

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

YERARD JOSE SOSA ORTIZ,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 5:25-cv-00204
	)	
WARDEN, FOLKSTON ICE	)	
PROCESSING CENTER,	)	
	)	
Respondent.	)	

ABBREVIATED RESPONSE TO PETITION
AND RESPONSE TO SHOW CAUSE ORDER

I. **Introduction**

Petitioner Yerard Jose Sosa Ortiz (“Petitioner” or “Sosa”) filed a habeas corpus petition pursuant to 28 U.S.C. § 2241. Doc. 1. Sosa’s § 2241 petition is one of many now pending in this Court challenging a petitioner’s designation as an “applicant for admission” subject to mandatory detention under 8 U.S.C. § 1225(b)(2). Sosa contends that his detention is properly grounded in 8 U.S.C. § 1226, which—unlike § 1225—generally authorizes immigration judges to release aliens on bond. Sosa claims that Respondent’s incorrect reading of the Immigration and Nationality Act (“INA”) has deprived him of the opportunity for release on bond—thus resulting in his unlawful detention.

On December 5, 2025, the Court issued an Order directing Respondent to show cause within five business days why the Court should not grant the same relief to Petitioner that the Court granted to petitioners in the recently adjudicated *Villa* case.

See Villa v. Normand, No. 5:25-cv-89, 2025 WL 3095969 (S.D. Ga. Nov. 4, 2025), *report and recommendation adopted*, 2025 WL 3188406 (S.D. Ga. Nov. 14, 2025). Respondent contends that none of Petitioner's claims are meritorious and thus asks the Court to deny the instant habeas corpus petition.

That said, Respondent alerts the Court to two points. First, Respondent acknowledges the recent class action decision in *Maldonado Bautista v. Santacruz*, ___ F.R.D. ___, No. 5:25-CV-01873, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). The *Maldonado* court granted class certification under Rule 23(b)(2), defining the certified class as follows:

Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Maldonado, 2025 WL 3288403 at *9. While Petitioner alleges he is a member of the *Maldonado* Bond Eligible Class, Respondent does not believe him to be a class member because he was apprehended upon arrival to the United States by United States Border Patrol ("USBP"). *See* Declaration of Bjorn M. Cupid (Exhibit 1), ¶ 5. Accordingly, Petitioner does not appear to meet the second requirement for class membership. *See Maldonado*, 2025 WL 3288403 at *9.

Second, Respondent recognizes this Court's prior ruling in *Villa* concerning a similar challenge to the detention authority at issue here and acknowledges that, if the Court adheres to its legal reasoning in *Villa*, it will control the result in this case. While reserving all rights, including the right to appeal, Respondent submits this

abbreviated response in lieu of an exhaustive opposition brief to preserve the legal issues and to conserve the resources of the Court and the parties. Consistent with the Court's Show Cause Order, Respondent confines its briefing to the INA statutory-interpretation issue addressed in this Court's *Villa* opinion. Should the Court desire a more exhaustive response memorandum or briefing on claims (or counts) not explicitly addressed herein, Respondent respectfully requests leave to file such a brief and will do so upon the Court's request.

II. Statutory Framework

The INA contains two complementary provisions, 8 U.S.C. §§ 1225 and 1226, governing the detention of aliens prior to issuance of a removal order. Section 1225 applies to “applicants for admission,” who are defined as “alien[s] present in the United States who [have] not been admitted” or “who arrive[] in the United States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation.” *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien “indicates an intention to apply for asylum . . . or a fear of persecution,” immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien “with a credible fear of persecution” is “detained for

further consideration of the application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of prosecution, or is “found not to have such a fear,” he is detained until removed. *Id.* § 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.* Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a removal proceeding “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A); see *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 220 (BIA 2025) (“[A]liens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.”) (citing *Jennings*, 583 U.S. at 300); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“[F]or aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention ‘until removal proceedings have concluded.’”) (internal citation omitted; quoting *Jennings*, 583 U.S. at 299)). Still, the Department of Homeland Security (“DHS”) possesses sole discretionary authority to temporarily release on parole “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); see *Biden v. Texas*, 597 U.S. 785, 806 (2022).

Section 1226, in turn, provides for arrest and detention “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). This section provides authority to detain aliens who do not fall under § 1225(b)(2) because they were previously admitted, but who are placed in removal proceedings under § 1229a for various reasons, including by violating their status, overstaying their visas, or being convicted of certain crimes. *See* 8 U.S.C. § 1227(a). Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers can release an alien detained under § 1226(a) if the alien demonstrates that he “would not pose a danger to property or persons” and “is likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8).

III. Factual Background

Sosa is a native and citizen of Venezuela. *See* Exh. 1, ¶ 4. He was apprehended by USBP after unlawfully entering the United States without inspection or admission at or near Eagle Pass, Texas on or about December 17, 2023. *See id.*, ¶ 5. On December 18, 2023, USBP served Petitioner a Notice to Appear (“NTA”) charging him with inadmissibility pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General, and § 1182(a)(7)(A)(i)(I), as an alien who did not have a valid unexpired immigrant visa or other valid entry document. *See id.*, ¶ 6. He was released by USBP on an Order of Recognizance. *See id.*, ¶ 7.

On November 14, 2024, Petitioner filed an application for relief from removal. *See id.*, ¶ 8. On September 15, 2025, Petitioner was encountered by ICE and detained. *See id.*, ¶ 9. A merits hearing on Petitioner's application for relief from removal is set for January 9, 2026. *See id.*, ¶ 10. Petitioner is presently detained at Folkston D Ray ICE Processing Center in Folkston, Georgia pursuant to 8 U.S.C. § 1225(b)(2)(A). *See id.*, ¶ 11.

IV. Argument¹

A. Petitioner's Habeas Corpus Claims Are Barred by Statute, and the Court Lacks Jurisdiction to Adjudicate Them.

The plain language of 8 U.S.C. § 1252(g) and the Eleventh Circuit's consistent interpretation of this provision independently foreclose Petitioner's habeas corpus claims. Congress stripped federal district courts of jurisdiction over § 2241 challenges to an alien's detention in 8 U.S.C. § 1252(g). That provision reads:

Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g).

Calling § 1252(g) "unambiguous," the Eleventh Circuit held that this statute

¹ Respondent reasserts arguments here that this Court rejected in *Villa*, including specifically: (1) a jurisdictional argument based on 8 U.S.C. § 1252(g); and (2) a statutory-interpretation argument concerning the proper reading of 8 U.S.C. §§ 1225 and 1226. *See Villa v. Normand*, 5:25-cv-0089 (S.D. Ga.), Docs. 46 (R&R) at 4-23; 84 (Adoption Order) at 11-21. Respondent reasserts these arguments to preserve them for review in any subsequent proceeding.

“bars federal courts’ subject-matter jurisdiction over any claim for which the ‘decision or action’ of the Attorney General (usually acting through subordinates) to commence proceedings, adjudicate cases, or execute removal orders is the basis of the claim.” *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). The Court of Appeals interpreted the scope of “commenc[ing] proceedings” to include “[s]ecuring an alien while awaiting a removal determination.” *Id.*

A subsequent panel made *Gupta*’s holding more plainly applicable to the facts of Petitioner’s habeas corpus petition, finding that “ICE’s decision to take [a noncitizen] into custody and to detain him during his removal proceedings . . . w[as] closely connected to the decision to commence proceedings, and thus w[as] immune from our review.” *Alvarez v. U.S. Immigr. & Customs Enft*, 818 F.3d 1194, 1203 (11th Cir. 2016). The Eleventh Circuit found that § 1252(g) barred Alvarez’s claim, even though he alleged his detention violated the Fourth and Fifth Amendments because government officials made knowing misrepresentations to detain him. *Id.* at 1203–04; *see also Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 488 (1999) (“[A]n alien unlawfully in this country has no constitutional right to assert selective enforcement as a defense against his deportation.”). “When asking if a claim is barred by § 1252(g), courts must focus on the action being challenged.” *Canal A Media Holding, LLC v. United States Citizenship & Immigr. Servs.*, 964 F.3d 1250, 1257–58 (11th Cir. 2020). Efforts to challenge the refusal of immigration officials to exercise favorable discretion also fall under § 1252(g)’s jurisdictional provision. *Alvarez*, 818 F.3d at 1205.

Here, Sosa's petition challenges a specific action—securing him during removal proceedings—that the Eleventh Circuit has ruled falls within the scope of “commenc[ing] proceedings” referenced in § 1252(g). *See Gupta*, 709 F.3d at 1065. Consequently, Petitioner's habeas corpus claims are barred by statute.

B. Because Petitioner Is An “Applicant for Admission” Whose Detention Is Required by 8 U.S.C. § 1225, Petitioner's Claims Are Meritless.

Petitioner's detention is governed by 8 U.S.C. § 1225, which mandates that he remain in detention during the pendency of his removal proceedings, subject to DHS's discretionary release on parole under 8 U.S.C. § 1182(d)(5)(A). Pursuant to 8 U.S.C. § 1225(b)(2)(A), “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.”

In the present case, Petitioner is an “applicant for admission” to the United States because he entered the country illegally and he has not demonstrated to an examining immigration officer that he is “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A); *see also DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (alien “who tries to enter the country illegally is treated as an ‘applicant for admission’”). Petitioner cannot demonstrate that he is “clearly and beyond a doubt entitled to be admitted” because, as he is present in the United States without being admitted or paroled, he is inadmissible under 8 U.S.C. §§ 1182(a)(6) & (a)(7). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. at 221-23; Doc. 20-1 at 2-3. Accordingly, Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2)(A), which mandates that he

“shall be” detained. *See Sandoval v. Acuna*, No. 6:25-cv-01467, 2025 WL 3048926, at *3-5 (W.D. La. Oct. 31, 2024); *Chavez v. Noem*, No. 3:25-cv-02325, --- F. Supp. 3d ---, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (“Petitioners do not contest that they are aliens present in the United States who have not been admitted. By the plain language of § 1225(a)(1), then, Petitioners are ‘applicants for admission’ and thus subject to the mandatory detention provisions of ‘applicants for admission’ under § 1225(b)(2)(A).” (cleaned up)); *Pena v. Hyde*, No. 25-cv-11983, 2025 WL 2108913, at *2 (D. Mass. July 28, 2025) (“Because petitioner [a Brazilian national who entered the country illegally in 2005] remains an applicant for admission, his detention is authorized so long as he is ‘not clearly and beyond doubt entitled to be admitted’ to the United States.”) (quoting 8 U.S.C. § 1225(b)(2)(A)).

Respondent’s reasoning is supported by Supreme Court decisional law. As explained in *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018), applicants for admission fall into one of two categories: those covered by § 1225(b)(1), and those covered by § 1225(b)(2). Section 1225(b)(1) applies to aliens arriving in the United States who are initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation. 8 U.S.C. § 1225(b)(1)(A)(i). Section 1225(b)(2), on the other hand, is “broader” and “serves as a catchall provision that applies to *all* applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here).” *Jennings*, 583 U.S. at 287 (emphasis added). Put another way, while § 1225(b)(1) applies to aliens “arriving” in the United States, § 1225(b)(2) applies to all “other” aliens who are applicants for admission—like

Petitioner. An alien does not lose his “applicant for admission” status as a matter of law simply because he failed to seek inspection and admission upon his immediate arrival in the United States. Moreover, the Supreme Court has confirmed that this statutory mandate for detention extends for the entirety of removal proceedings. *See Jennings*, 583 U.S. at 302 (“[Section] 1225(b)(2) ... mandates[s] detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.”). Accordingly, Sosa’s status as an “applicant for admission” mandates that he be detained during the pendency of his removal proceedings.

V. Conclusion

For the reasons stated above, this Court should deny Petitioner’s 28 U.S.C. § 2241 petition.

In the event the Court adheres to its *Villa* ruling, Respondent requests a reasonable period of seven days to arrange an individualized bond hearing pursuant to 8 U.S.C. § 1226(a).

Respectfully submitted, this 12th day of December, 2025.

MARGARET E. HEAP
UNITED STATES ATTORNEY

/s/ Sharla B. Svennes
Georgia Bar No. 926183
Assistant United States Attorney
U.S. Attorney’s Office
Post Office Box 8970
Savannah, Georgia 31412
Telephone: (912) 652-4422
E-mail: Sharla.Svennes@usdoj.gov