

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JULIO C. LOPEZ MENDEZ,

Petitioner,

v.

No.: 2:26-cv-01669-SPC-NPM

WARDEN, FLORIDA SOFT SIDE
SOUTH, et al.,

Respondents.

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

Petitioner Julio C. Lopez Mendez challenges his detention by the United States Immigration and Customs Enforcement (“ICE”) arguing he is entitled to release. *See generally* Dkt. 1. While Respondents contend Petitioner is subject to detention under § 1225, the recent decision in *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, Case No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026), categorizes Petitioner as subject to § 1226 and thus eligible for a bond hearing. However, Petitioner has failed to exhaust his administrative remedies before seeking habeas relief, as ICE advises he has not sought a bond hearing / redetermination since being detained most recently.

BACKGROUND

Petitioner is a citizen of Guatemala, *see* Ex. A at 1, who entered the United States without admission or inspection on or about March 16, 1989. *See id.* at 3. ICE served Petitioner with an NTA at that time and placed him in deportation

proceedings; and, following denial of his asylum application, in November 1990 he was granted voluntary departure but never actually left the United States. *See id.* at 4. ICE advises he was ordered to be deported to Guatemala if he failed to depart and that Petitioner appealed to the BIA, but the matter was administratively closed by the BIA in January 1991. Accordingly, ICE advises, Petitioner's order of deportation is not final.

On April 11, 2026, ICE detained Petitioner, *see* Ex. A, and on May 12, 2026, ICE issued a Notice to Appear to him. *See* Ex. B. Petitioner's next hearing date in Immigration Court is May 28, 2026. ICE advises that, since being detained on April 11, 2026, Petitioner has not requested a bond hearing / redetermination.

Petitioner is currently detained at the Florida Soft-Sided South Facility, *see* Ex. D, and as of the date of this Response (May 28, 2026), has presently been in detention for 47 days.

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). ICE advises that because Petitioner's order of deportation is not final, he is detained pursuant to section 235 of the INA, 8 U.S.C. § 1225. However, the Eleventh Circuit's precedential ruling in *Hernandez*

Alvaraez appears to categorize Petitioner under § 1226 and thus eligible for a bond hearing.

ARGUMENT

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, the regulations provide 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* 8 C.F.R. § 1003.19(b). Given the binding nature of *Hernandez Alvarez* on the Immigration Courts, 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). As noted, ICE advises that Petitioner has not sought a bond hearing / redetermination, and he thus has not exhausted his administrative remedies before seeking habeas relief.

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 could provide the benefit of a written decision from an Immigration Judge. Petitioner should therefore be required to exhaust his administrative remedies by seeking bond hearing / redetermination before the Immigration Court.

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 ten (10) days to arrange an individualized bond hearing.¹

Wherefore, the Federal Respondents respond to the Petition.

Respectfully submitted,

May 28, 2026

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s/ Charles T. Harden III
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CERTIFICATE OF FILING

I hereby certify that, on the date set forth above, I filed the foregoing documents and any exhibits referenced therein using the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record. I hereby further

¹ To the extent the Court Orders a 1226 bond hearing, Petitioner is not entitled to release in the interim. “[Section] 1226(a)(1) grants the executive branch discretion to determine whether to detain or release a noncitizen who is facing removal proceedings.” *Hulke v. Schmidt*, 572 F. Supp. 3d 593, 596 (E.D. Wis. 2021). Petitioner is an alien without lawful status. So even if Petitioner is entitled to a bond hearing under § 1226(a), he is not necessarily entitled to immediate release. *See, e.g., Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668 (W.D. Tex. 2025).

certify that I caused copies of the foregoing documents and any exhibits referenced therein to be sent to pro se Petitioner via U.S. Mail, at his last known address.

s/ Charles T. Harden III

Charles T. Harden III

Assistant United States Attorney