

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION**

Ilyas Pecen,

Petitioner,

v.

Tony Normand, warden of Folston D Ray ICE
Processing Center, in his official capacity
Respondent.

Case No.: 5:26-cv-00155-LGW-BWC

**PETITIONER'S REPLY TO THE RESPONDENTS' OPPOSITION TO PETITION AND
RESPONSE TO SHOW CAUSE ORDER**

INTRODUCTION

Petitioner hereby replies to Respondents' Response to Show Cause Order (ECF No. 6). Respondents argue that Petitioner's claim for habeas relief is distinguishable from *Villa* because he is "mandatorily detained pending expedited removal pursuant to 8 U.S.C. § 1225(b)(1)", as opposed to the "catchall provision of 8 U.S.C. § 1225(b)(2)". *Id.*; see also, *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).

While the Respondents' analysis explains the distinction between detention under 8 U.S.C. §§ 1225 and 1226, it stops well-short of properly analyzing the law as applied to the facts of Mr. Pecen's detention and previous release from custody. On August 29, 2024, Mr. Pecen was immediately detained upon his request for admission to the United States, and on or about September 26, 2024, a Credible Fear Interview ("CFI") was conducted by an asylum officer. ECF No. 1 at ¶¶16 – 17. He was issued a positive credible fear finding. *Id.*; Ex. 1, Credible Fear

Determination. Thereafter, Mr. Pecen was issued a Notice to Appear (“NTA”), dated November 5, 2024, where it states the “Section 235(b)(1) order was vacated pursuant to 8 C.F.R. 208.30.” *Id* at ¶18; Ex. 2, Notice to Appear¹. On December 18, 2024, Petitioner was released from custody to parole under 8 U.S.C. § 1182(d)(5). *Id* at ¶19. After living in the United States for over a year, on December 23, 2025, Petitioner was rearrested during a routine Immigration and Customs Enforcement (“ICE”) check-in. *Id* at ¶ 25. Petitioner is currently in the removal proceedings, and his next scheduled hearing is set for February 25, 2026. Ex. 3, Screenshot of EOIR Automated Case Information System.

Respondents appear to suggest that because Mr. Pecen was initially detained pursuant to expedited removal in 2024, it means that he forever remains subject to that provision if detained again. This assertion is irreconcilable with the Petitioner’s circumstances, foreclosed by *Villa*’s reasoning, and the statutory framework.

Respondents fail to appreciate the Petitioner’s particular circumstances that (1) Petitioner was not arriving or seeking admission in the United States at the time of his rearrest, (2) Petitioner is not subject to § 1225(b)(1) because the Section 235(b)(1) order was expressly vacated, and (3) Petitioner is not subject to § 1225(b)(1) because he is a parolee. The placement of a respondent into full removal proceedings following the vacatur of expedited removal proceedings is simply not reversible, nor does the expedited removal designation continue on parallel to 240 removal proceedings. In addition, by its terms, § 1225(b)(1) does not apply to the individuals, like Petitioner, who have been paroled into the United States since the plain language in §

¹ Respondents’ Response to the Order to Show Cause, Exhibit 3, includes a copy of the Notice to Appear. In their submission, however, Respondents redacted the pertinent language contained in the NTA. Petitioner therefore attaches the unredacted version of the NTA hereto for the Court’s review.

1225(b)(1)(A)(iii) precludes the application of § 1225(b)(1)(A)(ii) to the parolees.

Petitioner thus respectfully requests that this Court find his petition is aligned with its previous decision in *Villa* and grant his request for relief, so that he may pursue a bond hearing pursuant to 8 U.S.C. § 1226.

ARGUMENT

A. Petitioner's detention under 8 U.S.C. § 1225(b)(1) is unlawful

Petitioner falls squarely into the provision contemplated by the Respondents where, “Section 1226 provides for arrest and detention ‘pending a decision on whether the alien is to be removed from the United States.’” ECF. No. 6, *quoting* 8 U.S.C. § 1226(a). Conversely, the detention authority under Section § 1225(b)(1) applies to arriving noncitizens and certain individuals encountered within the United States who cannot demonstrate that they were admitted or paroled, or that they have maintained continuous physical presence for at least two-years. 8 U.S.C. § 1225(b)(1)(A)(iii). Moreover, it does not apply to individuals who have been placed in removal proceedings under INA § 240, as § 1226 operates as the default detention authority. *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).

Here, at the time of his rearrest, Petitioner was not subject to expedited removal because (1) his prior placement in the expedited removal was expressly vacated and he was in the removal proceedings, and (2) he was paroled into the United States and the plain and unambiguous language of § 1225(b)(1)(A)(iii) precludes the application of § 1225(b)(1)(ii) – and thus detention thereunder – to parolees. The record unequivocally demonstrates that Petitioner is not subject to expedited removal proceedings or to any removal order, and that he was present in the United States awaiting his scheduled hearing in ongoing removal proceedings. Ex. 2 and 3.

In *Villa*, the Court has already determined the detention provision for those like Petitioner. *Villa v. Normand*, No. 5:25-cv-89, at *16 2025 WL 3095969 (S.D. Ga. Nov. 4, 2025), *report and recommendation adopted*, 2025 WL 3188406 (S.D. Ga. Nov. 14, 2025) (finding “§1226(a) serves as a catchall or default when comparing with § 1225” in circumstances where petitioners are detained while physically present in the United States, rather than at or near the border.). Despite the Respondents’ contention that *Villa* did not analyze the expedited removal provisions set forth in § 1225(b)(1), the Court’s reasoning in *Villa* is similarly, if not equally, applicable to Section 1225(b)(1). *Id.* Moreover, numerous other district courts have likewise rejected Respondents’ interpretation as inconsistent with the statutory scheme. *Rodriguez v. Rokosky*, 1:25-cv-17419 (D. N.J. Dec. 3, 2025) (finding that § 1226, not §1225(b)(1), governs noncitizens custody where the noncitizen was paroled into the United States under 8 U.S.C. § 1182(d)(5)) (collecting cases); *Garcia-Alvarado v. Warden*, 2:25-cv-16109 (D.N.J. Nov. 24, 2025) (finding that § 1226 governs the noncitizen’s detention where the noncitizen is paroled under 8 U.S.C. § 1182(d)(5)); *see also Ibarra v. Warden of the Federal Detention Center Philadelphia*, 2:25-cv-06312 (E.D. Pa. Nov. 25, 2025); *Rodriguez Martinez v. Raycraft*, (W.D. Mi. Dec. 8, 2025); *J.S.H.M. v. Wofford*, 1:25-cv-01309 (E.D. Cal. Oct. 16, 2025).

Finally, Respondents’ assertion that Petitioner’s parole status has no bearing on the applicable detention authority is without merit. Although parole does not constitute an admission, it need not do so. The plain language of § 1225(b)(1)(A)(iii) expressly excludes parolees—no less than admitted noncitizens—from the scope of § 1225(b)(1). *See also Coal. for Humane Immigrant Rts. v. Noem*, 1:25-cv-872, 2025 WL 2192986, at *23–24 (D.D.C. Aug. 1, 2025) (explaining § 1182(d)(5)(A) does not state that a parolee “return[s] . . . to the position of an applicant for admission standing at the threshold of entry,” or that he “reverts to the status he possessed prior to

the grant of parole,” it provides only that, upon expiration of parole, the individual “shall . . . return . . . to the custody from which he was paroled” and that “his case shall continue to be dealt with in the same manner as that of any other applicant for admission.”).

CONCLUSION

For the foregoing reasons, the Court should find that that the Petition is aligned with its previous decision in *Villa* and grant his request for relief, so that he may pursue a bond hearing pursuant to 8 U.S.C. § 1226. Should the Court desire a more exhaustive response memorandum or briefing, Petitioner respectfully requests leave to file such a brief and will do so upon the Court’s request.

Dated: February 19, 2025

Respectfully submitted,

/s/ Aaron M. Bayram, Esq.

Aaron M. Bayram, Esq.
Onal Gallant Bayram & Amin P.C.
619 River Dr., Suite 340
Elmwood Park, New Jersey 07407
case@onalgallant.com
Attorney for Petitioner
Pro Hac Vice

/s/ Thomas Evans

Thomas Evans
KUCK BAXTER LLC
P.O. Box 501359
Atlanta, Georgia 31150
Tel.: (404) 949-8176
tevans@immigration.net
Attorney for Petitioner