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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SERGIO ALOE-MEJIA,

Petitioners,

v.

KRISTI NOEM, Secretary of the United States Department of Homeland Security; PAMELA BONDI, United States Attorney General; TODD LYONS, Director of United States Immigration and Customs Enforcement; BRYAN WILCOX, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement, Department of Homeland Security; John Mattos Warden, Nevada Southern Detention Center; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents.

Case No. 2:26-cv-00451-RFB-NJK

Federal Respondents' Response to the Court's Order to Show Cause (ECF No. 6) Why the Court Should Not Grant the Petition for Writ of Habeas Corpus (ECF No. 1)

NO ORAL ARGUMENT REQUESTED

Federal Respondents Kristi Noem, Pamela Bondi, Todd Lyons, Bryan Wilcox, United States Department of Homeland Security, and United States Immigration and Customs, 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 Sergio Aloe-Mejia's Verified Petition for Writ of Habeas Corpus (ECF No. 1).

I. Factual Background

Petitioner is an illegal alien from Mexico, who entered the United States without inspection at an unknown time and unknown location in 2006. *See* Notice to Appear, attached as Exhibit A. Petitioner came into DHS custody on February 1, 2026. after he was arrested for driving under the influence by the North Las Vegas Police Department. *See* I-213, attached as Exhibit B. On February 23, 2005, Petitioner was encountered by United States Border Patrol (USBP) near Sasabe, AZ, and was granted a voluntary return to Mexico. *Id.* On February 9, 2026, Petitioner had a bond hearing before an Immigration Judge, and he was denied a bond for lack of jurisdiction under *Hurtado*. *See* Order, dated February 9, 2026, attached Exhibit C. On February 17, 2026, the Petitioner had another bond order issued, reaffirming that the Immigration Judge did not have jurisdiction under *Hurtado*. *See* Bond Memorandum, dated February 17, 2026, attached as Exhibit D. Petitioner has a hearing before an Immigration Judge on March 2, 2026. Exhibit A.

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 E). 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)

In the recent decision on February 6, 2026, from the Fifth Circuit Court of Appeals, *Buenrostro-Mendez v. Bondi*, Case No. 25-20496, Docket No. 213-1, attached hereto as Exhibit E, 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, "As 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.

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

III. Conclusion

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

Respectfully submitted this 23rd day of February 2026.

SIGAL CHATTAH
First Assistant United States Attorney

/s/ Virginia T. Tomova
VIRGINIA T. TOMOVA
Assistant United States Attorney