

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ERLIN OBANDO MARTINEZ,

Petitioner,

Case No. 2:26-CV-01708-KCD-KRH

v.

GARRET RIPA, FIELD OFFICE
DIRECTOR OF ENFORCEMENT
AND REMOVAL OPERATIONS,
MIAMI FIELD OFFICE, IMMIGRATION
AND CUSTOMS ENFORCEMENT;
MARKWAYNE MULLIN, SECRETARY,
U.S. DEPARTMENT OF HOMELAND
SECURITY; U.S. ATTORNEY GENERAL
PAMELA BONDI, DAVID HARDIN,
WARDEN OF GLADES COUNTY
DETENTION CENTER; U.S. DEPARTMENT
OF HOMELAND SECURITY, EXECUTIVE
OFFICE FOR IMMIGRATION REVIEW,

Respondents.

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

Petitioner Erlin Obando Martinez challenges his detention by U.S. Immigration and Customs Enforcement ("ICE"), arguing he is entitled to immediate release or a bond hearing pursuant to 8 U.S.C. § 1226(a). 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. Obando Martinez is therefore entitled to an individualized bond hearing under 8

U.S.C. §1226(a). Nevertheless, because Obando Martinez makes no indication he has requested a bond hearing before an Immigration Judge, since the Eleventh Circuits ruling in *Hernandez Alvarez*, his petition should be denied for failure to exhaust his administrative remedies.

BACKGROUND

Obando Martinez is a national and citizen of Nicaragua who last entered the United States without inspection or admission on November 5, 2021. (Composite Exhibit A at 4 and 5). He was placed in immigration custody on November 10, 2021 and released on an order of recognizance on November 16, 2021. (*Id.* at 13). Obando Martinez was returned to immigration custody on November 15, 2025 (*Id.*). He was served with a Notice to Appear on or about November 13, 2025, charging him as “an alien present in the United States who has not been admitted or paroled”. (*Id.* at 6). On January 16, 2026, prior to the ruling in *Hernandez Alvarez*, Obando Martinez sought a bond hearing, and the immigration judge took no action finding there was no authority to redetermine custody status as he was subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(a). *Id.* at 11. Obando Martinez is currently detained at Glades County Detention Center. (*Id.* at 4). On May 19, 2026, Obando Martinez filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act, and the Due Process Clause of the Fifth Amendment. Doc. 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.” Obando Martinez 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*, Obando 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*, Obando 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.”). Pursuant to 8 C.F.R. § 1241.1(a)-(d) an order of removal becomes final, with respect to the appellate process, “[u]pon dismissal of an appeal by the Board of Immigration Appeals”, “[u]pon waiver of appeal by the respondent”, “[u]pon expiration of the time allotted for appeal, if respondent does not file an appeal within that time”, and “[if] certified to the Board or Attorney General, upon the date of the subsequent decision ordering removal”. Obando Martinez is entitled to a bond hearing pursuant to 8 U.S.C. § 1226(a).

II. Obando 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). 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 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).

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). Obando Martinez has not indicated he has availed himself

of either opportunity before turning to this Court for intervention, after the Eleventh Circuit's ruling in *Hernandez Alvarez*.

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). Moreover, exhaustion of administrative remedies would likely provide the benefit of a written decision from an Immigration Judge regarding Obando 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). Obando Martinez, who filed his petition **after** the *Hernandez Alvarez* decision, should therefore be required to exhaust his administrative remedies.

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 alternative, in the event the Court orders a bond hearing be conducted by an Immigration Judge under 8 U.S.C. § 1226(a), Federal Respondents request a reasonable period of ten days to arrange an individualized bond hearing.

III. Obando Martinez is not entitled to immediate release.

Obando Martinez 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, Obando Martinez is in removal proceedings, evidenced by a notice to appear, 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.

CONCLUSION

Federal Respondents respectfully request that Obando Martinez’s petition be denied. However, if a custody redetermination is order pursuant 8 U.S.C. § 1226(a), Federal Respondent’s request a reasonable period of 10 days to schedule a hearing.

DATED this 10th day of June 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 10, 2026, I electronically filed the foregoing

document with the Clerk of the Court by using the CM/ECF system, which will send notice of filing and a downloadable copy of the filed document to the following CM/ECF participant listed below:

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