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9 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

10 DOMINGO RAMIREZ MENDEZ,

11 Petitioners,

12 v.

13 JASON KNIGHT, *et.al.*,

14 Respondents.
15

Case No. 2:26-cv-00375-RFB-DJA

**Federal Respondents' Response to
Verified Petition for Writ of Habeas
Corpus, ECF No. 4**

**ORAL ARGUMENT NOT
REQUESTED**

16 Federal Respondents Jason Knight, U.S. Department of Homeland Security,
17 Executive Office for Immigration Review, Kristi Noem and Pamela Bondi hereby file their
18 Response to Petitioner Domingo Ramirez Mendez' Petition for Writ of Habeas Corpus.
19 (ECF No. 4). In addition, Petitioner's reliance on *Maldonado Bautista v. Noem*, 5:25-cv-
20 01873-SSS-BFM (C.D. Cal.), is misplaced, because the Court in that case did not issue a
21 class-wide declaratory judgment. A class-wide injunction is not permitted by law.

22 **I. Factual Background**

23 Petitioner is an illegal alien from Mexico, who entered the United States without
24 inspection at an unknown time and unknown location. *See* I-213, attached as Exhibit A.
25 Petitioner came into DHS custody on January 28, 2026, after he was arrested for traffic
26 violations. *Id.* On February 11, 2026, Petitioner requested a bond hearing. *See* Motion to
27 Determine the Respondent's Bond, attached as Exhibit B. On that same day, the Petitioner
28

1 was given a bond hearing, and a bond was denied due to lack of jurisdiction under *Hurtado*.
 2 See Order, attached as Exhibit C.

3 II. Legal Argument

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

5 Federal Respondents hereby incorporate by reference the Federal Respondents'
 6 Response in *Jacobo Ramirez v. Noem*, Case No. 2:25-cv-02136-RFB-MDC (D. Nev. Oct. 30,
 7 2025) (attached herein as Exhibit D). The *Jacobo Ramirez* Response addresses substantially
 8 the same questions at issue in the case at bar regarding DHS's authority to detain
 9 individuals under § 1225(b)(2) who are not yet admitted and whose cases remain in
 10 pending removal proceedings.

11 For efficiency and consistency, Federal Respondents adopt the *Jacobo Ramirez*
 12 Response in full. As the response demonstrates, Petitioner's lawful detention under §
 13 1225(b)(2)(A) is mandatory by statute. Further, as the response demonstrates, the Court
 14 lacks jurisdiction to adjudicate this matter.

15 B. A Growing Body of Well-Reasoned and Persuasive Authority Supports the 16 Federal Respondents' Legal Positions, Including the Recent Fifth Circuit Court 17 of Appeals Decision in *Buenrostro-Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899 (5th Cir. 2026)

18 In the recent decision on February 6, 2026, from the Fifth Circuit Court of Appeals,
 19 *Buenrostro-Mendez v. Bondi*, Case No. 25-20496, Docket No. 213-1, attached hereto as
 20 Exhibit E, the Court ruled, "unadmitted aliens apprehended anywhere in the United States
 21 are ineligible for release on bond, regardless of how long they have resided inside the
 22 United States." *Id.* at 6 (quoting *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025)).
 23 In *Buenrostro-Mendez*, the court stated, "As the Supreme Court has said, Section 1225(b)(2)
 24 operates as a "catchall provision that applies to all applicants for admission not covered by
 25 [subsection (b)(1)]." *Jennings v. Rodriguez*, 583 U.S. 281, 287, 138 S. Ct. 830, 837 (2018).
 26 Section 1225(b)(2) does not include any exception that permits the government to release
 27 detained aliens on bond." *Id.* at 4. The *Buenrostro-Mendez* court further explained:

28 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 5. The *Buenrostro-Mendez* court then 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 further 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 8–9. The *Buenrostro-Mendez* court next explained how 8 U.S.C. § 1225(b)(2)(A) and 8 U.S.C. § 1226(a) operate and overlap:

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, 1155 (2023) ("[T]he language of an opinion is not always to be parsed [like the] language of a statute." (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 341, 99 S. Ct. 2326, 2332 (1979))).

Moreover, even if this court should conduct a granular analysis of the language in *Jennings*, doing so supports the government's interpretation. In claiming that the Supreme Court's pronouncement that § 1225(b) applies to aliens who are seeking admission supports their interpretation, the petitioners inexplicably assume that the Supreme Court understood "seeking admission" in the same way that petitioners do. It demonstrably did not. Elsewhere in *Jennings*, the Supreme Court explained that "§ 1225(b) applies to aliens seeking entry into the United States ('applicants for admission' in the language of the statute)." *Jennings*, 583 U.S. at 297, 138 S. Ct. at 842. That language supports the government's contention that "applicants for admission" are according to the statute seeking entry or admission. And it suggests that when

1 the Supreme Court described § 1225 as applying to aliens "seeking
2 admission," it understood that to mean aliens who, like the petitioners here,
are present in the United States without admission.

3 *Id.* at 16–17. Finally, the *Buenrostro-Mendez* court addressed the issue of government's
4 longstanding practice which allowed illegal resident aliens who are present without being
5 admitted to seek release on bond under § 1226(a) instead of detaining them pursuant to §
6 1225(b)(2)(A), explaining:

7 While that is true, the government's past practice has little to do with the
8 statute's text. The text says what it says, regardless of the decisions of prior
9 Administrations. Years of consistent practice cannot vindicate an
10 interpretation that is inconsistent with a statute's plain text. *See, e.g., Pereira v.*
11 *Sessions*, 585 U.S. 198, 204, 138 S. Ct. 2105, 2111 (2018). In *Pereira*, the court
12 considered whether notices to appear for removal proceedings under 1229(a)
13 had to specify the time and place of removal proceedings. *Id.* at 202, 138 S.
14 Ct. at 2110. Despite 21 years during which the government consistently
15 served notices to appear that omitted time and place information, the court
16 rejected the government's practice based on the text of § 1229(a). *Id.* at 205,
17 209, 138 S. Ct. at 2111, 2114. The same approach is appropriate here.
18 Regardless of the government's past practice and regardless of Congress's
19 silence on § 1225(b)(2)(A), the text controls.

20 *Id.* at 17.

21 *Buenrostro-Mendez* applies to this case because Petitioner entered the U.S. without
22 inspection and is an applicant for admission who is lawfully mandatorily detained under §
23 1225(b)(2)(A) and is not subject to discretionary detention under 8 U.S.C. § 1226(a).

24 Although *Buenrostro-Mendez* is not a case from the Ninth Circuit Court of Appeals, it is a
25 very recent Circuit Court of Appeals decision, which is cited as persuasive authority that
26 squarely addresses the issues involving 8 U.S.C. § 1225(b)(2)(A) and 8 U.S.C. § 1226(a)
27 and supports the Federal Respondents' position.

28 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*, 801 F. Supp. 3d 1133 (S.D. Cal.
2025); *Vargas Lopez v. Trump*, 802 F. Supp. 3d 1132 (D. Neb. 2025); *Rojas v. Olson*, No. 25-
CV-1437-BHL, 2025 WL 3033967, at *1 (E.D. Wis. Oct. 30, 2025); *Sandoval v. Acuna*, No.
6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Oliveira v. Patterson*, No. 6:25-
CV-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Mejia Olalde v. Noem*, No. 1:25-CV-

00168-JMD, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Garibay-Robledo v. Noem*, 1:25-cv-00177 (N.D. Tex. 2025); *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025); *Altamirano Ramos v. Lyons*, No. 2:25-CV-09785-SVW-AJR, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025); *Alonzo v. Noem*, No. 1:25-CV-01519 WBS SCR, 2025 WL 3208284, at *1 (E.D. Cal. Nov. 17, 2025).

C. Request for EAJA Fees Should be Denied.

Petitioner seeks attorney's fees and costs pursuant to § 2412 of the Equal Access for Justice Act ("EAJA"), which allows fee-shifting in civil actions by or against the United States. EAJA has two parts, agency adversarial adjudication fee-shifting, 5 U.S.C. § 504, and fee-shifting in civil actions in federal court, 28 U.S.C. § 2412. Petitioner cannot obtain fees in this case under 5 U.S.C. § 504 since that provision excludes administrative immigration proceedings. *Ardestani v. I.N.S.*, 502 U.S. 129 (1991). His only recourse for fees is pursuant to § 2412(d)(1)(A), which provides, subject to exceptions not relevant here, that in an action brought by or against the United States, a court must award fees and expenses to a prevailing non-government party "unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A).

Here, Petitioner's request is premature because he is not a prevailing party. Second, even if Petitioner were to prevail in this case, the Federal Respondents' position asserted in this Response is substantially justified because other courts have found the arguments presented herein to be persuasive and that DHS can lawfully detain, under the mandatory detention provisions of 8 U.S.C. § 1225, other petitioners who are similarly situated to this Petitioner.

As described above, the United States District Court for the District of Nebraska and the United States District Court for the Southern District of California have both issued decisions holding that, under the plain language of § 1225(a)(1), aliens present in the United States who have not been admitted are "applicants for admission" and are thus subject to the mandatory detention provisions of "applicants for admission" under §

1 1225(b)(2). *See Vargas Lopez*, 802 F. Supp. 3d 1132; *Chavez*, 801 F. Supp. 3d 1133. Because
2 other federal judges have found persuasive the positions advanced by the Federal
3 Respondents in this case, the Federal Respondents' position is substantially justified. *See*
4 *Medina Tovar v. Zuchowski*, 41 F.4th 1085, 1091 (9th Cir. 2022) (finding that the district
5 court did not abuse its discretion, in finding that the United States' position was
6 substantially justified for purposes of EAJA, where different judges disagreed about the
7 proper reading of the statute and the case involved an issue of first impression). Because the
8 United States' position in this case is substantially justified, Petitioner's request for
9 attorney's fees under EAJA cannot prevail.

10 **III. Conclusion**

11 For the foregoing reasons, Federal Respondents respectfully request that the Court
12 deny Petitioner's Writ for Habeas Corpus.

13 Respectfully submitted this 23rd day of February 2026.

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