

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 25-cv-22451-DAMIAN**

**SERGIO MONTELIER CHAVIANO,**

Petitioner,

v.

**PAMELA BONDI**, U.S. Attorney General, *et al.*,

Respondents.

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**RESPONDENTS' OPPOSITION TO PETITIONER'S  
MOTION TO PRODUCE THE BODY**

Respondents, by and through the undersigned Assistant United States Attorney, respond in opposition to Petitioner's Motion to Produce the Body [ECF No. 21], and in support thereof state the following:

The only basis provided for the Motion is that 28 U.S.C. § 2243 proscribes that "[u]nless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained," and "[a]s Respondents have not yet filed a return in this matter, ... Petitioner's presence ... to testify would aid the Court in resolving any factual dispute that may arise ...." Motion p.1.

While § 2243 prescribes that the court may order the custodian of the habeas petitioner to produce the petitioner, it does not apply where "the writ and the return present only issues of law." "Where there is no dispute as to material fact and only a question of law involved, the court is not required to order that the petitioner be produced in court for a hearing." *Howard v. United States*, 274 F.2d 100, 104 (8th Cir. 1960) (analyzing 28 U.S.C. § 2243).

In this case, there is no basis to order Respondents to produce the Petitioner for the hearing.

Petitioner does not allege that there are any factual disputes. Rather, Petitioner merely argues that the lack of a return leaves the door open for a possible factual issue to arise. Respondents filed their return simultaneously with this opposition. The return closes that door. The writ and return in this case present only issues of law. The Motion should be denied.

DATED: June 10, 2025

Respectfully submitted,

**HAYDEN P. O'BYRNE**  
**UNITED STATES ATTORNEY**

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