

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

SARDOR ILGORJON UGLI
TUKHTAEV

Petitioner

v.

J.L. JAMISON, WARDEN OF
DETENTION FACILITY, in his official
capacity; FIELD OFFICE DIRECTOR,
PHILADELPHIA ERO FIELD
OFFICE, in his/her official capacity;
TODD LYONS, Acting Director, U.S.
Immigration and Customs
Enforcement, in his official capacity;
MARKWAYNE MULLIN, Secretary,
U.S. Department of Homeland Security,
in his official capacity; U.S.
DEPARTMENT OF HOMELAND
SECURITY; PAMELA BONDI,
Attorney General of the United States,
in her official capacity,

Respondents.

CIVIL ACTION

No. 2:26-cv-01969-WB

**PETITIONER'S REPLY TO
RESPONDENTS' OPPOSITION TO
PETITION FOR WRIT OF HABEAS CORPUS**

I. INTRODUCTION

Petitioner Sardor Ilgorjon Ugli Tukhtaev ("Petitioner"), by and through undersigned counsel, respectfully submits this Reply to Respondents' Opposition (ECF No. 6) to the Petition for Writ of Habeas Corpus. Respondents' Opposition recycles the same arguments that the vast majority of federal district courts have rejected. The government concedes that "all courts in this district (and many more elsewhere) have reasoned that § 1225(b)(2)(A) requires that an 'applicant for admission' be actively 'seeking admission' at or near the border." ECF No. 6 at 5. Despite this concession, the government asks this Court to depart from the overwhelming consensus. This Court should decline to do so.

Section 1225(b)(2)(A) does not apply to Petitioner, who entered the United States, was placed in removal proceedings, and was released from custody on an Order of Release on Recognizance under § 1226(a). The government's retroactive reclassification under § 1225(b)(2) strips Petitioner of bond eligibility without any individualized hearing, in violation of the INA and the Due Process Clause. This Court should grant the Petition.

II. ARGUMENT

A. Section 1225(b)(2)(A) Does Not Apply to Petitioner.

1. The Plain Text Requires Both "Applicant for Admission" and "Seeking Admission."

Respondents' entire argument rests on conflating two distinct statutory terms. Section 1225(b)(2)(A) applies only when "an alien who is an **applicant for admission**" is determined not to be clearly and beyond a doubt entitled to be admitted, and only if that individual is an "**alien seeking admission**." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). Congress used two distinct terms, and both conditions must be satisfied.

The present participle "seeking" connotes "ongoing and continuous action." *Kashranov v. Jamison*, Civ. No. 25-5555, 2025 WL 3188399, at *6–7 (E.D. Pa. Nov. 14, 2025). A noncitizen who entered the United States, was placed in removal proceedings, was released into the community, and has been living and working in the country is not "seeking admission" in any meaningful sense of the phrase. As Judge Costello observed in *Lopes de Andrade v. Rose*, No. 2:26-cv-00603, slip op. at 5 (E.D. Pa. Feb. 12, 2026), § 1225(b)(2)(A) "by its terms" applies only to a noncitizen who is "both" an "applicant for admission" and "seeking admission." *See also Agüero Venegas v. McShane*, No. 2:26-cv-01870, slip op. at 2 (E.D. Pa. Mar. 25, 2026) (it "would be strange to say that [the petitioner] seeks to be 'admitted' to a place he had already entered").

Respondents acknowledge that Petitioner "crossed the border without inspection," was "detained at that time," was "placed in removal proceedings, and released." ECF No. 6 at 3. These facts confirm that Petitioner is not currently "seeking admission." He is a person "already in the country pending the outcome of removal proceedings," and thus governed by § 1226(a). *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

2. The Government's Reading Violates the Canon Against Surplusage.

If "applicant for admission" and "seeking admission" were interchangeable, as Respondents contend, then Congress's use of both phrases in § 1225(b)(2)(A) would be pure surplusage. This violates the "cardinal principle of statutory construction" that "no clause, sentence, or word shall be superfluous, void, or insignificant." *Pulsifer v. United States*, 601 U.S. 124, 143 (2024). *See also Lopes de Andrade*, slip op. at 6 ("If the Court were to accept the Government's position that these terms are interchangeable, one phrase would be rendered 'entirely meaningless.'").

Even Judge Douglas's dissent in *Buenrostro-Mendez*, which Respondents rely upon, acknowledged that the majority's reading "would similarly make Congress's recent enactment of the Laken Riley Act . . . 'beside the point.'" *Aguero Venegas*, slip op. at 3 (citing *Demirel v. FDC Phila.*, 2025 WL 3218243, at *4 (E.D. Pa. Nov. 18, 2025)).

3. The Overwhelming Weight of Authority Rejects the Government's Position.

As of the date of this filing, the vast majority of federal district courts to address this issue have rejected the government's interpretation of § 1225(b)(2)(A). In *Demirel*, Judge Diamond catalogued 288 district court decisions, of which 282 rejected the government's position. 2025 WL 3218243, at *5. That number has only grown since. Respondents identify no intervening authority from within this district that would counsel a different result.

Decisions continue to issue in this district rejecting the government's position. *See, e.g., Aguero Venegas*, No. 2:26-cv-01870 (E.D. Pa. Mar. 25, 2026); *Lopez Lopez v. Jamison*, No. 2:26-cv-01539 (E.D. Pa. Mar. 11, 2026); *Coelho Lopes v. Jamison*, No. 2:26-cv-00234 (E.D. Pa. Feb. 4, 2026); *Lopes de Andrade*, No. 2:26-cv-00603 (E.D. Pa. Feb. 12, 2026).

4. *Matter of Q. Li* Is Not Binding on This Court.

Respondents rely heavily on the BIA's decision in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). But BIA decisions are not binding on Article III courts. Following *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which overruled *Chevron* deference, this Court must exercise its own "independent judgment" in determining the meaning of the statute. *Id.* at 392.

Notably, *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 reversed decades of its own settled practice without adequate justification, and over 280 federal courts have found its reasoning unpersuasive.

5. The Government's Own 1997 Rule Contradicts Its Current Position.

The government's 1997 interim rule implementing IIRIRA expressly stated that noncitizens "who are present [in the United States] without having been admitted or paroled" would be "eligible for bond and bond redetermination" under § 1226(a). 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). This is the government's own prior interpretation of the very statute it now reads differently. That rule has been in continuous effect for nearly three decades, and the BIA may not effectively repeal it through adjudication. *See Toure v. Bondi*, No. 3:26-cv-00323, at *12–14 (M.D. Pa. Feb. 27, 2026) (finding that the 1997 Rule confirms § 1226(a) governs EWI individuals in § 240 proceedings).

B. The Fifth and Eighth Circuit Decisions Are Unpersuasive and Not Binding.

Respondents place great weight on *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), and *Avila v. Bondi*, No. 25-3248, 2026 WL 819258 (8th Cir. Mar. 25, 2026). These decisions are not binding on this Court, which sits in the Third Circuit. More fundamentally, both decisions suffer from the same analytical flaw: they conflate "applicant for admission" with "seeking admission," precisely the reading that violates the surplusage canon.

As Judge Douglas recognized in dissent in *Buenrostro-Mendez*, 166 F.4th at 509, the majority's reading "threatens to make meaningless the concurrent requirement that the same 'alien seeking admission' be an 'applicant for admission.'" *Aguero Venegas*, slip op. at 3 (quoting *Demirel*, 2025 WL 3218243, at *4).

The government itself notes that the Seventh Circuit reached the opposite conclusion. In *Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1062 (7th Cir. 2025), the Seventh

Circuit concluded 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)." The circuit courts are thus split, with the weight of district court authority overwhelmingly favoring Petitioner.

The government also notes that it has appealed to the Third Circuit in *Lopes De Andrade v. Director Philadelphia Field Office*, No. 26-1454 (3d Cir.), and *Buele Morocho v. Warden Philadelphia FDC*, No. 26-1150 (3d Cir.). ECF No. 6 at 5 n.4. But the pendency of an appeal does not alter the law as it stands. Until the Third Circuit rules otherwise, this Court should follow the near-unanimous consensus of its sister courts in this district.

C. Petitioner's Asylum Application Does Not Make Him "Seeking Admission."

To the extent Respondents argue that Petitioner's pending asylum application renders him "seeking admission," this argument fails. "Instead 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*, slip op. at 7 (quoting *Anirudh v. McShane*, No. 25-cv-6458, 2025 WL 3527528, at *5 (E.D. Pa. Dec. 9, 2025)). Petitioner has been living in the United States, complying with all conditions of his release, and appearing for all court dates. He is not at the threshold of entry. He is seeking to remain.

D. Petitioner's Detention Without a Bond Hearing Violates Due Process.

Even if this Court were to accept Respondents' statutory interpretation, which it should not, Petitioner's detention without any individualized hearing violates the Due Process Clause. The *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), balancing test applies:

First, the private interest at stake, physical liberty, is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Petitioner has been deprived of his

freedom based on a categorical agency pronouncement that over 280 courts have found legally wrong.

Second, the risk of erroneous deprivation is exceptionally high. No neutral decisionmaker has made any individualized determination that Petitioner poses a flight risk or danger to the community. He was previously released under § 1226(a) and complied with all conditions.

Third, the government's interest in avoiding a bond hearing is minimal. Bond hearings are routine administrative proceedings that impose negligible burdens. *See Lopes de Andrade*, slip op. at 8 ("a bond hearing poses a minimal administrative burden to the Government").

Respondents cite *Demore v. Kim*, 538 U.S. 510 (2003), and *Zadvydas v. Davis*, 533 U.S. 678 (2001), for the proposition that detention during removal proceedings is constitutionally permissible. But *Demore* addressed § 1226(c) mandatory detention for *criminal* aliens with brief, defined detention periods, and the Court emphasized that the average detention lasted 47 days. 538 U.S. at 529. Petitioner has no criminal history, and his removal proceedings have no certain end date. *Zadvydas* itself held that due process applies regardless of immigration status. 533 U.S. at 693.

Respondents also argue that *German Santos v. Warden Pike County Correctional Facility*, 965 F.3d 203 (3d Cir. 2020), is inapplicable because Petitioner has been detained for only approximately one week. ECF No. 6 at 8. But the question here is not whether Petitioner's detention has become *prolonged*; the question is whether he is *entitled to any hearing at all*. The answer, under *Mathews*, is yes. Every day of detention without process compounds the constitutional injury.

III. CONCLUSION

For 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 a bond hearing within fourteen (14) days, with the burden on the government to justify continued detention by clear and convincing evidence; and
- (4) Grant such other and further relief as this Court deems just and proper.

Dated: March 30, 2026

Respectfully submitted,

/s/ Robert Bond

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CERTIFICATE OF SERVICE

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

Dated: March 30, 2026

/s/ Robert Bond
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