

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MIGUEL H. CANDELARIO GILBERTO,

Petitioner,

Case No. 2:26-cv-122-SPC-DNF

v.

WARDEN, FLORIDA SOFT SIDE SOUTH
DETENTION CENTER, et al.

Respondents.

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Miguel Candelario Gilberto challenges his detention by U.S. Immigration and Customs Enforcement, arguing he is entitled to a bond hearing under 8 U.S.C. § 1226. While reserving all rights, including the right to appeal, Respondents submit this 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.¹

¹ The only appropriate respondent to a habeas case is the official with physical custody of Perera. 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 Florida Soft Side South

FACTS

Candelario Gilberto is a national and citizen of Guatemala who last entered the United States at an unknown date and time. (Composite Exhibit, Ex. 1 at 1.) He was placed in immigration proceedings on or about January 13, 2026. *Id.* at 4. He is currently detained at Florida Soft Side South Detention Center. (Doc. 1 ¶ 1.)

On January 22, 2026, Candelario Gilberto filed a petition for writ of habeas corpus alleging his custody violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. (Doc. 1.)

ARGUMENT

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 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.

Detention Center in his official capacity. *See e.g., Vandersnick 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).

Respondents acknowledge that questions of law in this case, and the challenges to the government's policy and practice, substantially overlap with *Garcia v. Noem, et al.*, No. 2:25-cv-879-SPC-NPM, 2025 WL 3041895 (M.D. Fla. Oct. 31, 2025). It should be noted, however, that several courts have recently ruled against petitioners in similar cases. *Montoya Cabanas v. Bondi*, No. 4:25-cv-04830, 2:25-cv-00549, 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).² There is currently a district split across the country on the applicability of § 1225 and § 1226 in these instances. And at least three circuits have active appeals on the matter. *Martinez v. Hyde*, No. 25-1902 (1st Cir.); *Buenrostro-Mendez v. Bondi*, No. 25-20496 (5th Cir.); *Hernandez Alvarez v. Warden, Federal Detention Center Miami, et al.*, No. 25-14065 (11th Cir.).

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

² See also *Silva Oliveira v. Patterson*, No. 6:25-cv-01463, 2025 WL 3095972, at *2-7 (W.D. La. Nov. 4, 2025); *Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926, *2-7 (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); *Kum v. Ross*, No. 6:25-CV-00451, 2025 WL 3113646, at *1-2 (W.D. La. Oct. 22, 2025), *report and recommendation adopted by* 2025 WL 3113644 (W.D. La. Nov. 6, 2025); *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351, at *7-10 (D. Neb. Sept. 30, 2025); *Chavez v. Noem*, No. 25-CV-23250-CAB-SBC, 2025 WL 2730228 at *4-5 (S.D. Cal. Sept. 24, 2025). Cf. *Garibay-Robledo v. Noem*, No. 1:25-cv-00177-H, (Doc. 9), (N.D. Tex. Oct. 24, 2025).

1. Title 8 U.S.C. § 1252(g) bars review of the Candelario Gilberto's claims. *Garcia v. Noem, et al.*, No. 2:25-cv-00879-SPC-NPM, Doc. 14 at 4-5 (M.D. Fla. Oct. 10, 2025).³
2. Title 8 U.S.C. § 1252(b)(9) bars review of Candelario Gilberto's claims. *Id.* at 6-7.
3. Candelario Gilberto failed to exhaust his administrative remedies. *Id.* at 7-8.
4. Candelario Gilberto is properly detained under 8 U.S.C. § 1225. *Id.* at 9-14.

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, 434-36 (2004) (noting that for habeas petitions challenging detention, “the default rule

³ 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.

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

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

DATED this 2nd day of February, 2026.

Respectfully submitted,

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