

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

ADRIANO ROMEIRO CUSTODIO
OLIVEIRA,

Petitioner,

v.

J.L. JAMISON, et al.,

Respondents.

Civil Action No. 26-cv-1904

**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 (like this one) involve petitioners: (1) who entered the United States without inspection (including even someone like the petitioner here, whom immigration officials initially encountered at the southern border but released at that time without serving a notice to appear); and (2) whom immigration authorities, after a passage of time, recently encountered in the nation's interior (rather than at a border) and detained under 8 U.S.C. § 1225(b)(2)(A), for placement in removal

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

proceedings. *See, e.g., Cantu-Cortes v. O'Neill*, No. 25-cv-6338, 2025 WL 3171639, at *1-2 (E.D. Pa. Nov. 13, 2025).

Second, “Q. Li cases”² 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; 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 (including *Hurtado* 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**

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

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), 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 “*Hurtado*” case. Petitioner Adriano Romeiro Custodio Oliveira is a Brazilian citizen who is age 42. Although he crossed the southern border in late 2022 without inspection, and although immigration authorities initially encountered him

near El Paso, Texas on December 16, 2022, that was not a genuine first encounter or first detention because authorities immediately released him: (1) with instructions to report for any later proceedings; but (2) without issuing a notice to appear.

Mr. Oliveria was effectively first encountered this week, on March 23, 2026 in this District, when immigration officials detained him under 8 U.S.C. § 1225(b)(2)(A) so that he can be placed in standard removal proceedings.

Thus, this case turns principally on the threshold statutory interpretation question discussed above: whether Mr. Oliveira is an “applicant for admission” who is “seeking admission” within the meaning of § 1225(b)(2)(A).³ The government, below, expands on its continuing-to-see-admission argument. The government also addresses Mr. Oliveira’s separate argument alleging a violation of due process.

II. ARGUMENT

The Court should deny the petition because: (1) Mr. Oliveira 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 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

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).

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. Oliveira) 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,

⁴ The government is pursuing appeals in the Third Circuit related to both statutory and constitutional due-process claims. Those two actions (now consolidated for all purposes) are: (1) *Lopes De Andrade v. Director Philadelphia Field Office* (continued)

the Fifth Circuit Court of Appeals last month agreed with the government’s contrary position. *See Buenrostro-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. Oliveira, 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 v. Rodriguez*, 583 U.S. 281, 287 (2018) (“Both § 1225(b)(1) and § 1225(b)(2) authorize the detention of certain aliens.”).

The Board of Immigration Appeals (BIA) is a 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 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), the BIA concluded that the appealed-from immigration court lacked jurisdiction to conduct a bond hearing because § 1225 requires that an alien present in—

Immigration and Customs Enforcement, et al., No. 26-1454 (3d Cir.); and (2) *Buele Morochu v. Warden Philadelphia FDC*, et al., No. 26-1150 (3d Cir.). The government filed its consolidated opening brief on March 20, 2026. The consolidated appeals have been scheduled for expedited Third Circuit disposition during the week of May 11, 2026.

but never admitted to—the United States must be detained for the duration of his removal proceedings. *Id.*

As the BIA explained:

- “Based on the plain language of . . . 8 U.S.C. § 1225(b)(2)(A)[,] . . . Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission[,]” *see id.* at 226;
- § 1225 applies to aliens who are present in the country—even for years—who have not been admitted. *See id.* (“[T]he statutory text of the INA . . . is . . . clear and explicit in requiring mandatory detention of all aliens who are applicants for admission, without regard to how many years the alien has been residing in the United States without lawful status.”), citing 8 U.S.C. § 1225; and
- To hold otherwise would lead to an “incongruous result” that rewards aliens who unlawfully enter the United States without inspection and possibly evade apprehension for years. *Id.* at 228.

In *Hurtado*, the BIA also rejected the alien’s argument that the § 1225 mandatory detention scheme rendered superfluous the recent amendment to § 1226 under the Laken Riley Act. *See Hurtado*, 29 I&N Dec. at 222. As the BIA explained, “nothing in the statutory text[,]. . . including the text of the amendments made by the Laken Riley Act, purports to alter or undermine the provisions of . . . 8 U.S.C. § 1225(b)(2)(A), requiring that aliens who fall within the definition of the statute ‘shall be detained for [removal proceedings].’” *Id.* According to the BIA, any redundancy between the two statutes does not give license to “rewrite or eviscerate” one of the statutes. *See id.* (quoting *Barton v. Barr*, 590 U.S. 222, 239 (2020)).

The Fifth Circuit recently addressed the interplay of § 1225(b)(2) and § 1226(a). The court explained that § 1226(a) “undeniably does work independent from

§ 1225(b)(2)(A) because only § 1226(a) applies to admitted aliens who overstay their visas, become deportable on many different grounds, or were admitted erroneously due to fraud or some other error.” *See Buenrostro-Mendez*, 166 F.4th at 504-505. As for § 1226(c), the court explained: “Not only does § 1226(c) sweep in deportable aliens in addition to the inadmissible aliens covered by § 1225(b)(2)(A), *see* 8 U.S.C. § 1226(c)(1)(B)–(C), it also eliminates the option of parole for those to whom it applies.” *Id.* at 505. And the court noted that “the Laken Riley Act . . . did have a substantial effect when passed insofar as it required the detention without bond or parole of certain aliens the administration was then treating as bond-eligible.” *Id.*

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). Nothing in either § 1225(b)(2) or § 1226(a) provides that the government must default to detaining an alien pursuant to § 1226(a) if he is subject to detention under § 1225(b)(2) as well.

Mr. Oliveira is 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. Oliveira, 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. Oliveira’s mandatory detention under §1225(b) will last for only 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 with any detention-based due-process concerns—without engaging in the test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976)—during the period of removal proceedings. *See generally Demore*, 538 U.S. at 531.

Mr. Oliveira’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. Oliveira apparently does not challenge the durational reasonableness of his detention under *German Santos*. Nor could he reasonably do so, because he was not detained until this week.

III. CONCLUSION

For the foregoing reasons, Respondents respectfully request that Adriano Romeiro Custodio Oliveira's Petition for Writ of Habeas Corpus be denied.

Respectfully submitted,

DAVID METCALF
United States Attorney

/s/ Susan R. Becker for
GREGORY B. DAVID
Assistant United States Attorney
Chief, Civil Division

/s/ Gerald B. Sullivan
GERALD B. SULLIVAN
Assistant United States Attorney
PA I.D. No. 57300
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106
(215) 861-8786
Gerald.Sullivan@usdoj.gov

Dated: March 24, 2026

Counsel for Respondents

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 24, 2026

/s/ Gerald B. Sullivan
Gerald B. Sullivan
Assistant United States Attorney