

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CLEMENTE MATOS ROJAS,
et al.,

Petitioner,

vs.

Case no. 2:26-cv-150-JES-DNF

DEPT. OF HOMELAND SECURITY,
et al.,

Defendants.

**RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF
HABEAS CORPUS UNDER 28 U.S.C. § 2241**

Maribel Hernandez Llanes purports to bring a petition for writ of habeas corpus as a next friend on behalf of her husband Clemente Matos Rojas. Dkt. 1 at 10. In a petition initially filed in the Southern District of Florida and transferred to this Court, Ms. Llanes challenges Rojas's detention under the Fifth Amendment of the U.S. Constitution. The petition should be denied for several reasons. First, Ms. Llanes cannot bring this case as a next friend to her husband. Second, Ms. Llanes is unrepresented and cannot bring a pro se action on behalf of a third party. Finally, Mr. Rojas's detention is lawful.

FACTS¹

Clemente Matos Rojas is a 62- year-old male who is a national and citizen of Cuba. On April 25, 2022, the Petitioner unlawfully entered the U.S. from Mexico and was encountered by Customs and Border Protection near Calexico, CA. That same day, he was placed on removal proceedings with the issuance of an NTA alleging a single charge in violation of INA 212(a)(6)(A)(i). On January 6, 2026, at a Master Calendar Hearing, DHS made the operational decision to transfer the Petitioner from INA 236 proceedings to expedited removal proceedings under INA 235. The Petitioner was detained following the dismissal of the 236 proceedings and remains in custody at the Florida Soft-Sided Facility South. He's been detained for 28 days.

ARGUMENT

I. Ms. Llanes cannot bring a case as next friend.

Federal Rule of Civil Procedure 17(c)(2) provides that “[a] minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem.” Here, Ms. Llanes does not meet the requirements of Rule 17(c)(2), as Mr. Rojas is not a minor nor is it alleged that he is incompetent. Because the Federal Rules of Civil Procedure do not authorize Ms. Llanes to bring this case on behalf of her spouse, her petition must be dismissed.

¹ The factual documents necessary to establish the factual predicate were not accessible at the time of the filing of this response. We will separately file them on Monday, February 9, 2026. We regret this technical issue and the need for an additional filing.

Even if the procedural rules permit Ms. Llanes to file a petition on behalf of Rojas as a next friend, she cannot do so pro se. *See Marcia Turner v. Neptune Towing & Recovery, Inc.*, No. 8:09-CV-I071-T-27AEP, 2011 WL 2981786, at *2 (M.D. Fla. July 22, 2011) (“Under Rule 17(c), a representative does not have the right to appear on behalf of a minor or an incompetent person unless that representative is represented by counsel.”).

II. Rojas’s detention is lawful.

The lawfulness of the detention of the Petitioner asks the Court to discern whether ICE’s detention of Petitioner properly exists under 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a), whether Petitioner is entitled to a bond hearing, and if so, whether Petitioner must first exhaust his administrative remedies. While reserving all rights, including the right to appeal, the government respectfully submits this abbreviated memorandum of law to preserve the legal issues, conserve judicial and party resources, and to expedite the Court’s consideration of this matter. If the Court prefers to receive a further briefing on any issue, the government will be happy to submit whatever is needed upon request.

It is the government’s position that Petitioner is subject to mandatory detention under § 1225(b), because he was present in the United States without being admitted or paroled. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 228 (BIA 2025); *see also 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 However, the government acknowledges that this Court has reached the opposite conclusion in *Patel v. Hardin*, No. 2:25-CV-870-JES-NPM, 2025 WL 3442706, at *1 (M.D. Fla. Dec. 1, 2025).³ In that case, the petitioner

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. 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).

³ 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),

entered the United States without admission or parole and was placed into removal proceedings. *Id.* at *1. He was ordered removed *in absentia* and years later detained by ICE. Following his detention, however, the petitioner successfully reopened removal proceedings, vacating his prior order of removal. *Id.* In a decision issued on December 1, 2025, this Court, following the rationale of other courts that have addressed the issue, concluded that the petitioner's detention was governed by 8 U.S.C. § 1226, rendering him eligible for bond. *Id.* at *5.

Specifically, the *Patel* Court stated that “courts in this District and around the country have rejected [ICE’s] new interpretation of the INA.” *Id.* at *4. The Court reasoned that the statutory text of Section 1225 reflects its applicability to incoming noncitizens rather than those already present in the United States and that reading the statute consistent with the government’s position would render Section 1226 superfluous. *Id.* at *5. Moreover, because the petitioner had not received a bond hearing, the Court ordered that petitioner provided with the statutory process allowed under Section 1226, to include a bond hearing. *Id.* at *6.

On the legal issue of which statute governs Petitioner’s detention here—8 U.S.C. § 1226(a) or 8 U.S.C. § 1225(b)—the government acknowledges that this Court’s decision in *Patel* would control the result here if the Court adheres to that decision, as the facts are not materially distinguishable for purposes of the Court’s decision concerning which statutory provision authorizes Petitioner’s detention.

2026 WL 25627, at *1 (D. Minn. Jan. 5, 2026).

Thus, while the government does not consent to issuance of the writ and reserves all rights, including the right to appeal, it desires to conserve judicial and party resources while expediting the Court's consideration of this case. The government hereby relies upon, and incorporates by reference, the legal arguments it presented in *Patel v. Parra*,⁴ and invites the Court to decide this issue without further briefing.⁵

III. Release from custody is not available in an action alleging unconstitutional conditions of confinement.

Grounds Three and Four of the Petition raise health concerns and conditions of confinement claims as a basis for requesting release. However, "release from imprisonment is not an available remedy for a conditions-of-confinement claim." *Vaz v. Skinner*, 634 F. App'x 778, 781 (11th Cir. 2015 (per curiam)). Indeed, in *Gomez v. United States*, the Eleventh Circuit stated that if conditions of confinement violate a prisoner's constitutional rights, "[t]he appropriate Eleventh Circuit relief . . . is to require the discontinuance of any improper practices, or to require correction of any condition causing cruel and unusual punishment." *Gomez v. United States*, 899 F.2d 1124, 1126-27 (11th Cir. 1990).

⁴ Specifically, the government incorporates by reference all arguments raised in its opposition brief in *Patel v. Parra*. See *Patel v. Parra*, No. 25-CV-870-JES-NPM, Dkt. No. 15 (M.D. Fla. filed Oct. 22, 2025). 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.

⁵ Should the Court grant the petition, it should decline to address claims beyond the proper statutory authority for detention. *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

The Eleventh Circuit has further indicated that its holding from *Gomez* applies to civil detainees in ICE custody. *See Vaz*, 634 F. App'x at 781-82 (noting that a detained alien could not obtain release based on his conditions of confinement claim). This Court has further refused to permit any exception for civil detainees in ICE custody. “[R]elease under § 2241 unavailing when the alleged constitutional violation is predicated upon the conditions of a petitioner’s confinement.” *St. Louis v. Martin*, No. 220CV349FTM60NPM, 2020 WL 3490179, at *7 (M.D. Fla. June 26, 2020). Because Eleventh Circuit precedent precludes the Court from ordering release from custody, the petition should be denied.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Habeas Corpus should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 6, 2026, I electronically filed the foregoing with the Clerk of Court using the CM/ECF electronic filing system and mailed the foregoing to the below-listed addresses:

Maribel Hernandez Llanes



Clemente Matos Rojas

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Ochopee, FL 34141

Dated: February 6, 2026

Signed:

/s/ Lacy R. Harwell, Jr.

Lacy R. Harwell, Jr.

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