

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

JOSE LUIS BASURTO-JIMENEZ,

Case No.: 3:26-cv-1160-MMH-SJH

Petitioner,

v.

U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT, et al., Respondents.

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ABBREVIATED RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner filed a habeas corpus petition pursuant to 28 U.S.C. § 2241, one of many now pending in this Court challenging a petitioner's designation as an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Petitioner contends that his detention is properly grounded in 8 U.S.C. § 1226, which—unlike § 1225—generally authorizes immigration judges to release aliens on bond. Petitioner claims that Respondent's incorrect reading of the Immigration and Nationality Act ("INA") has deprived him of the opportunity for release on bond—thus resulting in his unlawful detention.

Respondents have reviewed this Petition and have determined that the United States Court of Appeals for the Eleventh Circuit's decision in *Hernandez Alvarez* controls. *Hernandez Alvarez v. Warden, Federal Det. Ctr. Miami*, No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026). There, the Eleventh Circuit held that mandatory detention under § 1225(b)(2)(A) "generally applies to arriving aliens seeking lawful entry to the country, and not to aliens who are simply present here." *Id.* at *1. Thus, pursuant to *Hernandez Alvarez*, Petitioner is detained under 8 U.S.C. § 1226(a) and he may seek a bond hearing

in immigration court. As the Court may resolve the petition on the statutory question, it need not proceed to evaluate any other claims raised in the Petition.

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.* Petitioner is in removal proceedings, evidenced by his own admission. (See Doc. 1 at 19-21). 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.

The burden of proof at the bond hearing should not be shifted to the Government. In general, an alien detained under § 1226 bears the burden of proof with respect to demonstrating that he merits release on bond in custody redetermination proceedings before the Immigration Judge. See, 8 C.F.R. § 1003.19(h)(3) (an alien applying for custody redetermination by the Immigration Judge “must first demonstrate, by clear and convincing evidence, that release would not pose a danger to other persons or to property. If an alien meets this burden, the alien must further demonstrate, by clear and convincing evidence, that the alien is likely to appear for any scheduled proceeding or interview.”).

The imposition of the burden of proof upon the alien in § 1226 bond proceedings facially satisfies due process. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1211-14 (9th

Cir. 2022). To the extent that an alien establishes that his detention under § 1226 has become prolonged in violation of the Due Process Clause due to articulable deficiencies in his individual bond proceedings (*i.e.*, through an as-applied challenge to his detention under INA § 236(a)), the Ninth Circuit has suggested that those procedural deficiencies are best remedied “through means short of major changes to the burden of proof”. *Id.*, at 1214, citing *Miranda v. Garland*, 34 F.4th 338, 361 (4th Cir. 2022).

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, Respondents acknowledge *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), Respondents request a reasonable period of ten days to arrange an individualized bond hearing.

Dated: June 12, 2026

Respectfully submitted,

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