

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

Victor Jose Vera Martinez,

Petitioner,

No. 3:26-cv-01141-WWB-LLL

v.

U.S. Department of Homeland Security et al.,

Respondents.

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

Petitioner Victor Jose Vera Martinez 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. Vera Martinez is therefore entitled to an individualized bond hearing under 8 U.S.C. §1226(a). Nevertheless, because Vera Martinez has not yet appeared for a scheduled June 4, 2026, bond hearing, his petition should be denied for failure to exhaust his administrative remedies.

BACKGROUND

Vera Martinez is a native and citizen of Venezuela who last entered the United States without inspection at an unknown place and time. (Composite

Exhibit, Ex. 1 at 1.) He was placed in immigration custody on January 22, 2026, and served with a Notice to Appear. *Id.* at 1, 5.

On May 5, 2026, Vera Martinez filed a petition for writ of habeas corpus alleging his custody violates the Due Process Clause of the Fifth Amendment. (Doc. 1.) Vera Martinez has since obtained counsel and a scheduled bond hearing for June 4, 2026, at 1:00 p.m. (Composite Exhibit, Ex. 1 at 6.) He is currently detained at Florida Baker Correctional Institute.

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*, Vera Martinez 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*, Vera Martinez 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. Vera Martinez 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). Vera Martinez did not avail 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).

Exhaustion of administrative remedies would also likely provide the benefit of a written decision from an Immigration Judge regarding Vera Martinez’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). Vera Martinez should therefore be required to exhaust his administrative remedies.

CONCLUSION

Federal Respondents respectfully request that Vera Martinez’s petition be denied.

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DATED this 2nd day of June, 2026.

Respectfully submitted,

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Lead Counsel for Fed. Respondents

Exhibit List

Exhibit 1-A: January 22, 2026, Form I-213

Exhibit 1-B: Notice of Bond Hearing Scheduled for June 4, 2026

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 2, 2026, the foregoing document was served via U.S. mail to:

Victor Jose Vera Martinez
A 
Baker Correctional Institution
20706 U.S. Highway 90 West
Sanderson, FL 32087-2359

I HEREBY CERTIFY that on June 2, 2026, the foregoing document was also sent via email to:

Daniela VanSuch
Bilbao Law
dvansuch@bilbaolaw.com

/s/ Chad C. Spraker
Assistant United States Attorney