

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

GUEYE,	)	
	)	Case No. 5:25-cv-00228
Petitioner,	)	
	)	
v.	)	Immigration File No.
	)	A# 
WARDEN, FOLSTON ICE PROCESSING CENTER, <i>et.al.</i>	)	
	)	
Respondents.	)	

**PETITIONER'S REPLY TO RESPONDENTS'
ABBREVIATED RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner Mouhamed Gueye, through undersigned counsel, submits this reply to Respondents' *Abbreviated Response* and states as follows:

I. This Court has jurisdiction over this habeas petition.

Respondents again argue that 8 U.S.C. §§ 1252(g) and 1252(b)(9) strip this Court of jurisdiction because Mr. Gueye's detention is "closely connected" to the initiation and conduct of his removal proceedings. That position is inconsistent with controlling precedent. Section 1252(b)(9) does not channel or bar stand-alone habeas challenges to civil immigration detention. *See Jennings v. Rodriguez*, 583 U.S. 281, 292–94 (2018). Section 1252(g) is much narrower than Respondents suggest and applies only to three discrete actions: the decision or action to commence proceedings, adjudicate cases, or execute removal orders. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Mr. Gueye does not challenge any of those actions; he challenges only the statutory basis and constitutionality of his ongoing civil detention. District courts retain jurisdiction over such claims. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1366–67 (11th Cir. 2006).

Respondents themselves acknowledge that this Court exercised jurisdiction over an indistinguishable detention challenge in *Aguirre Villa v. Normand* and decided the merits there. Nothing in their abbreviated response justifies a different jurisdictional outcome here.

II. Under *Villa*, § 1226(a) governs Mr. Gueye’s custody; Respondents concede *Villa* controls if the Court adheres to it.

On the merits, Respondents “recognize this Court’s prior ruling in *Aguirre Villa v. Normand* concerning a similar challenge to the detention authority at issue here and acknowledge that, if the Court adheres to its legal reasoning in *Aguirre Villa*, it will control the result in this case.” (Abbrev. Resp. at 2.) That concession is correct. In *Aguirre Villa*, this Court held that detention of individuals in § 240 removal proceedings is governed by 8 U.S.C. § 1226(a), not § 1225(b)(2), and rejected the Board’s attempt in *Matter of Yajure Hurtado* to reclassify never-admitted noncitizens as perpetual “applicants for admission” subject to mandatory, no-bond detention. The Court explained that reading § 1225(b)(2) to cover everyone who ever entered without admission would effectively nullify § 1226(a) and conflict with Congress’s recent amendments to § 1226(c) in the Laken Riley Act.

Mr. Gueye’s case is, in several respects, even clearer than *Aguirre Villa*. He was apprehended at or near Lukeville, Arizona, on September 19, 2023, immediately surrendered to CBP, and two days later was issued a Notice to Appear into § 240 proceedings charging him solely under INA § 212(a)(6)(A)(i). The NTA’s expedited-removal vacatur sections are blank; there is no reference anywhere to INA § 235(b)(1) or to any expedited removal order. That same day, DHS issued an Order of Release on Recognizance (Form I-220A) expressly stating that, in accordance with section 236 of the Immigration and Nationality Act and applicable regulations, he was being released on his own recognizance subject to conditions. There is no Form I-860, no credible-fear or reasonable-fear documentation, and no other paperwork placing him into any § 235(b) track.

DHS has litigated his case exclusively in § 240 proceedings.

In other words, Respondents never exercised § 235(b) authority over Mr. Gueye at all. At the moment of intake, CBP had the full menu of processing dispositions available—including expedited removal—but chose instead to issue a § 240 Notice to Appear and an Order of Release in accordance with section 236. They cannot, years later, retroactively recharacterize him as a § 1225(b)(2) detainee solely to avoid the bond framework Congress established in § 1226(a). After *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024), this Court owes no *Chevron* deference to the Board's recent interpretations in *Yajure Hurtado* or *Matter of Q. Li*, particularly where they depart from decades of practice and conflict with the statutory text and structure. The Court should adhere to *Aguirre Villa* and apply its reasoning here.

III. The *Maldonado Bautista* class-action orders confirm that the Government's policy is unlawful and that bond hearings are required.

Since this Court decided *Aguirre Villa*, the Central District of California has entered a series of orders in *Maldonado Bautista v. Santacruz* further confirming that DHS's July 2025 policy is unlawful. On November 20, 2025, that court granted partial summary judgment to the named petitioners, holding that the government's policy of treating certain noncitizens who entered without inspection as mandatory detainees under § 1225(b)(2)(A) is inconsistent with the plain language of the INA and that those petitioners are properly subject to § 1226(a). *See Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). Five days later, the court certified a nationwide Bond Eligible Class of individuals detained under the new policy and being denied access to bond hearings. *See id.*; Order Granting Class Certification (C.D. Cal. Nov. 25, 2025).

When immigration judges around the country continued to deny bond hearings to class members and the government questioned the effect of those orders, the court issued an amended

order in December 2025 consolidating and clarifying its prior decisions and, the same day, entered final judgment for the Bond Eligible Class. *See* Amended Order Consolidating Court's Orders, *Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM, Dkt. 93 (C.D. Cal. Dec. 18, 2025); Final Judgment, *Maldonado Bautista*, Dkt. 94 (C.D. Cal. Dec. 18, 2025). In that final judgment, the court declared that members of the Bond Eligible Class are detained under 8 U.S.C. § 1226(a) and not under § 1225(b)(2); declared that, under DHS's own regulations, they are entitled to consideration for release on bond by immigration officers and, if not released, a custody-redetermination hearing before an immigration judge; and vacated the July 8, 2025 Interim Guidance Regarding Detention Authority for Applicants for Admission as unlawful. *See id.*; *see also* ACLU, Federal Court Affirms Nationwide Class Has Right to Bond Hearings (Dec. 22, 2025).

Whether or not Mr. Gueye ultimately falls within every element of the Bond Eligible Class definition, the *Maldonado Bautista* orders underscore what this Court has already recognized in *Villa*: DHS's new theory that everyone who entered without inspection is a § 1225(b)(2) mandatory detainee is contrary to the INA. Like the class members in *Maldonado Bautista*, Mr. Gueye is being denied access to bond solely because the Government has re-labeled him as a § 1225(b)(2) detainee, despite a record showing that he has only ever been placed into § 240 proceedings and released in accordance with section 236. The class litigation does not deprive this Court of jurisdiction or provide him with an adequate alternative remedy; if anything, it confirms that the Government's position here cannot be squared with the statute.

IV. Requested relief.

Respondents concede that, if this Court adheres to *Aguirre Villa*, its legal reasoning will control the result in this case. The undisputed record shows that Mr. Gueye has never been

processed under INA § 235, has always been in § 240 removal proceedings, and was released from custody in accordance with section 236 before ICE abruptly re-detained him at a routine check-in. Under *Aguirre Villa*, *Maldonado Bautista*, and the almost unanimous consensus among federal courts, his detention is governed by § 1226(a) and he is entitled to an individualized bond hearing.

Petitioner respectfully requests that the Court deny Respondents' jurisdictional objections, grant the petition on the merits, declare that his detention is governed by 8 U.S.C. § 1226(a), and order Respondents to release him under his existing release order, or, alternatively, provide him with an individualized bond hearing before an Immigration Judge within seven (7) days of the Court's order, at which the Government bears the burden to justify continued detention by clear and convincing evidence and to demonstrate that no combination of conditions can reasonably assure public safety and his appearance. If Respondents are unable to provide such a hearing within that time, Petitioner respectfully requests that the Court order his release on appropriate conditions and prohibit his transfer outside this District while these proceedings remain pending.

Dated: December 31, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 31, 2025, the foregoing document was served on all parties or their respective counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

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