

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

BERNARDO FRANCO FERRO,

Petitioner,

v.

SECRETARY, UNITED STATES
DEPARTMENT OF HOMELAND
SECURITY, et al. (all official capacity),

Respondents.

Case No. 2:26-cv-694-SPC-DNF
A [REDACTED]
Colombia

Response to Petition for Writ of Habeas Corpus

Petitioner Bernardo Franco Ferro challenges his detention by U.S. Department of Homeland Security (“DHS”) and Immigration and Customs Enforcement (“ICE”), arguing he cannot be detained under 8 U.S.C. § 1226. The Court should deny habeas.

Among the current immigration onslaught in Fort Myers, this is a different case. The parties agree Franco Ferro was previously admitted and would be subject to § 1226. They disagree whether his removal proceedings are open. Because the removal proceedings are ongoing, ICE can detain under § 1226. Crucially, ICE agrees that Franco Ferro is entitled to a bond hearing. He simply hasn’t requested one.

Background

Franco Ferro is a citizen and national of Colombia who was admitted into the

United States on a visa in 2018. (Ex. 1 at 1-3). After overstaying his visa admission, DHS encountered him in January 2026. (Ex. 1 at 2). ICE issued Franco Ferro a Form I-862, Notice to Appear (“NTA”). (Ex. 2 at 1).

It appears that ICE filed the NTA with the immigration court (“EOIR”) on March 10. (Ex. 2 at 1). Those removal proceedings are ongoing with Franco Ferro’s next hearing set for April 23. (Ex. 2 at 1). To ICE’s knowledge, he has not yet requested a bond hearing with EOIR.

Shortly before he filed this case, Franco Ferro was transferred from Alligator Alcatraz to Krome. (Ex. 4 at 1).¹

Certified Habeas Return

ICE is detaining Franco Ferro under the discretionary detention provisions of 8 U.S.C. § 1226(a). *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.”). Franco Ferro 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

ICE filed Franco Ferro’s NTA and removal proceedings are underway. So ICE has discretion to detain under § 1226(a). On its custody determination, ICE exercised that discretion and detained. Now, Franco Ferro can request a custody

¹ Having already sought to transfer this case to the Middle District and given the pro se or next of friend status of this case, ICE waived any argument to transfer to back to the Southern District (i.e., the appropriate forum). *See* (Docs. 5; 6).

redetermination (i.e., bond hearing).

To be sure, Franco Ferro is entitled to a bond hearing. But he must request one. Franco Ferro failed to do that. So he failed to exhaust available remedies that ICE agrees are available before the IJ.

DHS makes initial decisions about custody and bond—which an IJ may review. 8 C.F.R. § 1003.19(a). But to get a bond hearing, the alien (or his lawyer) must make an application to the IJ for bond redetermination. *Id.* § 1003.19(b)-(c). The IJ's bond redetermination is “separate and apart from” the removal proceedings. *Id.* § 1003.19(d). If the alien disagrees with the IJ's decision, he may appeal to the Board of Immigration Appeals (“BIA”). *Id.* § 1003.1(b)(7).

To the extent that Franco Ferro implies futility in requesting bond, he is mistaken. *See McGee v. Warden, FDC Miami*, 487 F. App'x 516, 518 (11th Cir. 2012) (finding no jurisdiction on habeas petition where petitioner failed to exhaust remedies despite argument doing so would be futile). Futility is not a blank check to relieve petitioner's duty to exhaust his remedies. Under exceptional circumstances, courts may excuse an exhaustion requirement. *See Sanchez v. Warden, FCC Coleman-Low*, No. 5:23-CV-79-WFJ-PRL, 2023 WL 4489472, at *2 (M.D. Fla. July 12, 2023); *Faison v. Warden, FCC Coleman*, No. 5:23-CV-67-WFJ-PRL, 2023 WL 4489471 (M.D. Fla. July 12, 2023); *Vasquez v. Warden, FCC Coleman Low*, No. 5:22-CV-517-WFJ-PRL, 2023 WL 4157364, at *2 (M.D. Fla. June 23, 2023). Yet there are no facts alleged to support that relief in this case.

Recently, Judge Steele had a similar case. *Bazoalto Suarez v. ICE*, No. 2:26-cv-186-JES-NPM, Doc. 11 (M.D. Fla.). Given the agreement and availability of an administrative remedy, Judge Steele dismissed without prejudice. *Id.* The answer is the same here.

The parties agree that Franco Ferro is detained under § 1226(a). That entitles him to a bond hearing to challenge his current detention if he requests one. The Court need not grant habeas when the relief Franco Ferro seeks is available through a bond hearing (provided he presents no danger to the community or risk of flight).

Conclusion

Franco Ferro's Petition for Writ of Habeas Corpus should be denied. Even if the Court grants relief under § 1226, the only appropriate relief would be submission to an actual IJ bond hearing as set by EOIR—which ICE concedes is available.

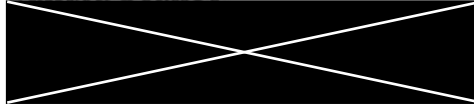
Certificate of Service

I certify that a copy of this Response and Exhibits were sent by regular U.S.

Mail to the following:

Bernardo Franco Ferro
A# [REDACTED]
Krome North SPC
18201 SW 12th Street
Miami, FL 33194

Sandra Franco²

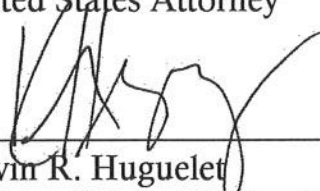


² Unless instructed otherwise, the undersigned will only send a copy of the Response to this next of friend out of privacy concerns for underlying immigration documentation.

Date: March 23, 2026

Respectfully submitted,

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