

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Jonathan Josue Lucario Isidro,

Petitioner,

vs.

Case no. 3:26-cv-1163-MMH-SJH

Warden, Baker County Correctional
Institute, et al.,

Respondents.

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

Petitioner challenges his detention by the United States Immigration and Customs Enforcement ("ICE"), seeking either immediate release or alternatively, a bond hearing under 8 U.S.C. § 1226(a). (Doc. 1.) The undersigned recognizes that Petitioner should receive an individualized bond hearing based on binding Eleventh Circuit precedent discussed below. However, Federal Respondents contend that Petitioner should be required to seek this relief in Immigration Court, as the Eleventh Circuit's recent decision is binding on immigration courts located within the Circuit's jurisdiction and Petitioner is required to exhaust his administrative remedies.

BACKGROUND

The Petitioner is a 39 year old native and citizen of Mexico. See NTA attached as Exhibit A. He entered the United States at an unknown date, place and location and was not inspected or admitted by an immigration official when he entered. See I-213 attached as Exhibit B. On April 27, 2026, he was encountered by local law enforcement for driving without a valid license and was taken into custody. *Id.* He has been in detention ever since at Baker Correctional Institute. See Detention History attached as Exhibit C.

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 Alvaraez*, 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*, which controls the issue in this case. The Eleventh Circuit

concluded 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. The Eleventh Circuit also 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.

Here, Petitioner’s Notice to Appear identifies him as an alien present in the United States who has not been admitted or paroled. Accordingly, based on the distinction drawn by the Eleventh Circuit in *Hernandez Alvarez*, Petitioner is entitled to an individualized bond hearing under 8 U.S.C. § 1226(a).

Petitioner should seek such hearing in Immigration Court and this case is not ripe until he does so. 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.").

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 acknowledge that *Hernandez Alvarez* is binding here. 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 seven days to make those arrangements.

Federal Respondents disagree that Petitioner is entitled to relief under the Administrative Procedures Act (APA). By the APA's terms, it is available only for final agency action "for which there is no other adequate remedy in court." 5 U.S.C. § 704. Petitioner's APA claims are barred by this limitation. In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, "necessarily imply the invalidity of [a Petitioner's] confinement and removal," such claims "must be brought in habeas." 604 U.S. 670, 672 (2025). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, in light of "5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, . . . habeas corpus, not the APA, is the proper vehicle." *Id.* at 674 (Kavanaugh, J., concurring). The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible

district court vehicle for challenges brought pursuant to the immigration statutes. *Heikkila v. Barber*, 345 U.S. 229, 234– 35 (1953). As such, the Petition should also be denied to the extent that Petitioner seeks relief under the APA.

Dated: May 15, 2026

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

By: /s/ Lacy R. Harwell, Jr.
LACY R. HARWELL, JR.
Assistant United States Attorney
Florida Bar No. 714623
Lead Counsel
Office of the United States Attorney
For the Middle District of Florida
400 N. Tampa St., Suite 3200
Tampa, Florida 33602
Tel. (813) 274-6000
Fax (813) 274-6200
randy.harwell@usdoj.gov

Certificate of Service

I hereby certify that on May 15, 2026, I caused a true copy of the foregoing to be filed using the Court's CM/ECF filing system, which will send an electronic notice of filing.

/s/ Lacy R. Harwell, Jr.
LACY R. HARWELL
Assistant United States Attorney