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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BALDEMAR MORA-ESPEJO,

Petitioners,

v.

KRISTI NOEM, *et.al.*,

Respondents.

Case No. 2:26-cv-00372-RFB-BNW

**Federal Respondents' Response to the
Court's Order to Show Cause (ECF No.
6) Why the Court Should Not Grant
Petitioner's Motion for Temporary
Restraining Order (ECF No. 2)**

Federal Respondents Kristi Noem, Pamela Bondi, and Jason Knight, through undersigned counsel, hereby file their Response to the Court's Order to Show Cause (ECF No. 6) why the Court should not grant Petitioner Baldemar Mora-Espejo's Motion for Temporary Restraining Order (ECF No. 2). The motion should be denied for the reasons stated below.

I. Factual Background

Petitioner is an illegal alien from Mexico, who entered the United States without being admitted or paroled, on or about December 24, 2022, at or near Otay Mesa, California. *See* I-213, attached as **Exhibit A**. Previously, this Petitioner was expelled to Mexico from the United States on December 14, 2022, and December 17, 2022. *Id.* Petitioner has clear disregard for the immigration laws of the United States. Petitioner was arrested during a traffic stop on January 21, 2026. *Id.* He has a hearing before an Immigration Judge on March 2, 2026. *See* Notice to Appear, attached as **Exhibit B**.

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 C**). 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 demonstrate, 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), attached hereto as **Exhibit D**, 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 (BIA 2025)). 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),

1 1236.1(d)(1), 1003.19. Because § 1226 is not limited to applicants for admission, it also
2 covers numerous grounds of deportability, including for admitted aliens who overstay or
3 violate the terms of their visas, engage in conduct that renders them removable, or were
4 improperly admitted. Not all aliens detained under § 1226(a) are eligible for release on
5 bond. If an alien has committed one of the criminal offenses enumerated in § 1226(c), he
6 loses his bond eligibility. 8 U.S.C. § 1226(c)(1)(A)-(E). The Laken Riley Act, enacted in
7 2025, expanded § 1226(c) by adding new bases for ineligibility for bond. *See* 8 U.S.C. §
8 1226(c)(1)(E). Aside from being ineligible for bond, aliens covered by § 1226(c) also may
9 not be granted parole under 8 U.S.C. § 1182(d)(5)(A).” *Id.* at 8. In *Buenrostro-Mendez*, the
10 court emphasized that 8 U.S.C. § 1225(b)(2)(A) requires detention without eligibility for
11 bond of individuals like Petitioner who entered the U.S. without being admitted and stated
12 “The statute unambiguously provides for mandatory detention. *See* 8 U.S.C. §
13 1225(b)(2)(A) (providing that aliens “*shall* be detained”) (emphasis added); *see also Jennings*,
14 583 U.S. at 302, 138 S. Ct. at 845 (“§§1225(b)(1) and (b)(2) *mandate* detention of aliens
15 throughout the completion of applicable proceedings and not just until the moment those
16 proceedings begin.”) (emphasis added). And “neither § 1225(b)(1) nor § 1225(b)(2) says
17 anything whatsoever about bond hearings.” *Jennings*, 583 U.S. at 297, 138 S. Ct. at 842. *Id.*
18 at 11-12.

19 In *Buenrostro-Mendez* the court explained how 8 U.S.C. § 1225(b)(2)(A) and 8 U.S.C.
20 § 1226(a) operate and overlap by stating, “It is true that § 1226 applies to aliens in the
21 United States. That it does so, however, does not preclude § 1225 from also applying to
22 such aliens. As the government acknowledges, the two provisions overlap. Accordingly, for
23 petitioners to find support in *Jennings*, they must overread the Supreme Court's language. In
24 particular, they seem to infer that when the Supreme Court specified that § 1226 applies to
25 aliens inside the United States, it implied that § 1225 does not apply to such aliens. But this
26 is the exact sort of language-parsing inquiry that the Supreme Court has cautioned lower
27 courts against. *See Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 373-74, 143 S. Ct. 1142,
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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 twenty-one years during which the
25 government consistently served notices to appear that omitted time and place information,
26 the court rejected the government's practice based on the text of § 1229(a). *Id.* at 205, 209,
27 138 S. Ct. at 2111, 2114. The same approach is appropriate here. Regardless of the
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1 government's past practice and regardless of Congress's silence on § 1225(b)(2)(A), the text
2 controls." *Id.* at 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*, 801 F. Supp. 3d 1133 (S.D. Cal.
13 2025); *Vargas Lopez v. Trump*, 802 F. Supp. 3d 1132 (D. Neb. 2025); *Rojas v. Olson*, No. 25-
14 CV-1437-BHL, 2025 WL 3033967, at *1 (E.D. Wis. Oct. 30, 2025); *Sandoval v. Acuna*, No.
15 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Oliveira v. Patterson*, No. 6:25-
16 CV-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Mejia Olalde v. Noem*, No. 1:25-CV-
17 00168-JMD, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Garibay-Robledo v. Noem*, 1:25-
18 cv-00177 (N.D. Tex. 2025); *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D.
19 Tex. Nov. 13, 2025); *Altamirano Ramos v. Lyons*, No. 2:25-CV-09785-SVW-AJR, 2025 WL
20 3199872 (C.D. Cal. Nov. 12, 2025); *Alonzo v. Noem*, No. 1:25-CV-01519 WBS SCR, 2025
21 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 Temporary Restraining Order.

Respectfully submitted this 19th day of February 2026.

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