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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ALEJANDRO RAMIREZ QUEMA,

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-00409-GMN-NJK

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

Federal Respondents hereby file their Response to Petitioner Alejandro Ramirez
Quema's Petition for Writ of Habeas Corpus. (ECF No. 1).

I. Factual Background

On February 1, 2026, Petitioner Alejandro Ramirez Quema ("Petitioner") who is a
citizen of Guatemala was detained by ICE for entering the U.S. without inspection and
without being admitted. See Form I-213 of Petitioner attached hereto as Exhibit A.
Petitioner was charged under INA 212(a)(6)(A)(i) as being an alien present in the U.S.

without being admitted or paroled, or who arrived in the U.S. at any time or place other than as designated by the Attorney General. See Notice of Appearance dated February 3, 2026, attached hereto as Exhibit B. Petitioner has not sought a bond hearing and no removal order has been issued. Petitioner is completely bypassing the Immigration Court and has not even filed a request to the Immigration Court for a bond hearing. It is very likely that since February 18, 2026 decision in *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Feb. 18, 2026), the Immigration Court will issue a bond hearing for Petitioner which will make this matter moot. However, that has not occurred because Petitioner has not filed request for bond from the Immigration Court. Therefore, it is Respondents' position that the Petition for Writ of Habeas Corpus be denied since Petitioner has not begun let alone exhausted his administrative remedies first before seeking relief in this Court.

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 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)

1 In the recent decision on February 6, 2026, from the Fifth Circuit Court of Appeals,
 2 *Buenrostro-Mendez v. Bondi*, Case No. 25-20496, Docket No. 213-1, attached hereto as
 3 Exhibit D, the Court ruled, “unadmitted aliens apprehended anywhere in the United States
 4 are ineligible for release on bond, regardless of how long they have resided inside the
 5 United States.” *Id.* at 9 (quoting *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025)).
 6 In *Buenrostro-Mendez*, the court stated, “As the Supreme Court has said, Section 1225(b)(2)
 7 operates as a “catchall provision that applies to all applicants for admission not covered by
 8 [subsection (b)(1)].” *Jennings v. Rodriguez*, 583 U.S. 281, 287, 138 S. Ct. 830, 837 (2018).
 9 Section 1225(b)(2) does not include any exception that permits the government to release
 10 detained aliens on bond.” *Id.* at 7. The *Buenrostro-Mendez* court further explained:

11 Unlike § 1225(b), § 1226(a)(2)(A) permits, but does not require, the Attorney
 12 General to release detained aliens on “bond of at least \$1,500 with security
 13 approved by, and containing conditions prescribed by, the Attorney
 14 General.” *See also* 8 C.F.R. §§ 236.1(c)(8), (d), 1236.1(d)(1), 1003.19. Because
 15 § 1226 is not limited to applicants for admission, it also covers numerous
 16 grounds of deportability, including for admitted aliens who overstay or violate
 17 the terms of their visas, engage in conduct that renders them removable, or
 18 were improperly admitted. Not all aliens detained under § 1226(a) are eligible
 19 for release on bond. If an alien has committed one of the criminal offenses
 20 enumerated in § 1226(c), he loses his bond eligibility. 8 U.S.C. §
 21 1226(c)(1)(A)-(E). The Laken Riley Act, enacted in 2025, expanded § 1226(c)
 22 by adding new bases for ineligibility for bond. *See* 8 U.S.C. § 1226(c)(1)(E).
 23 Aside from being ineligible for bond, aliens covered by § 1226(c) also may not
 24 be granted parole under 8 U.S.C. § 1182(d)(5)(A).

25 *Id.* at 8. The *Buenrostro-Mendez* court then emphasized that 8 U.S.C. § 1225(b)(2)(A)
 26 requires detention without eligibility for bond of individuals like Petitioner who entered the
 27 U.S. without being admitted, and further stated:

28 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. 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:

1 It is true that § 1226 applies to aliens in the United States. That it does so,
 2 however, does not preclude § 1225 from also applying to such aliens. As the
 3 government acknowledges, the two provisions overlap. Accordingly, for
 4 petitioners to find support in *Jennings*, they must overread the Supreme
 5 Court's language. In particular, they seem to infer that when the Supreme
 6 Court specified that § 1226 applies to aliens inside the United States, it
 7 implied that § 1225 does not apply to such aliens. But this is the exact sort of
 8 language-parsing inquiry that the Supreme Court has cautioned lower courts
 9 against. *See Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 373-74, 143 S.
 10 Ct. 1142, 1155 (2023) ("[T]he language of an opinion is not always to be
 11 parsed [like the] language of a statute." (quoting *Reiter v. Sonotone Corp.*, 442
 12 U.S. 330, 341, 99 S. Ct. 2326, 2332 (1979))).

13 Moreover, even if this court should conduct a granular analysis of the
 14 language in *Jennings*, doing so supports the government's interpretation. In
 15 claiming that the Supreme Court's pronouncement that § 1225(b) applies to
 16 aliens who are seeking admission supports their interpretation, the petitioners
 17 inexplicably assume that the Supreme Court understood "seeking admission"
 18 in the same way that petitioners do. It demonstrably did not. Elsewhere
 19 in *Jennings*, the Supreme Court explained that "§ 1225(b) applies to aliens
 20 seeking entry into the United States ('applicants for admission' in the language
 21 of the statute)." *Jennings*, 583 U.S. at 297, 138 S. Ct. at 842. That language
 22 supports the government's contention that "applicants for admission" are
 23 according to the statute seeking entry or admission. And it suggests that when
 24 the Supreme Court described § 1225 as applying to aliens "seeking
 25 admission," it understood that to mean aliens who, like the petitioners here,
 26 are present in the United States without admission.

27 *Id.* at 20–22. Finally, the *Buenrostro-Mendez* court addressed the issue of government's
 28 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), explaining:

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 because Petitioner entered the U.S. without
 inspection and is an applicant for admission who is lawfully mandatorily detained under §

1 1225(b)(2)(A) and is not subject to discretionary detention under 8 U.S.C. § 1226(a).

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

6 In addition, the United States notes the following recent decisions, each of which
7 concludes that, when properly interpreted and applied, the governing statutes support the
8 Federal Respondents' position in this case: *Chavez v. Noem*, 801 F. Supp. 3d 1133 (S.D. Cal.
9 2025); *Vargas Lopez v. Trump*, 802 F. Supp. 3d 1132 (D. Neb. 2025); *Rojas v. Olson*, No. 25-
10 CV-1437-BHL, 2025 WL 3033967, at *1 (E.D. Wis. Oct. 30, 2025); *Sandoval v. Acuna*, No.
11 6:25-CV-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); *Oliveira v. Patterson*, No. 6:25-
12 CV-01463, 2025 WL 3095972 (W.D. La. Nov. 4, 2025); *Mejia Olalde v. Noem*, No. 1:25-CV-
13 00168-JMD, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025); *Garibay-Robledo v. Noem*, 1:25-
14 cv-00177 (N.D. Tex. 2025); *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D.
15 Tex. Nov. 13, 2025); *Altamirano Ramos v. Lyons*, No. 2:25-CV-09785-SVW-AJR, 2025 WL
16 3199872 (C.D. Cal. Nov. 12, 2025); *Alonzo v. Noem*, No. 1:25-CV-01519 WBS SCR, 2025
17 WL 3208284, at *1 (E.D. Cal. Nov. 17, 2025).

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

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

1 States was substantially justified or that special circumstances make an award unjust.” 28
 2 U.S.C. § 2412(d)(1)(A).

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

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

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III. Conclusion

For the foregoing reasons, Federal Respondents respectfully request that the Court deny Petitioner's Writ of Habeas Corpus since he has not yet requested a bond hearing from the Immigration Court.

Respectfully submitted this 4th day of March 2026.

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