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

ARTEM BAGAEV, Petitioner, v. JAMAL L. JAMISON, Warden of Philadelphia Federal Detention Center, *et al.*, Respondents.	: : : : : : : : : : :	Civil Action No. 26-2361

RESPONDENTS' OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS

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.*, *Cantu-Cortes*

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

v. O'Neill, Civ. No. 25-6338, 2025 WL 3171639, at *1-2 (E.D. Pa. Nov. 13, 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*, Civ. No. 26-0534 (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*, Civ. No. 25-7427, 2026 WL 196505, at *5 (E.D. Pa. Jan. 26, 2026); and
- **Expedited Removal cases**: individuals who, based on certain conditions related to their time, matter, 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*, Civ. No. 26-0421 (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). While

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

there are certain legal and factual distinctions among these cases, the fundamental point of departure between the government's position and the position advanced by petitioners and adopted in over 250 decisions in this district relates to the correct interpretation of § 1225(b)(2)(A):

> In the cases 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.

8 U.S.C. § 1225(b)(2)(A) (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 admitted at or near the border. *See*, *e.g.*, *Kashranov v. Jamison*, Civ. No. 25-5555, 2025 WL 3188399, at *6-7 (E.D. Pa. 2025); *Vasquez-Rosario*, 2026 WL 196505, at *9.

By contrast, the government contends that "applicants for admission" are necessarily "seeking admission" until they have been admitted or until their removal proceedings are complete. Furthermore, in the cases of individuals paroled into the United States under 8 U.S.C. § 1182(d)(5), the government contends that the language of the statute makes clear that, following the period of parole, the

individual returns to the custody from which he was paroled at the border. And while the government's position has been rejected by the vast majority of district courts to have considered it, two courts of appeals, the Fifth and Eighth Circuit Courts of Appeals, have squarely considered the argument and agreed with the government. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 502 (5th Cir. 2026) ("The everyday meaning of the statute's terms confirms that being an 'applicant for admission' is not a condition independent from 'seeking admission'"); *Avila v. Bondi*, No. 25-3248, 2026 WL 819258, at *3 (8th Cir. Mar. 25, 2026) (concluding that "the structure of § 1225(b)(2)(A) does not indicate that 'seeking admission' is a separate requirement for detention under the statute"); *but see Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1062 (7th Cir. 2025) (concluding upon review of application for stay of a preliminary injunction that the government was not likely to succeed on the merits of its argument for mandatory detention of applicants for admission present in the United States under § 1225(b)(2)(A)).

This case involves an "Arriving Alien" who the government has detained under 8 U.S.C. § 1225(b)(2)(A). Petitioner, a noncitizen from Russia, applied for admission to the United States at the Calexico West Port of Entry on February 7, 2023. *See* Notice to Appear, attached as Exhibit A. At the time of his application for admission, he did not possess valid entry documents, such as an unexpired immigrant visa, reentry permit, or border crossing card, and thus, Customs and Border Protection (CPB) deemed him inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.* CBP thereafter issued a Notice to Appear charging him as

removable under § 1182(a)(7)(A)(i)(I) and paroled him into the United States under § 1182(d)(5) pending his removal proceedings under § 1229a. *Id.*; *see also* I-94, attached as Exhibit B. This discretionary parole expired on February 6, 2024. On April 8, 2026, the government detained Petitioner under 8 U.S.C. § 1225(b)(2)(A). Petition, at ¶ 4. At the time the habeas petition was filed, on April 10, Petitioner was detained within the Eastern District of Pennsylvania, where he remains. (*See* ECF No. 2 (order prohibiting transfer outside this district)).

Thus, this 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) following expiration of his period of parole.[3] The government expands on that argument below, addresses the particular context of Petitioner's status as an "arriving alien" whose parole has expired, and addresses Petitioner's separate argument alleging a violation of due process.

ARGUMENT

The Court should deny the petition because: (1) Petitioner is lawfully detained pursuant to 8 U.S.C. § 1225(b)(2)(A); (2) neither a grant of discretionary parole nor its later expiration or termination changes Petitioner's legal status as an

[3] In many of its prior responses filed in this district, the government has advanced various jurisdictional arguments that it does not advance 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*, 164 F.4th 259 (3d Cir. 2026).

inadmissible arriving alien subject to mandatory detention; and (3) Petitioner's detention does not violate constitutional due process.

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

A. 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*, 166 F.4th at 499. 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 doubt entitled to be admitted" to the United States. *See* 8 U.S.C. § 1225(b)(2)(A); *see also* 8 U.S.C. § 1225(a) (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. . . .") (emphasis added). 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* 8 U.S.C. § 1225(a)(1).

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 8 U.S.C. § 1225(b)(2)(A). *See Buenrostro-Mendez*, 166 F.4th at 503 ("[A]n 'applicant for admission' is necessarily someone who is 'seeking admission.'"); *id.* at 502 ("When a person applies for something, they are necessarily seeking it.). Otherwise, the alien must "withdraw the application for

admission and depart immediately from the United States." 8 U.S.C. § 1225(a)(4). An alien continues to be "seeking admission" while in immigration removal proceedings to determine whether he can "be admitted to the United States." *See* 8 U.S.C. § 1229a(3).

An alien continues to be "seeking admission" while in immigration removal proceedings to determine whether he can "be admitted to the United States." *See* 8 U.S.C. § 1229a(3). This is particularly true for inadmissible arriving aliens like Petitioner, who are necessarily "seeking admission" by virtue of their arrival at a port-of-entry and application to enter the United States. *See* 8 C.F.R. § 1001.1(q). This is why inadmissible arriving aliens like Petitioner, even after their entry to the United States, are not permitted to request voluntary departure and instead must withdrawn their application for admission should they wish to depart the United States. *See* 8 U.S.C. § 1229c(a)(4).

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, at *6-7; *Demirel v. Fed. Detention Ctr.*, Civ. No. 25-5488 (E.D. Pa. Nov. 18, 2025).[4] But, as noted, the Fifth Circuit Court of Appeals has agreed with the government. *See Buenrostro-Mendez*, 166 F.4th at 502 ("The everyday meaning of the statute's terms confirms that being an

[4] The government is pursuing appeals in the Third Circuit related to both statutory and constitutional due-process claims. The matters on appeal are *Lopes De Andrade v. Director Philadelphia Field Office Immigration and Customs Enforcement, et al.*, No. 26-1454 (3d Cir.), and *Buele Morocho v. Warden Philadelphia FDC, et al.*, No. 26-1150 (3d Cir.), which are now consolidated for all purposes. The government's consolidated opening brief was filed on March 20, 2026. The Third Circuit granted the Government's motion to expedite the consolidated appeals and scheduled them for disposition by the Court during the week of May 11, 2026.

'applicant for admission' is not a condition independent from 'seeking admission.'"). The *Buenrostro-Mendez* court concluded, correctly, that an "applicant for admission" is "necessarily someone who is 'seeking admission.'" *Id*. at 503; *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), particularly where, as discussed below, the terms of his parole expired and he has returned to his custody status at the time of entry."

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

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 [removal proceedings]." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The Supreme Court has held that § 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"). The regulations further make clear that § 1225(b) is the proper detention authority for arriving aliens, like Petitioner, who are placed into removal proceedings under section § 1229(a) of the Act rather than processed for expedited removal. *See* 8 C.F.R. § 235.3(c) ("[A]ny arriving alien who appears to the inspecting officer to be inadmissible, and who is placed in removal proceedings . . . *shall be detained* in accordance with [§ 1225(b)] of the Act) (emphasis added); *but see Murodov v. J.L.*

Jamison, *et al.*, Civ. No. 26-0594 (E.D. Pa. Feb. 13, 2026) (finding an arriving alien is not subject to mandatory detention under § 1225(b)(2) because that section includes no reference to arriving aliens); *Alekseev v. Warden*, *et al.*, Civ. No. 26-0462 (E.D. Pa. Feb. 13, 2026) (same).

Thus, Petitioner, by virtue of his manner of entry into the United States, 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 following his application at a port-of-entry. Consequently, he is subject to mandatory detention under § 1225(b)(2), and ineligible for a bond hearing before an immigration judge.

II. Neither a grant of discretionary parole nor a later expiration or revocation of parole changes Petitioner's legal status as an inadmissible arriving alien.

Under the INA and its implementing regulations, Petitioner was—and remains—an inadmissible arriving alien seeking admission to the United States. Specifically:

> Arriving alien means an applicant for admission coming or attempting to come into the United States at a port-of-entry[ ]. . . . An arriving alien remains an arriving alien even if paroled pursuant to section 212(d)(5) of the [INA], and even after any such parole is terminated or revoked. . . .

8 C.F.R. § 1001.1(q); *see also* 8 U.S.C. § 1225(a)(1) ("An 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 . . .) shall be deemed for purposes of this chapter an applicant for admission.").

As an "arriving alien"—which constitutes a distinct category of "applicants for admission" within the category considered by the Board of Immigration Appeals in *Matter of Hurtado*, 29 I & N Dec. 216 (BIA 2025)—Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), as discussed above. *See* 8 C.F.R. § 235.3(c)(1). Custody regulations expressly exclude arriving aliens from receiving a bond hearing, even if they have been paroled into the country. Specifically, 8 C.F.R. § 1003.19(h)(2)(i) provides that an immigration judge "may not redetermine conditions of custody" (i.e., set bond) "with respect to . . . (B) Arriving aliens in removal proceedings, including aliens paroled after arrival pursuant to section 212(d)(5) of the Act." Here, Petitioner applied for admission into the United States at a port-of-entry. Ex. A. "Thus, by definition, he is an arriving alien." *Contreras v. Oddo*, Civ. No. 25-0162, 2025 WL 2104428, at *4 (W.D. Pa. July 28, 2025).[5]

"[A]pplicants for admission may be temporarily released on parole 'in a case-by-case basis for urgent humanitarian reasons or significant public benefit.'" *Contreras*, 2025 WL 2104428, at *5 (quoting 8 U.S.C. § 1182(d)(5)(A)) (citing *Pierre v. Doll*, 350 F. Supp. 3d 327, 330 (M.D. Pa. 2018) ("Decisions under § 1182 are

[5] Judge Kenney of this Court rejected a similar government argument relying on the "arriving alien" distinction but did so by placing great weight on the government's reclassification of the petitioner in a superseding Notice to Appear as an "alien present in the United States" who had "arrived in the United States" one year before. *See Vasquez-Rosario v. Noem*, Civ. No. 25-7427, 2026 WL 196505, at *5 (E.D. Pa. Jan. 26, 2026). By contrast, here, Petitioner's Notice to Appear classified Petitioner as an "arriving alien" and the petition does not allege the government has issued a subsequent, superseding Notice to Appear.

purely discretionary")); 8 C.F.R. § 212.5(b) (setting forth general considerations for parole from custody). However,

> **[P]arole of such alien shall not be regarded as an admission of the alien** and when the purposes of such parole shall, in the opinion of the Secretary of [DHS], have been served **the alien shall forthwith return or be returned to the custody from which he was paroled** and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

Contreras, 2025 WL 2104428, at *5 (emphasis added) (quoting 8 U.S.C. § 1182(d)(5)(A) and citing *Chi Thon Ngo v. INS*, 192 F.3d 390, 392 n. 1 (3d Cir. 1999) ("When parole is revoked, the alien reverts to the status of an applicant for admission")). "In short, the decision to grant an revoke parole to an inadmissible arriving alien is discretionary." *Id*. And, at the conclusion of parole, § 1182(d)(5)(A) provides that the alien must be "returned to the custody from which he was paroled." 8 U.S.C. § 1182(d)(5)(A).

Here, therefore, although Petitioner may previously have been paroled into the United States, a later decision to terminate or revoke that parole "is left to the discretion of the Executive Branch." *Id*. And, upon the expiration, termination, or revocation of his parole, Petitioner is returned to the custody from which he was paroled—the mandatory detention required for inadmissible arriving aliens under 8 U.S.C. § 1225(b)(2)(A). In other words, following expiration or termination of parole, Petitioner is returned to his status at the time of entry, *i.e.*, an "applicant for admission," "seeking admission," who is "not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). *But see*, *e.g.*, *Piurbeev v. Rose*, Civ. No. 26-

0910 (E.D. Pa. Feb. 23, 2026) (Hodge, J.) (rejecting argument that an arriving alien is still "seeking admission" once paroled into the United States); *Olimov v. Jamison*, Civ. No. 26-0532 (E.D. Pa. Mar. 3, 2026) (Wolson, J.) (same); *Lotero Cano v. Jamison*, Civ. No. 26-1140 (E.D. Pa. Mar. 3, 2026) (Scott, J.) (same). Thus, under the applicable law, Petitioner's detention is lawful.

III. No written notice is required prior to terminating parole under § 1182(d)(5)(A).

No written notice is required prior to terminating a prior discretionary parole decision under § 1182(d)(5)(A). *See* 8 C.F.R. § 212.5(e)(1)(ii) (explaining that "[p]arole *shall be automatically terminated without written notice* . . . at the expiration of the time for which parole was authorized . . . in accordance with [8 C.F.R. § 212.5(e)(2),] *except that no written notice shall be required*") (emphasis added). Only when termination of parole is not automatic under § 212.5(e)(1)—in other words, when an alien has not departed the United States or the period of parole has not expired—is notice required under § 212.5(e)(2). *But see Talabadze v. Rose*, Civ. No. 26-0360 (E.D. Pa. Jan. 30, 2026) (Perez, J.) (finding notice required prior to terminating parole); *Vasquez Diaz v. Rose*, Civ. No. 26-0342 (Gallagher, J.) (same).

Here, Petitioner's parole expired automatically at the conclusion of his period of authorized parole, *i.e.*, on February 6, 2024. Ex. B. Petitioner is no longer in an authorized period of parole, thus returning him to custody status under 8 U.S.C. § 1225(b)(2)(A).

Furthermore, the Court lacks jurisdiction to review a parole revocation decision under 8 U.S.C. § 1252(a)(2)(B), since it is plainly a discretionary "decision or action." *Samirah v. O'Connell*, 335 F.3d 545, 549 (7th Cir. 2003) (holding DHS's authority to "grant or revoke" parole under § 1182(d)(5)(A) is a matter of agency discretion barred from review by § 1252(a)(2)(B)(ii)); *Hassan v. Chertoff*, 593 F.3d 785, 789 (9th Cir. 2010) (same). Moreover, to the extent Petitioner alleges that revocation of parole requires a case-by-case analysis, the Court should reject this argument. While 8 U.S.C. § 1182(d)(5)(A) requires that *grants* of parole be made on a case-by-case basis, it contains no parallel language with respect to terminations, and the language of § 1182(d)(5)(A) makes clear that such a determination is left entirely to the "opinion" of the DHS Secretary.

IV. 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. Kim*, 538 U.S. 510, 512 (2003) ("[B]ecause the statutory provision at issue in this case governs detention of deportable criminal aliens *pending their removal proceedings*, the detention necessarily serves the

purpose of preventing the aliens from fleeing prior to or during such proceedings.") (emphasis in original); *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 *Matthews 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, at this time, Petitioner does not challenge the length of his detention under *German Santos*.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the petition for writ of habeas corpus be denied. Respondents request that the Court decide this petition on the papers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this date, I filed the foregoing Response in Opposition to Petition for Writ of Habeas Corpus via the Court's Case Management/Electronic Case Filing System, thereby making said filing available for viewing and download by all counsel of record.

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Dated: April 14, 2026