

1 TODD BLANCHE
Deputy Attorney General of the United States
2 SIGAL CHATTAH
First Assistant United States Attorney
3 District of Nevada
Nevada Bar Number 8264
4 TAMER B. BOTROS
Assistant United States Attorney
5 Nevada Bar No. 12183
501 Las Vegas Blvd. So., Suite 1100
6 Las Vegas, Nevada 89101
Phone: (702) 388-6336
7 Fax: (702) 388-6787
Tamer.Botros@usdoj.gov

8 *Attorneys for the Federal Respondents*
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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 Alexander Esau Lopez Mendez,

13 Petitioner,

14 v.

15 Lester R. Hayes, Jr. et al.,

16 Respondents.

Case No. 2:26-cv-00402-CDS-BNW

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

17 Federal Respondents Lester R. Hayes, Jr., Kristi Noem, Rodney S. Scott and
18 Patrick Divver hereby file their Response to Petitioner Alexander Esau Lopez Mendez'
19 Petition for Writ of Habeas Corpus. (ECF No. 1). Please take notice that Assistant United
20 States Attorney Tamer B. Botros is appearing as counsel for the Federal Respondents
21 Lester R. Hayes, Jr., Kristi Noem, Rodney S. Scott and Patrick Divver.

22 **I. Factual Background**

23 Alexander Esau Lopez Mendez ("Petitioner") is a citizen and native of
24 Guatemala. According to the Form I-213, on or about an unknown date and an unknown
25 location, Petitioner unlawfully entered the United States without inspection, admission or
26 parole by an immigration officer. See Form I-213 of Petitioner attached hereto as **Exhibit**
27 **A**. On or about December 16, 2016, an officer of the United States Customs and Border
28 Protections Unit (CBP) apprehended Petitioner at or near the port-of-entry of Hebbronville,

1 Texas. See **Exhibit A**. CBP processed Petitioner for Expedited Removal and Credible
2 Fear. On or about February 2, 2017, USCIS made a positive credible fear determination
3 and commenced removal proceedings against Petitioner by filing a Notice to Appear and
4 charged him as being inadmissible under INA 212(a)(6)(A)(i) (EWI) and 212(a)(7)(A)(i)(I).
5 See **Exhibit A**. On August 2, 2023, an immigration judge dismissed the removal
6 proceedings against Petitioner on motion or consent of DHS as an exercise of prosecutorial
7 discretion on enforcement. See **Exhibit A**. On May 9, 2023, Petitioner filed for I-765 work
8 authorization with USCIS and was approved on May 30, 2023, valid through May 29,
9 2025. See **Exhibit A**.

10 On or about November 11, 2025, Petitioner was arrested by the Las Vegas City
11 Marshall for failure to appear for a traffic warrant, a misdemeanor offense, in violation of
12 NRS 179.395. See **Exhibit A**. From there, ICE apprehended Petitioner, and recommenced
13 removal proceedings against Petitioner, by filing a Notice to Appear and charging
14 Petitioner as being inadmissible under 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the
15 INA. See Notice to Appear attached hereto as **Exhibit B**. The removal proceedings are
16 still pending before the Immigration Judge. ICE continued to detain Petitioner under 8
17 U.S.C. § 1225(b)(2)(A). However, this case is different from *Matter of Hurtado*, 29 I&N 216
18 (BIA 2025) because Petitioner was apprehended at the time of his entry into the United
19 States. Under *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), an alien detained under section
20 235(b) of the INA, 8 U.S.C. § 1225(b), who is released from detention pursuant to a grant
21 of parole under section 212(d)(5)(A) of the INA, and whose grant of parole is subsequently
22 terminated, is returned to custody under section 235(b) pending the completion of removal
23 proceedings. Additionally, an applicant for admission who is arrested and detained
24 without a warrant while arriving in the United States, whether or not at a port of entry, and
25 subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8
26 U.S.C. § 1225(b) and is ineligible for any subsequent release on bond under section 236(a)
27 of the INA, 8 U.S.C. § 1226(a). While these facts do not exactly mirror *Matter of Q. Li*
28 *supra*, Petitioner was likely apprehended at or around the time of his entry to differentiate

1 his case from *Hurtado*. Thus, Petitioner was subject to mandatory custody under 235(b)(2)
2 of the INA, 8 U.S.C. § 1225(b) and not eligible for a bond.

3 On December 10, 2025, an Immigration Judge denied Petitioner's bond because the
4 IJ found no jurisdiction. See Order of the Immigration Judge dated December 10, 2025
5 attached hereto as **Exhibit C**. On February 17, 2026, Petitioner filed a Petition for Writ of
6 Habeas Corpus ("Petition"). See ECF No. 1. In his Petition, he alleged that his detention is
7 governed by 8 U.S.C. § 1226(a) and not 8 U.S.C. § 1225(b)(2)(A), that 8 U.S.C. §
8 1225(b)(2)(A) violates due process, that the 2025 DHS policy and the *Yajure Hurtado*
9 decision violate the Administrative Procedures Act (APA) and asked relief from the Court
10 to be released from detention, order that \$3,000 bond to be the amount to secure
11 Petitioner's release, or in the alternative, order that Petitioner be provided a prompt
12 individualized bond hearing. See ECF No. 1, Pages 8, 9, and 11. On March 4, 2026,
13 Petitioner received a bond hearing and the Immigration Judge ("IJ") ordered that
14 Petitioner be released from custody under bond of \$3,000.00. See Order of the Immigration
15 Judge dated March 4, 2026 attached hereto as **Exhibit D**. On March 5, 2026, Petitioner
16 was released pursuant to the IJs Order. Federal Respondents' position is that this matter is
17 now moot since Petitioner received the relief he requested in his Petition by obtaining the
18 requested bond hearing and released from detention on a \$3,000 bond. See **Exhibit D**.
19 Therefore, there is nothing further for the court to determine in this matter and the Petition
20 should be denied as moot. Out of abundance of caution, should the Court rule on the legal
21 arguments submitted in the Petition and this Response, Federal Respondents submit their
22 position on the issues of 8 U.S.C. § 1225(b)(2)(A) and 8 U.S.C. § 1226(a).

23 II. Legal Argument

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

25 Federal Respondents hereby incorporate by reference the Federal Respondents'
26 Response in *Jacobo Ramirez v. Noem*, Case No. 2:25-cv-02136-RFB-MDC (D. Nev. Oct. 30,
27 2025) (attached herein as **Exhibit E**). The *Jacobo Ramirez* Response addresses substantially
28 the same questions at issue in the case at bar regarding DHS's authority to detain

1 individuals under § 1225(b)(2) who are not yet admitted and whose cases remain in
 2 pending removal proceedings.

3 For efficiency and consistency, Federal Respondents adopt the *Jacobo Ramirez*
 4 Response in full. As the response demonstrates, Petitioner's lawful detention under §
 5 1225(b)(2)(A) is mandatory by statute. Further, as the response demonstrates, the Court
 6 lacks jurisdiction to adjudicate this matter.

7
 8 **B. A Growing Body of Well-Reasoned and Persuasive Authority Supports Federal**
 9 **Respondents' Legal Position on 8 U.S.C. § 1225(b)(2)(A) and 8 U.S.C. § 1226(a)**
 10 **Including the Recent Fifth Circuit Court of Appeals Decision in *Buenrostro-***
 11 ***Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899 (5th Cir. 2026)**

12 In 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) the Court ruled,
 14 "unadmitted aliens apprehended anywhere in the United States are ineligible for release on
 15 bond, regardless of how long they have resided inside the United States." *Id.* at 9 (quoting
 16 *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216). See attached *Buenrostro-Mendez v. Bondi*, 2026
 17 U.S. App. LEXIS 3899 (5th Cir. 2026) attached hereto as **Exhibit F**. In *Buenrostro-Mendez*
 18 the court stated, "The Supreme Court has said, Section 1225(b)(2) operates as a "catchall
 19 provision that applies to all applicants for admission not covered by [subsection
 20 (b)(1)]." *Jennings v. Rodriguez*, 583 U.S. 281, 287, 138 S. Ct. 830, 837 (2018). Section
 21 1225(b)(2) does not include any exception that permits the government to release detained
 22 aliens on bond." *Id.* at 7. In *Buenrostro-Mendez* the court explained as follows:

23 unlike § 1225(b), § 1226(a)(2)(A) permits, but does not require, the Attorney
 24 General to release detained aliens on "bond of at least \$1,500 with security
 25 approved by, and containing conditions prescribed by, the Attorney
 26 General." See also 8 C.F.R. §§ 236.1(c)(8), (d), 1236.1(d)(1), 1003.19. Because
 27 § 1226 is not limited to applicants for admission, it also covers numerous
 28 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 as follows:

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 the

Supreme Court described § 1225 as applying to aliens "seeking admission," it understood that to mean aliens who, like the petitioners here, are present in the United States without admission. *Id.* at 20-22.

In *Buenrostro-Mendez*, the court addressed the issue of government's longstanding practice which allowed illegal resident aliens who are present without being admitted, to seek release on bond under § 1226(a) instead of detaining them pursuant to § 1225(b)(2)(A) and explained,

While that is true, the government's past practice has little to do with the statute's text. The text says what it says, regardless of the decisions of prior Administrations. Years of consistent practice cannot vindicate an interpretation that is inconsistent with a statute's plain text. *See, e.g., Pereira v. Sessions*, 585 U.S. 198, 204, 138 S. Ct. 2105, 2111 (2018). In *Pereira*, the court considered whether notices to appear for removal proceedings under 1229(a) had to specify the time and place of removal 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).

III. Conclusion

For the foregoing reasons, Federal Respondents respectfully request that the Court deny the Petition as moot given that Petitioner received a bond hearing on March 4, 2026 and was released on March 5, 2026 from detention on a \$3,000 bond as requested in his Petition. Should the Court rule on the legal arguments presented in the Petition and Response, Federal Respondents respectfully request that the Court deny Petitioner's Petition and rule that Petitioner's lawful detention under § 1225(b)(2)(A) was mandatory by statute.

Respectfully submitted this 6th day of March 2026.

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

/s/ Tamer B. Botros
TAMER B. BOTROS
Assistant United States Attorney

