

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

JORGE LEMUS ALVARENGA,

Petitioner,

v.

Case No.: 3:26-cv-1037-JEP-PDB

WARDEN in his official capacity as
BAKER COUNTY CORRECTIONAL
INSTITUTION; UNITED STATES
DEPARTMENT OF HOMELAND
SECURITY; UNITED STATES
IMMIGRATION AND CUSTOMS
ENFORCEMENT; and TODD BLANCHE,
in his official capacity as ACTING
ATTORNEY GENERAL OF THE
UNITED STATES,

Respondents.

**FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF
HABEAS CORPUS**

Petitioner Jorge Lemus Alvarenga challenges his detention by United States Immigration and Customs Enforcement ("ICE"), requesting immediate release or, alternatively, a bond hearing under 8 U.S.C. § 1226(a). (Doc. 1.) To the extent Petitioner seeks an individualized bond hearing, Federal Respondents recognize that, under recent Eleventh Circuit precedent, Petitioner is entitled to such a hearing. However, to the extent Petitioner seeks immediate release or relief under the Administrative Procedures Act, Federal Respondents contend that the Petition should be denied.

BACKGROUND

Petitioner is a 56-year-old male, who is a national and citizen of El Salvador. (See Ex. A, Petitioner's Form I-213, p. 1.¹) According to U.S. Department of Homeland Security (DHS) records, he entered the United States without inspection at an unknown date and time. (*Id.*) Petitioner was first encountered by ICE on March 29, 2018. (See Ex. B, Detention History.) At that time, he was taken into ICE custody and, according to agency counsel, was issued a Notice to Appear charging him as subject to removal under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA).² According to agency counsel, Petitioner was given a bond hearing on May 2, 2018, and the Immigration Judge granted him bond. (See Ex. B.) He was released on bond on May 3, 2018. (*Id.*) On June 12, 2024, the Immigration Judge granted DHS's motion to dismiss Petitioner's removal proceedings. (Ex. C, Immigration Court Order on Motion to Dismiss.) Unsurprisingly, Petitioner did not oppose the dismissal. (*Id.*) However, the removal proceedings were dismissed without prejudice. (*Id.*)

On April 21, 2026, Petitioner was encountered by agents from the Jacksonville Border Patrol Station, who conducted a reasonable suspicion stop of a white pickup truck in Nassau County, Florida. (Ex. A, p. 3.) The agents interviewed the individuals

¹ Petitioner's Form I-213 is unsigned. The undersigned defers to the Court as to the weight it wishes to give the unsigned Form I-213.

² INA § 212(a)(6)(A)(i) is codified at 8 U.S.C. § 1182(a)(6)(A)(i) and provides that an alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

inside the vehicle and determined that they were illegally present in the United States. (*Id.*) After conducting database queries on both the driver and passenger in the vehicle, both subjects were detained, arrested, and transported to the Jacksonville Border Patrol Station for further processing. (*Id.*) On April 21, 2026, Petitioner was issued a second Notice to Appear, identifying him as an alien present in the United States, who has not been admitted or paroled, and charging him as subject to removal from the United States pursuant to Sections 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I)³ of the INA. (Ex. D, 2026 Notice to Appear.)

Petitioner was officially taken into ICE custody on April 23, 2026. (Ex. B.) He is currently detained at Baker Correctional Institute. (*Id.*)

CERTIFIED HABEAS RETURN

Pursuant to 28 U.S.C. § 2243, “[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 to prove his custody violates federal law. *Whitfield v. U.S. Sec’y of State*, 853 F. App’x 327, 329 (11th Cir. 2021). Federal Respondents acknowledge that the Eleventh Circuit’s precedential ruling in *Hernandez Alvarez* controls the outcome here and renders that Petitioner is detained under 8 U.S.C. § 1226(a).

³ INA § 212(a)(7)(A)(i)(I) is codified at 8 U.S.C. § 1182(a)(7)(A)(i)(I) and provides that any immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other required valid entry document, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if required, is inadmissible.

ARGUMENT

As stated above, Petitioner seeks immediate release or, alternatively, a bond hearing. (Doc. 1, p. 12.) Moreover, Petitioner contends that the decision of DHS to detain him in April 2026 violated due process and was arbitrary, capricious, an abuse of discretion, and violated the Administrative Procedures Act. (Doc. 1, ¶¶ 26, 33.) He argues that it is futile to request bond in Immigration Court because an Immigration Judge will only state that the Immigration Court lacks jurisdiction pursuant to the decision of the Board of Immigration Appeals (BIA) in *Matter of Yajure Hurtado*. (*Id.* ¶¶ 20–21.)

Of course, as this Court, the undersigned, and Petitioner's counsel are well aware, *Matter of Yajure Hurtado* was effectively overruled on May 6, 2026, by the Eleventh Circuit's *Hernandez Alvarez* decision. As such, the official position of DHS is that Petitioner has not exhausted his administrative remedies following the change in circumstances brought about by the Eleventh Circuit's *Hernandez Alvarez* decision. According to DHS, because *Yajure Hurtado* is no longer controlling, Petitioner is entitled to a bond redetermination hearing; however, he has not requested such a hearing with the Immigration Court since the *Hernandez Alvarez* decision was handed down, and it is his burden to do so under INA regulations and BIA precedent.

The United States Attorney's Office recognizes that this Court has rejected this position. To be sure, when this Petition was filed, it would have been futile for Petitioner to request a bond hearing because, under the BIA's *Yajure Hurtado* decision, an Immigration Judge would have had no choice but to deny him bond on

jurisdictional grounds. Accordingly, it is the undersigned's position that the exhaustion argument is inappropriate here. However, the practice of some—but not all—district judges in this District of almost universally ordering release post *Hernandez Alvarez* has created an incentive for detainees to forgo exhausting their administrative remedies by seeking a bond hearing in Immigration Court following the Eleventh Circuit's May 6, 2026 decision in *Hernandez Alvarez*. Indeed, why should a detainee seek bond in Immigration Court, where bond could possibly be denied on the merits, when the detainee can simply continue to pursue habeas relief in the federal district court and, if assigned the “right” judge, be granted release within 24 to 48 hours? While the undersigned does not believe that requiring exhaustion is appropriate in this case, allowing habeas petitioners to routinely forego the bond request process altogether where it is being implemented in Immigration Courts post *Hernandez Alvarez* has made the federal district court a preferable alternative to seeking bond in Immigration Court and will likely only invite the continued avalanche of habeas cases in federal district court that has continued to strain the already limited resources of both the Court and the U.S. Attorney's Office.

I. Petitioner is Entitled to a Bond Hearing pursuant to *Hernandez Alvarez*

On May 6, 2026, the Eleventh Circuit issued a decision in *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, Case No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026), which controls in this case. The Eleventh Circuit's decision concludes that the INA does not “authorize the detention of unadmitted aliens who are simply present in the country.” *Hernandez Alvarez*, 2026 WL 1243395, at *2. In

doing so, the Eleventh Circuit concluded that “[t]he text of [8 U.S.C.] § 1225(b)(2)(A) is clear that mandatory detention applies only to a narrower category of applicants for admission: those seeking lawful entry into the United States” and does not apply to “present aliens not seeking admission.” *Id.* at *13. Notably, the *Hernandez Alvarez* court agreed with the petitioners’ interpretation that 8 U.S.C. § 1225(b)(2)(A) applies to a “distinct group of aliens—those who have not yet entered the United States[] but are seeking admission at the border.” *Id.* at *18 (also stating that “[t]he distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law”). In short, the Eleventh Circuit drew the following distinction: “§ 1225 applies to arriving aliens seeking entry at the border, whereas § 1226 applies to aliens unlawfully in the interior.” *Id.* at *14.

Based on the decision in *Hernandez Alvarez*, Petitioner will be entitled to an individualized bond hearing under 8 U.S.C. § 1226(a). The Eleventh Circuit’s decision will necessarily apply with equal force to Immigration Courts located within the Eleventh Circuit’s territory of Florida, Georgia, and Alabama. *See Matter of Garcia*, 28 I. & N. Dec. 693, 698 (BIA 2023) (“We are bound to follow the law of the circuit court of appeals with jurisdiction over the region where an Immigration Court is located.”) Where immigration proceedings implicate multiple circuits, “[t]he circuit law that applies in Immigration Court proceedings is the law governing the geographic location of the Immigration Court where jurisdiction vests and proceedings commence.” *Id.* at 707. “This circuit law controls regardless of where the parties and the Immigration Judge are physically located and may only change where an

Immigration Judge grants a motion to change venue.” *Id.* As such, going forward, there should be no impediment to requiring petitioners in these cases to exhaust their administrative remedies by seeking bond hearings with the Immigration Courts.

Notably, immigration detainees must affirmatively seek bond hearings in Immigration Court. A non-citizen’s initial custody determination is made by ICE following detention. *See* 8 C.F.R. § 1236.1(c) However, there is no automatic bond redetermination. *See* 8 C.F.R. § 1236.1(d). Instead, 8 C.F.R. § 1003.19(b) provides that the non-citizen or his or her attorney or representative may affirmatively *request* a redetermination of the initial custody determination made by ICE. *See also generally* 8 C.F.R. § 1003.19. Given the binding nature of *Hernandez Alvarez* on the Immigration Courts, *Matter of Garcia*, 28 I. & N. Dec. at 698, seeking custody redetermination through a bond hearing in Immigration Court is no longer futile. Indeed, Immigration Courts have affirmatively granted bond hearings without the intervention of federal district courts following the *Hernandez Alvarez* decision. *See, e.g., Casallas Rodriguez v. Bondi*, Case No. 3:26-cv-702-JEP-MCR, Doc. 12, (M.D. Fla. June 5, 2026) (dismissing habeas petition as moot by Endorsed Order where the government filed a notice asserting that an Immigration Judge had granted Petitioner bond).⁴

At bottom, based on the Eleventh Circuit’s decision in *Hernandez Alvarez*, the undersigned recognizes that Petitioner is unequivocally entitled to an individualized bond hearing under 8 U.S.C. § 1226(a). Nevertheless, Federal Respondents are

⁴The docket displaying the Court’s decision is attached to this response as Exhibit E.

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, 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), Federal Respondents request a reasonable period of seven days to arrange an individualized bond hearing.

II. There is Otherwise No Due Process Violation

Notwithstanding Petitioner's entitlement to a bond hearing under the Eleventh Circuit's *Hernandez Alvarez* decision, there is otherwise no due process violation here, as Petitioner is in removal proceedings. The Supreme Court has recognized that "detention during such proceedings is a constitutionally permissible part of that process." *Demore v. Kim*, 538 U.S. 510, 531 (2003). Moreover, Petitioner's current detention of forty-three days, as of June 5, 2026, falls significantly short of the six-month presumptively reasonable detention period recognized by the U.S. Supreme Court in other immigration detention contexts. *Cf. Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

III. Petitioner is not Entitled to Relief under the Administrative Procedure Act

Federal Respondents also disagree that Petitioner is entitled to relief under the Administrative Procedures Act (APA). By the APA's terms, it is available only for final agency action "for which there is no other adequate remedy in court." 5 U.S.C.

§ 704. Petitioner's APA claims are barred by this limitation. In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, "necessarily imply the invalidity of [a Petitioner's] confinement and removal," such claims "must be brought in habeas." 604 U.S. 670, 672 (2025). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, in light of "5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, . . . habeas corpus, not the APA, is the proper vehicle." *Id.* at 674 (Kavanaugh, J., concurring). The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Heikkila v. Barber*, 345 U.S. 229, 234–35 (1953). As such, the Petition should also be denied to the extent that Petitioner seeks relief under the APA.

IV. Petitioner is Not Entitled to Immediate Release

Finally, Petitioner is not entitled to immediate release. Section 1226(a)(1) of the INA "grants the executive branch discretion to determine whether to detain or release a noncitizen who is facing removal proceedings." *Lopez Bartolo v. Mullin*, Case No. 2:26-cv-1247-KCD-NPM, 2026 WL 1309028, at *1 (M.D. Fla. May 13, 2026). "Petitioner is an alien without lawful status." *Id.* "So he is entitled to a bond hearing under 1226(a), not immediate release." *Id.* As stated above, Petitioner is in removal proceedings, and the Supreme Court has recognized that "detention during such proceedings is a constitutionally permissible part of that process." *Demore*,

538 U.S. at 531. Consequently, the Petition should be denied to the extent Petitioner seeks immediate release.

Dated: June 5, 2026

Respectfully submitted,

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