IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

VOLODYMYR KHUDYI,

Petitioner,

v. Case No. 26-3030-JWL

CRYSTAL CARTER, Warden, FCI-Leavenworth; TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; and PAM BONDI, U.S. Attorney General,

Respondents.

RESPONSE TO § 2241 HABEAS PETITION AND ORDER TO SHOW CAUSE

Crystal Carter, the Warden of the Federal Correctional Institute in Leavenworth, Kansas ("FCI-Leavenworth"); Todd Lyons, the Acting Director of United States Immigration and Customs Enforcement ("ICE"); Kristi Noem, the former Secretary of the United States Department of Homeland Security ("DHS");[1] and Pam Bondi, the United States Attorney General (collectively "Respondents") submit the following response to the Verified Petition for Writ of Habeas Corpus ("Habeas Petition") filed by Volodymyr Khudyi ("Petitioner") and the Order To Show Cause issued by the Court.

NATURE OF THE MATTER BEFORE THE COURT

The core allegation in this case is that Petitioner's detention during removal proceedings should be governed by 8 U.S.C. § 1226(a) instead of 8 U.S.C. § 1225(b). Section 1226(a) entitles an alien to a bond hearing; § 1225(b) does not. In Count One, Petitioner asserts that detention without a bond hearing violates his constitutional right to due process. ECF 1 ¶¶ 70-77. He says

[1] Under Federal Rule of Civil Procedure 25(d), Ms. Noem's successor will be automatically substituted as a party.

that "the government's continued detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to the community violates the Due Process Clause of the Fifth Amendment." *Id.* ¶ 77. In Count Two, Petitioner asserts that detention without a bond hearing violates the terms of the Immigration and Nationality Act ("INA"). *Id.* ¶¶ 78-80. He avers that "[t]he application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and therefore, violates the INA." *Id.* ¶ 80. The relief sought by Petitioner includes an order directing his immediate release or "requiring Respondents to provide Petitioner with a bond hearing" within seven days. *Id.* at 18-19.

A central issue in choosing between 8 U.S.C. § 1225(b) and 8 U.S.C. § 1226(a) is whether the terms "applicant for admission" and "seeking admission" are largely equivalent. Approximately five days before Respondents' deadline to respond to the Habeas Petition, this Court decided *Galdamez Orellana v. Welsh*, No. 26-3019-JWL, 2026 WL 710121 (D. Kan. Mar. 13, 2026). The petitioner in *Galdamez Orellana* entered the United States illegally and was taken into custody under § 1226(a). *Id.* at *1 & n.1. After a period of parole, the petitioner returned to custody, this time under § 1225(b)(2)(A). *Id.* at *1. The Court determined that the applicable statute was § 1226(a), rather than § 1225(b)(2)(A), and ordered the United States either to release the petitioner or to provide him a bond hearing by a specified date. *Id.* at *1-4. The Court relied on the statutory text and did not reach the petitioner's constitutional due process argument. *Id.* at *1 n.2.

Even with the recent ruling in *Galdamez Orellana*, all claims asserted in the Habeas Petition should be denied. First, unlike the petitioner in *Galdamez Orellana*, Petitioner here has submitted and is pursuing an application for asylum. Assuming for the sake of argument that "seeking admission" means something different than being an "applicant for admission," Petitioner's quest for asylum demonstrates that he has been seeking and continues to seek

admission for purposes of 8 U.S.C. § 1225(b)(2)(A). Second, Petitioner is an "arriving alien" who came into the United States at a port of entry. He participated in a humanitarian parole program (until such parole was terminated), but that did not change his status as an arriving alien. At least for constitutional purposes, arriving aliens are treated as if they were stopped at the border and never entered the country. The procedural due process rights of arriving aliens are limited to what has been prescribed by Congress. Consistent with these principles, this Court previously approved the detention of an arriving alien under § 1225(b)(2)(A) and rejected the alien's constitutional due process challenge. The Court should rule the same way now.[2]

STATEMENT OF FACTS

The following facts are part of the Declaration of Bradley McNary, a Deportation Officer for Enforcement and Removal Operations at ICE. Exhibit ("Ex.") 1, Declaration ¶¶ 1-4. Some allegations from and attachments to the Habeas Petition are cited as well.

Petitioner is a native and citizen of Ukraine. Ex. 1 ¶ 5; *see also* ECF 1 ¶ 25. On July 19, 2022, he arrived in the United States at the port of entry at O'Hare International Airport in Chicago, Illinois. Ex. 1 ¶ 6; *see also* ECF 1 ¶¶ 2, 25. He was paroled into the United States by Customs and Border Protection ("CBP"). Ex. 1 ¶ 6. Petitioner alleges that he participated in a humanitarian parole program known as Uniting 4 Ukraine. ECF 1 ¶¶ 2, 25; *see also* ECF 1 Ex. F at 4. He also alleges he applied for Temporary Protective Status ("TPS"), but he acknowledges this TPS application is still pending and has not been granted. ECF 1 ¶¶ 4-5; *see also* ECF 1 Ex. F at 4.

[2] There are other arguments as to why an "applicant for admission" is "seeking admission" under 8 U.S.C. § 1225(b)(2)(A). The Court rejected these arguments in *Galdamez Orellana*. In the final section of this brief, Respondents preserve these rejected arguments in the event an appeal or a response to an application for attorney's fees is required.

On August 14, 2025, Drug Enforcement Administration ("DEA") agents encountered Petitioner during an investigation into a conspiracy to traffic narcotics and launder money. Ex. 1 ¶ 7; *see also* ECF 1 ¶ 60; ECF 1 Ex. F at 3. He was taken into custody. Ex. 1 ¶ 7; *see also* ECF 1 ¶ 60; ECF 1 Ex. F at 3. On August 15, 2025, special agents ("SAs") with ICE's Homeland Security Investigations ("HSI") encountered Petitioner while in DEA custody and took him into ICE custody. Ex. 1 ¶ 8; *see also* ECF 1 ¶ 6. As explained in the Record of Deportable/Inadmissible Alien:

> DEA SAs took KHUDYI into custody for federal criminal violations. DEA SAs then determined that KHUDYI was a national and citizen of Ukraine and notified [HSI] SAs of KHUDYI's foreign citizenship. HSI SAs . . . determined that, while KHUDYI had been paroled into the United States, he had not been legally admitted. . . . An HSI SA asked KHUDYI whether he had a passport and visa to enter and remain in the United States. KHUDYI stated that he had a Ukrainian passport at his home, but he also stated that he did not have an immigrant or non-immigrant visa when he arrived and was paroled into the United States. . . . KHUDYI is subject to removal proceedings . . . in that, he is an immigrant not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document[.]

ECF 1 Ex. F at 3-4 (citation modified). A DHS Immigration Officer issued an arrest warrant on August 15, 2025, stating that there was probable cause to believe Petitioner was removable from the United States based upon "statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law." ECF 1 Ex. D at 1; *see also* ECF 1 ¶ 61; ECF 1 Ex. F at 3.

On August 20, 2025, DHS generated a Notice to Appear ("NTA"), also known as a Form I-862. Ex. 1 ¶ 9; *see also* ECF 1 ¶¶ 7, 62. The NTA charged Petitioner as inadmissible under § 212(a)(7)(A)(i)(I) of the INA. *See* Ex. 1 ¶ 9 (citing 8 U.S.C. § 1182(a)(7)(A)(i)(I)); *see also* ECF 1 ¶¶ 7, 62. The NTA classified Petitioner as "an arriving alien," stated that he was "not a citizen

or national of the United States," and reiterated that he was "not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document[.]" ECF 1 Ex. E at 1, 5; *see also* Ex. 1 ¶ 9. The NTA ordered Petitioner to appear before an Immigration Judge ("IJ"). ECF 1 Ex. E at 1. On August 26, 2025, DHS issued Additional Charges of Inadmissibility/Deportability, adding an allegation regarding Petitioner's manner of entry into the United States. Ex. 1 ¶ 10.

On August 27, 2025, Petitioner appeared before an IJ. *Id.* ¶ 11. On September 2, 2025, Petitioner, through counsel, submitted written pleadings denying the allegations and the charge in the NTA. *Id.* ¶ 12. The same day, Petitioner filed a motion to terminate his removal proceedings, asserting that he possessed a valid entry document at admission and his parole remained valid. *Id.*; *see also* ECF 1 ¶ 64. On September 3, 2025, Petitioner again appeared before the IJ and DHS argued that Petitioner's parole was terminated upon service of the NTA. Ex. 1 ¶ 13. The IJ denied Petitioner's motion to terminate removal proceedings and sustained the allegations and charge lodged by DHS. *Id.*; *see also* ECF 1 ¶ 64.

On September 18, 2025, Petitioner filed with the IJ an application for relief from removal. Ex. 1 ¶ 14. Petitioner alleges that he sought not only withholding of removal, but also asylum. ECF 1 ¶ 65; *see also* ECF 1 Ex. G at 3. Petitioner claimed that "he was afraid to return to Ukraine because if Russia takes over or wins the war, he feared he would be targeted on account of his nationality, as well as his political opinion in support of Ukrainian independence." ECF 1 ¶ 65. After holding a hearing on November 3, 2025, the IJ orally denied Petitioner's application for relief and ordered him removed to Ukraine; this oral decision was followed by a written opinion dated November 6, 2025. Ex. 1 ¶¶ 15-16; *see also* ECF 1 ¶ 66; ECF 1 Ex. G at 1-4, 6.

On December 2, 2025, Petitioner filed an appeal of the IJ's decision with the Board of Immigration Appeals ("BIA" or "Board"). Ex. 1 ¶ 17; *see also* ECF 1 ¶ 67. On December 12, 2025, DHS filed a motion to expedite Petitioner's appeal with the BIA. Ex. 1 ¶ 18. As of today's date, Petitioner's appeal with the BIA remains pending. *Id.* ¶ 20; *see also* ECF 1 ¶¶ 25, 67. When the BIA acknowledged receipt of Petitioner's appeal, the BIA stated that "[f]iling a motion with the Board does not automatically stop the DHS from executing an order of removal." ECF 1 Ex. H at 2-3. Petitioner has yet to be charged with a crime as a result of the DEA's investigation. Ex. 1 ¶ 19; *see also* ECF 1 ¶ 68.

ARGUMENT

I. The facts of this case make *Galdamez Orellana* distinguishable and defeat Petitioner's statutory claim

Section 1225(b) of Title 8 authorizes the detention of certain aliens. 8 U.S.C. § 1225(b)(1) explains which aliens may be subject to detention in connection with expedited removal proceedings. If an immigration officer determines an alien "who is arriving in the United States" or is "described in clause (iii)"[3] is "inadmissible under section 1182(a)(6)(C) or 1182(a)(7)," the officer "shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum" or "a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i). 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) states that "[a]ny alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed."

[3] An alien is subject to clause (b)(1)(A)(iii) if he or she "has not been admitted or paroled into the United States," and "has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility[.]" 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

8 U.S.C. § 1225(b)(2), in turn, describes "other aliens" who may be detained while participating in "full" removal proceedings. This portion of the statute states:

> Subject to subparagraphs (B) and (C), 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 proceeding under section 1229a of this title.

8 U.S.C. § 1225(b)(2)(A). An "applicant for admission" is defined as "[a]n alien present in the United States who has not been admitted or who arrives in the United States[.]" 8 U.S.C. § 1225(a). Section 1229a sets forth the rules and procedures for removal proceedings before an IJ. 8 U.S.C. § 1229a(a)-(e). 8 U.S.C. § 1225(b)(2)(A) applies here because (1) Petitioner is both an "applicant for admission" and "seeking admission," as he is pursuing an asylum application; and (2) Petitioner continues to be an "arriving alien," which prior court cases have evaluated under § 1225(b)(2).

A. Petitioner is "seeking admission" under 8 U.S.C. § 1225(b)(2)(A) because he submitted and is pursuing an application for asylum

Asylum is a conditional form of admission. "Admission" is "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). A grant of asylum "does not convey a right to remain permanently in the United States," 8 U.S.C. § 1158(c)(2), but it does mean an alien shall not be removed or returned to his or her country of nationality, shall be authorized to engage in employment in the United States, and may be allowed to travel abroad with prior consent. 8 U.S.C. § 1158(c)(1)(A)-(C). Since September 2025, Petitioner has been seeking asylum. *See supra* Statement of Facts ("SOF"). An IJ denied Petitioner's asylum request in November 2025. *Id.* Petitioner appealed that decision in December 2025. *Id.* Petitioner's appeal before the BIA remains pending. *Id.*

Petitioner's pursuit of asylum demonstrates that he has been seeking and continues to seek admission for purposes of 8 U.S.C. § 1225(b)(2)(A). In the words of one court:

> Moreover, even if Espinoza Hernandez was correct that the phrase "seeking admission" in addition to "applicant for admission" means that Section 1225(b)(2) does not apply to all applicants for admission, this does not help him. The record confirms that Espinoza Hernandez is both an applicant for admission and is seeking admission. It is undisputed that he has a pending application for asylum in the immigration court. By asking for asylum, Espinoza Hernandez is literally seeking admission—authorization to remain lawfully in this country. Section 1101(a)(13)(A) defines the terms "admission" and "admitted" to mean "with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). That is precisely what Espinoza Hernandez is seeking with his asylum petition. Indeed, one suspects that upon apprehension many unadmitted aliens promptly seek admission and permission to stay; their alternative is to elect to remove themselves voluntarily. This undercuts the logic of Espinoza Hernandez's argument. He cannot avoid this conclusion with the uncontroversial contention that one can apply for asylum while already lawfully present in the United States. That fact does not alter his own circumstances. There is no question that Espinoza is both an "alien present in the United States who has not been admitted" within the meaning of Section 1225(a)(1) and, due to his asylum petition, has requested authorization to remain here and is thus also "seeking admission" within the plain terms of Section 1225(b)(2).

Hernandez v. Olson, No. 25-cv-1670-bhl, 2026 WL 161509, at *5 (E.D. Wis. Jan. 21, 2026).

Hernandez does not stand alone. Other courts have similarly concluded that pursuing asylum means an alien is "seeking admission." *See, e.g., Byron A. v. Bondi*, Civ. No. 26-1365 (PAM/JFD), 2026 WL 608535, at *2 (D. Minn. Mar. 4, 2026) ("Moreover, Petitioner filed an application for asylum and ostensibly continues to pursue that status. That application seeks to allow him to remain in this country—i.e., to be admitted.") (citation modified); *Alcan v. Sec'y of U.S. Dep't of Homeland Sec.*, No. 1:25-cv-961, 2026 WL 472333, at *3 (S.D. Ohio Feb. 19, 2026) ("Furthermore, Alcan has applied for asylum, so that further suggests he is 'seeking admission.' 8 U.S.C. § 1225(b)(2)."); *Singh v. Noem*, No. CIV 25-1110 JB/KK, 2026 WL 146005, at *35 (D.N.M. Jan. 20, 2026) ("The Court therefore understands Singh, an alien present in the United States who has filed an asylum application, to be seeking admission, and can be properly held under § 1225(b)(2)."); *Chen v. Almodovar*, No. 1:25-cv-8350-MKV, 2025 WL 3484855, at *6

(S.D.N.Y. Dec. 4, 2025) (stating that where an alien was "actively seeking admission (i.e., lawful status) through asylum, the Court concludes that 8 U.S.C. § 1225(b)(2) clearly applies to Petitioner. Thus, Petitioner is subject to mandatory detention pending the resolution of his removal proceedings.") (citation omitted).

B. Petitioner is an "arriving alien," and this Court has already determined that such aliens are subject to detention under 8 U.S.C. § 1225(b)(2)(A)

An alien who comes in through a port of entry and is paroled into the United States remains an arriving alien. The definition of "arriving alien" includes "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry[.]" 8 C.F.R. §§ 1.2, 1001.1(q). "An arriving alien remains an arriving alien even if paroled" pursuant to 8 U.S.C. § 1182(d)(5), "and even after any such parole is terminated or revoked." 8 C.F.R. §§ 1.2, 1001.1(q). These regulatory provisions are reinforced by the text of the humanitarian parole statute:

> The Secretary of Homeland Security may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.

8 U.S.C. § 1182(d)(5)(A); *see also Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (repeating that parole "shall not be regarded as an admission of the alien" under § 1182(d)(5)(A)).

As a corollary, a paroled alien is "'treated as if stopped at the border' for purposes of immigration law," at least when constitutional due process is at issue. *Suarez-Tejada v. United States*, 85 F. App'x 711, 712-13 (10th Cir. 2004) (citation omitted). More specifically, a paroled

alien is "legally considered to be detained at the border and hence as never having effected entry into this country." *Id.* at 712 (quoting *Sierra v. INS*, 258 F.3d 1213, 1218 (10th Cir. 2001)); *see also Baca-Prieto v. Guigni*, 95 F.3d 1006, 1011 (10th Cir. 1996) ("A paroled alien is, therefore, not deemed to be within the United States and is subject to exclusion just as if he were initially appearing at the border seeking entry.") (citation omitted).[4]

These provisions and principles apply to the facts of this case. Petitioner came to the United States through a port of entry, O'Hare International Airport in Chicago. *See supra* SOF. He participated in a humanitarian parole program. *Id.* He remained an arriving alien during his period of parole. *Id.* He later received an NTA confirming his status as an arriving alien, charging him as inadmissible under the INA, and initiating removal proceedings. *Id.* Federal regulations provide that when "a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified." 8 C.F.R. § 212.5(e)(2)(i); *see also* 8 C.F.R. § 244.1 ("Charging document means the written instrument which initiates a proceeding before an Immigration Judge."). Petitioner's NTA thus terminated his parole. *See Guadarrama v. Scott*, No. 2:26-cv-00193-TMC, 2026 WL 507673, at *3 (W.D. Wash. Feb. 24, 2026) ("Navarro Ceja entered the United States as an 'arriving alien' in December 2024 and was granted deferred action shortly thereafter. . . . He was then detained and issued an NTA, which

[4] Although the petitioner in *Galdamez Orellana* also received parole under 8 U.S.C. § 1182(d)(5), *see* 2026 WL 710121, at *1, that does not put the case on all fours with this one. The United States did not argue in *Galdamez Orellana* that (1) the petitioner was an arriving alien; (2) an arriving alien retains that status despite being paroled; or (3) a paroled alien is treated as never having effected entry when evaluating constitutional due process. Respondents are making those arguments now. *Cf. Qui v. Carter*, No. 25-3131-JWL, 2025 WL 2770502, at *2 n.1 (D. Kan. Sept. 26, 2025) (concluding that non-compliance with a regulatory requirement for an interview did not justify habeas relief, despite an earlier ruling going the other way, because in the prior case "respondents had not disputed that compliance with that regulation was required or that non-compliance would justify release").

constituted notice that the government had terminated his advanced parole.") (citations omitted); *Quintero v. Francis*, No. 25-CV-10107 (MKV), 2026 WL 265921, at *6 (S.D.N.Y. Feb. 2, 2026) ("Thus, Petitioner's parole was effectively revoked on written notice when she was served with the NTA on the day she was arrested. The NTA does not specify that it would not constitute written notice of termination of parole.") (citations omitted).

This Court has previously approved the detention of an arriving alien under 8 U.S.C. § 1225(b)(2)(A). In *De La Rosa Espinoza v. Guadian*, No. 20-3126-JWL, 2020 WL 3452967 (D. Kan. June 24, 2020), the petitioner presented himself at a port of entry. *Id.* at *1 & n.1. An IJ found the petitioner was subject to mandatory detention under § 1225(b)(2)(A), denied the petitioner's asylum application, and ordered the petitioner's removal. *Id.* at *1-2. Petitioner appealed to the BIA, and his administrative appeal remained pending. *Id.* at *2. An appeal to the BIA involving the denial of the petitioner's request for parole also remained pending. *Id.* The petitioner filed a habeas petition under 28 U.S.C. § 2241, alleging that "his prolonged detention without a bond hearing violate[d] the Due Process Clause of the Fifth Amendment." *Id.* at *3 (citation modified); *see also id.* at *6 (noting that the petitioner did not argue he had "a statutory right to release or a bond hearing"). The United States maintained that the petitioner was "an arriving alien" for whom detention was mandatory under § 1225(b)(2)(A) until he was "subject to a final order of removal." *Id.* at *5.

Although the Court in *De La Rosa Espinoza* focused on the constitutional due process issue raised by the petitioner, the Court was required nonetheless to determine whether the petitioner had a statutory right to a bond hearing under 8 U.S.C. § 1225(b)(2)(A). *Id.* at *6-8. The Court agreed that arriving aliens, including those participating in humanitarian parole programs, are "legally considered to be detained at the border and hence as never having effected entry into this

country." *Id.* at *6 (citation omitted). The Court further agreed that for an alien "on the threshold of initial entry," the procedure authorized by Congress "*is* due process as far as an alien denied entry is concerned." *Id.* (citation omitted, emphasis in original); *see also id.* at *7-8 (stating that "an arriving alien has a procedural due process right only to the process accorded to her by Congress") (citation modified).

The Court in *De La Rosa Espinoza* ultimately denied the petitioner's request for habeas relief. *Id.* at *8. The Court held that "the applicable statutory process shapes Petitioner's procedural due process rights and Petitioner has no statutory right to release or a bond hearing." *Id.*; *see also Bataineh v. Lundgren*, No. 20-3132-JWL, 2020 WL 3572597, at *8 (D. Kan. July 1, 2020) (confirming that in *De La Rosa Espinoza* the Court "held that the applicable statutory process shapes an arriving alien's procedural due-process rights and therefore they have no statutory right to release or a bond hearing").[5] That holding forecloses the statutory claim asserted by Petitioner in in Count Two. ECF 1 ¶¶ 78-80.

II. The facts of this case make *Galdamez Orellana* distinguishable and defeat Petitioner's constitutional due process claim

De La Rosa Espinoza and *Bataineh* dispose of the constitutional claim asserted by Petitioner in Count One as well. *Id.* ¶¶ 70-77. *De La Rosa Espinoza* and *Bataineh* summarize Tenth Circuit and Supreme Court case law explaining why an arriving or paroled alien generally is

[5] While not part of any holding, other cases decided by this Court contain references to arriving aliens and 8 U.S.C. § 1225(b)(2)(A) too. *See, e.g., Trujillo Araya v. Guadian*, No. 20-3234-JWL, 2020 WL 7626508, at *1 & n.2 (D. Kan. Dec. 22, 2020) (citing 8 C.F.R. §§ 1.2, 1001.1(q), and 1003.19(h)(2)(i)(B) and indicating that "CBP determined Petitioner to be an arriving alien pursuant to 8 U.S.C. § 1225(b)(2)(A)"); *Zhiriakov v. Barr*, No. 20-3141-JWL, 2020 WL 3960442, at *2 (D. Kan. July 13, 2020) ("CBP determined Petitioner to be an arriving alien and detained him without bond pursuant to 8 U.S.C. § 1225(b)(2)(A).").

limited to the procedural due process rights bestowed by Congress. *De La Rosa Espinoza*, 2020 WL 3452967, at *6-8; *Bataineh*, 2020 WL 3572597, at *7-9. To quote the Supreme Court:

> In 1892, the Court wrote that as to "foreigners who have never been naturalized, nor acquired any domicil or residence within the United States, nor even been admitted into the country pursuant to law," "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law." Since then, the Court has often reiterated this important rule.
>
> Respondent argues that this rule does not apply to him because he was not taken into custody the instant he attempted to enter the country (as would have been the case had he arrived at a lawful port of entry). Because he succeeded in making it 25 yards into U. S. territory before he was caught, he claims the right to be treated more favorably. The Ninth Circuit agreed with this argument.
>
> We reject it. It disregards the reason for our century-old rule regarding the due process rights of an alien seeking initial entry. That rule rests on fundamental propositions: "[T]he power to admit or exclude aliens is a sovereign prerogative;" the Constitution gives "the political department of the government" plenary authority to decide which aliens to admit; and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted.
>
> This rule would be meaningless if it became inoperative as soon as an arriving alien set foot on U.S. soil. When an alien arrives at a port of entry—for example, an international airport—the alien is on U.S. soil, but the alien is not considered to have entered the country for the purposes of this rule. On the contrary, aliens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are "treated" for due process purposes "as if stopped at the border."
>
> The same must be true of an alien like respondent. As previously noted, an alien who tries to enter the country illegally is treated as an "applicant for admission," § 1225(a)(1), and an alien who is detained shortly after unlawful entry cannot be said to have "effected an entry." Like an alien detained after arriving at a port of entry, an alien like respondent is "on the threshold." The rule advocated by respondent and adopted by the Ninth Circuit would undermine the "sovereign prerogative" of governing admission to this country and create a perverse incentive to enter at an unlawful rather than a lawful location.

Dep't of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 138-39 (2020) (citations omitted).

As suggested in *Thuraissigiam*, there is a long ancestry to the rule that an arriving or paroled alien has only the procedural due process rights conveyed by Congress. *See, e.g., Leng*

May Ma v. Barber, 357 U.S. 185-86, 188-90 (1958) (rejecting the habeas petition of an alien who had been paroled into the United States for six years and had been detained for more than four years); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 208, 212, 215 (1953) (finding no violation of due process for a non-entered alien detained for over three years without a bond hearing, as "an alien on the threshold of initial entry stands on different footing"); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) ("Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned."); *Kaplan v. Tod*, 267 U.S. 228, 230-31 (1925) (determining that an alien living in America on parole for almost 10 years had not entered the country, as she "was still in theory of law at the boundary line and had gained no foothold in the United States"); *United States v. Ju Toy*, 198 U.S. 253, 263 (1905) (indicating that a paroled alien, "although physically within our boundaries," is to be "regarded as if he had been stopped at the limit of our jurisdiction"); *Nishimura Akiu v. United States*, 142 U.S. 660, 659-60 (1892) (denying a due process challenge by an alien who had spent over eight months in custody without a bond hearing, because the decisions of executive officers, "acting within powers expressly conferred by congress," constituted due process).

It follows that Petitioner cannot obtain habeas relief by invoking the Fifth Amendment's due process clause. As an arriving alien to whom humanitarian parole was initially extended and later terminated, for constitutional purposes Petitioner is deemed to be "on the threshold" and not to have effected entry into the United States. His due process rights are defined by 8 U.S.C. § 1225(b), and "neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings." *Jennings*, 583 U.S. at 297.

III. Respondents preserve all other arguments supporting Petitioner's detention under 8 U.S.C. § 1225(b)(2)(A)

Respondents recognize that if the Court decides *Galdamez Orellana* is materially indistinguishable from the matter at bar, the Court will adhere to the reasoning in *Galdamez Orellana* and grant the Habeas Petition. Still, undersigned counsel for Respondents is required to preserve for any appeal all arguments that support the United States' current interpretation and application of 8 U.S.C. § 1225(b)(2)(A). Undersigned counsel is also required to preserve all available arguments with respect to any future application for attorney's fees under the Equal Access to Justice Act. To these ends, Respondents summarize below the principal arguments that an "applicant for admission" is necessarily "seeking admission" under § 1225(b)(2)(A). This summary relies heavily on the majority opinion in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026). In *Galdamez Orellana*, this Court considered the points made by the *Buenrostro-Mendez* majority and concluded that the *Buenrostro-Mendez* dissenting opinion had the better of the argument. *Galdamez Orellana*, 2026 WL 710121, at *3. Respondents also incorporate by reference the arguments presented by the United States in *Galdamez Orellana* and *Bernal Vences v. Welsh*, No. 26-3029-JWL (copies of the United States' briefs in these matters are attached as Ex. 2 and Ex. 3).

A. Based on ordinary meaning and other statutory provisions, an "applicant for admission" is necessarily "seeking admission"

"There is no material distinction—by the terms of the statute or the English language—between the concept of 'applying' for something and 'seeking' something." *Buenrostro-Mendez*, 166 F.4th at 502 (citation omitted). Dictionary definitions show that "[w]hen a person applies for something, they are necessarily seeking it." *Id.* "Just as an applicant to a college seeks admission, an applicant for admission to the United States is 'seeking admission' to the same, regardless [of]

whether the person actively engages in further affirmative acts to gain admission." *Id.* (citation modified). In short, under 8 U.S.C. § 1225(b)(2)(A), "being an 'applicant for admission' is not a condition independent from 'seeking admission.'" *Id.*

8 U.S.C. § 1225(a)(3) states that "[a]ll aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers." The use of "or otherwise" suggests that "applicants for admission" are a subset of those "seeking admission." *Buenrostro-Mendez*, 166 F.4th at 503. "[W]hen an English speaker uses a phrase such as 'to bike, jog, or otherwise exercise,' the first two items constitute one item out of the overall set." *Id.* Additionally, 8 U.S.C. § 1225(a)(5) states that "[a]n applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant in seeking admission to the United States . . . ." This language also "strongly suggests that those who are applicants for admission are 'seeking admission.'" *Buenrostro-Mendez*, 166 F.4th at 503.

B. Treating an "applicant for admission" as someone "seeking admission" is consistent with immigration reforms in 1996

Treating an "applicant for admission" as someone "seeking admission" better "honors [the] predominant goal in the enactment of" the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). *Buenrostro-Mendez*, 166 F.4th at 508 (citation modified). IIRIRA "put aliens seeking admission lawfully on equal footing with those who entered without inspection." *Id.* "It seems strange to suggest that Congress would have preserved bond hearings exclusively for unlawful entrants." *Id.* Congress "undeniably did take other steps to address the entry anomaly," but "that does not explain why Congress would preserve one of the most significant advantages available for unlawful entrants." *Id.* at 508 n.15.

C. Any alleged redundancy between "applicant for admission" and "seeking admission" is immaterial

"To the extent that the government's interpretation creates any redundancy between these terms, that redundancy does not give this court a license to rewrite another portion of the statute contrary to its text." *Id.* at 503 (citation modified, quoting *Barton v. Barr*, 590 U.S. 222, 239 (2020)). Redundancies are "common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." *Id.* (citation omitted). "Moreover, there is 'no canon of interpretation that forbids interpreting different words used in different parts of the same statute to mean roughly the same thing.'" *Id.* (quoting *Jennings*, 583 U.S. at 303). "Because being an applicant ordinarily entails seeking something, it seems natural to use the words somewhat interchangeably." *Id.*

D. Treating an "applicant for admission" as "seeking admission" does not render superfluous parts of 8 U.S.C. § 1226

8 U.S.C. § 1226(a) covers the arrest, detention, and release of certain aliens. "Section 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." *Buenrostro-Mendez*, 166 F.4th at 504-05. 8 U.S.C. § 1226(c) covers the detention of certain criminal aliens and was amended in part by the Laken Riley Act.[6] The Fifth Circuit answered the petitioners' arguments regarding § 1226(c) as follows:

[6] In the Laken Riley Act, Congress provided that the Attorney General shall take into custody any alien who "is inadmissible under paragraph (6)(A), (6)(C), or (7) of section 1182(a) of this title" and "is charged with, is arrested for, is convicted of, admits having committed, or admits committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting,

> Why, they ask, would Congress have seen a need to specify that certain aliens are ineligible for bond if those aliens are already subject to mandatory detention under § 1225(b)(2)(A)? The answer is simple enough. 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. As for the Laken Riley Act, Congress passed the Act at a time when the Executive was still declining to exercise its full enforcement authority under the INA. Accordingly, the 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.

Buenrostro-Mendez, 166 F.4th at 505.

E. *Jennings* does not support separating an "applicant for admission" from someone "seeking admission"

A passage in *Jennings* states that 8 U.S.C. § 1225(b) applies to "aliens seeking admission" and 8 U.S.C. § 1226 applies to "aliens already in the country." 583 U.S. at 289. "In determining that aliens lacked a statutory right to periodic bond hearings," however, "the *Jennings* court did not opine on the difference between detention authority under § 1225 and § 1226." *Buenrostro-Mendez*, 166 F.4th at 505. While it is true that § 1226 applies to aliens in the United States, this does not mean that § 1225 "does not apply to such aliens." *Id.* Even if it were appropriate to parse *Jennings* in this manner (which it is not, *see id.* at 505-06), the Supreme Court went on to say that § 1225(b) "applies primarily to aliens seeking entry into the United States ('applicants for admission' in the language of the statute." *Jennings*, 583 U.S. at 297. This suggests that "when the Supreme Court described § 1225 as applying to aliens 'seeking admission,' it understood that to mean aliens who . . . are present in the United States without admission." *Buenrostro-Mendez*, 166 F.4th at 506.

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or assault of a law enforcement officer offense," or "any crime that results in death or serious bodily injury to another person[.]" 8 U.S.C. § 1226(c)(1)(E)(i)-(ii).

F. The government's prior practice does not support distinguishing an "applicant for admission" from someone "seeking admission"

The government's past practice "has little to do with the statute's text." *Id.* The text "says what it says, regardless of the decisions of prior Administrations. Years of consistent practice cannot vindicate an interpretation that is inconsistent with a statute's plain text." *Id.* (citing *Pereira v. Sessions*, 585 U.S. 198, 202, 204-05 (2018)). "Regardless of the government's past practice and regardless of Congress's silence on § 1225(b)(2)(A), the text controls." *Id.* "[T]hat prior Administrations decided to use less than their full enforcement authority under § 1225(b)(2)(A) does not mean they lacked the authority to do more." *Id.* To the contrary, regulations and entries in the Federal Register indicate that "past Administrations recognized" IIRIRA "conferred more authority upon them than they chose to exercise." *Id.* at 507-08.

CONCLUSION

For the foregoing reasons, the Court should deny all claims in the Habeas Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2026, I electronically filed the foregoing with the Clerk of the Court by uploading it to the CM/ECF system which will send a notice of electronic filing to all parties and counsel of record receiving CM/ECF notifications in this case, including:

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