same or similar grounds. If that were the case, then the administrative docket of the immigration courts would control the schedule for the docket for the District Court.

Hundreds of such cases challenging detention under Section 1225 are being filed and litigated across courts around the country. Many of these courts applying the plain language of Section 1225 and/or examine exhaustion have found in favor of detention pending resolution of a petitioner’s administrative challenge to removal. *See, e.g., Cortez v. Lynch*, 2026 WL 82039 (S.D. Ohio Jan. 12, 2026); *Garibay-Robledo v. Noem*, 2026 WL 81679 (N.D. Tex. Jan. 9, 2026); *Singh v. Noem*, 2026 WL 74558 (E.D. Ky. Jan. 9, 2026); *Benitez v. Bradford*, 2026 WL 82235 (S.D. Tex. Jan. 8, 2026); *Cruz Rodriguez v. Olson*, 2026 WL 63613 (N.D. Ill. Jan. 8, 2026); *D.M.R.D. v. Andrews*, 2026 WL 61504 (E.D. Cal. Jan. 8, 2026); *Calderon Lopez v. Lyons*, 2026 WL 44683 (N.D. Tex. Jan. 7, 2026); *Naikpay v. Sukkar*, 2026 WL 44820 (M.D. Fla. Jan. 7, 2026); *Zuniga v. Lyons*, 2025 WL 3755126 (N.D. Tex. Dec. 29, 2025); *Rivera Hernandez v. Noem*, 2025 WL 3754434 (E.D. Tex. Dec. 19, 2025). *See also* cases cited in *Response* (ECF No. 8) at pp. 12-13.

One district court has noted that the Fifth Circuit Court of Appeals has at least five appeals that are pending before it that will likely address the statutory construction issues that are at stake in this petition and many others in this district: *Buenrostro-Mendez v Bondi*, 25-20496; *Covarrubias v Vergara*, 25-40701; *Kostak v Trump*, 25-30620; *Ventura Martinez v Trump*, 25-30621; and *Lopez-Santos v Noem*, 25-30656. See *Benitez v. Bradford*, 2026 WL 82235, at *2 (S.D. Texas Jan. 12, 2026) (“[U]ntil the Fifth Circuit gives a definitive interpretation, it is simply up to each district court judge to give the text his or her own best reading.”).

Hernandez has made no showing his petition should be elevated above others out of the normal course of the Court’s consideration. Furthermore, Hernandez’s request for emergency consideration would not affect his removability. If a final order of removal is entered, Hernandez will then be subject to mandatory detention under 8 U.S.C. § 1231.

Because Hernandez has not made a showing of good cause to expedite his petition ahead of the nearly 50 others, his request should be denied.

CONCLUSION

For the reasons explained above, Petitioner’s request for expedited consideration of his habeas petition should be denied.

Dated: January 26, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gregg Mayer, Assistant U.S. Attorney, hereby certify that, on this day, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which sent notice to all counsel of record.

January 26, 2026

GREGG MAYER
Assistant United States Attorney