

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

ABASS SEKOU TOURE,

Petitioner,

v.

WARDEN, PHILADELPHIA
DETENTION CENTER, et al.,

Respondents.

Civil Action No. 26-cv-1416

**RESPONDENTS' OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS**

I. INTRODUCTION

In recent months, immigration detainees in this District have filed hundreds of petitions for habeas corpus writs. These have challenged the U.S. Department of Homeland Security Secretary's authority to detain the petitioners without a bond hearing, pending completion of immigration-court removal proceedings (which include consideration of any asylum-claim defense to removal).

The habeas cases can be divided into four categories:

First, "***Hurtado* cases**"¹ involve petitioners: (1) who entered the United States without inspection; and (2) whom immigration authorities, after a passage of time, encountered in the nation's interior (rather than at the borders), placed in standard removal proceedings, and then recently detained under 8 U.S.C. § 1225(b)(2)(A). *See, e.g., Cantu-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 (BIA 2025).

Second, “*Q. Li* cases”² (like this one) involve petitioners who entered the United States without inspection and whom immigration authorities: (1) encountered near the border, detained without a warrant, and released into the country (for example, on temporary parole, until such time as they would be served with a notice to appear for removal proceedings); and (2) then, 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).

Third, “arriving-alien cases” involve petitioners: (1) who presented at a port of entry, without valid entry documents, and were paroled into the country under 8 U.S.C. 1182(d)(5)(A); and (2) whom immigration authorities, 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).

Fourth, “expedited-removal cases” involve petitioners: (1) who, based on certain conditions (related to time, manner, and place of entry), were placed into expedited removal proceedings and paroled into the United States under 8 U.S.C. § 1182(d)(5)(A); and (2) whom immigration authorities, 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 case categories (which include *Q. Li* cases) share the same 8 U.S.C. § 1225(b)(2)(A) authority for mandatory detention. Although there are legal and factual distinctions among those cases, the fundamental point of departure between the government’s position, on the one hand, and petitioners’ position (which to date over 190 decisions in this District have adopted), on the other, turns on how to interpret § 1225(b)(2)(A), which provides:

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.

² “*Q. Li*” refers to *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025).

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), judges 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.” These courts have reasoned that the term “seeking admission”: (1) to avoid surplusage, should be given meaning beyond “applicant for admission”; but (2) is limited to “active and ongoing” efforts to be admitted *at or near the border*. *See, e.g., Kashranov v. Jamison*, No. 25-cv-5555, 2025 WL 3188399, *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*: (1) they have been admitted; or (2) their removal proceedings are complete. Though the vast majority of district courts to have ruled on the government’s position have rejected it, the lone court of appeals to have squarely considered the argument agreed with the government last month. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 502 (5th Cir. Feb. 6, 2026) (“The everyday meaning of the statute’s terms confirms that being an ‘applicant for admission’ is not a condition independent from ‘seeking admission.’”). *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 is a “*Q. Li*” case. The government has detained Petitioner Abass Sekou Toure, a citizen of Mozambique, under 8 U.S.C. § 1225(b)(2)(A). Earlier, in or around March 2024, near Sasabe, Arizona, immigration authorities initially encountered Mr. Toure after he entered the United States without having been admitted or paroled by an immigration officer. At that time, he was paroled with *temporary* permission to enter and physically remain in the country. *See* Petition, ECF 1, at ¶¶ 17-19.

On March 3, 2026, immigration officials encountered Mr. Toure again when he reported to an ICE office in Philadelphia for a check-in appointment. *See* Petition, ECF 1, at ¶ 23. At that time, he was placed in standard removal proceedings, and detained under 8 U.S.C.

§ 1225(b)(2)(A). *See id.* On March 5, 2026, when Mr. Toure filed his habeas petition, he was detained within this District, at the Federal Detention Center-Philadelphia.

This case turns principally on the threshold statutory interpretation question discussed above—whether Mr. Toure is an “applicant for admission” who is “seeking admission” within the meaning of § 1225(b)(2)(A).³ The government expands on its argument, below, in the context of Mr. Toure having been: (1) initially encountered near the New Mexico/Mexico border after entering without inspection; (2) temporarily paroled into the country at that time because of a lack of nearby detention-facility capacity, and thus falling within the scope of the Board of Immigration Appeals’ *Q. Li* decision; and (3) recently served with a notice or removal (effectively terminating his temporary parole) and detained in this District, pending his removal proceedings. The government also addresses Mr. Toure’s separate argument alleging a violation of due process.

II. ARGUMENT

The Court should deny the petition because: (1) Mr. Toure is lawfully detained under 8 U.S.C. § 1225(b)(2)(a); and (2) his detention does not violate constitutional due process.

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

1. He is an “applicant for admission” who is “seeking admission.”

An individual who “arrives” or is “present” in this country but “has not been admitted” is an “applicant for admission” under 8 U.S.C. § 1225(a)(1). *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 499-500 (5th Cir. Feb. 6, 2026). Such

³ In many earlier responses filed in this District, the government advanced jurisdictional arguments that it is not advancing here. Of course, the Court may appropriately satisfy itself of its jurisdiction upon consideration of: (1) 8 U.S.C. §§ 1225(b)(9), 1252(a)(2)(B)(ii), and 1252(g); and (2) *Khalil v. President, United States of America*, 164 F.4th 259 (3d Cir. 2026).

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, and that alien (like Mr. Toure) seeks 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 (if the alien is not seeking admission), 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).

The government acknowledges that, to date, all judges in this District (and many elsewhere) have reasoned that § 1225(b)(2)(A) requires that, to fall within its scope, an “applicant for admission” be actively “seeking admission” *at or near the border*. *See, e.g., Kashranov v. Jamison*, No. 25-cv-5555, 2025 WL 3188399, *6–7 (E.D. Pa. 2025); *Demirel v. Fed. Detention Ctr.*, No. 25-cv-5488 (E.D. Pa. Nov. 18., 2025).⁴ But, as noted, the Fifth Circuit Court of Appeals last month agreed with the government’s contrary position. *See Buenrostro-*

⁴ The government has filed protective notices of appeal in numerous cases and is awaiting final authorization decisions from the Solicitor General.

Mendez, 166 F.4th at 502 (“The everyday meaning of the statute’s terms confirms that being an ‘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 502-03. *But see Castañon-Nava*, 161 F.4th at 1062.

Thus, Mr. Toure, who is indisputably an “applicant for admission,” is also still “seeking admission” and covered by § 1225(b)(2)(A).

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

Under 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 [removal] proceeding under section 1229a.” 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 under it 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 Board of Immigration Appeals (BIA) is part of the Executive Office for Immigration Review of the U.S. Department of Justice and is responsible for reviewing immigration-court decisions.

Last year, in *Q. Li*, 29 I&N Dec. 66 (BIA 2025), the BIA expanded upon the Supreme Court’s holding in *Jennings* and clarified the scope of § 1225(b)(2) for applicants for admission who are situated like Mr. Toure and are “arriving” in the United States. *See Q. Li*, 29 I&N 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 (including those who like Mr. Toure had been temporarily paroled), the BIA affirmed in *Q. Li* that the U.S. Department of Homeland Security may either place the alien into expedited removal proceedings under § 1225(b)(1) or full removal

proceedings under § 1229a. *See Q. Li*, 29 I&N at 68; *see also id.* at 69-70 (recognizing that when DHS-granted parole is automatically terminated upon service of a notice to appear for removal proceedings, “the alien shall forthwith return or be returned to the custody from which he was paroled[,]” pending completion of removal proceedings), *citing* 7 U.S.C. § 1182(d)(5)(A) and 8 C.F.R. § 212.5(e)(2)(i).

According to the BIA, where the placement is into full removal proceedings, § 1225(b)(2)(A) mandates detention (without eligibility for release on bond) “until removal proceedings have concluded.” *Id.* (citing *Jennings*, 583 U.S. at 299). *But see Cordero v. Rose*, EDPA 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 before arrest, was not an applicant for admission who was actively “seeking admission” within the meaning of § 1225(b)(2)); *accord, e.g., Cajas-Duchimaza v. McShane*, EDPA No. 26-cv-621, ECF No. 6 (Feb. 3, 2026); *Gurievi v. Rose*, EDPA No. 26-cv-736, ECF No. 6 (Feb. 9, 2026) (Kearney, J.).

Mr. Toure remains an applicant for admission seeking admission, and 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 is ineligible for a bond hearing before an immigration judge.

B. Petitioner’s detention does not violate due process.

Congress broadly crafted “applicants for admission” to include undocumented persons, like Mr. Toure, 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.”).

Mr. Toure’s mandatory detention under §1225(b) will last only for the duration of his removal proceedings.

The Supreme Court has repeatedly recognized the profound public interest in detention while removal proceedings are pending. *See 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”); *see also Jennings*, 583 U.S. at 304.

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

Mr. Toure’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 shorter 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)). As of this time, Mr. Toure apparently does not challenge the reasonableness of his detention under *German Santos*. Nor could he do so, because he has been detained for under one week.

III. CONCLUSION

For the foregoing reasons, Respondents respectfully request that Abass Sekou Toure’s Petition for Writ of Habeas Corpus be denied.

Respectfully submitted,

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Dated: March 9, 2026

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CERTIFICATE OF SERVICE

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

Dated: March 9, 2026

/s/ Eric S. Wolfish

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