



U.S. Department of Justice

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February 6, 2026

VIA ECF FILING

The Honorable Mary Kay Costello
6614 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Re: *Butskhrikidze v. Jamison et al.*, No. 26-cv-730

Dear Judge Costello:

I represent the United States in this habeas action. At the time the habeas petition was filed, petitioner Zviad Butskhrikidze was detained at FDC Philadelphia pending removal proceedings, where he remains. Petitioner seeks release from detention. I write in response to the Court's February 5, 2026 order that "Respondents . . . advise the Court whether they oppose the Petition and, if so, whether they intend to make any arguments other than the ones they made in *Jamolzoda v. Rose*, Case No. 2:26-cv-0193-MKC." ECF No. 2.

Respondents oppose the Petition. They concede that this matter is legally and factually similar to recent cases decided by this Court, including *Jamolzoda*. Respondents nevertheless respectfully remain of the view that their legal positions are correct and therefore—despite the great weight of contrary decisions by this Court and in this District—incorporate the arguments made in those cases into this letter brief in order to preserve them for appeal (if ultimately authorized by the Solicitor General). Respondents call to the Court's attention the following additional legal support for their opposition to the Petition.

**Petitioner is lawfully detained pursuant to
8 U.S.C. § 1225(b)(2) and the BIA's decision in *Q. Li*.**

Petitioner is an alien who was initially detained without a warrant while arriving in the United States and was subsequently placed into removal proceedings. Thus, the holding of the Board of Immigration Appeals (BIA) in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025)—which was issued three months before the change in DHS policy that Petitioner challenges—confirms Petitioner's lawful detention under § 1225(b)(2). *But see 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

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petitioner, who entered the United States more than three years earlier, was not an applicant for admission who 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).¹

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 (BIA 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*, 538 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 thus ineligible for any subsequent release on bond.

Petitioner fits squarely within the BIA’s holding in *Q. Li* and the ambit of § 1225(b)(2)(A)’s mandatory detention requirement. He is an “applicant for admission” to the United States. *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that “an alien who tries to enter the country illegally is treated as an ‘applicant for admission,’ § 1225(a)(1), and an alien who is detained shortly after unlawful entry cannot be said to have ‘effected an entry’”); *In re Lemus-Losa*, 25 I&N Dec. 734, 743 (BIA 2012) (“Congress has defined the concept of an ‘applicant for admission’ in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission . . .”). Petitioner entered by crossing the United States border without being admitted. Pet., ECF No. 1, ¶¶ 2, 50. He was arrested and detained without a warrant while arriving in the United States outside of a designated port of entry and subsequently placed into removal proceedings under § 1229a. *Id.* ¶¶ 50–53. Therefore, he is an “applicant for admission,” and his detention is mandatory. 8 U.S.C. § 1225(b)(2)(A) (stating applicant for admission “shall be” detained); *Q. Li*, 29 I&N Dec. at 68.

¹ Courts in this district have also granted, without analysis of *Q. Li*, petitions in response to which the government raised the *Q. Li* decision. *See, e.g., Aman v. Jamison*, No. 26-695, ECF No. 7 (Feb. 5, 2026).

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The United States respectfully asks the Court to consider the authority discussed here, in addition to its prior briefing in other matters, and deny the Petition.

Very truly yours,

DAVID METCALF
United States Attorney

/s/ Rebecca S. Melley
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Assistant United States Attorney

cc (via ECF filing): Mana Aliabadi, Esq.