UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

NELSON MALDONA BRICENO,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 5:26-cv-193
	)	
WARDEN, FOLKSTON ICE PROCESSING CENTER,	)	
	)	
	)	
Respondent.	)	

ABBREVIATED RESPONSE TO PETITION AND RESPONSE TO SHOW CAUSE ORDER

I. Introduction

Petitioner filed a habeas corpus petition pursuant to 28 U.S.C. § 2241, 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). Petitioner 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. Petitioner's 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.

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.[1]

That said, 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

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[1] The only proper respondent in this habeas corpus matter is the Warden of Folkston ICE Processing Center. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) ("the proper respondent [in a habeas corpus petition] is the warden of the facility where the prisoner is being held"); *Grimes v. Geter*, No. 2:20-cv-42, 2020 WL 13917844, at *1 (S.D. Ga. Apr. 24, 2020) (Cheesbro, J.) ("The only proper respondent in a § 2241 case such as this is the inmate's immediate custodian—the warden of the facility where the inmate is confined.").

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. Argument[2]

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 "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.*

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[2] 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.

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 Enf't*, 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, the 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)(i). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. at 221-23. 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*, 801 F. Supp. 3d 1133, 1140 (S.D. Cal. 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, Petitioner's status as an "applicant for admission" mandates that he be detained during the pendency of his removal proceedings.

IV. 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,

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