

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),

Respondents.

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Supplement to Response to Petition for Writ of Habeas Corpus

Respondents supplement their Response (Doc. 10) to Petitioner's Habeas Petition (Doc. 1). (Doc. 12). Specifically, Respondents provide the Court with the Form I-862, Notice to Appear ("NTA"), and Form I-200, Warrant of Arrest ("WA"). (Exs. 1-2). As Respondents argued, they continue to detain Petitioner under 8 U.S.C. § 1225(b)(2).¹ (Doc. 10 at 3).

Petitioner alleges that he has been in ICE detention since December 29. (Doc. 1 at 12). ICE's records, however, indicate Petitioner was transferred to ICE custody on December 30. (Doc. 10-1 at 6). Buttressing ICE's records, the NTA and WA are dated December 30 too. (Exs. 1-2). The NTA is stamped as uploaded with the

¹ Respondents must note that the Fifth Circuit recently ruled in their favor on the §§ 1225 v. 1226 issue. *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026).

immigration court on January 25. (Ex. 1 at 1). And EOIR's portal shows removal proceedings as docketed on January 26. EOIR, available at <https://acis.eoir.justice.gov/en/caseInformation> (last visited Feb. 8, 2026).

Respondents filed their Response on January 26. (Doc. 10). At that time, the US Attorney's Office did not have copies of the WA or NTA. Nor was it aware that removal proceedings had just been filed.

True, ICE did not file the NTA with the immigration court at Krome until Petitioner was transferred there. But the document was in existence well before then—apparently created the same day Petitioner was transferred to ICE's custody. In fact, the NTA bears a notation of personal service on Petitioner with his signature. (Ex. 1 at 2). The WA was dated the same day. These facts distinguish *Gonzalez Ochoa v. McCleary*, No. 3:25-CV-00139-SHL-WPK, 2026 WL 235589 (S.D. Iowa Jan. 2, 2026).

Apart from the different facts, *Gonzalez Ochoa* is based on an incorrect assumption about basic immigration law. Specifically—without citing a single legal authority—it concludes that an NTA must be filed with the immigration court for a WA to issue or there to be a lawful basis to detain an illegal alien. *Id.* at *5. That isn't the law. Nor does anything *Gonzalez Ochoa* cites support that conclusion.

The “lawful authority” to detain that *Gonzalez Ochoa* thought missing is in the statutes it skipped past. *Id.* Section 1225(b)(2) allows detention without a WA (or NTA). Section 1226 allows detention “[o]n a warrant”—not an NTA. 8 U.S.C. § 1226(a). Even if the Court applied § 1226(a), there still was a WA. For the initial

detention, the NTA was irrelevant.

An NTA starts removal proceedings. 8 U.S.C. § 1229a(a)(1); *Niz-Chavez v. Garland*, 593 U.S. 155, 163-64 (2021); 8 C.F.R. § 1239.1(a). At that point, the immigration court gets jurisdiction over removal proceedings. 8 C.F.R. § 1003.14(a). Custody redeterminations (i.e., immigration bond hearings) are separate from removal proceedings. *E.g.*, 8 C.F.R. § 1003.19(d); *Matter of Guerra*, 24 I&N Dec. 37, 40 n.2 (BIA 2005) (“Bond proceedings are separate and apart from the removal hearing.”). Confirming that the two need not coexist at the same time, regulations specify that “no charging document [(i.e., NTA)] is required to be filed with the Immigration Court to commence bond proceedings.” 8 C.F.R. § 1003.14(a).

In sum, an NTA need not be filed with the immigration court to detain.

Confusingly, the regulation on which *Gonzalez Ochoa* relies specifies a WA to detain may issue in conjunction with or after “issuance” of an NTA. 8 C.F.R. § 236.1(b)(1). It goes without saying, there is a difference between ICE *issuing and serving* an NTA—which are statutory requirements—then *filing* it with EOIR to start removal proceedings. In fact, there’s a whole separate reg about issuing and serving an NTA. *Id.* § 239.1(a)-(b). It clarifies that issuance of the NTA is something a DHS official does to create the document before serving it on the alien. *Id.* So the regulation about “issuance” of an NTA does not suggest removal proceedings must be open and ongoing. *Id.* § 236.1(b)(1).

Further betraying its misunderstanding of removal proceedings, *Gonzalez Ochoa*

refers to WAs as “[w]arrants in removal proceedings.” 2026 WL 235589, at *5. But WAs are not akin to a subpoena that issue pursuant to the authority of an active case in litigation. Again, they are an administrative determination for detention by someone with delegated authority. But unlike a criminal warrant where a judge finds probable cause for arrest to confer detention authority, the authority to detain under a WA comes from Congress.

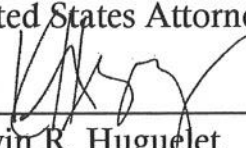
In short, on the law, *Gonzalez Ochoa* is wrong. If detention is under § 1225(b)(2)—as Respondents contend—then no WA or NTA were needed to detain. If detention is under § 1226(a), then only a WA was required. As the WA and NTA issued the day of Petitioner’s detention, there is no issue regarding the lawfulness of detention on those grounds.

Regardless, as *Gonzalez Ochoa* held in the end, any delay in a WA, NTA, or filing the NTA with the immigration court, the ultimate relief would be a bond hearing. 2026 WL 235589, at *7-8.

Date: February 8, 2026

Respectfully submitted,

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