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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOSE EMILIO REYNA HERNANDEZ,

Petitioner,

v.

John MATTOS, Warden of the Nevada
Southern Detention Center Michael
BERNACKE, Field Office Director of
Enforcement and Removal Operations, Salt
Lake City, Immigration and Customs
Enforcement; Kristi NOEM, Secretary, U.S.
Department of Homeland Security; U.S.
DEPARTMENT OF HOMELAND
SECURITY; Pamela BONDI, U.S. Attorney
General; EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW,

Respondents.

Case No. 2:26-cv-00365-APG-EJY

**Federal Respondents' Response to
Petitioner's Petition for Writ of Habeas
Corpus (ECF No. 1)**

Federal Respondents hereby file their Response to Petitioner Humberto Alfredo
Gaytan Castro's Petition for Writ of Habeas Corpus. (ECF No. 1).

I. Factual Background

On January 15, 2026, Petitioner Jose Emilio Reyna Hernandez ("Petitioner") was
detained by ICE for being present in the United States without being admitted or paroled.
See Form I-213 of Petitioner attached hereto as Exhibit A. On January 15, 2026, Petitioner
was issued a Notice to Appear and charged under INA 212(a)(6)(A)(i) as being an alien

1 present in the United States without being admitted or paroled, or who arrived in the
2 United States at any time or place other than as designated by the Attorney General. See
3 Notice to Appear attached hereto as Exhibit B. On February 5, 2026, Petitioner was denied
4 a bond hearing pursuant to the Board of Immigration Appeals' decision in *Matter of Yajure*
5 *Hurtado*, 29 I&N Dec. 216 (BIA 2025). See Order of the Immigration Judge dated February
6 5, 2026 attached hereto as Exhibit C. The Immigration Judge ("IJ") stated, "immigration
7 courts no longer have the authority to issue bonds to any individual falling under the *Matter*
8 *of Yajure Hurtado* (namely any individual who has not been admitted to the United States).
9 Because this court lacks the delegated authority to consider bond for individuals who have
10 not been admitted to the United States, this Court must find that the respondent is not
11 eligible for release on bond." See Exhibit C, Pages 1-2. The IJ further ruled, "Should any
12 reviewing Court determine that this Court has jurisdiction, or that the respondent must be
13 provided a bond hearing, the Court makes the alternative finding that bond in the amount
14 of \$1,500 plus alternatives to detention is an appropriate amount to ensure the respondent's
15 future appearance at immigration court proceedings." See Exhibit C, Page 1. On February
16 20, 2026, Petitioner filed Motion Requesting Bond Reconsideration citing to the decision in
17 *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr.*, No. 5:25-cv-01873-SSS-BFM (C.D.
18 Cal. Feb. 18, 2026). See Respondent's Motion Requested Bond Reconsideration attached
19 hereto as Exhibit D. On February 20, 2026, Petitioner received notice that he would be
20 receiving a bond hearing as he requested to be conducted on March 5, 2026 at 8:30 A.M.
21 See Notice of Custody Redetermination Hearing In Immigration Proceedings attached
22 hereto as Exhibit E. Given that Petitioner has now received the relief he has requested in
23 his Petition filed on February 12, 2026, which is that he will now receive a bond hearing,
24 this matter is now moot.

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II. Legal Argument

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

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

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

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). See attached *Buenrostro-Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899 (5th Cir. 2026) attached hereto as Exhibit G. 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 "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 particular, they seem to infer that when the Supreme Court specified that § 1226 applies to aliens inside the United States, it implied that § 1225 does not apply to such aliens. But this is the exact sort of language-parsing inquiry that the Supreme Court has cautioned lower courts against. *See Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 373-74, 143 S. Ct. 1142,

1 1155 (2023) ("[T]he language of an opinion is not always to be parsed [like the] language of
2 a statute." (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 341, 99 S. Ct. 2326, 2332 (1979)).
3 Moreover, even if this court should conduct a granular analysis of the language in *Jennings*,
4 doing so supports the government's interpretation. In claiming that the Supreme Court's
5 pronouncement that § 1225(b) applies to aliens who are seeking admission supports their
6 interpretation, the petitioners inexplicably assume that the Supreme Court understood
7 "seeking admission" in the same way that petitioners do. It demonstrably did not.
8 Elsewhere in *Jennings*, the Supreme Court explained that "§ 1225(b) applies to aliens
9 seeking entry into the United States ('applicants for admission' in the language of the
10 statute)." *Jennings*, 583 U.S. at 297, 138 S. Ct. at 842. That language supports the
11 government's contention that "applicants for admission" are according to the statute
12 seeking entry or admission. And it suggests that when the Supreme Court described § 1225
13 as applying to aliens "seeking admission," it understood that to mean aliens who, like the
14 petitioners here, are present in the United States without admission." *Id.* at 20-22. In
15 *Buenrostro-Mendez*, the court addressed the issue of government's longstanding practice
16 which allowed illegal resident aliens who are present without being admitted, to seek
17 release on bond under § 1226(a) instead of detaining them pursuant to § 1225(b)(2)(A) and
18 explained, "While that is true, the government's past practice has little to do with the
19 statute's text. The text says what it says, regardless of the decisions of prior
20 Administrations. Years of consistent practice cannot vindicate an interpretation that is
21 inconsistent with a statute's plain text. *See, e.g., Pereira v. Sessions*, 585 U.S. 198, 204, 138 S.
22 Ct. 2105, 2111 (2018). In *Pereira*, the court considered whether notices to appear for
23 removal proceedings under 1229(a) had to specify the time and place of removal
24 proceedings. *Id.* at 202, 138 S. Ct. at 2110. Despite 21 years during which the government
25 consistently served notices to appear that omitted time and place information, the court
26 rejected the government's practice based on the text of § 1229(a). *Id.* at 205, 209, 138 S. Ct.
27 at 2111, 2114. The same approach is appropriate here. Regardless of the government's past
28

1 practice and regardless of Congress's silence on § 1225(b)(2)(A), the text controls.” Id. at
 2 22.

3 *Buenrostro-Mendez* applies to this case, since Petitioner entered the U.S. without
 4 inspection and is an applicant for admission who is lawfully mandatorily detained under §
 5 1225(b)(2)(A) and is not subject to discretionary detention under 8 U.S.C. § 1226(a).
 6 Although *Buenrostro-Mendez* is not a case from the Ninth Circuit Court of Appeals, it is a
 7 very recent Circuit Court of Appeals decision, which is cited as persuasive authority that
 8 squarely addresses the issues involving 8 U.S.C. § 1225(b)(2)(A) and 8 U.S.C. § 1226(a)
 9 and supports the Federal Respondents’ position.

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

22 **C. Request for EAJA Fees Should be Denied.**

23 Petitioner seeks attorney’s fees and costs pursuant to § 2412 of the Equal Access for
 24 Justice Act (“EAJA”), which allows fee-shifting in civil actions by or against the United
 25 States. EAJA has two parts, agency adversarial adjudication fee-shifting, 5 U.S.C. § 504,
 26 and fee-shifting in civil actions in federal court, 28 U.S.C. § 2412. Petitioner cannot obtain
 27 fees in this case under 5 U.S.C. § 504 since that provision excludes administrative
 28 immigration proceedings. *Ardestani v. I.N.S.*, 502 U.S. 129 (1991). His only recourse for fees

1 is pursuant to § 2412(d)(1)(A), which provides, subject to exceptions not relevant here, that
2 in an action brought by or against the United States, a court must award fees and expenses
3 to a prevailing non-government party “unless the court finds that the position of the United
4 States was substantially justified or that special circumstances make an award unjust.” 28
5 U.S.C. § 2412(d)(1)(A).

6 Here, Petitioner’s request is premature because he is not a prevailing party. Second,
7 even if Petitioner were to prevail in this case, the Federal Respondents’ position asserted in
8 this Response is substantially justified because other courts have found the arguments
9 presented herein to be persuasive and that DHS can lawfully detain, under the mandatory
10 detention provisions of 8 U.S.C. § 1225, other petitioners who are similarly situated to this
11 Petitioner. Federal Respondents’ position was further substantially justified and supported
12 by the recent decision on February 6, 2026, from the Fifth Circuit Court of Appeals,
13 *Buenrostro-Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899 (5th Cir. 2026).

14 As described above, the United States District Court for the District of Nebraska
15 and the United States District Court for the Southern District of California have both
16 issued decisions holding that, under the plain language of § 1225(a)(1), aliens present in the
17 United States who have not been admitted are “applicants for admission” and are thus
18 subject to the mandatory detention provisions of “applicants for admission” under §
19 1225(b)(2). *See Vargas Lopez*, 802 F. Supp. 3d 1132; *Chavez*, 801 F. Supp. 3d 1133. Because
20 other federal judges have found persuasive the positions advanced by the Federal
21 Respondents in this case, the Federal Respondents’ position is substantially justified. *See*
22 *Medina Tovar v. Zuchowski*, 41 F.4th 1085, 1091 (9th Cir. 2022) (finding that the district
23 court did not abuse its discretion, in finding that the United States’ position was
24 substantially justified for purposes of EAJA, where different judges disagreed about the
25 proper reading of the statute and the case involved an issue of first impression). Because the
26 United States’ position in this case is substantially justified, Petitioner’s request for
27 attorney’s fees under EAJA cannot prevail.
28

III. Conclusion

For the foregoing reasons, Federal Respondents respectfully request that the Court deny Petitioner for Habeas Corpus since the issue is now moot given that he was granted a bond hearing that will take place on March 5, 2026.

Respectfully submitted this 4th day of March 2026.

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