UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS
KANSAS CITY, KS DIVISION

Volodymyr Khudyi, Petitioner, v. **CRYSTAL CARTER**, Warden, Federal Correctional Institution (FCI) LeavenworthFacility; **TODD LYONS**, Acting Director, U.S. Immigration and Customs Enforcement ("ICE"); **MARKWAYNE MULLIN**,[1] Secretary of the U.S. Department of Homeland Security; and **TODD BLANCHE**,[2] Acting Attorney General of the United States, in their official capacities, Respondents.	)	Case No. 5:26-cv-03030-JWL

REPLY TO RESPONSE OF RESPONDENTS

Petitioner, Volodymyr Khudyi (hereinafter referred to as "Mr. Khudyi" or "Petitioner"), submits the following reply to the Response of Respondents, filed March 18, 2026. ECF No. 5. Petitioner does not dispute any of the factual allegations in their Response; he hereby admits under oath all factual allegations contained in the Response. However, he denies the legal arguments made by Respondents. In support of his habeas petition, Mr. Khudyi respectfully submits the following: (1) this matter is not distinguishable from this Court's decision in Galdamez Orellana

[1] Markwayne Mullin has been substituted as DHS Secretary in place of former-DHS Secretary Kristi Noem, pursuant to Federal Rule of Civil Procedure 25(d), which provides that when a public officer (such as a federal official) dies, resigns, or ceases to hold office while a suit is pending, their successor is automatically substituted as a party.

[2] Todd Blanche has been substituted as Acting Attorney General in place of former-Attorney General Pam Bondi, pursuant to Federal Rule of Civil Procedure 25(d), which provides that when a public officer (such as a federal official) dies, resigns, or ceases to hold office while a suit is pending, their successor is automatically substituted as a party.

v. Welsh, No. 26-3019-JWL, 2026 WL 710121, 2026 U.S. Dist. LEXIS 52376 (D. Kan. Mar. 13, 2026), and therefore, the Court should follow Galdamez Orellana and grant his petition; (2) Mr. Khudyi's asylum application does not mean he is "seeking admission" under 8 U.S.C. § 1225(b)(2)(A), subjecting him to mandatory detention; (3) even if Mr. Khudyi was originally paroled into the United States as an "arriving alien," under the U4U program, his detention is nonetheless governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b), because he had resided in the United States for over three ("3") years before being detained by Respondents, and therefore, he is not considered "seeking admission" under 8 U.S.C. § 1225(b)(2)(A); and (4) the Court should reject Respondents' other arguments under Buenrostro-Mendez v. Bondi, 166 F.4th 494 (5th Cir. 2026), and continue to follow its decision in Galdamez Orellana.

I.) This case is not distinguishable from *Galdamez Orellana*, and therefore, the Court should grant Mr. Khudyi's habeas petition.

Respondents make much ado over the fact that Mr. Khudyi admittedly first entered the United States with parole via the U4U program, on or about July 19, 2022. They argue that this renders him "subject to detention under 8 U.S.C. § 1225(b)(2)(A)." ECF No. 5, at 9. However, the Court already considered this type of situation in Gladamez Orellana. There, the petitioner was initially detained by immigration officials, "but subsequently he was released on parole pursuant to 8 U.S.C. § 1225(b)(2)(A)." Galdamez Orellana, No. 26-3019-JWL, 2026 U.S. Dist. LEXIS 52376, at *2. In other words, there was no factual or legal dispute that the petitioner there was initially classified as an "arriving alien." 8 C.F.R. § 1.2, 1001.1(q). Nonetheless, the Court held that Mr. Galdamez was properly subject to detention under § 1226(a), not § 1225(b), because he had been paroled in 2021, but was not re-detained until 2026, over five ("5") years later. Id. "Petitioner was not recently detained as an alien newly arriving in the United States; rather, he had been present in the United States for years when he was detained." Id. at *2-3. The Court agreed

that this length of time present in the United States meant that the petitioner was not subject to mandatory detention under § 1225(b), because "Section 1225(b)(2)(A) also requires that the alien be 'seeking admission.'" Id. at *4. See also id. at *6-7 ("In summary, the Court … that the text of Section 1225(b)(2)(A) imposes a separate requirement that the alien be 'seeking admission' that is not satisfied in the case of an *already-present alien* by the mere fact that the alien is an 'applicant for admission' as statutorily defined…") (emphasis added).

Respondents argue that this case is distinguishable from Galdamez Orellana, because Mr. Khudyi is: (1) admittedly an "applicant for admission" as he was paroled via the U4U program (ECF No. 5, at 9-12); and (2) allegedly "seeking admission" by applying for asylum. (ECF No. 5 at 7-9) As discussed further below, neither of these purported reasons render Mr. Khudyi's case distinguishable from Galdamez Orellana.

First, the fact that Mr. Khudyi was classified as an "applicant for admission" at the time of his parole does not subject him to § 1225(b), because he was present in the USA for over three ("3") years (from July 19, 2022 to August 15, 2025) at the time of his detention, and this meant he was no longer considered as "seeking admission." Further, since §1225(b)(2)(A) "imposes a separate requirement that the alien be 'seeking admission' that is not satisfied in the case of an already-present alien by the mere fact that the alien is an 'applicant for admission' as statutorily defined," Galdamez-Orellana, 2026 U.S. Dist. LEXIS 52376, *6-7. In summary, since Mr. Galdamez himself was an "applicant for admission," the fact that Mr. Khudyi is too clearly does not make his case distinguishable on such basis.

Second, contrary to Respondents' arguments, and as explained futher below, applying for asylum (or any other form of relief from removal) does not mean a noncitizen is "seeking admission." Although Respondents cite Hernandez v. Olson, No. 25-cv-1670-bhl, 2026 WL

161509, 2026 U.S. Dist. LEXIS 11794 (E.D. Wis. Jan. 21, 2026), and four other decisions to support their claim, see ECF No. 5, at 8-9,[3] none of those decisions are from the District of Kansas, and therefore, none are binding on this court. Furthermore, there are at least twelve ("12") US District Court decisions (at least six of which are from the District of Oklahoma), which hold the opposite, i.e. that applying for asylum or other relief from removal *does not* mean the non-citizen is "seeking admission." See, e.g., Saidjon Jamolzoda v. Rose, 2026 U.S. Dist. LEXIS 17261 (E.D. Pa. Jan. 29, 2026) (a noncitizen who entered the United States without inspection in 2024 and has resided in the country since then is not "seeking admission" under § 1225, even if they have a pending asylum application); Panora-Chiriboga v. McShane, 2026 U.S. Dist. LEXIS 23801, at *12 (E.D. Pa. Feb. 5, 2026) ("Panora-Chiriboga is not taking active steps to obtain entry into the United States. He entered the United States in 2022 and has lived here ever since. … Section 1225 therefore does not apply to him. *Panora-Chiriboga's pending application for asylum does not alter this conclusion.* […] 'Instead of seeking a 'lawful entry to the United States,' *an asylum applicant currently living in the country*, like [Panora-Chiriboga], *is seeking a lawful means to remain here*.'") (emphasis added) (quoting Anirudh v. McShane, 25-6458, 2025 U.S. Dist. LEXIS 254674, 2025 WL 3527528, at *5 (E.D. Pa. Dec. 9, 2025)); Valeriia Pak v. Hoover, 2026 U.S. Dist. LEXIS 44941, *10 (M.D. Pa. Mar. 5, 2026) ("District courts … across the country have found that 'seeking admission' describes active and ongoing conduct, such as physically attempting to come into the United States at a border or port of entry.") (citations omitted); Chavez v. McShane, 2026 U.S. Dist. LEXIS 9138, *11 (E.D. Pa. Jan. 16, 2026) ("Chavez is not taking

[3] Respondents also cited Byron A. v. Bondi, Civ. No. 26-1365 (PAM/JFD), 2026 WL 608535, at *2 (D. Minn. Mar. 4, 2026); 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); Singh v. Noem, No. CIV 25-1110 JB/KK, 2026 WL 146005, at *35 (D.N.M. Jan. 20, 2026); and Chen v. Almodovar, No. 1:25-cv-8350-MKV, 2025 WL 3484855, at *6 (S.D.N.Y. Dec. 4, 2025).

active steps to obtain entry into the United States. He entered the United States in 2023 and has lived here ever since. [...] Section 1225 therefore does not apply to him. *Chavez's pending application for asylum does not alter this conclusion.* [...] '*Instead of seeking a 'lawful entry to the United States,' an asylum applicant currently living in the country*, like [Chavez], *is seeking a lawful means to remain here*.'") (emphasis added) (citations omitted); and Nava v. Jamison, 2026 U.S. Dist. LEXIS 8692, *1 (E.D. Pa. Jan. 16, 2026) (a noncitizen who entered the US in 2022, was released by border officials, applied for asylum, and lived in the country for over three years before being detained at a routine ICE check-in is not "seeking admission" under § 1225(b)(2)(A)).

While none of the aforementioned cited decisions are from the District of Kansas either, there are at least six ("6") decisions from the District of Oklahoma, which is under the jurisdiction of the Tenth Circuit like Kansas. See, e.g., Malacidze v. Noem, 2026 U.S. Dist. LEXIS 15711, *7 (W.D. Okla. Jan. 28, 2026) ("although Petitioner has a pending asylum application, the Court agrees ... that a pending asylum application does not render § 1225(b)(2)(A) applicable to Petitioner") (citing Li v. Grant, No. CIV-25-1426-HE, 2026 WL 147438, at *1 (W.D. Okla. Jan. 20, 2026) ("The court additionally agrees ... that § 1225(b)(2)(A) does not apply even though petitioner filed an application for asylum."); Toledo Santos v. Grant, No. CIV-25-1433-SLP, 2026 WL 184287, at *1-2 (W.D. Okla. Jan. 23, 2026) (ordering the respondents to provide the petitioner a bond hearing under § 1226(a) where the petitioner had been released on his own recognizance and later applied for asylum); Anmol Singh v. Bondi, 2026 U.S. Dist. LEXIS 55095, *3 (W.D. Okla. Mar. 17, 2026) ("this Court has previously declined to find that refusing to self-deport or submitting an asylum application constitute 'seeking admission' for purposes of § 1225(b)(2)(A)") (citations omitted); Zhidong Li v. Grant, 2026 U.S. Dist. LEXIS 9961 (W.D. Okla. Jan. 20, 2026) (concluding that 8 USCS § 1225(b)(2)(A) does not apply to a petitioner merely because they filed

an asylum application); and Gonzalez v. Bondi, 2026 U.S. Dist. LEXIS 56586, *3-4 (W.D. Okla. Mar. 18, 2026) (explicitly rejecting the argument that filing an asylum application constitutes "seeking admission" and holding that § 1226(a) governs detention in such cases).

The Western District Court of the District of Oklahoma held in those cases, as this Court has held in Galdamez Orellana, that § 1225(b)(2)(A) "unambiguously require[s] that an 'applicant for admission' also be 'seeking admission' for the section to control." Gonzalez v. Bondi, 2026 U.S. Dist. LEXIS 56586, *3; see also Anmol Singh v. Bondi, 2026 U.S. Dist. LEXIS 55095, *3 (same); and Malacidze v. Noem, 2026 U.S. Dist. LEXIS 15711, *7 (same). Accordingly, since the District of Oklahoma has relied on the same reasoning as this Court's decision in Galdamez Orellana, Petitioner respectfully submits that, likewise, he should not be considered "seeking admission," and therefore, the Court should follow Galdamez Orellana and grant his petition.

II.) Mr. Khudyi is not "seeking admission," even though he has applied for Asylum.

As mentioned above, Respondents argue that "Petitioner's pursuit of asylum demonstrates that he has been seeking and continues to seek admission for the purporses of 8 U.S.C. § 1225(b)(2)(A)," ECF No. 5, at 7. In support of this argument, Respondents cite Hernandez Olson, and four other decisions reaching the same conclusion, i.e. that "pursuing asylum means an alien is 'seeking admission."" ECF No. 5, at 8.

This Court should reject the Respondents' argument. Firstly, Hernandez Olson itself is not a strongly reasoned decision. The Court there reaches its conclusion after only one paragraph of analysis, noting that "[b]y asking for asylum, Espinoza Hernandez is literally seeking admission." 2026 U.S. Dist. LEXIS 11794, at *14. The only alleged textual support the Court notes for this conclusion is 8 U.S.C. § 1101(a)(13)(A), which defines "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). While repeatedly castigating the petitioner's attorney in that case for failing to offer textual support for their arguments, the Court in Hernandez Olson actually offers no other textual support for its own conclusion, other than section 1101(a)(13)(A). Hernandez, 2026 U.S. Dist. LEXIS 11794, *14.

Then, immediately after making its singular textual offer of support, the Court immediately notes that the Seventh Circuit recently reached the contrary conclusion in Castañon-Nava v. U.S. DHS, 161 F.4th 1048 (7th Cir. 2025), and that this decision "gives the Court pause." Hernandez, supra, at *14. Looking at Castañon-Nava, it is apparent why the Court was concerned about its own decision, as Castañon-Nava provides a plethora of textual reasons for concluding otherwise.

In Castañon-Nava, the Seventh Circuit considered DHS's argument that "an 'applicant for admission' is synonymous with a person 'seeking admission,' because, as they put it, one cannot apply for something without also seeking it." Castañon-Nava, 161 F.4th at 1061. Similarly straightforward arguments were also made by DHS and accepted by the Fifth Circuit in Buenrostro-Mendez v. Bondi, 166 F.4th 494, 502 (5th Cir. 2026) ("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 [...] Just as an applicant to a college seeks admission, an applicant for admission to the United States is 'seeking admission' to the same...").

However, the Seventh Circuit stated that such an argument merely has "superficial appeal." 161 F.4th at 1061. While it may be true, as an abstract concept, that there is no difference between "applying for something" and "seeking something," at the end of the day, it is Congress who provides the defintions of what the words in our laws mean. As the Seventh Circuit explained,

> it is Congress's prerogative to define a term however it wishes, and it has chosen to limit the definition of an "applicant for admission" to "an alien present in the United States who has not been admitted or who arrives in the United States." 8 U.S.C. § 1225(a)(1). It could

> easily have included noncitizens who are "seeking admission" within the definition but elected not to do so.
>
> What is more, Defendants' construction would render § 1225(b)(2)(A)'s use of the phrase "seeking admission" superfluous, violating one of the cardinal rules of statutory construction. See United States ex rel. Polansky v. Exec. Health Res., Inc., 599 U.S. 419, 432, 143 S. Ct. 1720, 216 L. Ed. 2d 370 (2023) ("[E]very clause and word of a statute should have meaning."). Indeed, as the Supreme Court reminds us, if an interpretation of one provision "would render another provision superfluous, courts presume that interpretation is incorrect." Bilski v. Kappos, 561 U.S. 593, 607-08, 130 S. Ct. 3218, 177 L. Ed. 2d 792 (2010). And this presumption is "strongest when an interpretation would render superfluous another part of the same statutory scheme," as would be the case here. Marx v. Gen. Rev. Corp., 568 U.S. 371, 386, 133 S. Ct. 1166, 185 L. Ed. 2d 242 (2013).
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> Furthermore, the difference in treatment between a noncitizen at the border and one already in the United States fits within the broader context of our immigration law. Indeed, "[t]he distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." Zadvydas v. Davis, 533 U.S. 678, 693, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001); Leng May Ma v. Barber, 357 U.S. 185, 187, 78 S. Ct. 1072, 2 L. Ed. 2d 1246 (1958). ("[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission ... and those who are within the United States after an entry, irrespective of its legality.").

Castañon-Nava, 161 F.4th at 1061-1062.

This Court should also consider "the surplusage canon of statutory interpretation," or "*verba cum effectu sunt accipienda*," i.e. the proposition that "[i]f possible, every word and every provision [of a statute or regulation] is to be given effect…" La Unión del Pueblo Entero v. FEMA, 762 F. Supp. 3d 552, 568 (S.D. Tex. 2023) (quoting Antonin Scalia & Bryan A. Garner, "Reading Law: The Interpretation of Legal Texts," 174-79 (2012)). "Congress used two distinct terms when drafting the INA— 'seeking admission' and 'applicant for admission.' If the Court were to accept the Government's position that these terms are interchangeable, one phrase would be rendered

'entirely meaningless.'" Saidjon Jamolzoda v. Rose, 2026 U.S. Dist. LEXIS 17261, *11 (quoting Kashranov v. Jamison, 2025 U.S. Dist. LEXIS 224644, at *7 (E.D. Pa. Nov. 14, 2025) (citing Pulsifer v. United States, 601 U.S. 124, 143, 144 S. Ct. 718, 218 L. Ed. 2d 77 (2024) (explaining cannon against surplusage)). Considering this canon of statutory interpretation, it is clear that "seeking admission" and "applicant for admission" do not mean the same thing.

Here, Respondents argue that Mr. Khudyi is "seeking admission" because he has applied for asylum, but this argument should be rejected for the same reasons explained above. Other District Courts considering this question have found the Seventh Circuit's rationale in Castañon-Nava "helpful" in guiding "analysis of this issue." Malacidze, 2026 U.S. Dist. LEXIS 15711, at *5 (relying on reasoning from Castañon-Nava to conclude that "a pending asylum application does not render § 1225(b)(2)(A) applicable to Petitioner").

Furthermore, even though the INA does not define the phrase "an alien seeking admission," several Courts have "construed this language to mean 'actively trying to acquire or gain 'lawful entry . . . after inspection and authorization by an immigration officer.'" Saidjon Jamolzoda v. Rose, 2026 U.S. Dist. LEXIS 17261, *10-12 (quoting Kashranov, 2025 U.S. Dist. LEXIS 224644, 2025 WL 3188399, at *6 (internal quotations omitted)). And with good reason! As the District Court for the Eastern District of Pennsylvania explained in Saidjon Jamolzoda:

> The Court agrees with this interpretation of the statute for several reasons. First, the plain text supports this reading. The present participle "seeking" connotes "ongoing and continuous action." [Kashranov, supra, at *6] "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. Second, the statutory context of § 1225(a) confirms it governs "inspections and detentions" of noncitizens at the border. 2025 U.S. Dist. LEXIS 224644, at *7. [...] various provisions of § 1225(b) refer to "inspection" of noncitizens and the treatment of noncitizens "arriving from contiguous territory." Id. (internal quotations omitted). These references

> confirm that mandatory detention under § 1225(a) applies to individuals detained "at or immediately following border crossing."
>
> Basic principles of statutory construction lend further support to this interpretation. Congress used two distinct terms when drafting the INA— "seeking admission" and "applicant for admission." If the Court were to accept the Government's position that these terms are interchangeable, one phrase would be rendered "entirely meaningless." Id. (citing Pulsifer v. United States, 601 U.S. 124, 143, 144 S. Ct. 718, 218 L. Ed. 2d 77 (2024) (explaining cannon against surplusage)).
>
> Jamolzoda is not taking active steps to obtain entry into the United States. He entered the United States in 2024 and has lived here ever since. [...] Section 1225 therefore does not apply to him. *Jamolzoda's pending application for asylum does not alter this conclusion.* "Instead of seeking a 'lawful entry to the United States,' an asylum applicant currently living in the country, like [Jamolzoda], is seeking a lawful means to remain here." Anirudh v. McShane, CIVIL ACTION NO. 25-6458, 2025 U.S. Dist. LEXIS 254674, 2025 WL 3527528, at *5 (E.D. Pa. Dec. 9, 2025).

Saidjon Jamolzoda, 2026 U.S. Dist. LEXIS 17261, *10-12 (emphasis added).

Therefore, the Court should reject Respondents' invitation to interpret "seeking admission" as including pursuing an application for asylum, or applying for any other form of relief from removal. Additionally, Petitioner's position on this issue is aligned with a greater number of decisions from various courts. See, e.g., Panora-Chiriboga v. McShane, 2026 U.S. Dist. LEXIS 23801, at *12 (" Panora-Chiriboga's pending application for asylum does not alter this conclusion. [...] 'Instead of seeking a 'lawful entry to the United States,' an asylum applicant currently living in the country, like [Panora-Chiriboga], is seeking a lawful means to remain here.'"); Anirudh v. McShane, 25-6458, 2025 U.S. Dist. LEXIS 254674, 2025 WL 3527528, at *5 (E.D. Pa. Dec. 9, 2025) (same); Valeriia Pak v. Hoover, 2026 U.S. Dist. LEXIS 44941, *10 (M.D. Pa. Mar. 5, 2026) (same); Chavez v. McShane, 2026 U.S. Dist. LEXIS 9138, *11 (E.D. Pa. Jan. 16, 2026) (same); Nava v. Jamison, 2026 U.S. Dist. LEXIS 8692, *1 (E.D. Pa. Jan. 16, 2026) (same); Malacidze v.

Noem, 2026 U.S. Dist. LEXIS 15711, *7 (W.D. Okla. Jan. 28, 2026) (same); Li v. Grant, No. CIV-25-1426-HE, 2026 WL 147438, at *1 (W.D. Okla. Jan. 20, 2026) (same); Toledo Santos v. Grant, No. CIV-25-1433-SLP, 2026 WL 184287, at *1-2 (W.D. Okla. Jan. 23, 2026) (same); Anmol Singh v. Bondi, 2026 U.S. Dist. LEXIS 55095, *3 (W.D. Okla. Mar. 17, 2026) (same); Zhidong Li v. Grant, 2026 U.S. Dist. LEXIS 9961 (W.D. Okla. Jan. 20, 2026) (same); and Gonzalez v. Bondi, 2026 U.S. Dist. LEXIS 56586, *3-4 (W.D. Okla. Mar. 18, 2026) (same).

III.) Even though Mr. Khudyi was paroled into the United States as an "arriving alien," under the U4U program, his detention is nonetheless governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b), because he had resided in the United States for over three ("3") years before being detained by Respondents, and therefore, he is not considered "seeking admission" under 8 U.S.C. § 1225(b)(2)(A).

Mr. Khudyi does not dispute that he was paroled into the United States as an "applicant for admission" via the U4U program. However, as explained above, and as this Court held in Galdamez Orellana, "the text of Section 1225(b)(2)(A) imposes a separate requirement that the alien be 'seeking admission' that is not satisfied in the case of an already-present alien by the mere fact that the alien is an 'applicant for admission' as statutorily defined…" No. 26-3019-JWL, 2026 U.S. Dist. LEXIS 52376, at *6-7. Furthermore, as explained above, Mr. Khudyi is not "seeking admission," despite his pending asylum application, because "seeking admission" 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." Saidjon Jamolzoda, 2026 U.S. Dist. LEXIS 17261, at *10. Therefore, his detention is governed by § 1226(a), not § 1225(b).

Respondents proffer two prior decisions by this Court in support of their argument to the contrary, De La Rosa Espinoza v. Guadian, No. 20-3126-JWL, 2020 WL 3452967 (D. Kan. June 24, 2020), and Bataineh v. Lundgren, No. 20-3132-JWL, 2020 WL 3572597, at *8 (D. Kan. July 1, 2020). However, Respondents have failed to mention significant facts from both cases which

show that they are readily distinguishable from this matter. In particular, they fail to mention that the noncitizen in De La Rosa was initially detained as an arriving alien in the US/Mexico border and how he was never released from custody. 2020 U.S. Dist. LEXIS 110560, at *1-2. They further fail to mention how he was given an expedited order of removal immediately upon arrival, or how he was detained in the border in March 2019, and filed the habeas petition in May 2020, little over one year after arriving, when he was always held in custody as an "arriving alien." Id. at *4-6.

Likewise, regarding Bataineh, Respondents fail to mention how the noncitizen was once again immediately detained as an "arriving alien,"[4] how he was never thereafter released from custody, nor did they mention how he was first detained June 2019 and filed the habeas in June 2020, only one year later, when he was always held in custody as an "arriving alien." 2020 U.S. Dist. LEXIS 114979, at *1-5.

Petitioner respectfully submits that De La Rosa Espinoza and Bataineh can be interpreted as upholding the correctness of § 1225(b) detention in cases where the noncitizen is both (1) an applicant for admission; and (2) seeking admission. In both those cases, the noncitizen was initially detained at a port of entry or in the border, where they were properly charged as arriving aliens, and where they were both seeking admission. However, those cases are easily distinguishable from Mr. Khudyi's case, because even though he was paroled as an "applicant for admission," he was

[4] Although the petitioner in Bataineh was a lawful permanent resident or "LPR," he was still legally considered an "arriving alien" after departing the United States and seeking reentry, beause he had committed an offense identified in 8 U.S.C. § 1182(a)(2). Bataineh, 2020 U.S. Dist. LEXIS 114979, at *22 (citing Schubler v. Holder, 472 F. App'x 867, at *1 n.1 (10th Cir. 2012) (unpublished) (noting that lawful permanent resident that briefly left the country applied for admission as an arriving alien because "[d]espite her LPR status, Schubler was considered an alien seeking admission to the United States because she had committed an offense identified in 8 U.S.C. § 1182(a)(2)"); and Othi v. Holder, 734 F.3d 259, 267 (4th Cir. 2013) (LPR who had committed offenses enumerated in Section 1182(a)(2) is excluded from the exemption granted to LPRs from admission status and is treated as "seeking admission").

not "seeking admission" at the time he was detained by DHS ICE, because he had been living in the United States at that time for over three ("3") years (from July 19, 2022 to August 15, 2025).

In fact, this Court recently decided exactly that in Madymarov v. Welsh, Case no. 26-3059-JWL, 2026 WL 962101, 2026 U.S. Dist. LEXIS 77557 (D. Kan. April 9, 2026). Like Mr. Khudyi, Mr. Madymarov, was "paroled into the United States, and he has resided in the United States since then." Id., at *2. Mr. Madymarov argued that although he was paroled and therefore an "applicant for admission," his detention was nonetheless governed by § 1226(a) because he "was not recently detained as an alien newly arriving in the United States; rather, he had been present in the United States for a period of years when he was detained." Id. at *2-3. The Court agreed with Mr. Madymarov, and followed Galdamez Orellana, ordering Respondents to provide the petitioner with a bond hearing in the Immigration Court. Id. at *3-4.

Reading these three decisions together, Petitioner sees no contradiction between the Court's reasoning. Whereas the noncitizens in De La Rosa Espinoza and Bataineh were detained as aliens newly arriving in the United States and remained detained from that time, Mr. Madymarov was not recently detained as an alien newly arriving in the United States; rather, he had been present in the United States for a period of years when he was detained.

Likewise, Mr. Khudyi was not recently detained as an arriving alien either. As explained above, he was paroled into the United States via the U4U program on July 19, 2022. He was not detained by DHS ICE until August 20, 2025, over three ("3") years later. Therefore, he cannot be regarded as "seeking admission" at the time of his detention.

In fact, several other District Courts under the jurisdiction of the Tenth Circuit have reached similar conclusions. For instance, in Sacvin v. Anda-Ybarra, 2025 U.S. Dist. LEXIS 224815, *5-7 (N.M. Dist. Ct. Nov. 14, 2025), the New Mexico District Court held that INA § 235(b)(2)(A)

only applies to noncitizens actively "seeking admission," which requires *current efforts* to lawfully enter the US. In contrast, noncitizens who have been present in the country for years, even if initially paroled, are not considered to be "seeking admission" and are instead subject to INA § 236(a), which allows release on bond. Id.

Similarly, in Hernandez v. Baltazar, 2025 U.S. Dist. LEXIS 265306, *13 (CO Dist. Ct. Dec. 23, 2025), the Colorado District Court held that a noncitizen who entered and resided in the US for over ten years was not "seeking admission" under § 1225(b)(2)(A), and was therefore entitled to a bond hearing under § 1226(a). Id. at *13 (holding that "[noncitizens] *already in the country* pending the outcome of removal proceedings" are subject to § 1226(a) (quoting Jennings v. Rodriguez, 583 U.S. 281, 289 (2018)) (emphasis added)). See also Facio v. Baltazar, 2025 U.S. Dist. LEXIS 257971, *4-5 (CO Dist. Ct. Dec. 12, 2025) (finding that a noncitizen who had resided in the US for years was not "seeking admission" and was therefore detained under § 1226(a), and further noting that "every decision in this District addressing the issue" has reached the same conclusion, "with a regularity bordering on the monotonous") (omitting citations).

Therefore, Mr. Khudyi's continued detention violates his due process. See, e.g., Gutierrez v. Garcia, 2026 U.S. Dist. LEXIS 24066, *17 (N.M. Dist. Ct. Feb. 5, 2026) (finding that detention violated the petitioners' statutory rights, and ordering prompt individualized bond hearings); and Loa Caballero v. Baltazar, 2025 U.S. Dist. LEXIS 208290, *12 (CO Dist. Ct. Oct. 22, 2025) (collecting cases that collect cases that "overwhelmingly reject[]" the government's argument that § 1225(b)(2)(A) applies, instead of § 1226(a)).

IV.) The Court should reject Respondents' other arguments under *Buenrostro-Mendez v. Bondi*, and continue to follow its decision in *Galdamez Orellana*.

Respondents incorporate and reserve all other arguments in support of Petitioner's detention under 8 U.S.C. § 1225(b)(2)(A), relying primarily on the rationales adopted by the Fifth

Circuuit in Buenrostro-Mendez v. Bondi, 166 F.4th 494 (5th Cir. 2026). See ECF No. 5, at 15-19. However, as the Respondents acknowledge, 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." ECF No. 5, at 15 (citing Galdamez Orellana, 2026 WL 710121, at *3).

Given that this Court has already considered and rejected the reasoning of the Buenrostro-Mendez majority, and given that many of the arguments addressed therein have already been discussed at length above (for example, Respondents' argument that "[b]ased on ordinary meaning and other statutory provisions, an 'applicant for admission' is necessarily 'seeking admission,'" ECF No. 5, at 15; and "[t]reating an 'applicant for admission' as 'seeking admission' does not render superfluous parts of 8 U.S.C. § 1226," ECF No. 5, at 17), Petitioner submits that it is not legally necessary to rehash all of those arguments here.

As Mr. Khudyi explained in his Habeas petition, several courts have found that noncitizens who have been present in the US for an extended period after being paroled are not "seeking admission" at the time of their detention and are therefore governed by 8 USC § 1226(a), which allows for discretionary release on bond. See, e.g., Delgado v. Warden of the Fed. Det. Ctr. Phila., 2026 U.S. Dist. LEXIS 16407, *9 (E.D. Pa. Dist. Ct. Jan. 29, 2026) ("courts around the country have also found noncitizens who were paroled under § 1182(d)(5) are not subject to mandatory detention if they have been residing within the country for years"); and Nunez v. McShane, 2026 U.S. Dist. LEXIS 12807, *9 (E.D. Pa. Dist. Ct. Jan. 22, 2026) (same).

For example, in Nunez v. McShane, 2026 U.S. Dist. LEXIS 12807, *9, and Delgado, supra, 2026 U.S. Dist. LEXIS 16407, *9, the courts held that noncitizens who had been paroled into the United States and resided in the country for over three years were not subject to mandatory

detention under 8 USC § 1225(b)(2)(A) but were instead entitled to bond hearings under 8 USC § 1226(a). Likewise, Petitioner in this case had resided in the United States for over three years at the time he was detained by ICE. Mr. Khudyi was paroled into the US on July 19, 2022, and he was not detained by ICE until August 15, 2025. Like petitioners in Nunez and Delgado, the Court should find that he is not subject to § 1225(b)(2)(A), and is instead, subject to § 1226(a).

This Court just last week considered virtually identicial circumstances in the matter of Madymarov v. Welsh, Case no. 26-3059-JWL, 2026 WL 962101, 2026 U.S. Dist. LEXIS 77557 (D. Kan. April 9, 2026). Like Mr. Khudyi, Mr. Madymarov, was "paroled into the United States, and he has resided in the United States since then." Id., at *2. Mr. Madymarov argued that although he was paroled and therefore an "applicant for admission," his detention was nonetheless governed by § 1226(a) because he "was not recently detained as an alien newly arriving in the United States; rather, he had been present in the United States for a period of years when he was detained." Id. at *2-3. This Court agreed with Mr. Madymarov, and followed Galdamez Orellana, ordering Respondents to provide the petitioner with a bond hearing in the Immigration Court. Id. at *3-4. The Court ought to reach the same conclusion here as in the case of Mr. Madymarov. In summary, Mr. Khudyi has been unlawfully detained under INA § 235(b)(2)(A), 8 USC § 1225(b)(2)(A), when in fact, he should be detained pursuant to INA § 236(a), 8 USC § 1226(a), which allows for discretionary release on bond.

CONCLUSION

For all of the foregoing reasons, the Court should grant the petition for writ of habeas corpus, and order Petitioner's immediate release, or in the alternative, order Respondents to provide the Petitioner with a custody hearing under 8 U.S.C. § 1226(a) within seven ("7") days. Thank you for your prompt and courteous attention to this matter.

Dated: 04/15/2026

Respectfully submitted,

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Sworn Statement of Volodymyr Khudyi

I, **Volodymyr Khudyi**, being of full age, swear under penalty of perjury under the laws of the United States of America, that the following is true and correct to the best of my knowledge and ability.

1. My name is Volodymyr Khudyi. I was born on 1979, in Chervonohrad, Ukraine. I am currently (46) years old.
2. I am providing this statement in support of my petition for writ of habeas corpus.
3. I understand that the government has filed an opposition to my habeas petition, and that they have included with their opposition a declaration from Deportation Officer Bradley W. McNary, that states the facts of the case, including that I was paroled into the USA on July 19, 2022, through the Uniting 4 Ukraine program, and that I was arrested by DEA agents on August 14, 2025, and taken into ICE custody the next day, August 15, 2025.
4. I hereby confirm and admit that all factual allegations made by Deportation Officer McNary in his declaration are true and correct. I further hereby confirm that all factual allegations made in the Respondents' response to my habeas petition and order to show cause are also true and correct, to the best of my knowledge and understanding.

Please accept my statement. Thank you very much.

Date: 04/14/2026

Volodymyr Khudyi

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2026, I filed the foregoing Reply to Response of Respondents, and any and all exhibits and/or attachments thereto with the Clerk of the Court through the Court's ECF system and with Respondent(s) via ECF on their counsel, and I further certify that all parties to this matter are registered CM/ECF users and will be served by the CM/ECF system.

Dated: April 15, 2026

Respectfully submitted,

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