

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

JOSE MARGARITO LUCAS VAIL,

Petitioner,

Case No.: 2:26-cv-01679-KCD-NPM

v.

WARDEN, GLADES COUNTY
DETENTION CENTER, et al.

Respondents.

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

Petitioner Jose Margarito Lucas Vail challenges his detention by the United States Immigration and Customs Enforcement ("ICE"), arguing he is entitled to an individualized bond hearing under 8 U.S.C. § 1226(a) or immediate release with appropriate conditions of supervision. Dkt. 5 at 11. To the extent Petitioner seeks an individualized bond hearing, the undersigned concedes that he is entitled to one under the law, but Petitioner has not requested one. Petitioner filed this petition after *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, 175 F.4th 1258 (11th Cir. 2026) was decided by the Eleventh Circuit and has failed to exhaust his administrative remedies. Therefore, his petition should be denied.

BACKGROUND

Petitioner is a citizen of Guatemala, who last entered the United States at an unknown place and time. Composite Exhibit 1 at 5. He was taken into ICE custody

on May 3, 2026 after a traffic stop. *Id.* at 8. On May 3, 2026, he was served with a Notice to Appear. *Id.* at 3. Petitioner is currently detained at the Glades County Detention Center. *Id.* at 12.

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). Petitioner is detained under 8 U.S.C. § 1226(a).

ARGUMENT

I. Petitioner is entitled to a bond hearing.

On May 6, 2026, the Eleventh Circuit issued a decision in *Hernandez Alvarez*, which controls this case. The Eleventh Circuit’s decision concludes that the Immigration and Nationality Act (“INA”) does not “authorize the detention of unadmitted aliens who are simply present in the country.” *Hernandez Alvarez*, 175 F.4th at 1262. 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 1276. The Eleventh Circuit also 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 1281 (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 1276. The Petitioner is entitled to an individualized bond hearing under 8 U.S.C. § 1226(a).

II. Petitioner has failed to exhaust his administrative remedies.

Nevertheless, Petitioner has failed to exhaust his administrative remedies – he has not requested a bond hearing. 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). 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.

CONCLUSION

Federal Respondents respectfully request that Petitioner's petition be denied.

Dated: June 10, 2026

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