

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

JOSE RAUL PEREZ LOPEZ,

Petitioner,

Case No. 3:26-cv-1084-WWB-MCR

v.

U.S. ATTORNEY GENERAL, et al.,

Respondents.

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

Petitioner Jose Raul Perez Lopez 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. Perez Lopez is therefore entitled to an individualized bond hearing under 8 U.S.C. §1226(a). Nevertheless, the fundamental flaw of Perez Lopez's position is that he has expressly abandoned his request for a bond hearing. (Exhibit A at 12). Petitioner cannot circumvent immigration court, and Petitioner is free to submit a Petition in the future should he wish, but the instant Petition (Doc. 1) is due to be denied for mootness, or in the alternative, for failure to exhaust administrative remedies.

BACKGROUND

Perez Lopez is a national and citizen of Mexico who last entered the United States without inspection at an unknown date and time, though Petitioner claims having illegally entered in 2005. (Exhibit A at 2). At one point, Petitioner had a V2/visa which was

cancelled following a conviction for theft in 2003. (*Id.*). Petitioner was also convicted of Battery-Family Violence in 2006. (*Id.*) On January 12, 2026, Petitioner was encountered during a traffic stop and detained in the Alachua County Jail. (*Id.*). Perez Lopez was then transported to the Jacksonville, Florida ICE/ERO office for processing. (*Id.*).

On March 17, 2026 – prior to the release of the *Hernandez Alvarez* decision – the immigration court denied Perez Lopez’s custody redetermination request citing a lack of jurisdiction. (*Id.* at 7). Accordingly, on April 30, 2026, Petitioner filed a petition for writ of habeas corpus alleging continued detention was unlawful and requesting release or, in the alternative, for the court to order a bond hearing. (Doc. 1). On May 4, 2026, this Court entered an order directing Respondents to show cause why the petition should not be granted. (Doc. 4).

Following the issuance of the *Hernandez Alvarez* decision on May 6, 2026, Respondents scheduled Petitioner for a custody redetermination hearing on May 12, 2026. (Exhibit A at 9). The May 12, 2026 order – attached for this Court’s review – shows that Perez Lopez withdrew his request for a bond hearing. Perez Lopez is currently detained at the Folkston Main Immigration Processing Center in Folkston, Georgia. (*Id.* at 14). Federal Respondents respectfully submit that the petition is moot, as Perez Lopez was provided the remedy he sought – a bond hearing – or, in the alternative, that the petition is due to be denied as the claim is not yet ripe and Federal Respondents remain in the presumptively reasonable window under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

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*, Perez Lopez 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. **Perez Lopez has failed to exhaust his administrative remedies.**

Perez Lopez demanded a hearing; was afforded a hearing after the Hernandez Alvarez decision; and then abandoned the opportunity when he withdrew his request. The exact same fact pattern was addressed by Judge Dudek in *Hector Manuel Marquez Palencia v. D.H.S., et al.*, 2:26-cv-1199-KCD-NPM (M.D. Fla. May 11, 2026). Judge Dudek provided the following reasoning in dismissing the petition as moot:

Article III of the Constitution limits federal courts to resolving actual, ongoing controversies. We do not issue advisory opinions, and we do not keep cases on the docket when the underlying dispute has evaporated. See *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1335 (11th Cir. 2001). When Palencia filed his petition, his only grievance was that he had been locked up with no mechanism for release. (Doc. 1 at 6.) But that wasn’t the case. The Government had afforded Palencia the very opportunity to contest his detention that he asked this Court to provide. Palencia simply chose to abandon that opportunity when, through counsel, he withdrew the request for that exact relief. A petitioner cannot demand a hearing, receive a date for that hearing, walk away from it, and then ask a federal court to intervene because he has not had one. Because the underlying claims in his petition are now fully extinguished, his challenge to his initial, physical detention is moot.

(*Id.* at 2). Perez Lopez’s petition is due to be dismissed for the same reasons here.

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). Perez Lopez 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 Perez Lopez'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). Perez Lopez should therefore be required to exhaust his administrative remedies.

II. Petitioner's Detention Claim is Not Yet Ripe under *Zadvydas*

In *Zadvydas v. Davis*, the Supreme Court held that detention following a final removal order is presumptively reasonable for six months. 533 U.S. 678, 701 (2001). Petitioner has been detained since January 14, 2026; as of the date of this filing, Petitioner has 140 days in DHS custody. (Exhibit A at 14). As such, his aggregate detention does not exceed the six-month, or 180-day, presumptively reasonable post-removal order detention length set forth in *Zadvydas*. See also *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (stating that "[t]his six-month period thus must have expired at the time [Petitioner's] § 2241 petition was filed in order to state a claim under *Zadvydas*").

"As the Supreme Court has long recognized, detention during deportation proceedings is a constitutionally valid aspect of the deportation process." *Id.* "So the executive branch gets a presumptively reasonable six-month runway to do its job, negotiate with foreign governments, and execute a final removal order." *Id.* "The question is not whether his detention was unlawful in the past." *Nguyen v. Noem*, 797 F. Supp. 3d

651, 669 (N.D. Tex. 2025). “The great and central office of the writ of habeas corpus is to test the legality of the petitioner’s current detention.” *Id.* at 669–700.

III. 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*, Perez Lopez is entitled to an individualized bond hearing under 8 U.S.C. §1226(a).

Again, the issue in this case is not whether Perez Lopez is entitled to a bond hearing – he is, and he was provided with one. The issue, rather, is that Perez Lopez abandoned the opportunity for a bond hearing when it was given to him.

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CONCLUSION

Federal Respondents respectfully request that Perez Lopez's petition be denied.

DATED this 3rd day of June, 2026.

Respectfully submitted,

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