IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DIEGO ARMANDO CHIROY PEREZ *Petitioner,* v. J.L. JAMISON, et al., *Respondents.*	: : : : : : : : :	Case No. 2:26-cv-01065-TJS

RESPONDENTS' OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS

I. BACKGROUND

As the Court is undoubtedly aware, immigration detainees in this district have filed hundreds of petitions for writs of habeas corpus challenging the authority of the Secretary of the U.S. Department of Homeland Security (DHS) to detain them without setting a bond hearing. These cases involve individuals who have been detained pending the completion of their removal proceedings, including consideration of their asylum claims as a defense to removal, and break down into four categories:

- ***Hurtado*[1] cases:** individuals who entered the United States without inspection; after a passage of time, they were encountered by immigration authorities in the interior, placed in standard removal proceedings, and recently were detained under 8 U.S.C. § 1225(b)(2)(A); *see, e.g.,* C*antu-Cortes v. O'Neill,* No. 25-cv-6338, 2025 WL 3171639, at *1-2 (E.D. Pa. Nov. 13, 2025);

[1] "*Hurtado"* refers to the Board of Immigration Appeals' decision in *Matter of Hurtado*, 29 I. & N. Dec. 216 (B.I.A. 2025).

- ***Q. Li*[2] cases:** individuals who entered the United States without inspection, were encountered near the border and detained without a warrant, released into the country, and, after a passage of time, recently detained under 8 U.S.C. § 1225(b)(2)(A); *see, e.g., Cordero v. Rose*, No. 26-cv-534 (E.D. Pa. Jan. 29, 2026);
- **Arriving Alien cases:** individuals who presented at a port of entry without valid entry documents, were paroled into the country under 8 U.S.C. § 1182(d)(5)(A), and, after a passage of time, recently detained under 8 U.S.C. § 1225(b)(2)(A); *see, e.g., Vasquez-Rosario v. Noem,* No. 25-cv-7427, 2026 WL 196505, at *5 (E.D. Pa. Jan. 26, 2026).
- **Expedited Removal cases**: individuals who, based on certain conditions related to their time, manner, and place of entry, were placed into expedited removal proceedings, paroled into the country under 8 U.S.C. § 1182(d)(5)(A), and, after a passage of time, recently detained under 8 U.S.C. § 1225(b)(1)(B)(iv); *see, e.g., Seminario Marcos v. Jamison*, No. 26-cv-421 (E.D. Pa. Feb. 6, 2026).

The first three categories of cases (*Hurtado*, *Q. Li*, and Arriving Alien) all share the same authority for mandatory detention: 8 U.S.C. § 1225(b)(2)(A). And while there are certain legal and factual distinctions among those cases, the fundamental point of departure between the government's position and the position advanced by petitioners, and adopted in over 200 decisions in this district, relates to the correct interpretation of § 1225(b)(2)(A):

> [I]n the case of an alien who is an **applicant for admission**, if the examining immigration officer determines that an **alien seeking**

[2] "*Q. Li*" refers to the Board of Immigration Appeals' decision in *Matter of Q. Li*, 29 I. & N. Dec. 66 (B.I.A. 2025).

> **admission** is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under [8 U.S.C. § 1229a].

Id. (emphasis added).

Although petitioners in these cases are indisputably "applicants for admission," *see* 8 U.S.C. § 1225(a)(1), courts in this district (and many elsewhere) have concluded that § 1225(b)(2)(A) does not apply to applicants for admission who are present in the interior of the country because, these decisions conclude, the petitioners are no longer "seeking admission." Courts have reasoned that "seeking admission" should be given meaning beyond "applicant for admission" to avoid surplusage and have read the term to require active and ongoing efforts to be physically admitted into the country at or near the border. *See, e.g., Kashranov v. Jamison*, No. 25-05555, 2025 WL 3188399, *6–7 (E.D. Pa. Nov. 14, 2025); *Vasquez-Rosario*, 2026 WL 196505, at *9.

By contrast, the government takes the position that "applicants for admission" are necessarily "seeking admission" until they have been admitted or until their removal proceedings are complete. While the government's position has been rejected by the vast majority of district courts to have considered it, the Fifth Circuit Court of Appeals has agreed with the government. *See Buenrostro-Mendez v. Bondi*, --- F.4th ---, 2026 WL 323330, at *1, *4–*6 (5th Cir. Feb. 6, 2026). As *Buenrostro-Mendez* explained,

> When a person applies for something, they are necessarily seeking it. [dictionary citations omitted]. Just as an applicant to a college seeks admission, an applicant for admission to the United States is "seeking admission" to the same, regardless whether the person actively engages in further affirmative acts to gain admission. The everyday meaning of the statute's terms confirms that being an "applicant for admission" is not a condition independent from "seeking admission."

Id. *But see Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1062 (7th Cir. 2025) (concluding, upon review of an application for stay pending appeal,

that the government was not likely to succeed on the merits of its argument that individuals who were applicants for admission, and present in the United States, were subject to mandatory detention under § 1225(b)(2)(A)).

This case is an "*Q. Li*" case where the government has detained petitioner under 8 U.S.C. § 1225(b)(2)(A). The Petitioner, a noncitizen, crossed the border without inspection, but was encountered near the border in June 2024. Petition, ECF No. 1 at ¶¶ 24-25. The Petitioner was placed in standard removal proceedings, and released into the country. *Id.* at ¶ 25. On February 18, 2026, the government detained the Petitioner under 8 U.S.C. § 1225(b)(2)(A). *Id.* at ¶ 28. At the time the habeas petition was filed, Petitioner was detained within the Eastern District of Pennsylvania. *Id.* at ¶ 29.[3]

Thus, the case turns principally on the threshold question of statutory interpretation discussed above—whether petitioner is an "applicant for admission" that is "seeking admission" within the meaning of § 1225(b)(2)(A).[4] The government expands on that argument below in the context of Petitioner, who was first encountered near the border after entering without inspection (thereby falling

[3] Respondents are aware of this Court's February 19, 2026 Order directing that Petitioner "shall not be transferred outside the Eastern District of Pennsylvania pending further Order of the Court." ECF No. 3. Respondents were not served with notice of this lawsuit until after the Court's Order was issued. *See* Affidavit of Service, ECF No. 5. Respondents have informed counsel that, at the time that Respondents received the Order, Petitioner was already on a bus and in transit to ICE's Moshannon Valley Processing Center. Respondents do not dispute that jurisdiction over the habeas petition remains with this Court.

[4] In many of its prior responses filed in this district, the government has advanced various jurisdictional arguments that it is not advancing here. Of course, the Court may appropriately satisfy itself of its jurisdiction upon consideration of 8 U.S.C. §§ 1225(b)(9), 1252(a)(2)(B)(ii), 1252(g), and the Third Circuit's decision in *Khalil v. President, United States of America*, --- F.4th ---, 2026 WL 111933 (3d Cir. 2026).

within the scope of the BIA's decision in *Q. Li*), and addresses petitioner's separate argument alleging a violation of due process.

II. ARGUMENT

The Court should deny the petition because: (1) Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2)(a); and (2) Petitioner's detention does not violate constitutional due process.

A. Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2).

1. Petitioner is an "applicant for admission" "seeking admission."

An individual who "arrives in the United States," or is "present" in this country but "has not been admitted," is considered an "applicant for admission" under 8 U.S.C. § 1225(a)(1). *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *Buenrostro-Mendez*, 2026 WL 323330, at *2. Applicants for admission are covered by either § 1225(b)(1) or § 1225(b)(2). *See Jennings*, 583 U.S. at 287 (section 1225(b)(2) "serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1)") (emphasis added).

An alien remains an applicant for admission, and subject to § 1225(b)(2), so long as he is "not clearly and beyond a doubt entitled to be admitted" to the United States. *See* § 1225(b)(2)(A). *See also* 8 U.S.C. § 1225(a)(1) (defining applicant for admission as *either* "[a]n alien present in the United States who has not been admitted *or* who arrives in the United States (whether or not at a designated port of arrival …)") (emphasis added). Thus, Congress defined *all* aliens who are present in the United States without being admitted as "applicant[s] for admission," regardless of when they entered. *See id.*

When an immigration officer encounters and examines an applicant for admission who seeks to remain in the United States, and that alien (like Petitioner) desires to remain in the United States, the applicant is necessarily "seeking

admission" within the meaning of Section 1225(b)(2)(A). *See Buenrostro-Mendez*, 2026 WL 323330, at *4 ("There is no material disjunction—by the terms of the statute or the English language—between the concept of 'applying' for something and 'seeking' something. [citation omitted]. When a person applies for something, they are necessarily seeking it."). As the *Buenrostro-Mendez* opinion further explained,

> [Section] 1225(a)(3) specifies that "[a]ll aliens (including alien crewmen) who are applicants for admission or *otherwise* seeking admission or readmission to or transit through the United States shall be inspected by immigration officers" (emphasis added). The use of "or otherwise" suggests that "applicants for admission" are a subset of those "seeking admission." *See Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 963-64 (11th Cir. 2016) (en banc) (concluding that the phrase "or otherwise" means "the first action is a subset of the second action"); *Kleber v. CareFusion Corp.*, 914 F.3d 480, 483 (7th Cir. 2019) (same). As the government points out, when an English speaker uses a phrase such as "to bike, jog, or otherwise exercise," the first two items constitute one item out of the overall set. Accordingly, an "applicant for admission" is necessarily someone who is "seeking admission."

Id., at *5.

The government acknowledges that all courts in this district (and many more elsewhere) have reasoned that § 1225(b)(2)(A) requires that an "applicant for admission" be actively "seeking admission" at or near the border to fall within its scope. *See, e.g., Kashranov*, 2025 WL 3188399, *6–7; *Demirel v. Fed. Detention Ctr.*, No. 25-cv-5488, 2025 WL 3218243 (E.D. Pa. Nov. 18., 2025).[5] But, as noted, the Fifth Circuit Court of Appeals has agreed with the government. *See Buenrostro-Mendez*, 2026 WL 323330, at *1, *4–*6; *but see Castañon-Nava*, 161 F.4th at 1062.

Thus, Petitioner, who is indisputably an "applicant for admission," is also "seeking admission" and covered by § 1225(b)(2)(A).

[5] The government has filed protective notices of appeal in numerous cases and is awaiting final authorization decisions from the Solicitor General as to whether it may appeal.

2. Applicants for admission must be detained under 8 U.S.C. § 1225(b)(2)(A), absent discretionary parole.

Pursuant to Section 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 [removal proceedings]." § 1225(b)(2)(A) (emphasis added). The Supreme Court has held that Section 1225(b)(2)(A) is a mandatory detention statute and that individuals detained pursuant to that provision are not entitled to bond. *Jennings*, 583 U.S. at 287 ("Both § 1225(b)(1) and § 1225(b)(2) authorize the detention of certain aliens.").

In *Q. Li*, the BIA expanded upon the Supreme Court's holding in *Jennings* and clarified the scope of §1225(b)(2) for applicants for admission, like Petitioner, who are "arriving" in the United States. 29 I&N Dec. at 68 (citing *Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 23 (B.I.A. 2020) (defining the term "arriving" to apply to aliens "who [are] apprehended" just inside "the southern border, and not at a point of entry, on the same day [they] crossed into the United States"). For aliens in this category, the BIA affirmed that DHS may either place the alien into expedited removal proceedings under § 1225(b)(1) or full removal proceedings under § 1229a. *Id.* For the latter category—aliens arriving in and seeking admission into the United States who are placed directly into full removal proceedings—the Board held that § 1225(b)(2)(A) mandates detention "until removal proceedings have concluded." *Id.* (citing *Jennings*, 583 U.S. at 299).

Thus, the BIA held that an applicant for admission "who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings," is detained under § 1225(b)(2) and is therefore ineligible for any subsequent release on bond. *But see Cabeza Cordero v. Rose,* No. 26-cv-534, ECF No. 5 at 5-6 (E.D. Pa. Jan. 29, 2026)

(Marston, J.) (disagreeing with the United States' interpretation of *Q. Li* and concluding that petitioner, who entered the United States more than three years ago, was not an applicant for admission that was actively "seeking admission" within the meaning of § 1225(b)(2)); *Cajas-Duchimaza v. McShane*, No. 26-cv-621, ECF No. 6 (Feb. 3, 2026) (McHugh, J.) (similar); *Gurievi v. Rose*, No. 26-736, ECF No. 6 (Feb. 9, 2026) (Kearney, J.).

Respondents maintain that Petitioner remains an applicant for admission seeking admission, as he has not clearly and beyond doubt established that he is entitled to be admitted to the United States. Consequently, he is subject to mandatory detention under § 1225(b)(2), and ineligible for a bond hearing before an immigration judge.

B. Petitioner's detention does not violate constitutional due process.

Congress broadly crafted "applicants for admission" to include undocumented persons, like Petitioner, who are present within the United States. *See* 8 U.S.C. § 1225(a)(1). In so doing, Congress made a legislative judgment to detain undocumented persons during removal proceedings. 8 U.S.C. § 1225(b)(2)(A); *Jennings*, 583 U.S. at 297 ("Read most naturally, §§ 1225(b)(1) and (b)(2) thus mandate detention of applicants for admission until certain proceedings have concluded.").

The Supreme Court has repeatedly recognized this profound interest. Petitioner's mandatory detention pursuant to §1225(b) will only last the duration of his removal proceedings. *Demore v. Hyung Joon Kim*, 538 U.S. 510, 528 (2003) (explaining that, because "the statutory provision at issue governs detention of deportable criminal aliens pending their removal proceedings," detention "necessarily serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings"); *see also Jennings*, 583 U.S. at

304. In light of Congress's interest in regulating immigration, including by keeping specified persons in detention pending the removal period, the Supreme Court dispensed of any due process concerns without engaging in the test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See generally Demore*, 538 U.S. at 531.

Petitioner's recent detention pending his removal proceedings does not violate the Due Process Clause. *See, e.g.*, *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) (detention less than six months presumed constitutional). Congress made the decision to detain him pending removal, which is a "constitutionally permissible part of that process." *Demore*, 538 U.S. at 531.

The Third Circuit has recognized that there may come a time when mandatory civil detention without a bond hearing becomes unreasonable. *See German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 211 (3d Cir. 2020) (analyzing detention under § 1226(c)). However, Petitioner does not challenge the reasonableness of his detention under *German Santos* at this time.

III. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the petition for writ of habeas corpus be denied.

Dated: February 20, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this date, I caused the foregoing Response in Opposition to Petition for Writ of Habeas Corpus to be filed via the Court's CM/ECF System, thereby making it available for viewing and download for all parties to the case.

Dated: February 20, 2026

/s/ Erin Lindgren
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