

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

JOSE EMANUEL GALLARDO,

Petitioner,

No. 2:25-cv-1193-JES-DNF

v.

WARDEN GLADES DETENTION  
FACILITY, et al.,

Respondents.

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

Petitioner Jose Emanuel Gallardo challenges his detention by U.S. Immigration and Customs Enforcement, arguing his detention is continuing detention is unlawful, and he is entitled to a bond hearing under 8 U.S.C. § 1226. While reserving all rights, including the right to appeal, Respondents submit an abbreviated brief in lieu of an exhaustive memorandum to preserve the Respondents' arguments and to conserve judicial resources. Should the Court prefer a more exhaustive discussion, Respondents request leave to submit additional briefing.<sup>1</sup>

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<sup>1</sup> The only appropriate respondent to a habeas case is the official with physical custody of Rodriguez. 28 U.S.C. § 2243 ("The writ, or order to show cause shall be directed to the person having custody of the person detained."); *Rumsfeld v. Padilla*, 542 U.S. 426, 434-36 (2004) ("[T]he default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official."). Accordingly, the only proper respondent in this case is the Warden of Gladers

## FACTS

Gallardo is a national and citizen of Guatemala who last entered the United States on October 1, 2020, near McAllen Texas. (Composite Exhibit, Ex. A at 1.) U.S. Immigration and Customs Enforcement encountered Gallardo following a traffic stop on November 16, 2025. *Id.* at 2. He was served with a Notice to Appear on the same day alleging he is an alien present in the United States without being admitted or paroled. *Id.* at 5.

Gallardo has filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act. (Doc. 1.)

## ARGUMENT

### **I. Gallardo is properly detained under 8 U.S.C. § 1225.**

In *In re Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025) the Board of Immigration Appeals (BIA) examined the plain language of Section 1225, the INA's statutory scheme, Supreme Court and BIA precedent, the legislative history of the INA and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub L. No. 104-208, and DHS's prior practices. After doing so, the BIA held that "under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant

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County Detention Facility in his official capacity. *See e.g., Vandernick v. Sec'y, Fla. Dep't of Corr.*, No. 5:18-cv-603-SPC-PRL, 2021 WL 1020914, at \*1 n.3 (M.D. Fla. Mar. 17, 2021).

bond to aliens, like the petitioner, who are present in the United States without admission.” 29 I&N Dec. at 225. This Court should rule the same.

Respondents acknowledge that questions of law in this case, and the challenges to the government’s policy and practice, substantially overlap with *Patel v. Hardin*, No. 2:25-cv-00870-JES-NPM (M.D. Fla.) (Doc. 22) (granting habeas in part). It should be noted, however, many courts recently ruled in Respondents in similar challenges. *Manzo Valencia v. Chestnut*, No. 1:25-cv-01550 WBS JDP, 2025 WL 3205133, at \*1-4 (E.D. Cal. Nov. 17, 2025).<sup>2</sup> There is therefore a countrywide district split on applying § 1225 or § 1226 in these instances. And at least four circuits have active appeals on the matter. *Martinez v. Hyde*, No. 25-1902 (1st Cir.); *Buenrostro-Mendez v. Bondi*, No. 25-20496 (5th Cir.); *Pizzaro Reyes v. ERO*, No. 25-1982 (6th Cir.); *Cortes Alonzo v. Noem*, No. 25-7348 (9th Cir.).<sup>3</sup>

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<sup>2</sup> See also *Suarez v. Noem*, No. 1:25-cv-00202-JMD, 2025 WL 3312168, at \*2-3 (E.D. Mo. Nov. 28, 2025); *Cortes Alonzo v. Noem*, No. 1:25-cv-01519 WBS SCR, 2025 WL 3208284, at \*1-5 (E.D. Cal. Nov. 17, 2025); *Altamirano Ramos v. Lyons*, No. 2:25-cv-09785-SVW-AJR, 2025 WL 3199872, at \*4-9 (C.D. Cal. Nov. 12, 2025); *Montoya Cabanas v. Bondi*, No. 4:25-cv-04830, 2025 WL 3171331, at \*3-7 (S.D. Tex. Nov. 13, 2025); *Olalde v. Noem*, No. 1:25-CV-00168-JMD, 2025 WL 3131942, at \*2-5 (E.D. Mo. Nov. 10, 2025); *Oliveira v. Patterson*, No. 6:25-cv-01463-DCJ-DJA, 2025 WL 3095972, at \*2-6 (W.D. La. Nov. 4, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926, \*2-6 (W.D. La. Oct. 31, 2025); *Rojas v. Olson*, No. 25-cv-1437-bhl, 2025 WL 3033967, at \*2-10 (E.D. Wis. Oct. 30, 2025); *Garibay-Robledo v. Noem*, No. 1:25-cv-00177-H (Doc. 9) (N.D. Tex. Oct. 24, 2025); *Kum v. Ross*, No. 6:25-cv-00451-DCJ-CBW, 2025 WL 3113646, at \*1-2 (W.D. La. Oct. 22, 2025); *Vargas v. Lopez*, No. 25-CV-526, 2025 WL 2780351, at \*4-9 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-23250CAB-SBC, 2025 WL 2730228 at \*4-5 (S.D. Cal. Sept. 24, 2025).

<sup>3</sup> *Buenrostro-Mendez v. Bondi*, No. H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Martinez v. Hyde*, 792 F. Supp. 3d 211 (D. Mass. 2025); *Cortes Alonzo*, 2025 WL

Respondents respectfully disagree with the Court's decision in *Patel*. That said, in the interest of judicial economy and to expedite the Court's consideration of this matter, Respondents make the following arguments:

1. Title 8 U.S.C. § 1252(g) bars review of the Gallardo's claims. *Patel v. Hardin*, No. 2:25-cv-00870-JES-NPM, Doc. 15 at 4-7 (M.D. Fla. Oct. 22, 2025).<sup>4</sup>
2. Title 8 U.S.C. § 1252(b)(9) bars review of Gallardo's claims. *Id.* at 7-8.
3. Gallardo failed to exhaust his administrative remedies. *Id.* at 8-9.
4. Gallardo is properly detained under 8 U.S.C. § 1225. *Id.* at 10-16.

Finally, Respondents contend that should this Court determine that Petitioner's detention is subject to 8 U.S.C. § 1226, outright release is inappropriate. To the extent the Court orders a bond hearing before an Immigration Judge for the purpose of determining whether Petitioner is a flight risk or danger to the community—see, e.g., *Garcia v. Noem*, No. 2:25-CV-00879-SPC-NPM, 2025 WL 3041895, at \*6 (M.D. Fla. Oct. 31, 2025)—Respondents aver that such bond hearings are not conducted or managed by ICE, rather by the Executive Office for Immigration Review, which is not a proper party to this suit. See *Rumsfeld v. Padilla*, 542 U.S. 426,

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3208284; *Pizzaro Reyes v. ERO*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025).

<sup>4</sup> Respondents acknowledge Local Rule 3.01(h) prohibits incorporation by reference of any other motion, legal memorandum, or brief. To achieve the purpose of efficiency, Respondents respectfully request the Court to suspend application of the rule in this instance. See Local Rule 1.01(a) and 1.01(b); Fed. R. Civ. P. 1.

434-36 (2004) (noting that for habeas petitions challenging detention, “the default rule is that the proper Respondents is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official”).

### CONCLUSION

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

DATED this 12th day of January, 2026.

Respectfully submitted,

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