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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Jesus Garcia-Hernandez,

Plaintiff,

v.

Michael v. Bernacke, Field Office Director,
U.S. Immigration and Customs
Enforcement; John Mattos, Warden,
Nevada Southern Detention Center; Kristi
Noem, Secretary, U.S. Department of
Homeland Security
Defendant.

Case No. 2:26-cv-00355

**Federal Respondents' Response to
Petitioner's Emergency Motion for
Temporary Restraining Order and
Preliminary Injunction (ECF No. 2)**

NO ORAL ARGUMENT REQUESTED

Federal Respondents hereby file their Response to Petitioner Jesus Garcia-Hernandez' (ECF No.). Pursuant to the Order to Show Cause, Federal Respondents does not request oral argument or an evidentiary hearing on the Petition and request the Court rule on the papers. ECF No. 4.

I. Introduction

On January 16, 2026, Petitioner Jesus Garcia-Hernandez ("Petitioner") a citizen of Mexico was detained by ICE officers for entering the U.S. without admission or parole and without inspection and subject to mandatory detention under 8 U.S.C. § 1225(b)(2). See I-213 of Petitioner attached hereto as Exhibit A. A Notice to Appear was issued. See Notice to Appear dated January 16, 2026, attached hereto as Exhibit B. On February 5, 2026, Petitioner requested a custody redetermination hearing under 8 C.F.R. § 1236. The Immigration Judge ("IJ") denied the request for the bond hearing pursuant to *Matter of*

1 *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). See Order of the Immigration Judge dated
 2 February 5, 2026, attached hereto as Exhibit C. The IJ ruled that “Should any reviewing
 3 Court determine that this Court has jurisdiction, or that the respondent must be provided a
 4 bond hearing, the Court makes the alternative finding that bond in the amount of \$1,500 is
 5 sufficient to ensure his appearance at future court proceedings.” See Exhibit C, Page 2.

6 II. Legal Argument

7 A. Incorporation By Reference of the United States’ Prior Responses

8 Federal Respondents hereby incorporate by reference the Federal Respondents’
 9 Response in *Jacobo Ramirez v. Noem*, Case No. 2:25-cv-02136-RFB-MDC (D. Nev. Oct. 30,
 10 2025) (attached herein as Exhibit D). The *Jacobo Ramirez* Response addresses substantially
 11 the same questions at issue in the case at bar regarding DHS’s authority to detain
 12 individuals under § 1225(b)(2) who are not yet admitted and whose cases remain in
 13 pending removal proceedings.

14 For efficiency and consistency, Federal Respondents adopt the *Jacobo Ramirez*
 15 Response in full. As the response demonstrates, Petitioner’s lawful detention under §
 16 1225(b)(2)(A) is mandatory by statute. Further, as the response demonstrates, the Court
 17 lacks jurisdiction to adjudicate this matter.

18 B. A Growing Body of Well-Reasoned and Persuasive Authority Supports the 19 Federal Respondents’ Legal Positions Including the Recent Fifth Circuit Court 20 of Appeals Decision in *Buenrostro-Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899 (5th Cir. 2026)

21 In the recent decision on February 6, 2026, from the Fifth Circuit Court of Appeals,
 22 *Buenrostro-Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899 (5th Cir. 2026) the Court ruled,
 23 “unadmitted aliens apprehended anywhere in the United States are ineligible for release on
 24 bond, regardless of how long they have resided inside the United States.” *Id.* at 9 (quoting
 25 *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216). See attached *Buenrostro-Mendez v. Bondi*, 2026
 26 U.S. App. LEXIS 3899 (5th Cir. 2026) attached hereto as Exhibit E. In *Buenrostro-Mendez*
 27 the court stated, “The Supreme Court has said, Section 1225(b)(2) operates as a “catchall
 28 provision that applies to all applicants for admission not covered by [subsection

(b)(1)]." *Jennings v. Rodriguez*, 583 U.S. 281, 287, 138 S. Ct. 830, 837 (2018). Section 1225(b)(2) does not include any exception that permits the government to release detained aliens on bond." *Id.* at 7. In *Buenrostro-Mendez* the court explained, "unlike § 1225(b), § 1226(a)(2)(A) permits, but does not require, the Attorney General to release detained aliens on "bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General." *See also* 8 C.F.R. §§ 236.1(c)(8), (d), 1236.1(d)(1), 1003.19. Because § 1226 is not limited to applicants for admission, it also covers numerous grounds of deportability, including for admitted aliens who overstay or violate the terms of their visas, engage in conduct that renders them removable, or were improperly admitted. Not all aliens detained under § 1226(a) are eligible for release on bond. If an alien has committed one of the criminal offenses enumerated in § 1226(c), he loses his bond eligibility. 8 U.S.C. § 1226(c)(1)(A)-(E). The Laken Riley Act, enacted in 2025, expanded § 1226(c) by adding new bases for ineligibility for bond. *See* 8 U.S.C. § 1226(c)(1)(E). Aside from being ineligible for bond, aliens covered by § 1226(c) also may not be granted parole under 8 U.S.C. § 1182(d)(5)(A)." *Id.* at 8. In *Buenrostro-Mendez*, the court emphasized that 8 U.S.C. § 1225(b)(2)(A) requires detention without eligibility for bond of individuals like Petitioner who entered the U.S. without being admitted and stated "The statute unambiguously provides for mandatory detention. *See* 8 U.S.C. § 1225(b)(2)(A) (providing that aliens "shall be detained") (emphasis added); *see also Jennings*, 583 U.S. at 302, 138 S. Ct. at 845 ("§§1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.") (emphasis added). And "neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings." *Jennings*, 583 U.S. at 297, 138 S. Ct. at 842. *Id.* at 11-12.

In *Buenrostro-Mendez* the court explained how 8 U.S.C. § 1225(b)(2)(A) and 8 U.S.C. § 1226(a) operate and overlap by stating, "It is true that § 1226 applies to aliens in the United States. That it does so, however, does not preclude § 1225 from also applying to such aliens. As the government acknowledges, the two provisions overlap. Accordingly, for petitioners to find support in *Jennings*, they must overread the Supreme Court's language. In

1 particular, they seem to infer that when the Supreme Court specified that § 1226 applies to
2 aliens inside the United States, it implied that § 1225 does not apply to such aliens. But this
3 is the exact sort of language-parsing inquiry that the Supreme Court has cautioned lower
4 courts against. *See Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 373-74, 143 S. Ct. 1142,
5 1155 (2023) ("[T]he language of an opinion is not always to be parsed [like the] language of
6 a statute." (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 341, 99 S. Ct. 2326, 2332 (1979))).
7 Moreover, even if this court should conduct a granular analysis of the language in *Jennings*,
8 doing so supports the government's interpretation. In claiming that the Supreme Court's
9 pronouncement that § 1225(b) applies to aliens who are seeking admission supports their
10 interpretation, the petitioners inexplicably assume that the Supreme Court understood
11 "seeking admission" in the same way that petitioners do. It demonstrably did not.
12 Elsewhere in *Jennings*, the Supreme Court explained that "§ 1225(b) applies to aliens
13 seeking entry into the United States ('applicants for admission' in the language of the
14 statute)." *Jennings*, 583 U.S. at 297, 138 S. Ct. at 842. That language supports the
15 government's contention that "applicants for admission" are according to the statute
16 seeking entry or admission. And it suggests that when the Supreme Court described § 1225
17 as applying to aliens "seeking admission," it understood that to mean aliens who, like the
18 petitioners here, are present in the United States without admission." *Id.* at 20-22. In
19 *Buenrostro-Mendez*, the court addressed the issue of government's longstanding practice
20 which allowed illegal resident aliens who are present without being admitted, to seek
21 release on bond under § 1226(a) instead of detaining them pursuant to § 1225(b)(2)(A) and
22 explained, "While that is true, the government's past practice has little to do with the
23 statute's text. The text says what it says, regardless of the decisions of prior
24 Administrations. Years of consistent practice cannot vindicate an interpretation that is
25 inconsistent with a statute's plain text. *See, e.g., Pereira v. Sessions*, 585 U.S. 198, 204, 138 S.
26 Ct. 2105, 2111 (2018). In *Pereira*, the court considered whether notices to appear for
27 removal proceedings under 1229(a) had to specify the time and place of removal
28 proceedings. *Id.* at 202, 138 S. Ct. at 2110. Despite 21 years during which the government

consistently served notices to appear that omitted time and place information, the court rejected the government's practice based on the text of § 1229(a). *Id.* at 205, 209, 138 S. Ct. at 2111, 2114. The same approach is appropriate here. Regardless of the government's past practice and regardless of Congress's silence on § 1225(b)(2)(A), the text controls." *Id.* at 22.

Buenrostro-Mendez applies to this case, since Petitioner entered the U.S. without inspection and is an applicant for admission who is lawfully mandatorily detained under § 1225(b)(2)(A) and is not subject to discretionary detention under 8 U.S.C. § 1226(a). Although *Buenrostro-Mendez* is not a case from the Ninth Circuit Court of Appeals, it is a very recent Circuit Court of Appeals decision, which is cited as persuasive authority that squarely addresses the issues involving 8 U.S.C. § 1225(b)(2)(A) and 8 U.S.C. § 1226(a) and supports the Federal Respondents' position.

In addition, the United States notes the following recent decisions, each of which concludes that, when properly interpreted and applied, the governing statutes support the Federal Respondents' position in this case: *Chavez v. Noem*, No. 25-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*, No. 25-526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at *1 (E.D. Wis. Oct. 30, 2025); *Barrios Sandoval v. Acuna*, No. 25-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Silva Oliveira v. Patterson*, No. 25-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Mejia Olalde v. Noem*, No. 25-00168, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Garibay-Robledo v. Noem*, 1:25-cv-00177 (N.D. Tex. 2025); *Montoya Cabanas v. Bondi*, 4:25-cv-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Altamiro Ramos v. Lyons*, 2:25-cv-09785, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025); *Cortes Alonzo v. Noem*, No. 1:25-cv-01519, 2025 WL 3208284, at *1 (E.D. Cal. Nov. 17, 2025).

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III. Conclusion

For the foregoing reasons, Federal Respondents respectfully request that the Court deny Petitioner's Motion for Preliminary Injunction.

Respectfully submitted this 18th day of February 2026.

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/s/ Tamer B. Botros
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