

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ABEL ALFARO GONZALEZ,

Petitioner,

v.

Case No.: 3:26-cv-1297-JEP-LLL

WARDEN RONNIE WOODALL, BAKER
CORRECTIONAL INSTITUTION, in his
official capacity; FIELD OFFICE
DIRECTOR, (ICE) ENFORCEMENT AND
REMOVAL OPERATIONS MIAMI FIELD
OFFICE, in his/her official capacity; KEN
CUCCINELLI, ACTING SECRETARY OF
HOMELAND SECURITY, in his official
capacity; and JAMES UTHMEIRER,
ATTORNEY GENERAL OF FLORIDA, in
his official capacity,

Respondents.

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

Petitioner Abel Alfaro Gonzalez challenges his detention by United States Immigration and Customs Enforcement ("ICE") and requests that the Court: (1) order his immediate release; (2) declare that Petitioner is detained under 8 U.S.C § 1226(a) consistent with *Maldonado Bautista*; (3) order the U.S. Department of Homeland Security (DHS) and ICE to provide him with an immediate, individualized custody redetermination hearing before a neutral decision-maker, with the burden placed on the government to justify continued detention; and (4) declare that Petitioner's continued detention violates due process. (Doc. 1, pp. 9–10.)

As an initial matter, Petitioner is not entitled to immediate release. And while Federal Respondents recognize that, under recent Eleventh Circuit precedent, Petitioner is entitled to an individualized bond hearing under 8 U.S.C. § 1226(a), he was provided such a hearing on May 19, 2026, and was denied bond based on the finding that he is a danger to the community. (Ex. A, Bond Order, p. 3.) Notably, contrary to Petitioner's request, in Immigration Court "[t]he burden is on the *alien* to show to the satisfaction of the Immigration Judge that he or she merits release on bond." *In re Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) (emphasis added).

The remainder of Petitioner's purported claims also fail, as detailed below. Accordingly, the instant Petition should be denied.

BACKGROUND

Petitioner is a 46-year-old male, who is a national and citizen of Mexico. (See Ex. B, Petitioner's Form I-213, p. 1.) He entered the United States without inspection at an unknown date and time. (*Id.* at 1, 3.) According to his Form I-213, he attempted to enter the United States illegally by crossing the border from Mexico to Arizona on five separate occasions from May 31, 2005, through June 15, 2005. (*Id.* at 2–3.) Each time, Petitioner was arrested by Border Patrol agents and elected to voluntarily return to Mexico. (*Id.*)

At some point, Petitioner entered the country, was not apprehended, and remained in the United States. On July 3, 2025, he was involved in two consecutive motor vehicle accidents in Pasco County and arrested for a hit-and-run offense based on leaving the scene of a crash involving damage to property, as well as driving under

the influence. (Ex. C, Criminal Records, pp. 4–8, 16–20.) During the arresting officer’s crash investigation, Petitioner admitted to being born in Mexico and being in the United States illegally. (*Id.* at 17.)

On February 24, 2026, Petitioner was adjudicated guilty for a DUI causing property damage or personal injury. (*Id.* at 24–25.) He was placed on twelve months of supervised probation. (*Id.* at 24.)

A warrant for Petitioner’s arrest was issued on March 4, 2025. (Ex. D, Warrant for Arrest of Alien.) On March 5, 2025, Petitioner was encountered by ICE Enforcement and Removal Operations (ERO) officers at the Florida Department of Corrections-Probation Office in New Port Richey, Florida, arrested for violations of the Immigration and Nationality Act (INA), and taken into ICE custody. (Ex. B, p. 2; *see also* Ex. E, Detention History.) He was served with the Warrant for Arrest for Alien on March 5, 2025, in Tampa. (Ex. D.) That same day, Petitioner was also issued and served with a Notice to Appear, which charged him as subject to removal under Sections 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the INA, and placed him in removal proceedings. (Ex. F, Notice to Appear.) According to agency counsel, Petitioner was not placed into expedited removal proceedings.

On May 18, 2026, Petitioner was given a bond hearing on the merits. (Ex. A, p. 3.) The Immigration Judge denied him bond based on the finding that Petitioner was a danger to the community, specifically referencing Petitioner’s DUI conviction. (*Id.*) Petitioner reserved his right to appeal. (*Id.* at 4.) The deadline for his appeal of

the bond order is June 18, 2026. (*Id.*) Petitioner is currently detained at California City Corrections Center. (Ex E.)

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). Federal Respondents acknowledge that the Eleventh Circuit’s precedential ruling in *Hernandez Alvarez* controls the outcome here and renders that Petitioner is detained under 8 U.S.C. § 1226(a). Nevertheless, Federal 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, Federal Respondents acknowledge that under *Hernandez Alvarez*, which is binding on this Court, Petitioner is detained under 8 U.S.C. § 1226(a).

ARGUMENT

I. Petitioner is Not Entitled to Immediate Release

To the extent Petitioner seeks immediate release, the Petition should be denied, as he 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.* To be sure, Petitioner is in removal proceedings, and the U.S. Supreme Court has recognized that “detention during such proceedings is a constitutionally permissible part of that process.” *Demore v. Kim*, 538 U.S. 510, 531 (2003). Moreover, here, where Petitioner was provided a bond hearing on the merits and denied bond on substantive grounds, this Court lacks jurisdiction to review the denial of bond by the Immigration Judge. 8 U.S.C. § 1226(e) (“The Attorney General’s discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.”). Consequently, the Petition should be denied to the extent Petitioner seeks immediate release.

II. Petitioner is Entitled to a Bond Hearing pursuant to *Hernandez Alvarez*, not *Maldonado Bautista*

On May 6, 2026, the Eleventh Circuit issued a decision in *Hernandez Alvarez v. Warden, Federal Detention Center Miami*, Case No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026), which controls in this case. The Eleventh Circuit’s decision concludes that the INA does not “authorize the detention of unadmitted aliens who are simply present in the country.” *Hernandez Alvarez*, 2026 WL 1243395, at *2. 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 *13. Notably, the *Hernandez Alvarez* court 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 *18 (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 *14.

Based on the decision in *Hernandez Alvarez*, Petitioner was entitled to an individualized bond hearing under 8 U.S.C. § 1226(a). However, this entitlement to relief is not based on any relief rewarded in the *Maldonado Bautista* class action because the decision in that case is not binding on this Court. Notably, on March 31, 2026, the Ninth Circuit granted the Government’s Motion to Stay, staying (1) the district court’s December 18, 2025 class certification order and judgment to the extent it extends beyond the Central District of California, and (2) the district court’s February 18, 2026 post-judgment order vacating *Matter of Yajure Hurtado*. (Ex. G, *Maldonado Bautista v. Exec. Off. for Immigr. Rev.*, Case No. 26-1044, Doc. 17.1, p. 4 (9th Cir. Mar. 31, 2026).) Thus, the effect of the *Maldonado Bautista* decision does not extend beyond the Central District of California.

Furthermore, “absent the application of res judicata or collateral estoppel, a district court is not bound by the judgment of another district court.” *Dos Santos Lopes v. Sec’y, Dep’t of Homeland Sec.*, Case No. 3:25-cv-1522-WWB-LLL, 2026 WL 776158,

at *4 (M.D. Fla. Mar. 19, 2026) (citing *Stone v. First Union Corp.*, 371 F.3d 1305, 1310 (11th Cir. 2004)). Because “[r]es judicata applies only when the cases involve the same parties or their privies,” and “Petitioner was not a party to the *Bautista* case, res judicata does not apply” here. *Id.* (citing *S. River Watershed All., Inc. v. DeKalb Cnty.*, 69 F.4th 809, 815 n.1 (11th Cir. 2023)). “Moreover, offensive collateral estoppel is not available against the government.” *Id.* (citation omitted). Accordingly, Petitioner is not entitled to relief here based on the declaratory judgment in *Maldonado Bautista* or the vacatur of *Matter of Yajure Hurtado* in the Central District of California.

Nevertheless, pursuant to the *Hernandez Alvarez* decision, Petitioner sought and was granted a bond hearing, which occurred on May 19, 2026. (Ex. A, p. 3.) Bond was denied on the merits. (*Id.*)

III. In Light of Petitioner’s Bond Hearing, the Petition should be Denied as Moot

As the Eleventh Circuit ruled in *Hernandez Alvarez*, the Executive Branch lacks the authority to detain every unadmitted alien present in the country “without the possibility of bond.” *Hernandez Alvarez*, 2026 WL 1243395, at *21 (emphasis added). Here, Petitioner has already received a bond hearing, which resulted in the Immigration Court’s denial of bond on the ground that he is a danger to the community based, at least in part, on his DUI conviction. (Ex. A., p. 3.). Accordingly, Petitioner’s request for a bond hearing is moot.

The United States Constitution limits this Court’s jurisdiction to the adjudication of actual cases and controversies. U.S. Const. art. III, § 2, cl. 1. The

doctrine of mootness is derived from this limitation. *Adler v. Duval Cnty. Sch. Bd.*, 112 F.3d 1475, 1477 (11th Cir. 1997). The U.S. Supreme Court has characterized mootness as “the doctrine of standing set in a time frame: [t]he requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).” *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 68 n. 22 (1997). As such, if something occurs during litigation that makes it impossible for the court to provide some sort of meaningful relief, there is no case or controversy and the court must dismiss the claim as moot. *See Church of Scientology v. United States*, 506 U.S. 9, 12 (1992). In other words, where the question sought to be adjudicated has been mooted by developments subsequent to the filing of the complaint, no justiciable controversy is presented. *Flast v. Cohen*, 392 U.S. 83, 95 (1968); *see also Bennett v. Jefferson Cnty., Ala.*, 899 F.3d 1240, 1245 (11th Cir. 2018) (citing *Arizonans for Off. Eng.*, 520 U.S. at 68); *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1336 (11th Cir. 2001). As the Eleventh Circuit previously summarized, “[w]hen we consider our jurisdiction for mootness, we look at the events at the present time, not at the time the complaint was filed or when the federal order on review was issued.” *Dow Jones & Co. v. Kaye*, 256 F.3d 1251, 1254 (11th Cir. 2001).

The Petition primarily challenges Petitioner’s prolonged detention without a custody redetermination. (Doc. 1.) Because Petitioner has already received a bond hearing, there is no live case or controversy over which the Court may continue to exercise jurisdiction concerning Petitioner’s request for bond. The Petition should, therefore, be denied as moot to the extent it requests such a hearing.

IV. Petitioner Must Exhaust his Administrative Remedies with respect to the Denial of Bond

To the extent Petitioner seeks a custody redetermination in this Court, a habeas petition is not the proper vehicle to challenge the bond decision of the Immigration Judge. *See* 8 U.S.C. § 1226(e). Rather, any such challenge should be appealed to the Board of Immigration Appeals (BIA). “A petitioner must exhaust all available administrative remedies before filing a [28 U.S.C.] § 2241 petition in federal court.” *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)). In addition, because Petitioner has not yet exhausted his administrative remedies, “it is premature for the Court to reach the constitutional questions presented in the Petition.” *See Bohorquez-Valencia*, 2026 WL 662980, at *2.

To be sure, “[a]lthough the BIA may not have jurisdiction to adjudicate constitutional issues, it can review and reverse the [Immigration Judge’s] bond determination.” *Id.* As such, “this case is distinguishable from those cases in which [district judges within this District] ha[ve] found it unnecessary for petitioners to exhaust claims that they were improperly classified as ‘arriving aliens’ under 8 U.S.C. § 1225(b)(2) and denied bond hearings.” *Id.* “In those cases, BIA precedent—binding on [Immigration Judges]—foreclosed the possibility of any relief for those petitioners.” *Id.* “That is not the case here.” *Id.* Accordingly, the Court should also dismiss the Petition for failure to exhaust available administrative remedies.

Indeed, the Eleventh Circuit's *Hernandez Alvarez* decision now applies with equal force to Immigration Courts located within the Eleventh Circuit's territory of Florida, Georgia, and Alabama, as well as the BIA. *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.* Accordingly, there is no impediment here to Petitioner seeking review of the Immigration Court's denial of bond by the BIA. Nor has the time for doing so expired, as the deadline for such an appeal is June 18, 2026. (Ex. A, p. 4.)

V. Petitioner Improperly Raises Challenges to the Conditions of his Confinement in his Habeas Petition

The Petition also raises issues regarding Petitioner's access to adequate medical care and counsel. (Doc. 1, ¶¶ 6, 7, 10, 11.) "Claims challenging the fact or duration of a sentence fall within the 'core' of habeas corpus, while claims challenging the conditions of confinement fall outside of habeas corpus law." *Vaz v. Skinner*, 634 F. App'x 778, 780 (11th Cir. 2015). As such, "Petitioner's § 2241 petition is not the appropriate vehicle for raising an inadequate medical care claim, as such a claim

challenges the conditions of confinement, not the fact or duration of that confinement.” *Id.* at 781. Nor can a habeas petition be used to raise alleged due process violations stemming from Petitioner’s complaints about access to counsel and use of monitored lines for phone calls with his attorney. *See, e.g., Suarez-Garcia v. Warden Fla. Soft Side S.*, No. 2:26-CV-00687-KCD-DNF, 2026 WL 1396082, at *2 (M.D. Fla. May 19, 2026) (concluding that the petitioner’s complaint’s about access to counsel and forcing him to use monitored lines were grievances “about the *conditions* of his confinement, not the *fact or duration* of it” (emphasis in original)). “And, in any event, even if Petitioner established a constitutional violation, he would not be entitled to the relief he seeks because release from imprisonment is not an available remedy for a conditions-of-confinement claim.” *Vaz*, 634 F. App’x at 781. Accordingly, the Petition should be denied to the extent it seeks release on grounds of inadequate access to medical care and counsel.

VI. The *Zadvydas* Burden-Shifting Framework is not Applicable to Petitioner’s Pre-Removal Order Detention

To the extent Petitioner attempts to invoke the *Zadvydas* burden-shifting framework, the Petition should be denied because it is inapplicable to *pre*-removal order detention. In *Zadvydas v. Davis*, the Supreme Court held that detention *following* a final removal order is presumptively reasonable for six months. 533 U.S. 678, 701 (2001). Here, Petitioner has not yet been ordered removed. The relevant time period for stating a *Zadvydas* claim is the time spent in detention between the date a detainee’s removal order becomes administratively final and the date that the detainee files a

petition for habeas relief under 28 U.S.C. § 2241. *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002) (stating that “in order to state a claim under *Zadvydas* the alien . . . must show post-removal order detention in excess of six months” and that “[t]his six month period . . . must have expired at the time [the petitioner’s] § 2241 petition was filed in order to state a claim under *Zadvydas*”).

If the six-month presumptively reasonable *post-removal order detention* period expires without removal, then a burden-shifting framework comes into play regarding the “significant likelihood of removal in the reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 701. If an alien “provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the government must either rebut that showing or release the alien. *Id.* But before that six-month period expires, any habeas challenge to the detention itself is premature. *E.g.*, *Akinwale*, 287 F.3d at 1051–52; *Song v. U.S. Att’y Gen.*, 516 F. App’x 894, 899 (11th Cir. 2013); *Gozo v. Napolitano*, 309 F. App’x 344, 346 (11th Cir. 2009). At bottom, “until the six-month *Zadvydas* period concludes, detention is presumptively reasonable, and any due process claim is not ripe.” *Al Ellary v. Noem*, Case No. 2:26-cv-112-KCD-DNF, 2026 WL 548048, at *1 (M.D. Fla. Feb. 27, 2026).

Petitioner has no removal order at all, let alone an administratively final removal order. Consequently, any *Zadvydas* claim is premature and unripe. “The determination of ripeness goes to whether the district court ha[s] subject matter jurisdiction to hear the case.” *Digit. Props., Inc. v. City of Plantation*, 121 F.3d 586, 591 (11th Cir. 1997). “The ripeness doctrine involves considerations of both jurisdictional

and prudential concerns.” *Id.* at 589. “Article III of the United States Constitution limits the jurisdiction of the federal courts to cases and controversies of sufficient concreteness to evidence ripeness for review.” *Id.* “The doctrine seeks to avoid entangling courts in the hazards of premature adjudication.” *Id.*

The ripeness doctrine also “protects the other branches from judicial meddling.” *Nat’l Advert. Co. v. City of Miami*, 402 F.3d 1335, 1339 (11th Cir. 2005). “When a plaintiff is challenging a governmental act, the issues are ripe for judicial review if a plaintiff shows he has sustained, or is in immediate danger of sustaining, a direct injury as the result of that act.” *Id.* “Based on these interests, courts decide only cases that are ripe for their review.” *Club Madonna, Inc. v. City of Miami Beach*, 924 F.3d 1370, 1380 (11th Cir. 2019). Courts “determine ripeness, which addresses both constitutional and prudential concerns, by evaluating[:] (1) the fitness of the issues for judicial decision[;] and (2) the hardship to the parties of withholding court consideration.” *Id.* “Concerning fitness for judicial decision, [courts] ask whether the parties raise an issue that [can be] decide[d] without further factual development and whether the institutional interests of the court and agency favor immediate review.” *Id.* “As for ‘hardship,’ litigants must show that they are forced between foregoing lawful activity and risking substantial legal sanctions.” *Id.* “If a claim is fit for judicial decision, that is [the] end of the inquiry, and the matter is ripe, given that the absence of a ‘hardship’ cannot tip the balance against judicial review.” *Id.*

Ripeness is assessed on a claim-by-claim basis. *Id.* “A facial challenge presenting a purely legal argument, for example, is presumptively ripe for judicial review because

that type of argument does not rely on a developed actual record.” *Id.* “In contrast, an as-applied challenge necessarily requires the development of a factual record for the court to consider.” *Id.*

The lack of any removal order for Petitioner presents a sufficient factual record for the Court to determine that Petitioner’s purported *Zadvydas* claim is not fit for judicial decision, as the ruling in *Zadvydas* is not applicable to pre-removal order detention. Nor is Petitioner forced between foregoing lawful activity and risking substantial legal sanctions. He is entitled to a bond hearing and has received one. His bond was denied. He is well within his legal rights to seek appeal of that bond denial with the BIA. There is no risk of substantial legal sanctions to Petitioner if he exercises such rights. Moreover, in his Petition, he admits he has an attorney assisting him with his defense in his immigration proceedings. (Doc. 1, ¶ 6.) Accordingly, the Petition should be denied for lack of subject matter jurisdiction to the extent it requests relief on the basis of an unripe *Zadvydas* claim.¹

VII. There is Otherwise No Due Process Violation

Finally, notwithstanding Petitioner’s entitlement to a bond hearing under the Eleventh Circuit’s *Hernandez-Alvarez* decision—which he was provided, there is otherwise no due process violation here, as Petitioner is in removal proceedings. As stated above, the Supreme Court has recognized that “detention during such proceedings is a constitutionally permissible part of that process.” *Demore*,

¹ Similarly, the INA regulations that the Petitioner alleges were violated by ICE—8 C.F.R. §§ 241.4 and 241.13—are also only applicable to post-removal order detention.

538 U.S. at 531. Consequently, Petitioner is not entitled to any other relief on due process grounds.

Dated: May 29, 2026

Respectfully submitted,

GREGORY W. KEHOE
United States Attorney

By: /s/ Somadina I. Sullins
SOMADINA I. SULLINS
Assistant United States Attorney
Florida Bar No. 0120126
400 N. Tampa Street, Suite 3200
Tampa, FL 33602
Telephone: (813)-274-6000
Fax: (813)-274-6200
Email: Soma.Nwokolo@usdoj.gov
Counsel for the Federal Respondents

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2026, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system and that, on or about June 1, 2026, I will serve the foregoing document and exhibits thereto on Petitioner via mail at California City Corrections Center.

/s/ Somadina Sullins

SOMADINA SULLINS

Assistant United States Attorney