

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

ASLANBEK BASKAEV,
Petitioner,

v.

J.L. JAMISON,
Warden, FDC Philadelphia,
THOMAS ROSE,
Acting Field Office Director,
ICE ERO Philadelphia;
TODD LYONS,
Acting Director, ICE;
KRISTI NOEM,
Secretary of Homeland Security,
Respondents.

Case No. 2:26-cv-01053-KBH

**PETITIONER’S REPLY TO RESPONDENTS’ RESPONSE
IN OPPOSITION TO PETITION FOR
WRIT OF HABEAS CORPUS**

INTRODUCTION

Petitioner Aslanbek Baskaev (“Petitioner”), by and through undersigned counsel, respectfully submits this Reply to Respondents’ Response in Opposition to the Petition for Writ of Habeas Corpus. Respondents’ principal argument—that Petitioner is subject to mandatory detention without a bond hearing under 8 U.S.C. § 1225(b)(2)(A)—has been squarely rejected by the overwhelming majority of federal district courts nationwide, including by numerous judges in this very District. As demonstrated below, Petitioner’s detention is properly governed by 8 U.S.C. § 1226(a), which entitles him to a bond hearing before an Immigration Judge.

ARGUMENT

I. SECTION 1225(b)(2) DOES NOT APPLY TO PETITIONER

A. The Plain Text of § 1225(b)(2)(A) Requires That a Noncitizen Be “Seeking Admission”

Respondents contend that because Petitioner is an “applicant for admission” as defined by 8 U.S.C. § 1225(a)(1), he is automatically subject to mandatory detention under § 1225(b)(2)(A). This argument ignores the statutory text. Section 1225(b)(2)(A) does not apply to all “applicants for admission.” Rather, it applies only when “the examining immigration officer determines that *an alien seeking admission* is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added). The statute thus requires two conditions: (1) the individual must be an “applicant for admission,” *and* (2) the individual must be “seeking admission.” *See Lopes de Andrade v. Rose*, No. 2:26-cv-00603, slip op. at 6 (E.D. Pa. Feb. 12, 2026) (“By its terms, this section applies to a noncitizen who is both ‘an applicant for admission’ and ‘seeking admission.’”).

This reading is compelled by the canon against surplusage. If Congress intended § 1225(b)(2)(A) to apply to *all* “applicants for admission,” the additional requirement that the alien be “seeking admission” would be rendered meaningless. “It is ‘a cardinal principle of statutory construction’ that ‘a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.’” *Pulsifer v. United States*, 601 U.S. 124, 143 (2024) (citation omitted). Respondents’ reading collapses these two distinct statutory terms into one, violating this foundational principle.

As multiple judges in this District have explained, the present participle “seeking” connotes “ongoing and continuous action.” *Kashranov v. Jamison*, No. 2:25-cv-05555, 2025 WL 3188399, at *6 (E.D. Pa. Nov. 14, 2025). “Seeking admission” therefore means “taking ongoing, affirmative

steps to enter the United States, typically at a border or port of entry by presenting oneself for inspection and authorization.” *Id.* Petitioner, who entered the United States in June 2024 and has been residing in this country since that date, was not “seeking admission” at the time he was detained. He was already present within the United States. Section 1225(b)(2)(A) simply does not reach him.

B. The Statutory Context of § 1225 Confirms It Governs Border Inspections, Not Interior Detention

The statutory context further supports Petitioner’s reading. Section 1225 is titled “Inspection by immigration officers; expedited removal of inadmissible arriving aliens.” Its provisions repeatedly reference the “inspection” of noncitizens and the treatment of those “arriving from contiguous territory.” These references confirm that § 1225 governs individuals detained “at or immediately following border crossing,” not those who have long since entered and established residence in the United States. *See Traore v. Noem*, No. 2:26-cv-00851, slip op. at 6–7 (E.D. Pa. Feb. 17, 2026); *Umarov v. Rose*, No. 2:26-cv-00486, slip op. at 6 (E.D. Pa. Feb. 17, 2026).

By contrast, § 1226, titled “Apprehension and detention of aliens,” provides that “an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a). As the Supreme Court has explained, “aliens already in the country pending the outcome of removal proceedings” are subject to discretionary detention under § 1226(a). *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Noncitizens detained under this section are entitled to a bond hearing and an opportunity for release pending the outcome of immigration proceedings. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d).

C. The Regulatory History Confirms That EWI Individuals Are Eligible for Bond

The Government’s own regulatory history undermines its litigation position. In 1997, when implementing the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), the former Immigration and Naturalization Service promulgated an interim rule expressly providing that noncitizens “who are present [in the United States] without having been admitted or paroled”—the precise category to which Petitioner belongs—“will be eligible for bond and bond redetermination” hearings under § 1226(a). 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). This regulatory interpretation, adopted by the very agency now arguing to the contrary, confirms that Congress did not intend § 1225(b)(2) to mandate indefinite detention without bond for individuals who entered without inspection and subsequently resided in the interior.

D. The Overwhelming Weight of District Court Authority Rejects Respondents’ Position

Respondents’ interpretation of the INA has been repeatedly and resoundingly rejected. In *Demirel v. Federal Detention Center Philadelphia*, No. 2:25-cv-05488 (E.D. Pa. Nov. 18, 2025), Judge Diamond catalogued 288 district court decisions addressing this precise issue and found that 282 of those decisions—the “overwhelming majority”—rejected the Government’s interpretation that § 1225(b)(2) mandates detention without bond for noncitizens who entered without inspection. Respondents’ own Response acknowledges that multiple judges in this District have ruled against them, citing *Cabeza Cordero v. Rose* (Marston, J.), *Cajas-Duchimaza v. McShane* (McHugh, J.), and *Kashranov v. Jamison* (Wolson, J.).

Since those decisions, additional judges in this District have continued to rule in Petitioner’s favor, including: *Traore v. Noem*, No. 2:26-cv-00851 (E.D. Pa. Feb. 17, 2026) (Goldberg, J.); *Lopes de Andrade v. Rose*, No. 2:26-cv-00603 (E.D. Pa. Feb. 12, 2026) (Costello,

J.); *Umarov v. Rose*, No. 2:26-cv-00486 (E.D. Pa. Feb. 17, 2026) (Costello, J.); *Murodov v. Jamison*, No. 2:26-cv-00594 (E.D. Pa. Feb. 13, 2026) (Pappert, J.); *Mendez Sanchez v. Rose*, No. 2:26-cv-00820 (E.D. Pa. Feb. 13, 2026); *Butskhrikidze v. Jamison*, No. 2:26-cv-00730 (E.D. Pa. Feb. 17, 2026). The consensus in this District is clear and overwhelming: § 1225(b)(2) does not apply to noncitizens who have already entered and resided in the United States.

E. *Matter of Q. Li* Is Not Binding on This Court and Has Been Widely Rejected

Respondents rely heavily on the BIA’s decision in *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), which held that Immigration Judges lack authority to conduct bond hearings for noncitizens who entered without inspection. That decision is not binding on this Court. Following *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which overruled *Chevron* deference, this Court must “exercise [its] independent judgment” in interpreting the statute rather than deferring to the BIA’s construction. *Id.* at 392. For all the reasons set forth above, the plain text of § 1225(b)(2)(A) does not support the Government’s position.

Moreover, *Matter of Q. Li* itself acknowledged that “for years Immigration Judges have conducted [§ 1226(a)] bond hearings for aliens who entered the United States without inspection.” 29 I. & N. Dec. at 71. The BIA’s abrupt reversal of longstanding practice does not alter the meaning of the statute, and this Court should decline to follow it. *See also Demirel*, No. 2:25-cv-05488, slip op. at 8 (cataloguing 282 district court decisions rejecting this precise interpretation).

F. Petitioner’s Asylum Application Does Not Make Him “Seeking Admission”

To the extent Respondents suggest that Petitioner’s pending asylum application renders him “seeking admission,” that argument fails. As this District has held, “[i]nstead of seeking a ‘lawful entry to the United States,’ an asylum applicant currently living in the country . . . is seeking

a lawful means to remain here.” *Lopes de Andrade*, No. 2:26-cv-00603, slip op. at 7. Petitioner has been living in the United States since June 2024. He is not at a border or port of entry attempting to gain entry. His asylum application is a request to *remain* in this country, not a request for “admission” within the meaning of § 1225.

G. The Canon of Constitutional Avoidance Supports Petitioner’s Reading

Even if the statutory text were ambiguous—and it is not—the canon of constitutional avoidance would require this Court to adopt Petitioner’s interpretation. Under this canon, “where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress.” *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988). Respondents’ interpretation—that § 1225(b)(2) authorizes indefinite mandatory detention without any individualized hearing for persons who have lived in the United States for extended periods—raises grave due process concerns. The Court should adopt the reading that avoids these constitutional difficulties and hold that § 1226(a) governs Petitioner’s detention.

H. The Minority View Relied Upon by Respondents Is Unpersuasive

To the extent Respondents rely on the handful of district court decisions that have adopted the Government’s position, those decisions represent a small minority that has been thoroughly repudiated by the weight of authority. Some of those decisions conflate the statutory terms “applicant for admission” and “seeking admission,” treating them as synonymous despite Congress’s use of distinct language. Others rely on pre-*Loper Bright* deference to the BIA’s interpretation. Neither basis withstands scrutiny. As Judge Diamond observed in *Demirel*, the

Government’s interpretation has been rejected in 282 of 288 district court decisions—a ratio that speaks for itself.

II. PETITIONER IS ENTITLED TO A BOND HEARING UNDER § 1226(a)

Because § 1226(a)—not § 1225(b)(2)—governs Petitioner’s detention, his mandatory detention without any opportunity for a bond hearing is unlawful. Under § 1226(a), noncitizens are entitled to an initial custody determination, including the possibility of release on bond or conditional parole. *See* 8 U.S.C. § 1226(a)(1)–(2); 8 C.F.R. § 1236.1(d)(1). Petitioner has been denied this hearing entirely. This Court should grant the Petition and order that Petitioner receive a bond hearing before an Immigration Judge within fourteen (14) days.

III. EVEN IF § 1225(b)(2) APPLIED, PETITIONER’S DETENTION WITHOUT A BOND HEARING VIOLATES DUE PROCESS

Even assuming, *arguendo*, that § 1225(b)(2) applied to Petitioner, his mandatory detention without any individualized hearing before a neutral decision-maker violates the Due Process Clause of the Fifth Amendment. Applying the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), each factor weighs in Petitioner’s favor.

First, Petitioner has a “strong liberty interest in being free from mandatory detention.” *Traore*, No. 2:26-cv-00851, slip op. at 10. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Second, Petitioner’s detention under § 1225 “poses a high risk of erroneously depriving him of his rights because he has not been afforded the opportunity for a neutral decisionmaker to make an individualized determination about whether he poses a flight risk or a danger to the

community.” *Traore*, No. 2:26-cv-00851, slip op. at 10. Without a hearing, there is no mechanism to assess whether Petitioner’s continued detention is justified—or whether he could be safely released on bond or conditions.

Third, “a bond hearing poses a minimal administrative burden to the Government. That minimal burden is clearly outweighed by [Petitioner’s] strong liberty interest and right to be heard.” *Id.* Bond hearings are a routine part of immigration proceedings; the Government has offered no reason why the well-established bond hearing process would be burdensome in Petitioner’s case.

CONCLUSION

For all the foregoing reasons, Petitioner respectfully requests that this Court: (1) grant the Petition for Writ of Habeas Corpus; (2) declare that Petitioner’s detention is governed by 8 U.S.C. § 1226(a); (3) order Respondents to provide Petitioner with a bond hearing before an Immigration Judge within fourteen (14) days of the date of any Order granting this Petition, at which the Government shall bear the burden of justifying Petitioner’s continued detention by clear and convincing evidence; and (4) grant such other relief as this Court deems just and proper.

Dated: February 23, 2026

Respectfully submitted,

/s/ Robert Bond

Robert Bond, Esquire

PA Bar No. 308371

Law Offices of Robert Bond, LLC

11880 Bustleton Ave #206

Philadelphia, PA 19116

Phone: (215) 240-7565

Email: Rbond@phillylawcenter.com

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2026, a true and correct copy of the foregoing Petitioner's Reply to Respondents' Response in Opposition to Petition for Writ of Habeas Corpus was served upon all counsel of record via the Court's CM/ECF electronic filing system.

/s/ Robert Bond
Robert Bond, Esquire