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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Alejandro RAMIREZ QUEMA,

Petitioner,

v.

John MATTOS, *et al.*,

Respondents.

Case No. 2:26-cv-00409-GMN-NJK

**Federal Respondents' Response to
Petitioner's Amended Petition for Writ
of Habeas Corpus (ECF No. 16)**

Federal Respondents hereby file their Response to Petitioner Alejandro Ramirez Quema's Amended Petition for Writ of Habeas Corpus (ECF No. 16).

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, ECF No. 9-2; *see also* Warrant for Arrest of Alien, attached as **Exhibit A**. Petitioner was encountered by ICE at the Salt Lake County Metro Jail, after Petitioner was arrested for driving under the influence, speeding, failure to operate within a single lane, and driving without a valid license. *See generally* ECF No. 9-2; *see also* Petitioner's Criminal History, attached as **Exhibit B**. 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

1 designated by the Attorney General. *See* Notice to Appear, ECF No. 9-3. Petitioner has not
2 sought a bond hearing and no removal order has been issued. Petitioner is completely
3 bypassing the Immigration Court and has not even filed a request to the Immigration Court
4 for a bond hearing before an Immigration Judge (“IJ”). Therefore, it is Federal
5 Respondents’ position that the Petition for Writ of Habeas Corpus be denied since
6 Petitioner has not begun let alone exhausted his administrative remedies first before seeking
7 relief in this Court. This issue is not ripe. If a Petitioner is dissatisfied with the IJ’s bond
8 determination, he may file an administrative appeal so that the necessity of detention can
9 be reviewed by the BIA. That is the proper procedural mechanism to seek a bond
10 redetermination. The Ninth Circuit precedent provides that a noncitizen must seek review
11 from the BIA before filing a habeas petition in this court. *See Leonardo v. Crawford*, 646 F.3d
12 1157, 1160 (9th Cir. 2011) (emphasis added) (explaining once the BIA has rendered its
13 decision, the petitioner could have properly pursued habeas relief in the district court and
14 the district court would have been subject to review).

15 In this case, Petitioner has not even sought to seek a bond redetermination hearing
16 let alone seek review from the BIA and argues, “Any appeal to the BIA is futile.” *See* ECF
17 No. 16, p. 10:19. Unfortunately for Petitioner, the Ninth Circuit Court of Appeals
18 disagrees. Petitioner should have exhausted his administrative remedies by appealing any
19 decision of the IJ to the BIA before asking the federal district court to review the IJ’s
20 decision. *See Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003). Petitioner has not
21 even received any rulings from the IJ, which renders this matter not ripe, and the Amended
22 Petition must be denied. Before a petitioner can raise an argument on appeal, the petitioner
23 must first raise the issue before the BIA or IJ. *Id.*; INA § 242(d), 8 U.S.C. § 1252(d).
24 Therefore, this court is without jurisdiction until a decision is rendered by the BIA.

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II. Legal Argument

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

If this court finds that this matter is ripe for adjudication and has jurisdiction despite no decision from the BIA let alone from the IJ, 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 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) and the recent decision from the Eighth Circuit *Herrera Avila v. Bondi et al.*

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 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. The *Buenrostro-Mendez* court further 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. 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 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:

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. Finally, the *Buenrostro-Mendez* 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), 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 § 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.

Herrera Avila v. Bondi, No. 25-3248, 2026 WL 819258 (8th Cir. Mar. 25, 2026), also applies to this case. The Petitioner is an illegal alien who entered the U.S. without an inspection. Just like the Court in *Buenrostro-Mendez*, the *Herrera Avila* Court also disagreed with the legislative history arguments presented by petitioners that § 1225 should not apply to aliens arrested in the interior:

[Petitioner]'s argument is unconvincing because "it is never our job to rewrite... statutory text under the banner of speculation about what Congress might have done." *Garland v. Cargill*, 602 U.S. 406, 428, 144 S.Ct. 1613, 219 L.Ed.2d 151 (2024) (alteration in original) (citation omitted). Here "Congress

could have declined to delay implementation of § 1225(b)(2)(A) for any number of reasons.” *Buenrostro-Mendez v. Bondi*, 166 F.4th at 507–08. Moreover “the legislative history is not the law”, and “[w]e do not inquire what the legislature meant; we ask only what the statute means.” *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 523, 138 S.Ct. 1612, 200 L.Ed.2d 889 (2018) (alteration in original) (citation omitted). Because the text here is clear that an “applicant for admission” is also an alien who “is seeking admission,” see § 1225(a)(1), (b)(2)(A), we may not “resort to legislative history to cloud a statutory text that is clear,” *Cont’l Res., Inc. v. N. Dakota Bd. of Univ. & Sch. Lands*, 136 F.4th 778, 785 (8th Cir. 2025) (citation omitted). Accordingly, we find that the District Court erred in holding that the Government could not detain him without a bond under § 1225(b)(2)(A) and in granting habeas relief on that basis.

Herrera Avila, 2026 WL 819258 at *6.

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*, 809 F. Supp. 3d 1015 (C.D. Cal. 2025); *Alonzo v. Noem*, 809 F. Supp. 3d 1069 (E.D. Cal. 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. See ECF No. 16, p. 12:16–18. Petitioner cannot obtain fees in this case under 5 U.S.C. § 504 because 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

1 States, a court must award fees and expenses to a prevailing non-government party “unless
2 the court finds that the position of the United States was substantially justified or that
3 special circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A).

4 Here, Petitioner’s request is premature because he is not a prevailing party. Second,
5 even if Petitioner were to prevail in this case, the Federal Respondents’ position asserted in
6 this Response is substantially justified because other courts have found the arguments
7 presented herein to be persuasive and that DHS can lawfully detain, under the mandatory
8 detention provisions of 8 U.S.C. § 1225, other petitioners who are similarly situated to this
9 Petitioner. Federal Respondents’ position was further substantially justified and supported
10 by the recent decisions on February 6, 2026, from the Fifth Circuit Court of Appeals,
11 *Buenrostro-Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899 (5th Cir. 2026) and Eighth Circuit
12 Court of Appeals, *Herrera Avila v. Bondi*, No. 25-3248, 2026 WL 819258 (8th Cir. Mar. 25,
13 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's Amended Petition for Writ of Habeas Corpus (ECF No. 16).

Respectfully submitted this 8th day of April 2026.

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