UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Mamadou Bella DIALLO,
A [redacted]
Petitioner,

v.

CRAIG LOWE, in his official capacity as the Warden of the Pike County Correctional Facility; et al.

Respondents.

Case No. 3:26-cv-00286

PETITIONERS' REPLY TO RESPONDENT'S RESPONSE

As numerous district court judges have found in other similar cases, 8 U.S.C. § 1225(b)(2)(A) does not apply to Petitioner, and instead 8 U.S.C. § 1226(a) is the controlling statute. *See, e.g., Gonzalez Centeno v. Lowe, et al.,* No. 3:25-cv-2518 (M.D. Pa. Jan. 13, 2026); *Hernandez v. Kunes, et al.,* No. 1:25-cv-01847 (M.D. Pa. Feb. 13, 2026). As has been made clear in nearly every similar case, Section 1225(b)(2)(A) is not applicable to a detainee like Petitioner who had been living in the United States for a large amount of time prior to detention. While some Courts have held otherwise, none of those decisions are binding on this Court, and they should be disregarded as described herein.

The consensus view of the district courts is that "seeking admission" requires active, affirmative conduct, such as attempting to enter the country through a port of entry. *Quispe v. Rose*, No. 3:25-CV-02276, 2025 WL 3537279, at *5 (M.D. Pa. Dec. 10, 2025). This language does not apply to a person who has resided in the United States for years. *Patel v. O'Neil*, No. 3:25-CV-2185, 2025 WL 3516865, at *5 (M.D. Pa. Dec. 8, 2025). Adopting the Respondents' interpretation

of the statute would create a host of *avoidable* problems, including violating the rule against surplusage, negation of the plain meaning of the word "seeking" and other parts of the statutory text, and render the mandatory detention provisions of Section 1226(c) as virtually meaningless. *See id.* (*citing Centeno Ibarra v. Warden of the Fed. Det. Ctr. Philadelphia*, No. CV 25-6312, 2025 WL 3294726, at *6 (E.D. Pa. Nov. 25, 2025)). Further, as the only real evidence of Congressional intent for detention, let alone mandatory detention, appears in the word "shall," the Respondents position on mandatory detention is weekly supported and should not be followed.

Respondents note that recently, the Fifth Circuit upheld the Respondent's interpretation of the provision, which Respondents have cited and asked the Court to follow. *See Buenrostro-Mendez v. Bondi, et al.*, No. 25-40701 (5th Cir. February 6, 2026) (slip op.). Though the Fifth Circuit, the only circuit to issue a decision on this issue of the Respondents' current enforcement activity, concluded the government position is correct, the decision is poorly supported and impermissibly narrows review of the issue to specific words in Section 1225 to such a degree as to ignore the plain meaning of the statutory scheme as a whole.

Nearly all of the Fifth Circuit's reasoning relies on a historical discussion about the motives behind the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA). The Fifth Circuit cites a Congressional report on IIRAIRA, House Report 104-469, for the proposition that IIRAIRA was as an attempt to "reduce" an apparent "incongruity" between noncitizens who arrive at a port of entry, who could not seek bond, and those who are found in the interior after having crossed into the country undetected, who could. *Buenrostro-Mendez,* at *3.

While House Report 104-469 does include vague references to various "equities" and "privileges" that were created by the prior statutory scheme ("[I]llegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are

not available to aliens who present themselves for inspection."), it does not explicitly say what those equities or privileges were. See H.R. Rep. No. 104-469, pt. 1, at 225 (1996). Without saying so directly, this broad statement does little to advance the proposition that Congress intended mandatory detention without bond in cases like these.

Contrary to Respondent's assertions, the "privileges" and "equities" mentioned were not a function of any specific rules regarding bond, so much as they were the natural result of the separation of exclusion and deportability procedures, which was dependent on when and where a person entered the country. IIRAIRA was an attempt to change this demarcation point from the point at which a person physically entered (or attempted to enter) the country to the point where the person had been inspected and admitted by an immigration officer. H.R. Rep. No. 104-469, at 226. The Fifth Circuit erroneously explains that the result of this change was to render all persons who had not formally been admitted as "applications for admission" and as such subject to mandatory detention without access to bond. *Buenrostro-Mendez,* at *4-6. The Fifth Circuit asserts that the phrase "shall detain" stands for the proposition that Respondents must detain and hold affected noncitizens without bond. *Buenrostro-Mendez,* at *8. However, the Circuit court gives little support beyond this assertion that would tend to show Congress intended mandatory detention under Section 1225(b)(2).

This lack of support is and should be taken as fatal to the perspective offered by Respondents. As the late Justice Antonin Scalia famously explained, "Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes." *Whitman v. American Trucking Assns., Inc.*, 531 US 457, 469 (2001). If the Fifth Circuit's explanation is correct, one would expect that the House Report would mention a clear intention that *all* applicants for admission were to be held without

bond for the duration of their proceedings. However, there is *no* clear expression of this intent, or anything even close to it included in the House Report. Instead, the report states that the intent was to create "more stringent standards for the release of aliens" from detention "during and after removal proceedings." H.R. Rep. No. 104-469, at 12. This would imply that release *remains* an option. Further, there is no single statement of intent to revoke the IJ's authority to hear bond matters and to grant bond alongside removal proceedings or to adjust the IJ's jurisdiction in any way that would be relevant to this legal dispute. Simply put, "[i]f Congress had wanted the provision to have th[e] effect [urged by the government], it could have said so in words far simpler than those that it wrote." *Biden v. Texas*, 597 U.S. 785, 798 (2022)[1].

Ruling in favor of Petitioner is consistent with *Jennings.* In the case, the Supreme Court noted that "U.S. immigration law authorizes the Government to detain *certain* aliens *seeking admission into the country. . .*" *Jennings*, at 289-90. As at least one district court has pointed out, the Supreme Court's language contains a measure of equivocation about the level of definition relative to the categories of individuals to whom Sections 1225 and 1226 apply. *See Del Cid v. Bondi,* No. 3:25-cv-304, *26 fn. 6 (W.D. Pa. October 23, 2025). As such, *Jennings* does not address which noncitizen falls into which category.

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[1] The lack of explicit support, perhaps, is why the Fifth Circuit does not cite the House Report for the ultimate proposition that detention is mandatory. Instead, it draws this conclusion not from the House Report, but from the plurality decision in *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018). *Jennings* held, among other things, that the Ninth Circuit's use of the constitutional avoidance cannon was improper because its interpretations of Section 1225 and 1226 were implausible, and that, subject only to express exceptions in the statute, Section 1225(b) and 1226(c) authorize detention until the end of applicable proceedings. *Jennings* at 842. The *Jennings* decision is problematic for several reasons, not least of which is that it was a plurality decision wherein no clear majority of the Court held that the Court had jurisdiction to hear the case. Regardless, *Jennings* does not defeat Petitioner's argument. Notwithstanding the Fifth Circuit's reliance on *Jennings*, the case spoke only about the issue of statutory interpretation, and the Court expressly did not address any arguments regarding the constitutionality of the provision, nor did the case cover *which* noncitizens fall under which statute. Petitioner has raised those challenges in his Petition.

Even if the Fifth Circuit reasoning persuades this Court, the decision does not address the affirmative nature of "seeking admission," which most courts have held is significant. Section 1225(b)(2)(A) "applies only to noncitizens who are actively, i.e., affirmatively, 'seeking admission' to the United States." *Bethancourt Soto v. Soto*, No. 25-cv-16200, --- F. Supp. 3d ----, 2025 WL 2976572, at *7 (D.N.J. Oct. 22, 2025). The express words of the statute limit the application of the statute to those who have not already been living in the United States for over two years. The alternative is unlikely, for the reasons described above. As the dissenting opinion in *Buenrostro-Mendez* explains,

> The Congress that passed IIRIRA would be surprised to learn it had also required the detention without bond of two million people. For almost thirty years there was no sign anyone thought it had done so, and nothing in the congressional record or the history of the statute's enforcement suggests that it did. Nonetheless, the government today asserts the authority and mandate to detain millions of noncitizens in the interior, some of them present here for decades, on the same terms as if they were apprehended at the border. No matter that this newly discovered mandate arrives without historical precedent, and in the teeth of one of the core distinctions of immigration law. The overwhelming majority of courts in this circuit and elsewhere have recognized that the government's position is totally unsupported. Undeterred, the majority and the government distort the statutory text, abstract it from its context and history, ignore the Supreme Court's clearly stated understanding of the statutory scheme, and wave away the agency's previous failure to detain millions of noncitizens as if it were a rounding error.
>
> And for what? The majority stakes the largest detention initiative in American history on the possibility that "seeking admission" is like being an "applicant for admission," in a statute that has never been applied in this way, based on little more than an apparent conviction that Congress *must have* wanted these noncitizens detained—some of them the spouses, mothers, fathers, and grandparents of American citizens. Straining at a gnat, the majority swallows a camel. I dissent.

Buenrostro-Mendez at 22-23 (footnote omitted). This court should deny Respondents' reading of the statute as incorrect, as many, many courts have already done[2].

WHEREFORE, Petitioners ask this court to order immediate release to correct the violation of law that has occurred in the underlying proceeding.

Dated: 02/17/2026

Respectfully submitted,

s/ Jacquelyn Kline
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[2] While Petitioner could insert here a full page or more of string citations to cases that agree with Respondent, there is no need to belabor the point. Instead, Petitioner directs the court to footnote 15 of the Fifth Circuit opinion, which states that as of January 26, 2026, 105 cases in the Fifth Circuit, from 29 district judges, agree with Petitioner, while only 31 cases from 6 judges agreed with the Government. *Buenrostro-Mendez*, at *37 fn. 15. This is in addition to the countless cases in the other federal circuits. Respondents and the Fifth Circuit itself stand in the minority for a reason, and that reason is that the statute does not stand for the proposition that the Respondents say it does.

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys, and I have discussed the claims with Petitioner's legal team. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: February 17, 2026

Respectfully Submitted,

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