

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MANUEL DE JESUS LOPEZ
AREVALO,

Petitioner,

v.

Case No. 2:26-cv-18-SPC-DNF


(El Salvador)

WARDEN, GLADES COUNTY
DETENTION CENTER, et al. (all
official capacity),¹

Respondents.

_____ /

Response to Petition for Writ of Habeas Corpus

Petitioner Manuel de Jesus Lopez Arevalo 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 upon entry.

The parties agree Lopez Arevalo was first detained at the border. If the Court concludes this fact relevant, it should deny the Petition. *Duenas Garcia v. ICE*, No.

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).

2:25-cv-1004-KCD-NPM, 2025 WL 3277163 (M.D. Fla. Nov. 25, 2025). That analysis is in Section A below.

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 B.

Background

Lopez Arevalo is a 31-year-old citizen and national of El Salvador who unlawfully entered the United States without inspection, admission, or parole in January 2016. (Doc. 1 at 1). Lopez Arevalo was detained at the Texas border by US Customs and Border Protection (“CBP”). (Ex. 1 at 2).

Initially, Lopez Arevalo stated he did not fear persecution or torture, so CBP processed him for expedited removal. (Ex. 1 at 2-3). About a week later, Lopez Arevalo expressed fear of returning to his home country and was referred for a credible fear interview. ICE placed him in removal proceedings and eventually released on bond. (Doc. 1-2 at 3-4).

In December 2016, Lopez Arevalo filed a petition for asylum and withholding to El Salvador. (Doc. 1-2 at 6-20). In November 2023, he sought ICE’s exercise of

prosecutorial discretion to dismiss removal proceedings without prejudice, which it did. (Doc. 1-2 at 22-28). In January 2025, Lopez Arevalo filed a Form I-589, Application for Asylum and Withholding of Removal with US Citizenship and Immigration Services (“USCIS”). (Ex. 2 at 2).

In August 2025, ICE encountered Lopez Arevalo while targeting a different person. (Ex. 2 at 2). ICE detained him and issued a Form I-862, Notice to Appear (“NTA”). (Ex. 3). The NTA charged unlawful presence (8 U.S.C. § 1182(a)(6)(A)) and lack of valid documentation (8 U.S.C. § 1182(a)(7)(A)(i)). (Ex. 3).

Lopez Arevalo is currently detained at Glades County Detention Center. He has a hearing set for his current asylum petition on February 10.

Certified Habeas Return

ICE is detaining Lopez Arevalo 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.”). Lopez Arevalo 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, Lopez Arevalo 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 Lopez Arevalo. Judge Dudek consistently explains this

reasoning. *Naikpay v. Warden*, No. 2:25-cv-1167-KCD-DNF, 2026 WL 44820, at *1-2 (M.D. Fla. Jan. 7, 2026); *Alfonso Parra v. DHS*, No. 2:25-cv-1116-KCD-DNF, 2026 WL 21243, at *2 (M.D. Fla. Jan. 5, 2026); *Aranda Garcia v. Warden*, No. 2:25-cv-1053-KCD-DNF, 2025 WL 3537592, at *1 (M.D. Fla. Dec. 10, 2025); *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. 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 *Vasquez Carcamo v. Noem*, No. 2:25-cv-922-SPC-NPM, 2025 WL 3119263 (M.D. Fla. Nov. 7, 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 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 *Vasquez Carcamo* 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:

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).

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).

1. 8 U.S.C. § 1252(g) bars review of the Lopez Arevalo's claims. *Vasquez Carcamo*, No. 2:25-cv-922-SPC-NPM (Doc. 5 at 2-6) (M.D. Fla.).⁴
2. 8 U.S.C. § 1252(b)(9) bars review of Lopez Arevalo's claims. *Id.* at 6-7.
3. Lopez Arevalo failed to exhaust his administrative remedies. *Id.* at 7-8.
4. Lopez Arevalo is properly detained under 8 U.S.C. § 1225. *Id.* at 8-13.

Should the Court determine Lopez Arevalo'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 Lopez Arevalo is a flight risk or 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-SPC-DNF, Doc. 8 at *3.

Conclusion

Lopez Arevalo'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.


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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.

Date: January 12, 2026

Respectfully submitted,

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