

TODD BLANCHE
Deputy Attorney General of the United States
SIGAL CHATTAH
First Assistant United States Attorney
District of Nevada
Nevada Bar Number 8264
MARTIN J. MAYER
Special Assistant United States Attorney
501 Las Vegas Blvd. So., Suite 1100
Las Vegas, Nevada 89101
Phone: (702) 388-6336
Fax: (702) 388-6787
Martin.Mayer@usdoj.gov

Attorneys for the Federal Respondent

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ANTONIO SANTOS GODINEZ,

Petitioner,

v.

KRISTI NOEM, *et.al.*

Respondents.

Case No. 2:26-cv-00362-RFB-BNW

**Federal Respondent's Response to
Petition for a Writ of Habeas Corpus
Under 28 U.S.C. § 2241 (ECF No. 1)
and Motion for Temporary Restraining
Order (ECF No. 2)**

Federal Respondents hereby file their Response to Petitioner Antonio Santos Godinez's Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 (ECF No. 1) and Motion for Temporary Restraining Order per this Court's Order to Show Cause, ECF No. 6.

I. Factual Background

On February 1, 2026, Petitioner Antonio Santos-Godinez ("Petitioner") was encountered by Enforcement and Removal Operations (ERO) officers in a targeted operation. *See I-213 and NTA, attached as Exhibit A.* Petitioner is a citizen of Mexico and was not in possession of valid immigration documents allowing him to be or remain in the United States legally. *Exhibit A.* Petitioner has entered the United States illegally at least five times, most recently in 2003¹. *Exhibit A.* In his most recent entry, Petitioner was able

¹ Exhibit A states that between 2001 and 2002 Petitioner was granted "voluntary departure" four times by CBP. On belief this appears to be a typo, instead intending to say, "Voluntary Return" rather than "departure".

1 to evade detection for approximately 23 years before ERO arrested and detained the
2 Petitioner. **Exhibit A.**

3 Federal Respondents' position is that 8 U.S.C. § 1225(b)(2)(A) applies to Petitioner
4 and he should be mandatorily detained and hence his Petition should be denied. Federal
5 Respondents are fully aware of this Court's previous ruling on similar matters involving 8
6 U.S.C. § 1225(b)(2)(A) and 8 U.S.C. § 1226(a). However, if this court is inclined to grant
7 the Petition, Federal Respondents' request that this Petitioner not be released from custody
8 and if the Court is inclined, he be provided a bond hearing instead by an IJ pursuant to 8
9 U.S.C. § 1226(a). Federal Respondents are not waiving nor conceding their previous
10 consistent position that 8 U.S.C. § 1225(b)(2)(A) applies to Petitioner as opposed to 8
11 U.S.C. § 1226(a). However, given the unique factual circumstances, that being Petitioner's
12 multiple unlawful entries into the United States and having evaded immigration authorities
13 for over two decades, rather than release this Petitioner into the public, if the Court is
14 inclined, permit him to have a bond hearing pursuant to 8 U.S.C. § 1226(a) as this court
15 has done in previous cases. This will allow the IJ to look at all the evidence presented and
16 decide as to whether Petitioner is eligible to be released on a bond.

17 **II. Legal Argument**

18 **A. Incorporation By Reference of the United States' Prior Responses**

19 Federal Respondents hereby incorporate by reference the Federal Respondents'
20 Response in *Jacobo Ramirez v. Noem*, Case No. 2:25-cv-02136-RFB-MDC (D. Nev. Oct. 30,
21 2025). The *Jacobo Ramirez* Response addresses substantially the same questions at issue in
22 the case at bar regarding DHS's authority to detain individuals under § 1225(b)(2) who are
23 not yet admitted and whose cases remain in pending removal proceedings.

24 For efficiency and consistency, Federal Respondents adopt the *Jacobo Ramirez*
25 Response in full. As the response demonstrates, Petitioner's lawful detention under §
26 1225(b)(2)(A) is mandatory by statute. Further, as the response demonstrates, the Court
27 lacks jurisdiction to adjudicate this matter.
28

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

In the recent decision on February 6, 2026, from the Fifth Circuit Court of Appeals, *Buenrostro-Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899 (5th Cir. 2026) the Court ruled, “unadmitted aliens apprehended anywhere in the United States are ineligible for release on bond, regardless of how long they have resided inside the United States.” *Id.* at 9 (quoting *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216). In *Buenrostro-Mendez* the court stated, “The Supreme Court has said, Section 1225(b)(2) operates as a “catchall 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

1 "shall be detained") (emphasis added); *see also Jennings*, 583 U.S. at 302, 138 S. Ct. at 845
2 ("§§1225(b)(1) and (b)(2) *mandate* detention of aliens throughout the completion of
3 applicable proceedings and not just until the moment those proceedings begin.") (emphasis
4 added). And "neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond
5 hearings." *Jennings*, 583 U.S. at 297, 138 S. Ct. at 842. *Id.* at 11-12.

6 In *Buenrostro-Mendez* the court explained how 8 U.S.C. § 1225(b)(2)(A) and 8
7 U.S.C. § 1226(a) operate and overlap by stating, "It is true that § 1226 applies to aliens in
8 the United States. That it does so, however, does not preclude § 1225 from also applying to
9 such aliens. As the government acknowledges, the two provisions overlap. Accordingly, for
10 petitioners to find support in *Jennings*, they must overread the Supreme Court's language. In
11 particular, they seem to infer that when the Supreme Court specified that § 1226 applies to
12 aliens inside the United States, it implied that § 1225 does not apply to such aliens. But this
13 is the exact sort of language-parsing inquiry that the Supreme Court has cautioned lower
14 courts against. *See Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 373-74, 143 S. Ct. 1142,
15 1155 (2023) ("[T]he language of an opinion is not always to be parsed [like the] language of
16 a statute." (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 341, 99 S. Ct. 2326, 2332 (1979))).
17 Moreover, even if this court should conduct a granular analysis of the language in *Jennings*,
18 doing so supports the government's interpretation. In claiming that the Supreme Court's
19 pronouncement that § 1225(b) applies to aliens who are seeking admission supports their
20 interpretation, the petitioners inexplicably assume that the Supreme Court understood
21 "seeking admission" in the same way that petitioners do. It demonstrably did not.
22 Elsewhere in *Jennings*, the Supreme Court explained that "§ 1225(b) applies to aliens
23 seeking entry into the United States ('applicants for admission' in the language of the
24 statute)." *Jennings*, 583 U.S. at 297, 138 S. Ct. at 842. That language supports the
25 government's contention that "applicants for admission" are according to the statute
26 seeking entry or admission. And it suggests that when the Supreme Court described § 1225
27 as applying to aliens "seeking admission," it understood that to mean aliens who, like the
28 petitioner here, are present in the United States without admission." *Id.* at 20-22. In

1 *Buenrostro-Mendez*, the court addressed the issue of government's longstanding practice
2 which allowed illegal resident aliens who are present without being admitted, to seek
3 release on bond under § 1226(a) instead of detaining them pursuant to § 1225(b)(2)(A) and
4 explained, "While that is true, the government's past practice has little to do with the
5 statute's text. The text says what it says, regardless of the decisions of prior
6 Administrations. Years of consistent practice cannot vindicate an interpretation that is
7 inconsistent with a statute's plain text". *See, e.g., Pereira v. Sessions*, 585 U.S. 198, 204, 138 S.
8 Ct. 2105, 2111 (2018). In *Pereira*, the court considered whether notices to appear for
9 removal proceedings under 1229(a) had to specify the time and place of removal
10 proceedings. *Id.* at 202, 138 S. Ct. at 2110. Despite 21 years during which the government
11 consistently served notices to appear that omitted time and place information, the court
12 rejected the government's practice based on the text of § 1229(a). *Id.* at 205, 209, 138 S. Ct.
13 at 2111, 2114. The same approach is appropriate here. Regardless of the government's past
14 practice and regardless of Congress's silence on § 1225(b)(2)(A), the text controls." *Id.* at
15 22.

16 *Buenrostro-Mendez* applies to this case, since Petitioner entered the U.S. without
17 inspection and is an applicant for admission who is lawfully mandatorily detained under §
18 1225(b)(2)(A) and is not subject to discretionary detention under 8 U.S.C. § 1226(a).
19 Although *Buenrostro-Mendez* is not a case from the Ninth Circuit Court of Appeals, it is a
20 very recent Circuit Court of Appeals decision, which is cited as persuasive authority that
21 squarely addresses the issues involving 8 U.S.C. § 1225(b)(2)(A) and 8 U.S.C. § 1226(a)
22 and supports the Federal Respondents' position.

23 In addition, the United States notes the following recent decisions, each of which
24 concludes that, when properly interpreted and applied, the governing statutes support the
25 Federal Respondents' position in this case: *Chavez v. Noem*, No. 25-02325, 2025 WL
26 2730228 (S.D. Cal. Sept. 24, 2025); *Vargas Lopez v. Trump*, No. 25-526, 2025 WL 2780351
27 (D. Neb. Sept. 30, 2025); *Cirrus Rojas v. Olson*, No. 25-cv-1437, 2025 WL 3033967, at *1
28 (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).

III. Conclusion

For the foregoing reasons, Federal Respondents respectfully request that the Court deny Petitioner's Petition for Writ of Habeas Corpus and Motion for Temporary Restraining Order.

Respectfully submitted this 19th day of February 2026.

TODD BLANCHE
Deputy Attorney General of the United States
SIGAL CHATTAH
First Assistant United States Attorney

/s/ Martin J. Mayer
MARTIN J. MAYER
Special Assistant United States Attorney