

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

CHRISTIAN MONTUFAR,

Case No.: 3:26-cv-1109-WWB-LLL

Petitioner,

v.

ACTING SECRETARY
MARKWAYNE MULLIN, et al.

Respondents.

_____ /

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

Petitioner Christian Montufar challenges his detention by the United States Immigration and Customs Enforcement ("ICE"), arguing he is entitled to immediate release or bond hearing under 8 U.S.C. § 1226(a). Dkt. 1. To the extent Petitioner seeks an individualized bond hearing, the undersigned concedes that the Petition should be granted based on new and binding Eleventh Circuit precedent.

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). Based on the Eleventh Circuit's precedential ruling in *Hernandez Alvarez*, the undersigned concludes that Petitioner is detained under 8 U.S.C. § 1226(a). See generally *Hernandez Alvarez*

v. Warden, Fed. Det. Ctr. Miami, Case No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026).

ARGUMENT

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 the issue in this case. The Eleventh Circuit's decision concludes that the Immigration and Nationality Act ("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. While the Eleventh Circuit's decision does not specifically address the detention individuals—such as Petitioner—who were initially apprehended at the border, paroled, and then re-detained in the interior, the 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 foregoing, Petitioner is entitled to an individualized bond hearing under 8 U.S.C. § 1226(a). Notably, 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. *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.”).

Accordingly, based on the Eleventh Circuit's decision in *Hernandez Alvarez*, the undersigned concedes that Petitioner is entitled to an individualized bond hearing under 8 U.S.C. § 1226(a). Nevertheless, 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, Federal Respondents acknowledges *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 ten days to arrange an individualized bond hearing.

Dated: May 14, 2026

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

By: /s/ Mamie V. Wise
MAMIE V. Wise
Assistant United States Attorney
Florida Bar No. 65570
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
Telephone: 813-274-6000
Facsimile: 813-274-6114
E-mail: mamie.wise@usdoj.gov

Lead Counsel for Federal Respondents

ARTIFICIAL INTELLIGENCE CERTIFICATION

Undersigned counsel certifies that no generative AI was used in the drafting and preparation of this filing.

/s/ Mamie V. Wise
Assistant United States Attorney