IN THE UNITED STATES DISTRICT COURT
FOR DISTRICT OF KANSAS

Cristihan Vasquez Perez, Petitioner,	)	
v.	)	Case No. 26-cv-3102-JWL
Misty Mackey, et al. Respondents.	)	

Petitioner's Traverse

Petitioner submits this traverse in response to Respondents' Response to Petition for Writ of Habeas Corpus.

Respondents acknowledge that this Court has already rejected the government's interpretation of 8 U.S.C. § 1225(b)(2)(A) in materially indistinguishable cases, including *Galdamez Orellana v. Welsh*, No. 26-3019-JWL, 2026 WL 710121 (D. Kan. Mar. 13, 2026), and *Solaya Clavero v. Welsh*, No. 25-3278-JWL, 2026 WL 717958 (D. Kan. Mar. 16, 2026). Respondents also acknowledge that "the facts are not materially distinguishable for purposes of the Court's decision on the legal issue of which statutory provision authorizes Petitioner's detention." Response at 2.

Petitioner agrees. This Court should again hold that § 1225(b)(2)(A) does not govern the detention of long-present noncitizens who are not actively "seeking admission," and that Petitioner therefore is entitled to a custody determination under 8 U.S.C. § 1226(a).

I. Respondents Effectively Concede that *Orellana* Controls.

Respondents do not meaningfully distinguish this case from *Galdamez Orellana*. Instead, Respondents acknowledge that "this Court's recent decision in *Galdamez Orellana v. Welsh* …

would control the result here if the Court adheres to that decision, as the facts are not materially distinguishable." Response at 2.

That concession is correct.

Like the petitioner in *Orellana*, Petitioner here entered the United States long ago without inspection, has lived freely in the United States for many years, was not apprehended while arriving at the border, and now is being subjected to mandatory detention under the government's revised interpretation of § 1225(b)(2)(A). Under *Orellana*, that detention framework is unlawful because Petitioner is not presently "seeking admission" within the meaning of § 1225(b)(2)(A). 2026 WL 710121, at *3.

II. *Orellana* Correctly Interpreted § 1225(b)(2).

This Court already thoroughly analyzed the statutory question presented here in *Orellana*. The same reasoning applies with equal force here.

As this Court explained, § 1225(b)(2)(A) applies only where an immigration officer determines that "an alien seeking admission" is not clearly entitled to admission. The phrase "seeking admission" performs independent work within the statute. *Orellana*, 2026 WL 710121, at *3. Congress did not simply mandate detention of every "applicant for admission." Instead, Congress imposed a separate requirement that the noncitizen be "seeking admission."

Petitioner is not presently 'seeking admission' within the meaning recognized in *Orellana*. He entered the United States about eighteen years ago and has lived openly in the country ever since. He was not apprehended at the border, during an attempted entry, or while presenting himself for inspection. He therefore falls outside the category of individuals historically subjected to mandatory detention under § 1225.

Respondents principally rely on the Fifth Circuit's decision in *Buenrostro-Mendez* and the Board's decision in *Matter of Yajure Hurtado*. But this Court already considered and rejected materially identical arguments in *Orellana*. Respondents' abbreviated response does not identify any intervening authority requiring a different result.

Indeed, the legal landscape since *Orellana* further supports Petitioner's position. Respondents themselves acknowledge that the Second and Eleventh Circuits recently issued decisions favorable to detainees challenging mandatory detention under § 1225. Response at 2 (citing *Cunha v. Freden* and *Hernandez Alvarez v. Warden*).

Most importantly, Respondents' interpretation effectively collapses § 1226(a) for a massive category of noncitizens who historically have been processed under that statute. Under Respondents' theory, any person who entered without inspection decades ago remains perpetually subject to mandatory detention under § 1225 merely because they were never formally admitted. This Court correctly rejected that interpretation in *Orellana*.

III. The Court Should Grant Relief.

For these reasons, and for the reasons stated in the Petition, Petitioner respectfully asks the Court to grant the writ and order Respondents either:

(a) to immediately release Petitioner; or

(b) at minimum, to provide Petitioner with a prompt individualized custody hearing pursuant to 8 U.S.C. § 1226(a).

Petitioner further requests any additional relief the Court deems just and proper.

Respectfully submitted,

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Certificate of Service

I hereby certify that on May 11, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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