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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA (Las Vegas)

ABIMAEL BEQUER ARROYO LUCAS,

JESUS GUSTAVO HUERTA CORTEZ,

AND DAGLIS NOELY FLORES ZELAYA

Petitioner,

v.

KRISTI NOEM, U.S. DEPARTMENT OF HOMELAND SECURITY, PAMELA J. BONDI, TODD LYONS, BRIAN HENKEY, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, AND JOHN MATTOS,

Respondents.

Case No.: 2:26-cv-00465-RFB-BNW

Petitioners' in Support of Motion for Temporary Restraining Order (ECF No. 3) and Petition for Writ of Habeas Corpus (ECF No. 1).

NO HEARING REQUESTED

Petitioners through their attorneys, Alissa A. Cooley Yonesawa, Melissa Corral, Wyatt Kay, and Yvette Machado Tuinier, hereby submit their Traverse in Support of their Petition for Writ of Habeas Corpus (ECF No. 1) ("Petition") and their Motion for Temporary Restraining Order (ECF No. 3) ("TRO"). Because Federal Respondents (hereinafter "Respondents") filed a consolidated response to both the Verified Petition and the Motion for TRO (ECF No. 10-11)[1], Petitioners file this as a Traverse to both.

I. INTRODUCTION

Respondents' main argument is that all applicants for admission are subject to mandatory detention under 8 U.S.C. § 1225(b)(2).[2] *See* ECF No. 1 at 2–3. As such, as they argue, their interpretation of 8 U.S.C. § 1225(b)(2) applies to Petitioners' detention. Respondents do not bring up any new arguments except that this Court should be persuaded by the recent Fifth Circuit Court of Appeals Decision in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496, 25-40701, 2026 U.S. App. LEXIS 3899, at * (5th Cir. Feb. 6, 2026). But as explained below, a critical fact in *Buenrostro-Mendez* renders it distinct from the instant case.

As this Court has already ruled on prior cases, Petitioners are not subject to detention until the end of their removal proceedings because Petitioners' detention is not controlled by 8 U.S.C. § 1225(b)(2) but instead by 8 U.S.C. § 1226. Respondents' own exhibits demonstrate all three (3) Petitioners entered the U.S. without inspection at an unknown date and time and years later were detained inside the U.S. *See* ECF No. 11-2, at 5; ECF No. 11-3, at 7; ECF No. 11-4,

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[1] Respondents filed two separate pleadings but the contents of both is the same.

[2] Respondents "incorporate by reference" their arguments made in a sealed case to which none of the undersigned have access. ECF No. 11, at 3. While efficient for Respondents, it unfairly prejudices Petitioners' ability to respond.

at 6. Respondents also do not address any of the requirements for a TRO, as such, they consent to this Court's granting of such motion. Moreover, though they argue against the Petition, they nonetheless agree to the relief Petitioners request. Therefore, because Petitioners' continued detention is unlawful, and Respondents yield to this Court ordering Petitioners to receive a bond hearing, their Motion for a TRO should be granted.[3]

II. LEGAL ARGUMENT

As Respondents double down on their interpretation of 8 U.S.C. § 1225(b)(2), it misses the mark. Here, the issue is a misreading of Petitioner's factual circumstances along with the misapplication of the law. Further, in their insistence on their obscure interpretation on 8 U.S.C. § 1225(b)(2), Respondent's point to dissimilar caselaw and forego all other arguments.

A. Respondents Misapply the Entirety of 8 U.S.C. § 1225.

First, 8 U.S.C. § 1225(b)(2) does not apply to Petitioners, let alone the entirety of § 1225. Respondents are seeking to impose mandatory detention where it is not applicable and unlawful. In summary, Respondent's argue that applicants for admission include any noncitizen who arrives in the United States, **and/or** is present in the United States without an inspection and/or admission for any period of time. *See* ECF 11, at 3.

However, Respondents forget that Section 1225(b)(2) is part of a larger statutory framework that governs only expedited removal proceedings. *See* 8 U.S.C. § 1225 ("Inspection by immigration officers; expedited removal of inadmissible aliens; referral for hearing"). This is clarified in the Federal Regulations, which fill in the details of ambiguous Congressional

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[3] Petitioners agree with Respondents that ordering the immigration court to hold immediate bond hearings for Petitioners would cure the alleged due process violations.

language, *see Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 844 (1984) (*abrogated on other grounds by Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024)) and explain to whom this statutory framework applies — "arriving aliens" and only those who entered without inspection and are unable to demonstrate **two (2) years of presence** in the United States from the date of their inadmissibility determination. 8 C.F.R. § 235.3(b)(1) (emphasis added).

Along with this misinterpretation of the statute and supporting Federal Regulations, Respondents' argument is also illogical because it takes the teeth out of other detention provisions under the statute, namely 8 U.S.C. § 1226(c), which was recently amended to include the Laken Riley Act ("LRA").[4] Respondents argue that those present in the U.S. without inspection and/or admission,[5] who they argue are also applicants for admission, are inadmissible simply because of their presence without admission. 8 U.S.C. §§ 1182(a)(6)(A)(i); 1182(a)(7)(A)(i). But, if these inadmissible individuals have been subject to mandatory detention since 1996, when 8 U.S.C. § 1225(b)(2) was already enacted, Congress need not have passed the LRA. *Buenrostro-Mendez v. Bondi*, Nos. 25-20496, 25-40701, 2026 U.S. App. LEXIS 3899, at *30 (5th Cir. Feb. 6, 2026) (Douglas, J., dissenting). In fact, all persons charged with inadmissibility would be subject to mandatory detention regardless of arrests, charges, or convictions for the offenses enumerated in the LRA. *Id.*

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[4] The Laken Riley Act requires the mandatory detention of inadmissible individuals with certain criminal histories. *See* Press Release, U.S. Department of Homeland Security, (January 29, 2025), https://www.dhs.gov/news/2025/01/29/president-trump-signs-laken-riley-act-law; *see also* 8 U.S.C. § 1226(c)(1)(E).

[5] Commonly referred as "entry without inspection" ("EWI") by immigration legal professionals.

Here, Petitioners' do not meet the definition of an "arriving alien"[6] nor are they designated as such on their Notices to Appear. *See* ECF No. 11-2, at 5; ECF No. 11-3, at 7; ECF No. 11-4, at 6. ICE apprehended Petitioners within the interior of the U.S. multiple years since their last entry into the U.S. *See* ECF 1-1, at 3, 32, 47-48. As such, they are not an "arriving aliens."

In addition to "arriving aliens," 8 C.F.R. § 235.3(b)(1)(ii) provides another group to whom expedited removal applies. This definition states that individuals who arrive in the United States, attempt to enter, or have entered without being admitted or paroled *and* have not established, to the satisfaction of an immigration official, that they have been physically present in the United States for two (2) years after their inadmissibility determination, are subject to expedited removal. *Id.* Petitioners also do not meet this definition.

Here, Petitioners are not arriving or attempting to enter the United States. *See* ECF No. 11-2, at 5; ECF No. 11-3, at 7; ECF No. 11-4, at 6. Petitioners all entered the U.S. without inspection, and they can demonstrate multiple years of physical presence in the United States, exceeding the two (2) year requirement. *See* ECF No. 11-2, at 5; ECF No. 11-3, at 7; ECF No. 11-4, at 6.

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[6] The definition of an "arriving alien" is provided in 8 C.F.R. § 1.2 as:

> [A]n applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport.

Given that § 1225 and expedited removal only apply to certain persons outlined in 8 C.F.R. § 235.3(b), and Petitioners meet neither of those categories of persons, 8 U.S.C. § 1225 does not apply to them, and 8 U.S.C. § 1225(b)(2) does not govern their detention. Therefore, Petitioners are likely to win on the merits of these proceedings.

B. Respondents Point to and Lean on a Nonbinding Case Outside this Circuit.

Respondents point to *Buenrostro-Mendez v. Bondi*, Nos. 25-20496, 25-40701, 2026 U.S. App. LEXIS 3899, at * (5th Cir. Feb. 6, 2026) as instructive and analogous. It is not. Preliminarily, *Buenrostro-Mendez* is not binding, as it is issued by the Fifth Circuit. *Id.*

Of note, the petitioners in *Buenrostro-Mendez* "concede[d] they are applicants for admission as defined in section 235(a)(1) of the INA and neither disputed they would be subject to mandatory detention if section 235(b)(2)(A) applied to them...." *Id.* * 4. Here, this case is distinguishable from *Buenrostro-Mendez* because Petitioners have never conceded this point. Their refusal to concede this point is the exact reasons they filed this instant action.

The analysis in *Buenrostro-Mendez* relies on that "applicants for admission are '[noncitizens] present in the U.S. who ha[ve] not been admitted' by lawful means." *Id.* * 5. For the Fifth Circuit, presence [in the U.S.] without admission deems petitioners to be applicants for admission. *Id.* * 11. Additionally, it holds that applicants for admission are *seeking admission* pending the resolution of removal proceedings. *Id.* * 13-14. However, as discussed *supra* Part II(A) and as this Court has previously held, Petitioners are not applicants for admission, and the entirety of 8 U.S.C. § 1225 does not apply to them in any respect. None of Petitioners was in removal proceedings at the time of their apprehension. *See* ECF No. 11-2, at 2-4; ECF No. 11-3, at 2-4; ECF No. 11-4, at 2-4.

Therefore, the overlap between 8 U.S.C. §§ 1225 and 1226 that Respondents believe exists in *Buenrostro-Mendez*[7] is not present in Petitioners' cases. Only § 1226(a) applies as they also do not have any convictions that subject them to mandatory detention under § 1226(c). Therefore, *Buenrostro-Mendez* remains factually distinct and not binding, instructive, or analogous to Petitioners' cases.

C. Respondents' Citations to Ten District Court Decisions Siding with Their Arguments Is Neither Accurate Nor Compelling.

In addition to *Buenrostro-Mendez*, Respondents cite to "recent decisions, each of which concludes that, when properly interpreted and applied, the governing statutes support the Federal Respondents' position in this case." *See* ECF No. 11 at 6. First and preliminarily, ten (10) district court cases across the country in support of Respondents' arguments compared to well over 300 decisions refuting it is hardly compelling, let alone persuasive. Second, six (6) of the ten (10) cited cases are distinguishable from Petitioners' case.

In *Chavez v. Noem*, while the district court initially denied the motion for a TRO pursuant to the same logic Respondents employ here, the *Chavez* court later granted a second motion following the orders in *Maldonado-Bautista*. *Chavez v. Noem*, No. 3:25-cv-02325-CAB-SBC, 2026 WL 114929 (S.D. Cal. Jan. 15, 2026). Likewise, in *Cortes Alonzo*, after initially denying the petitioner's motion for a TRO and petition for the arguments on which Respondents rely, in a subsequent petition, the district court granted the motion. *Compare Cortes Alonzo v. Noem*, No. 1:25-cv-01519, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025) *with*

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[7] *Buenrostro-Mendez v. Bondi*, Nos. 25-20496, 25-40701, 2026 U.S. App. LEXIS 3899, at * 20-21 (5th Cir. Feb. 6, 2026)

Cortes Alonzo v. Noem, No. 1:26-cv-00753-DAD-JDP (E.D. Cal. Feb. 3, 2026). Thus, the final judgments of the district courts do not support Respondents' arguments.

In *Vargas-Lopez v. Trump*, *Barrios Sandoval*, and *Silva Oliveira*, the district courts denied the motion for a TRO finding that petitioners did not allege or could not establish they were arrested on a § 1226(a) administrative warrant to distinguish their case from § 1225(b). No. 25-526, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); No. 25-01467, 2025 WL 3048926 (W.D. La. Oct. 31, 2025); No. 25-01463, 2025 WL 3095972. Petitioner Flores Zelaya submitted an administrative warrant with his Petition and Motion. *See* ECF. No. 1-1, at 53. Petitioners Arroyo Lucas and Huerta Cortez likely were too, given ICE's common practice, but as noted in the Petition, Petitioners lack complete copies of their initiating documents. ECF No. 1, at 10, 12; ECF No. 1-1. Respondents submitted only Petitioners' Form I-213 and Notices to Appear[8] without any indication that those are the only documents in Respondents' possession. *See* ECF No. 11. Specifically, Respondents failed to include any Form I-286 Notice of Custody Determination or Form I-200 Administrative Arrest Warrant. *See id.* At any rate, this distinction made by the *Vargas Lopez*, *Barrios Sandoval*, and *Silva Oliveira* courts suggests it in fact agrees with Petitioners' arguments and this Court's prior decisions on the matter.

Finally, in *Montoya Cabanas*, the petitioner conceded she was an applicant for admission, and therefore, the court found her subject to § 1225(b). Respondents' reference to the *Montoya Cabanas* decision fails for the same reason *Buenrostro-Mendez* does—Petitioners

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[8] Petitioners note that Respondents submitted a copy of Petitioner Huerta Cortez' Form I-213 with redactions. ECF 11-2, at 3. Critically, a majority of the redactions are beneath the heading titled "Entry Data / Immigration History" and considering Respondents' argument hinge on Petitioner Huerta Cortez's entry and immigration history, it is curious why these paragraphs are redacted.

here have not conceded they are applicants for admission. Thus, this decision does not support Respondents' argument.

At best, Respondents can point to four (4) district court decisions that support their arguments. Four (4) decisions in the faces of *hundreds* is not compelling, let alone persuasive enough to defeat Petitioners' arguments here and the arguments of petitioners past.

D. Respondents Have Not Addressed All Requirements for a Temporary Restraining Order; Therefore, They Have Forgone All Other Arguments.

Although Respondents state they responded to both Petitioner's Verified Petition for a Writ of Habeas Corpus and Motion for a TRO, Respondents do not address all arguments in the Motion for a TRO and, therefore, concede them. Respondents only address which statute governs Petitioners' detention; however, they do not address the four (4) requirements for a TRO:

> (1) [that Petitioner] is likely to succeed on the merits,
> (2) [that Petitioner] is likely to suffer irreparable harm in the absence of preliminary relief,
> (3) the balance of equities tips in his favor, and
> (4) an injunction is in the public interest.

East Bay Sanctuary Covenant v. Biden, 993 F.3d 640, 668 (9th Cir. 2021); *Chamber of Commerce of the United States v. Bonta*, 62 F.4th 473, 481 (9th Cir. 2023) (*citing All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)).

At best, Respondents argue that Petitioners' detention will not offend due process because they are subject to mandatory detention pursuant to U.S.C § 1225(b)(2)(A). *See* ECF No. 11, at 2. Petitioners construe this argument as they are not likely to succeed on the merits. However, Respondents fail to address the potential irreparable harm to Petitioners or even the burden on them if Petitioners are released. Without addressing any of the other three (3)

requirements for a TRO, Respondents forgo this issue and Petitioners' motion for a TRO should be granted.

II. CONCLUSION

For the foregoing reasons, Petitioner requests that this Court expeditiously grant the Petition, and if there is any necessary delay to draft such a decision, to order Petitioners' bond hearing to occur within seven (7) days.

DATED this 1st day of March, 2026.

Respectfully Submitted,

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Nevada Bar. No. 14182

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/s/ Wyatt Kay
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CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing Petitioner's Traverse in Support of Motion for TRO and Petition for Writ of Habeas with the Clerk of the Court for the United States District Court for the District of Nevada using the CM/ECF system.

DATED this 1st day of March, 2026.

/s/Melissa Corral
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