UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

EMERSON RAMIREZ PEREZ,

Petitioner,

v.

WARDEN, FLORIDA SOFT SIDE SOUTH DETENTION CENTER, et al. (all official capacity),[1]

Respondents.
_____/

Case No. 2:26-cv-108-SPC-DNF
A No. [redacted]
Guatemala

Response to Petition for Writ of Habeas Corpus

Petitioner Emerson Ramirez Perez 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 Perez was detained at or near 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 WL 3277163 (M.D. Fla. Nov. 25, 2025). That analysis is in Section A below.

[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).

Given his detention near the border, the issues related to a class action lawsuit in California are irrelevant because Ramirez Perez 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 Perez is a citizen and national of Guatemala who entered the United States without inspection, admission, or parole. (Ex. 1 at 2). He entered this country in February 2024—when he was encountered by Border Patrol. (Doc. 1 at 6).

Ramirez Perez was paroled into the United States as an unaccompanied minor. (Doc. 1 at 6). Ramirez Perez is currently detained at Alligator Alcatraz.

Certified Habeas Return

ICE is detaining Ramirez Perez 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."). Escalante

Perez 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 Perez was first detained at or near 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 Perez. Judge Dudek 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 Perez 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 WL3678485 (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 Perez 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 Perez was undisputedly "apprehended upon arrival." So by its own terms, the *Maldonado Bautista* class definition does not extend to Ramirez Perez. *Aranda Garcia*, 2025 WL 3537592, at *2 n.2.

In short, Ramirez Perez 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

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). Courts have struggled with the interpretive question of applying § 1225(b)(2) or § 1226(a) in these instances. Even courts disagreeing with Respondents note this "statutory-interpretation issue is difficult and close." *Ahmed v. Bondi*, No. 25-cv-4711 (ECT/SGE), 2026 WL 25627, at *1 (D. Minn. Jan. 5, 2026).

It should be noted, however, growing numbers of courts recently ruled in Respondents' favor on this issue. *Iraheta Morales v. Noem*, No. 25-62598-CIV-SINGHAL, 2026 WL 236307, at *3-9 (S.D. Fla. Jan. 29, 2029); *Diaz Lopez v. ICE*, No. 3:25-cv-1313-JEP-SJH (M.D. Fla. Jan. 26, 2026).[2] Some decisions have even

[2] *E.g.*, ***Perez Ramirez v. Holt***, No. 2:25-cv-00156-SCM, 2026 WL 226964, at *2-7 (E.D. Ky. Jan. 28, 2026); ***Vidal Alvacora v. Olson***, No. 0:26-cv-00675-DMT-SGE, 2026 WL 220417, at *1-3 (D. Minn. Jan. 28, 2026); ***Qiwei Weng v. Genalo***, No. 25 Civ. 09595 (JHR), 2026 WL 194248, at *3-6 (S.D.N.Y. Jan. 25, 2026); ***Hernandez v. Olson***, No. 25-cv-1670-bhl, 2026 WL 161509, at *3-7 (E.D. Wis. Jan. 21, 2026); ***Singh v. Albarran***, No. 1:26-cv-00244-WBS-CSK, 2026 WL 124881, at *1-2 (E.D. Cal. Jan. 16, 2026); ***J.E.P.M. v. Wofford***, No. 1:26-cv-00316-WBS-CKD, 2026 WL 125270, at *1 (E.D. Cal. Jan. 16, 2026); ***Martinez v. Villegas***, No. 1:25-CV-256-H, 2026 WL 114418, at *3-8 (N.D. Tex. Jan. 15, 2026); ***Sargsyan v. Bondi***, No. 1:26-cv-00259-WBS-CKD, 2026 WL 114665, at *1-2 (E.D. Cal. Jan. 15, 2026); ***Cutiopala v. Noem***, No. 1:25-cv-00211-MAL, 2026 WL 113567, at *2-5 (E.D. Mo. Jan. 15, 2026); ***Chen v. Almodovar***, No. 25 Civ. 9670 (JPC), 2026 WL 100761, at *7-14 (S.D.N.Y. Jan. 14, 2026); ***Choudhary v. Albarran***, No. 1:26-cv-00119-WBS-CKD, 2026 WL 102708, at *2 (E.D. Cal. Jan. 14, 2026); ***Singh v. Noem***, No. 1:26-cv-00224 WBS CSK, 2026 WL 91787, at *2 (E.D. Cal. Jan. 13, 2026); ***Singh v. Noem***, No. 2:25-cv-00157-SCM, 2026 WL 74558, at *3-7 (E.D. Ky. Jan. 9, 2026); ***Garibay-Robledo v. Noem***, No. 1:25-cv-00177-H, 2026 WL 81679, at *3-9 (N.D. Tex. Jan. 9, 2026); ***Rodriguez v. Olson***, No. 1:25-cv-12961, 2026 WL 63613, at *5-8 (N.D. Ill. Jan. 8, 2026); ***Gutierrez Sosa v. Holt***, No. CIV-25-1257-PRW, 2026 WL 36344, at *3-5 (W.D. Okla. Jan. 6, 2026); ***Gomez Hernandez v. Lyons***, No. 1:25-CV-216-H, 2026 WL 31775, at *2-8 (N.D. Tex. Jan. 6, 2026); ***Ugarte-Arenas v. Olson***, No. 25-C-1721, 2025 WL 3514451, at *1-4 (E.D. Wis. Dec. 8, 2025); ***Suarez v. Noem***, No. 1:25-cv-00202-JMD, 2025 WL 3312168, at *2-3 (E.D. Mo. Nov. 28, 2025); ***Manzo Valencia v. Chestnut***, No. 1:25-cv-01550 WBS JDP, 2025 WL 3205133, at *1-4 (E.D. Cal. Nov. 17, 2025); ***Cortes Alonzo v.***

started recognizing that there is no jurisdiction over this question to begin with:

> For this reason, the Court finds that Congress has not conferred jurisdiction on federal district courts to interpret or apply Section 1225 or Section 1226 of the INA. Divesting federal district courts of jurisdiction over such determinations makes sense. After all, Congress created an administrative process intended to act quickly (though in practice its actions have been anything but) in a field requiring specialized knowledge generally outside the experience of the inferior federal courts.

Munoz Nataren v. Raycraft, No. 4:26-cv-212, 2026 WL 214368, at *2 (N.D. Ohio Jan. 28, 2026); *Amaya-Velis v. Raycraft*, No. 4:26-cv-73, 2026 WL 100596, at *2-3 (N.D. Ohio Jan. 14, 2026).

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*

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); ***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); ***Pipa-Aquise v. Bondi***, No. 1:25-cv-01094-MSN-WBP, 2025 WL 2490657, at *1-2 (E.D. Va. Aug. 5, 2025).

Alvarez v. Warden, No. 25-14065 (11th Cir.).[3] Soon, there will be appellate clarity one way or the other on this question. Until that time, courts nationwide will continue struggling with this interpretive issue.

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:

1. 8 U.S.C. § 1252(g) bars review of the Ramirez Perez'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 these claims. *Id.* at 6-7.

3. Ramirez Perez failed to exhaust administrative remedies. *Id.* at 7-8.

4. Ramirez Perez is properly detained under 8 U.S.C. § 1225. *Id.* at 8-13.

Should the Court determine Ramirez Perez'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 Perez is a flight risk or danger to the community. *See, e.g., Vasquez Carcamo*, 2025 WL 3119263, at *5-6.

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[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.

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 Perez'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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Respectfully submitted,

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