TODD BLANCHE
Deputy Attorney General of the United States
SIGAL CHATTAH
First Assistant United States Attorney
District of Nevada
Nevada Bar Number 8264
MARTIN J. MAYER
Special Assistant United States Attorney
501 Las Vegas Blvd. So., Suite 1100
Las Vegas, Nevada 89101
Phone: (702) 388-6336
Fax: (702) 388-6787
Martin.Mayer@usdoj.gov

Attorneys for the Federal Respondents

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Abimael Bequer Arroyo Lucas, *et al.*, Petitioners, v. Kristi Noem, *et.al.* Respondents.	Case No. 2:26-cv-00465-RFB-BNW **Federal Respondent's Response to Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 (ECF No. 1) and Motion for Temporary Restraining Order (ECF No. 3)**

Federal Respondents hereby file their Response to Petitioners' Abimael Bequer Arroyo Lucas, Jesus Gustavo Huerta Cortez, and Daglis Noely Flores Zelaya Amended Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 (ECF No. 1) and Motion for Temporary Restraining Order (ECF No. 3) per this Court's Order to Show Cause, ECF No. 9.

I. Factual Background

On December 16, 2025, Petitioner Abimael Bequer Arroyo Lucas ("Petitioner Lucas") was encountered by Enforcement and Removal Operations (ERO) officers at the Washington County Jail in Hurricane, Utah after being arrested for driving under the influence. *See* **I-213, bond order and NTA for Petitioner Lucas, attached as Exhibit A**. Petitioner is a citizen of Guatemala who entered the United States without inspection 2022, and was not in possession of valid immigration documents allowing him to be or remain in the United States legally. **Exhibit A**.

On January 2, 2026, Petitioner Daglis Noely Flores Zelaya ("Petitioner Zelaya") was encountered by Enforcement and Removal Operations (ERO) officers at the Clark County Detention Center after being arrested for domestic violence. *See* **I-213, and NTA for Petitioner Zelaya, attached as Exhibit B**. Petitioner is a citizen of Honduras who entered the United States without inspection 2012, and was not in possession of valid immigration documents allowing him to be or remain in the United States legally. **Exhibit B**.

On December 10, 2025, Petitioner Jesus Gustavo Huerta Cortez ("Petitioner Cortez") was encountered by Enforcement and Removal Operations (ERO) officers at the Clark County detention Center after being arrested for driving under the influence. *See* **I-213, and NTA for Petitioner Cortez, attached as Exhibit C**. Petitioner is a citizen of Mexico who entered the United States without inspection 2001, and was not in possession of valid immigration documents allowing him to be or remain in the United States legally. **Exhibit C**.

Federal Respondents' position is that 8 U.S.C. § 1225(b)(2)(A) applies to the Petitioners and they should be mandatorily detained and hence their Petition should be denied. Federal Respondents are fully aware of this Court's previous ruling on similar matters involving 8 U.S.C. § 1225(b)(2)(A) and 8 U.S.C. § 1226(a) and the recent vacatur of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Federal Respondents are not waiving nor conceding their previous consistent position that 8 U.S.C. § 1225(b)(2)(A) applies to Petitioners as opposed to 8 U.S.C. § 1226(a). However, if the Court is inclined, permit them to have a bond hearing pursuant to 8 U.S.C. § 1226(a) as this court has done in previous cases. This will allow the IJ to look at all the evidence presented and decide as to whether the Petitioners are eligible to be released on bond which would be the appropriate course of action if this Court believes that § 1226 is the proper detention authority.

///

///

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). 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, Petitioners' 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*, 2026 U.S. App. LEXIS 3899 (5th Cir. 2026) 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). 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. In *Buenrostro-Mendez* the court 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. In *Buenrostro-Mendez,* the court emphasized that 8 U.S.C. § 1225(b)(2)(A) requires detention without eligibility for bond of individuals like Petitioners 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, "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 petitioner 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 Petitioners entered the U.S. without inspection and are applicants for admission who are lawfully mandatorily detained under § 1225(b)(2)(A) and are 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 Petitioners' Petition for Writ of Habeas Corpus and Motion for Temporary Restraining Order.

Respectfully submitted this 26th day of February 2026.

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

/s/ Martin J. Mayer
MARTIN J. MAYER
Special Assistant United States Attorney