

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

JAMES GALLEG0 PEREIRA,

Petitioner,

v.

Case No.: 3:26-cv-1224-MMH-PDB

WARDEN OF NORTH FLORIDA
DETENTION FACILITY; AND
UNITED STATES IMMIGRATION
AND CUSTOMS ENFORCEMENT,

Respondents.

**FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR A WRIT OF
HABEAS CORPUS UNDER 28 U.S.C. § 2241**

Petitioner James Gallego Pereira 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.) To the extent Petitioner seeks an individualized bond hearing, Federal Respondents recognize that, under recent Eleventh Circuit precedent, Petitioner is entitled to such a hearing.

BACKGROUND

Petitioner is a native and citizen of Colombia who entered the United States without inspection on or about December 5, 2023. (Ex. A, Petitioner's Form I-213, pp. 1, 2; *see also* Ex. B, Notice to Appear.) At that time, he was encountered by Border Patrol Agents at Tecate, California. (Ex. A, p. 3.) During this encounter, Petitioner was questioned by Border Patrol Agents about his citizenship and nationality and

whether he was in possession of any legal documents allowing him to remain in the United States legally. (*Id.*) According to his Form I-213, Petitioner affirmatively admitted that he was a citizen and national of Colombia without proper immigration documents allowing him to enter or remain in the United States. (*Id.*) Border Patrol Agents subsequently served Petitioner with a Form I-862, Notice to Appear in removal proceedings, and released him on his own recognizance. (*Id.*; Ex. B, Notice to Appear.) The Notice to Appear charged Petitioner under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA), codified at 8 U.S.C. 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. (Ex. B, p. 1.)

On May 27, 2025, Petitioner received a criminal citation for attaching unassigned vehicle tags to a vehicle. (Ex. C, Criminal Citation in Case Number 25-CT-008501; *see also* Ex. A, p. 3.) The case was disposed of and nolle prossed on July 1, 2025. (Ex. A, p. 3; Ex. D, Hillsborough County Docket for Case Number 25-CT-008501.) On March 9, 2026, Hillsborough County Sherriff's Office arrested Petitioner on battery and domestic violence charges, and an Order of No Contact was issued against Petitioner. (Ex. A, p. 3; *see also* Ex. E, Hillsborough County Docket for Case Number 26-CM-002599-A *and* Ex. F, Summary of Hillsborough County Charges for Case Number 26-CM-002599-A.) His prosecution was terminated on March 26, 2026. (Exs. E & F.)

On March 26, 2026, U.S. Department of Homeland Security (DHS) Enforcement and Removal Operations (ERO) agents encountered Petitioner at the Hillsborough County Jail following his arrest on suspicion of domestic battery. (Ex. A, pp. 1, 2.) He was transferred to DHS custody on March 26, 2026. (Ex. G, Detention History.) ICE made an initial custody determination to hold Petitioner in custody pending removal proceedings. (Ex. A, p. 3.) Alternatively, because he is the sole caregiver of his child, ICE approved Petitioner's self-deportation. (*Id.*) However, Petitioner claims that he fears being returned to Colombia. (*Id.*)

On April 29, 2026, an Immigration Judge ordered Petitioner removed to Colombia on the charges set forth in the Notice to Appear. (Ex. H, Removal Order, p. 3.) Petitioner reserved his right to appeal the removal order to the Board of Immigration Appeals. (*Id.* at 4.) The deadline for Petitioner to appeal his removal order is May 29, 2026. (*Id.*) As of May 18, 2026, Petitioner had not yet appealed the order, but he remains within the window timely to do so. Therefore, his removal order is not yet administratively final. *Johnson v. Guzman Chavez*, 594 U.S. 523, 533–535 (2021). Petitioner is currently detained at Baker Correctional Institute. (Ex. G.)

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). While Federal Respondents

acknowledge that the Eleventh Circuit’s precedential ruling in *Hernandez Alvarez* controls the outcome here and renders that Petitioner is detained under 8 U.S.C. § 1226(a), for preservation purposes, Federal Respondents maintain that Petitioner was properly detained under 8 U.S.C. § 1225. Importantly, because Petitioner’s appeal of his removal order is still pending, it is not yet administratively final and, therefore, he is not yet detained under 8 U.S.C. § 1231(a). *Guzman Chavez*, 594 U.S. at 533–535.

ARGUMENT

I. Petitioner is Entitled to a Bond Hearing pursuant to *Hernandez Alvarez*

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 in this case. The Eleventh Circuit’s decision concludes that the 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. Notably, the *Hernandez Alvarez* 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 decision in *Hernandez Alvarez*, Petitioner will be 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, 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.”).

Notably, immigration detainees must affirmatively seek bond hearings in Immigration Court. A non-citizen's initial custody determination is made by ICE following detention. *See* 8 C.F.R. § 1236.1(c) However, there is no automatic bond redetermination. *See* 8 C.F.R. § 1236.1(d). Instead, 8 C.F.R. § 1003.19(b) provides that the non-citizen or his or her attorney or representative may affirmatively *request* a bond redetermination of the initial custody determination made by ICE. *See also generally* 8 C.F.R. § 1003.19. Given the binding nature of *Hernandez-Alvarez* on the Immigration Courts, *Matter of Garcia*, 28 I. & N. Dec. at 698, seeking a custody redetermination through a bond hearing is no longer futile. Indeed, Immigration Courts have affirmatively granted bond hearings without the intervention of district courts following the *Hernandez-Alvarez* decision. *See, e.g., Fuentes Barrientos v. Warden Baker Cnty. Facility*, Case No. 3:26-cv-834-MMH-MCR, Doc. 9, (M.D. Fla. May 20, 2026) (dismissing habeas petition as moot by Endorsed Order where the petitioner filed a notice asserting that an immigration judge granted him bond).¹

At bottom, based on the Eleventh Circuit's decision in *Hernandez Alvarez*, the undersigned recognizes that Petitioner is unequivocally 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

¹ The docket displaying the Court's decision is attached to this response as Exhibit I.

unlawfully, Federal 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), Federal Respondents request a reasonable period of seven days to arrange an individualized bond hearing.

II. There is Otherwise No Due Process Violation

Notwithstanding Petitioner's entitlement to a bond hearing under the Eleventh Circuit's *Hernandez-Alvarez* decision, there is 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).) Moreover, Petitioner's detention of fifty-five days falls woefully short of the six-month presumptively reasonable detention period recognized by the U.S. Supreme Court in other immigration detention contexts. *Cf. Zadvydas v. Davis*, 533 U.S. 678, 701 (2001).

III. Petitioner is Not Entitled to Immediate Release

Finally, 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.* As stated above, Petitioner is in removal

proceedings, and 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.

Dated: May 20, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system and that, on or about May 21, 2026, I will serve the foregoing document and exhibits thereto on Petitioner via mail at the address listed for him on the docket.

/s/ Somadina Sullins
SOMADINA SULLINS
Assistant United States Attorney