

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

GASPAR GERNALDO RAMIREZ
RAFAEL,

Petitioner,

v.

Case No. 2:26-cv-17-KCD-NPM

A-No. 

WARDEN, SOUTH FLORIDA SOFT-
SIDED FACILITY SOUTH, et al. (all
official capacity),¹

Respondents.

Response to Petition for Writ of Habeas Corpus

Petitioner Gaspar Gernaldo Ramirez Rafael challenges his detention by U.S. Department of Homeland Security (“DHS”) and Immigration and Customs Enforcement (“ICE”), arguing he is entitled to a bond hearing under 8 U.S.C. § 1226. This is a standard § 1225 v. § 1226 case with detention at the border.

Ramirez Rafael was detained at the border after his illegal entry, so the Court should deny the Petition. *Duenas Garcia v. ICE*, No. 2:25-cv-1004-KCD-NPM, 2025

¹ The Warden is the only appropriate Respondent. 8 U.S.C. § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004); *Vandersnick v. Sec’y, Fla. Dep’t of Corr.*, No. 5:18-cv-603-SPC-PRL, 2021 WL 1020914, at *1 n.3 (M.D. Fla. Mar. 17, 2021). Any relief the Court awards should be fashioned to that within the power of the immediate custodian (i.e., the Warden) or ICE/DHS. See, e.g., *Mirando Bravo v. Noem*, No. 2:25-cv-1046-SPC-DNF, Doc. 8 at *3 (M.D. Fla. Dec. 5, 2025) (ordering ICE *either* to bring petitioner for a bond hearing or release by a specific date).

WL 3277163 (M.D. Fla. Nov. 25, 2025). That analysis is in Section A below.

Given his detention at the border, the issues related to a class action lawsuit in California are irrelevant because Ramirez Rafael isn't a member of that class. *Aranda Garcia v. Warden*, No. 2:25-cv-1053-KCD-DNF, 2025 WL 3537592, at *2 n.2 (M.D. Fla. Dec. 10, 2025). This is addressed in Section B.

Alternatively, while reserving all rights—including a right to appeal—the Federal Respondents submit this abbreviated brief in lieu of exhaustive, duplicative briefing on the § 1225(b)(2) v. § 1226 issue. This is an effort to preserve Respondents' arguments and conserve scarce judicial resources. Should the Court prefer a fulsome discussion or entertain reconsidering its rulings on § 1226, Respondents request leave to submit additional briefing. Otherwise, these standard preservation arguments are included below in Section C.

Background

Ramirez Rafael is a citizen and national of Guatemala who entered the United States without inspection, admission, or parole. (Ex. 1 at 2). He entered in February 2019 and was detained by U.S. Border Patrol ("USBP") at the border. (Ex. 1 at 2; Doc. 1 at 12).

Eventually, he was released on his own recognizance due to lack of bed space. (Ex. 1 at 7). ICE issued a Form I-862, Notice to Appear ("NTA") for unlawful presence (8 U.S.C. § 1182(a)(6)(A)). (Ex. 1 at 4). Eventually, removal proceedings were dismissed. (Ex. 2). Since Ramirez Rafael is still unlawfully present, ICE is in the

process of transferring him to Krome—where it will file another NTA on that basis to restart removal proceedings.

Ramirez Rafael is currently detained at “Alligator Alcatraz.”

Certified Habeas Return

ICE is detaining Ramirez Rafael under the mandatory detention provisions of 8 U.S.C. § 1225(b)(2). *See* 28 U.S.C. § 2243 (“The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.”). Ramirez Rafael bears the burden to prove his custody violates federal law. *Whitfield v. U.S. Sec’y of State*, 853 F. App’x 327, 329 (11th Cir. 2021).

Discussion

A. Detention at Border

As stated, Ramirez Rafael was first detained at the border when he illegally entered the United States. Given his detention at or near the border upon entry, § 1225(b)(2) applies to Ramirez Rafael. The Court consistently explains this reasoning. *Alfonso Parra v. DHS*, No. 2:25-cv-1116-KCD-DNF, 2026 WL 21243, at *2 (M.D. Fla. Jan. 5, 2026); *Aranda Garcia*, 2025 WL 3537592, at *1; *Duenas Garcia*, 2025 WL 3277163, at *2; *Pirto v. Warden*, No. 2:25-cv-966-KCD-DNF, Doc. 13 (M.D. Fla. Nov. 13, 2025). Likewise, the Court should deny the Petition.

B. Class Action Component

Ramirez Rafael argues he is entitled to relief based on developments in a class action lawsuit. *Maldonado Bautista v. Noem*, No. 5:25-cv-1873-SSS-BFM, 2025 WL

3678485 (C.D. Cal. Dec. 18, 2025); *Maldonado Bautista v. Noem*, No. 5:25-cv-1873-SSS-BFM, 2025 WL 3713982 (C.D. Cal. Dec. 18, 2025). He is mistaken. Simply put, he isn't a member of the class definition.

Maldonado Bautista defined the certified class as follows:

Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) *were not or will not be apprehended upon arrival*; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

2025 WL 3288403, at *9 (emphasis added). Ramirez Rafael is not a member of the *Maldonado Bautista* class. He entered the United States without inspection. He was, however, possibly subject to detention under § 1225(b)(1) (i.e., expedited removal) at the time DHS made its initial custody determination. But regardless of that, Ramirez Rafael was undisputedly “apprehended upon arrival.” So by its own terms, the *Maldonado Bautista* class definition does not extend to Ramirez Rafael. *Aranda Garcia*, 2025 WL 3537592, at *2 n.2.

In short, Ramirez Rafael concedes he was apprehended at the border upon arrival. So he is not a class member. *Aranda Garcia*, 2025 WL 3537592, at *2 n.2.

C. Standard § 1225 v. § 1226 Argument

Alternatively, *In re Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), the Board of Immigration Appeals (“BIA”) examined the plain language of § 1225, the Immigration and Nationality Act’s (“INA”) statutory scheme, Supreme Court and

BIA precedent, the legislative history of the INA and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and ICE's prior practices. After doing so, the BIA held that "under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), immigration judges lack authority to hear bond requests or to grant bond to aliens, like the respondent, who are present in the United States without admission." 29 I&N Dec. at 225. This Court should rule the same.

Respondents acknowledge that questions of law in this case substantially overlap with *Hernandez Lopez v. Hardin*, No. 2:25-cv-830-KCD-NPM, 2025 WL 3022245 (M.D. Fla. Oct. 29, 2025). It should be noted, however, many courts recently ruled in Respondents favor on this issue. *Manzo Valencia v. Chestnut*, No. 1:25-cv-01550 WBS JDP, 2025 WL 3205133, at *1-4 (E.D. Cal. Nov. 17, 2025).² As the battle of the string cites builds, there is clearly a countrywide district split on applying § 1225 or § 1226 in these instances. And at least five circuits—including the Eleventh—have

² See also *Suarez v. Noem*, No. 1:25-cv-00202-JMD, 2025 WL 3312168, at *2-3 (E.D. Mo. Nov. 28, 2025); *Cortes Alonzo v. Noem*, No. 1:25-cv-01519 WBS SCR, 2025 WL 3208284, at *1-5 (E.D. Cal. Nov. 17, 2025); *Altamirano Ramos v. Lyons*, No. 2:25-cv-09785-SVW-AJR, 2025 WL 3199872, at *4-9 (C.D. Cal. Nov. 12, 2025); *Montoya Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331, at *3-7 (S.D. Tex. Nov. 13, 2025); *Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942, at *2-5 (E.D. Mo. Nov. 10, 2025); *Oliveira v. Patterson*, No. 6:25-cv-01463-DCJ-DJA, 2025 WL 3095972, at *2-6 (W.D. La. Nov. 4, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926, *2-6 (W.D. La. Oct. 31, 2025); *Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967, at *2-10 (E.D. Wis. Oct. 30, 2025); *Garibay-Robledo v. Noem*, No. 1:25-cv-00177-H (Doc. 9) (N.D. Tex. Oct. 24, 2025); *Kum v. Ross*, No. 6:25-cv-00451-DCJ-CBW, 2025 WL 3113646, at *1-2 (W.D. La. Oct. 22, 2025); *Vargas v. Lopez*, No. 25-CV-526, 2025 WL 2780351, at *4-9 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-23250CAB-SBC, 2025 WL 2730228 at *4-5 (S.D. Cal. Sept. 24, 2025).

active appeals on the matter. *Martinez v. Hyde*, No. 25-1902 (1st Cir.); *Buenrostro-Mendez v. Bondi*, No. 25-20496 (5th Cir.); *Pizzaro Reyes v. ERO*, No. 25-1982 (6th Cir.); *Cortes Alonzo v. Noem*, No. 25-7348 (9th Cir.); *Hernandez Alvarez v. Warden*, No. 25-14065 (11th Cir.).³

Respondents respectfully disagree with the Court's decision in *Hernandez Lopez* and believe appeals on this legal question will be in their favor. That said, in the interest of judicial economy and to expedite the Court's consideration of this matter, Respondents make the following arguments for preservation purposes:

1. 8 U.S.C. § 1252(g) bars review of the Ramirez Rafael's claims. *Hernandez Lopez*, No. 2:25-cv-830-KCD-NPM (Doc. 5 at 5-6) (M.D. Fla.).⁴
2. 8 U.S.C. § 1252(b)(9) bars review of these claims. *Id.* at 7-8.
3. Ramirez Rafael failed to exhaust administrative remedies. *Id.* at 8.
4. Ramirez Rafael is properly detained under 8 U.S.C. § 1225. *Id.* at 8-14.

Should the Court determine Ramirez Rafael's detention is subject to § 1226, the only appropriate remedy is to begin the process for a bond hearing—not outright release—during which an IJ can determine whether Ramirez Rafael is a flight risk or

³ *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Martinez v. Hyde*, 792 F. Supp. 3d 211 (D. Mass. 2025); *Cortes Alonzo*, 2025 WL 3208284; *Pizzaro Reyes v. ERO*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) *Alvarez v. Morris*, No. 0:25-cv-24806, Doc. 6 (S.D. Fla. Oct. 27, 2024).

⁴ Respondents acknowledge Local Rule 3.01(h) prohibits incorporation by reference of any other motion, legal memorandum, or brief. To achieve the purpose of efficiency, Respondents respectfully request the Court to suspend application of the rule in this instance. See M.D. Fla. Local R. 1.01(a)-(b); Fed. R. Civ. P. 1.

danger to the community. *See, e.g., Vasquez Carcamo*, 2025 WL 3119263, at *5-6. Again, only EOIR can provide a bond hearing. That said, if ordered, ICE would do what is in its power to facilitate a hearing. *See Mirando Bravo*, No. 2:25-cv-1046, Doc. 8 at *3.

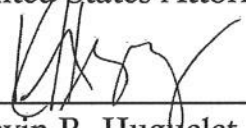
Conclusion

Ramirez Rafael's Petition for Writ of Habeas Corpus should be denied. Even if the Court grants relief under § 1226, the only appropriate relief would be a bond determination by ICE and submission to an actual IJ bond hearing as set by EOIR.

Date: January 26, 2026

Respectfully submitted,

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