

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT MYERS DIVISION

OSCAR AMADO SALES-LOPEZ,

Petitioner,

v.

Case No. 3:26-cv-1013-MMH-MCR

WARDEN,¹ Florida Baker Correctional
Institute; **TODD M. LYON**, Acting
Director of the Immigration and
Customs Enforcement, Enforcement and
Removal Operations Washington Field
Office; **MARKWAYNE MULLIN**,
Secretary of the Department of
Homeland Security; **TODD**
BLANCHE, Attorney General of the
United States,

Respondents.

**AMENDED RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS
AND CONSTRUED REQUEST FOR PRELIMINARY INJUNCTION**

Petitioner Oscar Amado Sales-Lopez filed a habeas corpus petition pursuant to
28 U.S.C. § 2241, one of many now pending in this Court challenging a petitioner's

¹ The individual having physical custody of a petitioner 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 within the power of the immediate custodian 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).

designation as an “applicant for admission” subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Petitioner contends that his detention is properly grounded in 8 U.S.C. § 1226, which—unlike § 1225—generally authorizes immigration judges to release aliens on bond. Petitioner claims that Respondent’s incorrect reading of the Immigration and Nationality Act (“INA”) has deprived him of the opportunity for release on bond—thus resulting in his unlawful detention. The Federal Respondents recognize that *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026) controls..

PRELIMINARY STATEMENT

On April 24, 2026, Petitioner filed the Petition, challenging his detention as unlawful. Doc. 1. By Order dated April 29, 2026, this Court ordered service of Petition and directed Respondents to respond within 30 days of the date of the order. By Order dated May 13, 2026, this Court also ordered the consolidation of the construed request for preliminary injunction with an adjudication of the Petition on the merits. Doc. 8. This response is a joint response pursuant to that order. While habeas relief may be appropriate, the relief need not take the form of restraining order.

BACKGROUND

1. Petitioner is a 46-year-old male, native and citizen of Guatemala, who entered the United States on an unknown date and at an unknown location without inspection. *See Exhibit A* (Notice to Appear).

2. On January 14, 2023, Petitioner was served with the NTA. *See id.*

3. On September 7, 2025, following Petitioner's arrest by Fish and Wildlife Conservation for resisting an officer without violence, Petitioner was encountered by ICE while at the Lee County Jail. *See Exhibit B* (Petitioner I-213). Petitioner's other criminal history includes a 2014 arrest for resisting an officer without violence, 2022 arrest for possession of cocaine, and 2025 arrest for resisting without violence. *See id.*

4. On May 5, 2026, an Immigration Judge denied Petitioner's request for Cancellation of Removal. *See Exhibit C* (IJ Order May 2026) & *Exhibit D* (Notice of Internet-Based Hearing).

5. Petitioner's next court date in Immigration Court is scheduled for June 27, 2029. *See Exhibit E* (Automated Case Information).

6. To date, Petitioner has been in ICE custody for approximately 194 days. *See Exhibit F* (Detention History).

MEMORANDUM OF LAW

I. CERTIFIED HABEAS RETURN

ICE is detaining Petitioner under the mandatory detention provisions of 8 U.S.C. § 1226(a). *See* 28 U.S.C. § 2243 (stating "[t]he person to whom the writ or order is directed shall make a return certifying the true cause of the detention."). Petitioner bears the burden of proving Petitioner's custody violates federal law. *Whitfield v. United States Sec'y of State*, 853 F. App'x 327, 329 (11th Cir. 2021).

II. LEGAL STANDARD

Preliminary injunctive relief—in the form of a temporary restraining order or a preliminary injunction—is “an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” *See Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). The standard for obtaining either form of relief is the same. *See Windsor v. United States*, 379 F. App’x 912, 916-17 (11th Cir. 2010).

The Eleventh Circuit standard for temporary restraining orders is as follows: “A TRO or preliminary injunction is appropriate where the movant demonstrates that:

- (a) there is a substantial likelihood of success on the merits;
- (b) the TRO or preliminary injunction is necessary to prevent irreparable injury;
- (c) the threatened injury outweighs the harm that the TRO or preliminary injunction would cause to the non-movant; and
- (d) the TRO or preliminary injunction would not be averse to the public interest.

Parker v. State Bd. of Pardons & Paroles, 275 F.3d 1032, 1034–35 (11th Cir. 2001).

“The preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant ‘clearly carries the burden of persuasion’ as to the four prerequisites,” *United States v. Jefferson Cnty.*, 720 F.2d 1511, 1519 (11th Cir. 1983), and is “never awarded as [a matter] of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). The burden to prove entitlement to a TRO is on the petitioner, and respondents bear no burden to prove that petitioner is not entitled to a

TRO. *See Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 443 (1974).

III. ANALYSIS

The Federal Respondents have reviewed this Petition and have determined that the United States Court of Appeals for the Eleventh Circuit's recent decision controls. *Hernandez Alvarez v. Warden, Federal Det. Ctr. Miami*, ___ F.4th ___, No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026). There, the Eleventh Circuit held that mandatory detention under § 1225(b)(2)(A) "generally applies to arriving aliens seeking lawful entry to the country, and not to aliens who are simply present here." *Id.* at *1. Thus, pursuant to *Hernandez Alvarez*, Petitioner is detained under 8 U.S.C. § 1226(a) and he may seek a bond hearing in immigration court. As the Court may resolve the petition on the statutory question, it need not proceed to evaluate any other claims raised in the Petition.

The Federal Respondents are evaluating whether to seek further appellate review of *Hernandez Alvarez*. While reserving all rights, including the right to appeal on the issue of the proper detention authority for noncitizens like Petitioner who are present in the United States unlawfully, the Federal Respondents acknowledge that *Hernandez Alvarez* is binding on this Court and controls the outcome of this matter. In the event the Court orders a bond hearing to be conducted by an Immigration Judge under 8 U.S.C. § 1226(a), Respondent requests a reasonable period of seven days to arrange an individualized bond hearing.

The Federal Respondents submit that because Petitioner's habeas petition may be due to be granted, the Court may not need provide the same relief in the form of a preliminary injunction.

Dated: May 18, 2026

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

/s/ Mai Tran

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Attorneys for Federal Respondents

EXHIBIT LIST

- 1) Exhibit A (Notice of Appear) dated January 13, 2023;
- 2) Exhibit B (Petitioner's I-213) dated November 25, 2025;
- 3) Exhibit C (IJ Order) dated May 5, 2026;
- 4) Exhibit D (Notice of Internet-Based Hearing);
- 5) Exhibit E (Automated Case Info); and
- 6) Exhibit F (Detention History).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 18, 2026, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to CM/ECF participants. I will further furnish a hard copy via mail to the below *pro se* petitioner:

Oscar Amado Sales-Lopez
A# 
Florida Baker Correctional Institute
20706 US 90 W
Sanderson, Florida 32087
Pro Se Petitioner

/s/ Mai Tran
MAI TRAN
Assistant United States Attorney