

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

FABIANO HENRIQUE BESSA SILVESTRE,

Petitioner,

Case No. 3:26-cv-1215-WWB-MCR

v.

WARDEN, FLORIDA BAKER
CORRECTIONAL INSTITUTION, et al.,

Respondents.

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

Petitioner Fabiano Henrique Bessa Silvestre challenges his detention by the United States Immigration and Customs Enforcement ("ICE"), arguing he is entitled to 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. See *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, Case No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026). Because Petitioner has a bond hearing set for today, May 19, 2026, at 1:00 p.m. (Exhibit 1, Notice of Custody Redetermination Hearing), the Petition should be denied as moot.

BACKGROUND

Petitioner is a citizen and national of Brazil. (Exhibit 2, I-213, at 3). He last entered the United States without inspection on or about August 18, 2018. (See Doc. 1-3; see also Ex. 2 at 3). Petitioner was issued a Notice to Appear and a Warrant for Arrest on May 5, 2026. (Exhibit 3, Notice to Appear, at 1; Exhibit 4, I-200 Warrant, at 1). He was

taken into immigration custody on the following day. (Exhibit 5, Detention History, at 1). Petitioner is currently detained at Baker Correctional Institution. (*Id.*). He has a bond hearing set for May 19, 2026. (Ex. 1).

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*, Petitioner is detained under 8 U.S.C. § 1226(a). 2026 WL 1243395, at *1 (11th Cir. May 6, 2026).

DISCUSSION

I. In Light of Petitioner’s Bond Hearing, the Petition should be Denied as Moot.

As the Eleventh Circuit ruled in *Hernandez Alvarez*, the Executive Branch lacks the authority to detain every unadmitted alien present in the country “without the possibility of bond.” *Hernandez Alvarez*, 2026 WL 1243395, at *21 (emphasis added). Here, Petitioner requested immediate release from custody unless Federal Respondents provide Petitioner with a bond hearing under 8 U.S.C. 1226(a). (See Doc. 1 at 12–13). As Petitioner has already been granted a bond hearing—which is scheduled for today, May 19, 2026—Petitioner’s requested relief is now moot. (Ex. 1).

The United States Constitution limits this Court’s jurisdiction to the adjudication of actual cases and controversies. U.S. Const. art. III, § 2, cl. 1. The doctrine of mootness is derived from this limitation. *Adler v. Duval Cnty. Sch. Bd.*, 112 F.3d 1475, 1477 (11th Cir. 1997). The U.S. Supreme Court has characterized mootness as “the doctrine of

standing set in a time frame: [t]he requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Arizonans for Official Eng. v. Arizona*, 520 U.S. 43, 68 n.22 (1997). As such, if something occurs during litigation that makes it impossible for the court to provide some sort of meaningful relief, there is no case or controversy and the court must dismiss the claim as moot. See *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992). In other words, where the question sought to be adjudicated has been mooted by developments subsequent to the filing of the complaint, no justiciable controversy is presented. *Flast v. Cohen*, 392 U.S. 83, 95 (1968); see also *Bennett v. Jefferson County*, 899 F.3d 1240, 1245 (11th Cir. 2018) (citing *Arizonans for Official Eng.*, 520 U.S. at 68); *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1336 (11th Cir. 2001). As the Eleventh Circuit previously summarized, "[w]hen we consider our jurisdiction for mootness, we look at the events at the present time, not at the time the complaint was filed or when the federal order on review was issued." *Dow Jones & Co. v. Kaye*, 256 F.3d 1251, 1254 (11th Cir. 2001).

The Petition asks that the Court require Federal Respondents to release Petitioner unless they provide Petitioner with a bond hearing under 8 U.S.C. 1226(a). (See Doc. 1 at 12–13). Because Petitioner has a scheduled bond hearing for May 19, 2026, there is no live case or controversy over which the Court may continue to exercise jurisdiction concerning Petitioner's request for bond. (See Ex. 1). Thus, this Petition should be denied as moot to the extent it requests such a hearing.

Notably, the Eleventh Circuit's decision in *Hernandez Alvarez* 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.* Here, Petitioner’s bond hearing is scheduled for today, May 19, 2026, before the Orlando Immigration Court—within the Eleventh Circuit. (Ex. 1). Thus, there should be no impediment to Petitioner in obtaining a bond hearing on the merits in Immigration Court under 8 U.S.C. § 1226(a).

II. There is Otherwise No Due Process Violation.

Notwithstanding the Federal Respondents’ mootness argument, there is still no due process violation here, as Petitioner is in removal proceedings. The Supreme Court has recognized that “detention during such proceedings is a constitutionally permissible part of that process.” *Demore v. Kim*, 538 U.S. 510, 531 (2003).

CONCLUSION

Federal Respondents respectfully request that Petitioner Fabiano Henrique Bessa Silvestre’s Petition be denied as moot and dismissed.

Dated: May 19, 2026

Respectfully Submitted,

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Ex. No.	Date	Title and Description
1	5/13/2026	Notice of Custody Redetermination Hearing
2	5/5/2026	I-213: Record of Deportable/Inadmissible Alien
3	5/5/2026	Notice to Appear charging Petitioner as removable
4	5/5/2026	I-200 Warrant: Warrant for Arrest of Alien
5	5/18/2026	Detention History as of 5/18/2026

A.I. CERTIFICATION

The undersigned hereby certifies that no generative AI was used in the drafting and preparation of the foregoing filing.

/s/ Avery A. Holloman
AVERY A. HOLLOMAN
Assistant U.S. Attorney