

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

EVELIO GARCIA PENA,

Petitioner,

Case No. 3:26-cv-1040-JEP-MCR

v.

U.S. ATTORNEY GENERAL, et al.,

Respondents.

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

Petitioner Evelio Garcia Pena challenges his detention by U.S. Immigration and Customs Enforcement ("ICE"), arguing he is entitled to immediate release. Federal Respondents acknowledge that the Eleventh Circuit decision issued in *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026) controls this case. Garcia Pena is therefore entitled to an individualized bond hearing under 8 U.S.C. §1226(a). Nevertheless, because Garcia Pena makes no indication he has requested a bond hearing before an Immigration Judge, his petition should be denied for failure to exhaust his administrative remedies.

BACKGROUND

Garcia Pena is a national and citizen of Nicaragua who last entered the United States at Eagle Pass, Texas without inspection on November 13, 2022. (Composite Exhibit A at 5). Following a traffic stop on April 6, 2026, Garcia Pena was detained

and put in the custody of ICE on April 7, 2026, and that same day he received a Notice to Appear. (*Id.* at 5). Petitioner was noticed for removal proceeds to take place on May 7, 2026. (*Id.*). Garcia Pena is currently detained at the Baker County Detention Center. (*Id.* at 9).

On April 28, 2026, Garcia Pena filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. (Doc. 1.) On May 6, 2026, this Court entered an order directing Respondents to show cause why the petition should not be granted.

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). Under the Eleventh Circuit’s precedential ruling in *Hernandez Alvarez*, Garcia Pena is detained under 8 U.S.C. § 1226(a). *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026).

ARGUMENT

I. This case is controlled by *Hernandez Alvarez*.

Federal Respondents acknowledge that the Eleventh Circuit’s decision issued in *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026) controls this case. There, the court held 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 . . . [not] to other present aliens not seeking admission.” *Id.* at *13. In short, “§ 1225 applies to arriving aliens seeking entry at the border, whereas § 1226 applies to aliens unlawfully in the interior.” *Id.* at *14. Following the Eleventh Circuit’s decision in *Hernandez Alvarez*, Garcia Pena is 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, there should be no impediment to requiring petitioners to exhaust their administrative remedies by seeking bond hearings with the Immigration Courts. *See Bohorquez-Valencia v. Ripa*, Case No. 3:25-cv-1383-MMH-LLL, 2026 WL 662980, at *2 (M.D. Fla. Mar. 9, 2026) (citing *Santiago-Lugo v. Warden*, 785 F.3d 467, 475

(11th Cir. 2015)) (“A petitioner must exhaust all available administrative remedies before filing a [28 U.S.C.] § 2241 petition in federal court.”).

II. Garcia Pena has failed to exhaust his administrative remedies.

Federal regulations give an alien the ability to seek review of ICE’s initial custody determination before an immigration judge. 8 C.F.R. § 1003.19(a). This is not an automatic process; rather, an alien must specifically request it. *Id.* § 1003.19(b). Should an alien be dissatisfied with an Immigration Judge’s ultimate decision—including one in which the alien is found subject to mandatory detention—he has the opportunity to appeal the Immigration Judge’s order to the Board of Immigration Appeals. *Id.* § 1003.1(b)(7). Garcia Pena has not availed himself of either opportunity before turning to this Court for intervention.

The principle of exhaustion protects administrative agency authority and promotes judicial efficiency, recognizing that agencies “ought to have primary responsibility for the programs that Congress has charged them to administer.” *McCarthy v. Madigan*, 503 U.S. 140, 145 (1992). The Eleventh Circuit has not adopted a futility exception in the habeas context. *See e.g., McGee v. Warden, FDC Miami*, 487 F. App’x 516, 518 (11th Cir. 2012) (finding that the district court lacked jurisdiction to consider a Section 2241 petition where the petitioner failed to exhaust remedies, notwithstanding his argument that doing so would be futile); *Morris v. Warden, FCC Coleman - Low*, No. 5:22-CV-527-WFJ-PRL, 2023 WL 3931928, at *2 (M.D. Fla. June 9, 2023) (expressing doubt as to whether the futility exception applies in the context of Section 2241 habeas petitions); *Gonzalez-Velez v. Warden, FCC Coleman - Low*, No. 5:22-

CV-509-WFJ-PRL, 2023 WL 3584113, at *2 (M.D. Fla. May 22, 2023) (“[a]t the outset, it should be noted that an ‘exception’ to administrative exhaustion based on futility in the § 2241 setting has not been adopted by the Eleventh Circuit.”); *but see Garcia v. Noem*, No. 2:25-CV-00879-SPC-NPM, 2025 WL 3041895, at *3 (M.D. Fla. Oct. 31, 2025) (stating that exhaustion may be excused if an administrative body is biased or otherwise predetermined the issue before it). Moreover, exhaustion of administrative remedies would likely provide the benefit of a written decision from an Immigration Judge regarding Garcia Pena’s custody status. *See* Executive Office for Immigration Review, Policy Manual, 8.3 Bond Proceedings, § (e)(7) (“If either party appeals, the Immigration Judge prepares a written decision based on notes from the hearing”), *available at* <https://www.justice.gov/eoir/policy-manual-eoir/part-II/icpm/chapter-8-3> (last visited May 5, 2026). Garcia Pena should therefore be required to exhaust his administrative remedies.

In the alternative, in the event the Court orders a bond hearing 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.

CONCLUSION

Federal Respondents respectfully request that Garcia Pena's petition be denied.

DATED this 5 day of June, 2026.

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

By: /s/Conor P. Flynn
CONOR P. FLYNN
Assistant United States Attorney
Florida Bar No. 1010091
35 SE 1st Avenue, Suite 300
Ocala, FL 34471
Telephone: 352-547-3600
Email: conor.flynn@usdoj.gov
Counsel for Federal Respondents