

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

ZADKIEL JOSE MADUENO AZUAJE,

Petitioner,

Case No. 2:26-cv-1675-JES-NPM

v.

WARDEN, FLORIDA SOFT SIDE  
SOUTH DETENTION CENTER, et al.,

Respondents.

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**RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Zadkiel Jose Madueno Azuaje challenges his detention by U.S. Immigration and Customs Enforcement (“ICE”), arguing he is entitled to immediate release. 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. Madueno Azuaje is therefore entitled to an individualized bond hearing under 8 U.S.C. §1226(a). Nevertheless, because Madueno Azuaje makes no indication he has requested a bond hearing before an Immigration Judge, his petition should be denied for failure to exhaust his administrative remedies.

**BACKGROUND**

Petitioner is a national and citizen of Venezuela who last entered the United States without inspection on or about May 10, 2023. (Composite Exhibit, Ex. A at

2.) He was served with a Notice to Appear on October 24, 2024. *Id.* at 4. He was placed in immigration custody on December 29, 2025. *Id.* at 11. On June 3, 2026, an Immigration Judge ordered him removed from the United States. *Id.* at 9-10. Petitioner reserved his right to appeal this removal order. *Id.* Petitioner is currently detained at Florida Soft-Sided Facility-South. *Id.* at 11.

On May 18, 2026, Petitioner 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. On May 21, 2026, this Court issued an order to show cause why the petition should not be granted and requiring a response on or before June 4, 2026. Doc. 2.

### 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). Under the Eleventh Circuit’s precedential ruling in *Hernandez Alvarez*, Petitioner is detained under 8 U.S.C. § 1226(a).<sup>1</sup> *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026).

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<sup>1</sup> If Petitioner does not appeal his June 3, 2026 order of removal on or before July 6, 2026, the removal order will become administratively final and the authority for his detention will shift to 8 U.S.C. § 1231.

## 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*, Petitioner 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.”).

## **II. Petitioner 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). This is not an automatic process; rather, an alien must specifically request it. *Id.* § 1003.19(b). 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). Petitioner has not availed himself of either opportunity before turning to this Court for intervention.

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 Petitioner’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 June 4, 2026). Petitioner should therefore be required to exhaust his administrative remedies.

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 seven days to arrange an individualized bond hearing, and oppose any burden shifting for such hearing. *See In re Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) (“[t]he burden is on the alien to show to the satisfaction of the Immigration Judge that he or she merits release on bond.”).

### CONCLUSION

Madueno Azuaje’s Petition for Writ of Habeas Corpus should be denied.

DATED this 4th day of June, 2026.

Respectfully submitted,

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