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UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

Ricardo de Jesus Cisneros,

Petitioner

v.

KRISTI NOEM, in her official capacity as  
Secretary of the Department of Homeland  
Security,

TODD LYONS, in his official capacity as  
Acting Director of Immigration and Customs  
Enforcement,

Michael Bernacke, in his official capacity as  
ICE Field Officer Director and as warden in  
current custody of Petitioner,

PAMALA BONDI, in her official capacity as  
the United States Attorney General,

The Executive Office for Immigration Review

United States Immigration and Customs  
Enforcement.

Respondents

Civil No.: 2:25-cv-01170-HCN-JCB

RESPONSE TO RESPONDENTS' NOTICE  
OF SUPPLEMENTAL AUTHORITY

IMMIGRATION HABEAS CASE

1                   **RESPONSE TO RESPONDENTS’ NOTICE OF SUPPLEMENTAL AUTHORITY**

2                   Petitioner respectfully submits this response to Respondents’ Notice of Supplemental Authority  
3 regarding the Fifth Circuit’s recent decision in *Buenrostro-Mendez v. Bondi*. The cited decision does  
4 not alter the analysis before this Court and should carry little persuasive weight.

5                   **I.       THE OVERWHELMING MAJORITY OF COURTS HAVE REJECTED THE**  
6                   **FIFTH CIRCUIT’S INTERPRETATION**

7                   Even the Fifth Circuit itself acknowledged that the overwhelming majority of district courts to  
8 consider this issue have granted habeas relief and rejected the Government’s theory of mandatory  
9 detention under 8 U.S.C. § 1225(b)(2) for noncitizens long present in the United States. *Buenrostro-*  
10 *Mendez v. Bondi*, No. 25-20496, 2026 WL 323330, at \*6 (5th Cir. Feb. 6, 2026). This widespread and  
11 consistent body of authority reflects the settled nationwide judicial understanding of the INA’s  
12 detention framework following IIRIRA, an understanding that persisted for decades across  
13 administrations, immigration courts, and federal courts alike.<sup>1</sup>

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17 <sup>1</sup> See *Escobar Salgado v. Mattos*, No. 2:25-cv-01872-RFB-EJY 2025 WL 3205356 (D. Nev. Nov. 17, 2025); *Herrera v.*  
18 *Knight*, No. 2:25-CV-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Vazquez v. Feeley*, No. 2:25-CV-  
19 01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Roman v. Noem*, No. 2:25-CV-01684-RFB-EJY, 2025 WL  
20 2710211 (D. Nev. Sept. 23, 2025); *Carlos v. Noem*, No. 2:25-CV-01900-RFB-EJY, 2025 WL 2896156 (D. Nev. Oct. 10,  
21 2025); *E.C. v. Noem*, No. 2:25-CV-01789-RFB-BNW, 2025 WL 2916264 (D. Nev. Oct. 14, 2025); *Perez Sanchez v.*  
22 *Bernacke*, No. 2:25-CV-01921-RFB-MDC (D. Nev. Oct. 17, 2025); *Aparicio v. Noem*, No. 2:25-CV-01919-RFB-DJA, 2025  
23 WL 2998098 (D. Nev. Oct. 23, 2025); *ominguez-Lara v. Noem*, No. 2:25-CV-01553-RFB-EJY, 2025 WL 2998094 (D.  
24 Nev. Oct. 24, 2025); *Bautista-Avalos v. Bernacke*, 2:25-CV-01987-RFB-BNW (D. Nev. Oct 27, 2025); *Arce-Cervera v.*  
25 *Noem*, No. 2:25-CV-01895-RFB-NJK, 2025 WL 3017866 (D. Nev. Oct. 28, 2025); *Alvarado Gonzalez v. Mattos*, No. 2:25-  
26 CV-01599-RFB-NJK (D. Nev. Oct. 30, 2025); *Rodriguez Cabrera v. Mattos*, No. 2:25-cv-01551-RFB-EJY, 2025 WL  
27 3072687 (D. Nev. Nov. 3, 2025); *Berto Mendez v. Noem*, No. 2:25-cv-02602-RFB-MDC, 2025 WL 3124285 (D. Nev.  
28 Nov. 7, 2025); *Cornejo-Mejia v. Bernacke*, No. 2:25-cv-02139-RFB-BNW, 2025 WL 3222482 (D. Nev. Nov. 18, 2025);  
*Lucero Ortiz v. Bernacke*, No. 2:25-cv-01833-RFB-NJK, 2025 WL 3237291 (D. Nev. Nov. 19, 2025); *Perez Sales v.*  
*Mattos*, No. 2:25-cv-01819-RFB-BNW, 2025 WL 3237366 (D. Nev. Nov. 19, 2025); *Hernandez Duran v. Bernacke*, No.  
2:25-cv-02105-RFB-EJY, 2025 WL 3237451 (D. Nev. Nov. 19, 2025); *Cabrera-Cortes v. Knight*, No. 2:25-cv-01976-  
RFB-MDC, 2025 WL 3240971 (D. Nev. Nov. 20, 2025); *Jacobo Ramirez v. Noem*, No. 2:25-cv-02136-RFB-MDC, 2025  
WL 3270137 (D. Nev. Nov. 24, 2025); *Garcia-Arauz v. Noem*, No. 2:25-cv-02117-RFB-EJY, 2025 WL 3470902 (D. Nev.  
Dec. 3, 2025); *Silva Hernandez v. Noem*, No. 2:25-cv-02304-RFB-EJY, 2025 WL 3470903 (D. Nev. Dec. 3, 2025); *Reyes*  
*Cristobal v. Bernacke*, No. 2:25-cv-02231-RFB-EJY, 2025 WL 3485770 (D. Nev. Dec. 4, 2025); *Carrillo Fernandez v.*  
*Knight*, No. 2:25-cv-02221-RFB-BNW, 2025 WL 3485800 (D. Nev. Dec. 4, 2025); *Pilar Torres v. Bernacke*, No. 2:25-cv-  
02270-RFB-EJY, 2025 WL 3514615 (D. Nev. Dec. 8, 2025); *Nolasco-Gomez v. Noem*, No. 2:25-cv-02217-RFB-DJA,  
2025WL 3514758 (D. Nev. Dec. 8, 2025); *Ramirez-Contreras v. Noem*, No. 2:25-cv-02218-RFB-EJY, 2025 WL 3514681  
(D. Nev. Dec. 8, 2025); *Rodas v. Noem*, No. 2:25-cv-02216-RFB-BNW, 2025 WL 3514680 (D. Nev. Dec. 8, 2025);  
*Perdomo-Gonzalez v. Noem*, No. 2:25-cv-02121-RFB-EJY, 2025 WL 3514758 (D. Nev. Dec. 8, 2025); *Hernandez Isidoro*  
*v. Bernacke*, No. 2:25-cv-02312-RFB-NJK, 2025 WL 3524773 (D. Nev. Dec. 8, 2025); *Serrano Gonzalez v. Knight*, No.

1  
2 Against that backdrop, the Fifth Circuit’s newly issued panel decision represents not the  
3 maturation of an emerging consensus, but a recent and isolated departure from the dominant  
4 interpretation applied throughout the country. As an out-of-circuit decision issued only days ago, it  
5 carries limited persuasive force—particularly where it conflicts with the considered judgment of  
6 numerous courts that have carefully analyzed the same statutory text, structure, and history. See, e.g.,  
7 *Barco Mercado v. Francis*, No. 25-cv-6582, 2025 WL 3295903, at \*13 (S.D.N.Y. Nov. 26, 2025)  
8 (collecting hundreds of decisions granting relief).  
9

10 Accordingly, this Court should accord far greater weight to the broad and longstanding national  
11 consensus than to a single, nonbinding appellate decision that stands in tension with prevailing judicial  
12 authority and historical practice.  
13

14 **II. HISTORICAL PRACTICE UNIFORMLY CONTRADICTS THE FIFTH**  
15 **CIRCUIT’S RULE**

16 For nearly three decades following IIRIRA’s enactment, successive presidential  
17 administrations, immigration courts, and federal courts uniformly treated noncitizens present in the  
18 United States without admission as detained under 8 U.S.C. § 1226(a), not § 1225(b)(2).  
19 Contemporaneous regulations implementing IIRIRA expressly recognized that, even though such  
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22 2:25-cv-02081-RFB-BNW, 2025 WL 3524774 (D. Nev. Dec. 9, 2025); *Morales Rondon v. Bernacke*, No. 2:25-cv-01979-  
23 RFB-BNW, 2025 WL 3527246 (D. Nev. Dec. 9, 2025); *Marquez v. Knight*, No. 2:25-cv-02203-RFB-NJK, 2025 WL  
24 3527244 (D. Nev. Dec. 9, 2025); *Flores-Garcia v. Bernacke*, No. 3:25-cv-00688-RFB-CSD, 2025 WL 3527247 (D. Nev.  
25 Dec. 9, 2025); *Garcia Soto v. Knight*, No. 2:25-cv-02138-RFB-BNW, 2025 WL 3537405 (D. Nev. Dec. 10, 2025);  
26 *Quinonez Orosco v. Lyons*, No. 2:25-cv-02240-RFB-EJY, 2025 WL 3539275 (D. Nev. Dec. 10, 2025); *Gallegos Rangel v.*  
27 *Knight*, No. 2:25-cv-02161-RFB-BNW, 2025 WL 3539303 (D. Nev. Dec. 10, 2025); *Salguero v. DHS*, No. 2:25-cv-02328-  
28 RFB-NJK, 2025 WL 3539276 (D. Nev. Dec. 10, 2025); *Mejia Soto v. DHS*, No. 2:25-cv-02281-RFB-EJY (D. Nev. Dec.  
11, 2025); *Perez Gonzalez v. Noem*, No. 2:25-cv-02137-RFB-DJA (D. Nev. Dec. 11, 2025); *Ramirez v. Noem*, No. 2:25-  
cv-02110-RFB-DJA (D. Nev. Dec. 12, 2025); *Reyes v. Henkey*, No. 2:25-cv-02206-RFB-NJK (D. Nev. Dec. 12, 2025);  
*Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240 (W.D. Wash.); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK (D. Mass.);  
*Diaz Martinez v. Hyde*, No. CV 25-11613-BEM (D. Mass.); *Sarmiento v. Perry*, No. 1:25-cv-01644 (E.D. Va.); *Salazar v.*  
*Dedos*, No. 1:25-cv-00835-DHU-JMR (D.N.M.); *Nava Hernandez v. Baltazar*, No. 1:25-cv-03094-CNS (D. Colo.);  
*Ernesto Gonzalez Ramos v. Dedos*, No. 1:25-cv-00975-MLG-KRS (D.N.M.); *Pu Sacvin v. De Anda-Ybarra*, No. 2:25-cv-  
01031 (D.N.M.); *Espinoza Ruiz v. Baltazar*, No. 1:25-cv-03642-CNS (D. Colo.); *Arauz v. Baltazar*, No. 1:25-cv-03260-  
CNS (D. Colo.); *Garcia Cortes v. Noem*, No. 1:25-cv-02677-CNS (D. Colo.).

1 individuals were technically “applicants for admission”, they nevertheless remained eligible for bond  
2 and bond redetermination. *Inspection and Expedited Removal of Aliens; Detention and Removal of*  
3 *Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10,312, 10,323 (Mar. 6,  
4 1997); see also *Jimenez v. FCI Berlin Warden*, No. 24-cv-\_\_\_\_, 2025 WL 2084238, at \*4–8 (D.N.H.  
5 2025) (describing DHS’s longstanding interpretation that § 1226(a) governed detention of individuals  
6 present without admission and emphasizing that decades of consistent executive practice are  
7 “significant in determining whether such power was actually conferred” (quoting *West Virginia v. EPA*,  
8 597 U.S. 697, 725 (2022))).  
9

10 This settled interpretation persisted across administrations of both political parties and reflected  
11 the ordinary functioning of the immigration system, in which most individuals who entered without  
12 inspection but were later apprehended in the interior received custody hearings before an immigration  
13 judge unless separately subject to mandatory detention. *See* 62 Fed. Reg. at 10,323; see also H.R. Rep.  
14 No. 104-469, pt. 1, at 229 (1996) (explaining that § 1226(a) “restates” prior detention authority  
15 allowing custody determinations).  
16

17 Only in July 2025 did the Executive Branch abruptly reverse this decades-long understanding,  
18 adopting a novel interpretation that subjects all non-admitted noncitizens, regardless of length of  
19 residence or criminal history, to mandatory detention without bond. Courts and commentators have  
20 widely recognized this shift as a dramatic break from historical practice that newly exposed hundreds  
21 of thousands, if not millions, of long-present residents to detention without the possibility of release.  
22

23 Contemporaneous reporting likewise confirms that prior administrations consistently applied §  
24 1226, not § 1225, to individuals apprehended within the United States, reserving mandatory detention  
25 for those arriving at or near the border, and that the 2025 policy change triggered an avalanche of  
26 habeas litigation nationwide.  
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1 This uniform, decades-long governmental practice is powerful evidence of statutory meaning.  
2 See *West Virginia v. EPA*, 597 U.S. at 725 (longstanding failure to assert sweeping authority is  
3 significant in assessing whether Congress conferred it). A sudden reinterpretation in 2025—untethered  
4 from historical enforcement, regulatory implementation, or consistent judicial understanding—cannot  
5 override decades of settled application confirming bond eligibility under § 1226(a).  
6

7 **III. THE FIFTH CIRCUIT IS CONTRARY TO NUMEROUS DECISIONS WITHIN**  
8 **THIS DISTRICT AND ELSEWHERE**

9 The Fifth Circuit reversed district court decisions that had granted habeas relief and ordered  
10 bond hearings for similarly situated petitioners. *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL  
11 323330, at \*7–8 (5th Cir. Feb. 6, 2026). Those underlying district-court rulings, consistent with  
12 decisions across the country, reflect the prevailing judicial interpretation of the INA’s detention  
13 framework rather than an outlier view. See *id.* at \*6 (acknowledging that the “vast majority” of courts  
14 addressing the issue had ruled for habeas petitioners).  
15

16 Given that nationwide consensus, those district-court decisions remain far more persuasive to  
17 a district court within the Tenth Circuit than a single, nonbinding appellate ruling from another circuit  
18 issued only days ago. See *United States v. Porter*, 745 F.3d 1035, 1049 (10th Cir. 2014) (explaining  
19 that sister-circuit decisions are not binding); cf. *Ullery v. Bradley*, 949 F.3d 1282, 1291 (10th Cir. 2020)  
20 (treating out-of-circuit authority as persuasive only to the extent its reasoning is convincing).  
21 Accordingly, the Fifth Circuit’s contrary decision does not displace the dominant judicial  
22 understanding supporting bond eligibility here. circuit.  
23

24 **IV. THE FIFTH CIRCUIT’S READING CREATES IMPERMISSIBLE**  
25 **STATUTORY INCONSISTENCIES**

26 The Fifth Circuit’s interpretation destabilizes the INA’s detention framework by collapsing the  
27 carefully calibrated statutory structure. First, it effectively renders substantial portions of 8 U.S.C. §  
28

1 1226, including Congress’s detailed mandatory-detention provisions and enumerated carve-outs,  
2 functionally superfluous, contrary to the settled rule that statutes must be construed to give operative  
3 effect to each provision. *See Williams v. Taylor*, 529 U.S. 362, 404 (2000).

4 Second, the Fifth Circuit’s reading produces a regime of sweeping mandatory detention for  
5 millions of long-present noncitizens, a consequence the dissent itself recognized as historically  
6 unprecedented and unsupported by congressional design. *Buenrostro-Mendez v. Bondi*, No. 25-20496,  
7 2026 WL 323330, at \*22–23 (5th Cir. Feb. 6, 2026) (Douglas, J., dissenting).

8 Because courts are obligated to avoid interpretations that generate such structural  
9 contradictions, surplusage, and implausible consequences, the Fifth Circuit’s construction should not  
10 be followed here. *See Biden v. Texas*, 597 U.S. 785, 798 (2022).

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13 **V. THE FIFTH CIRCUIT’S CORE PREMISE IS LOGICALLY UNSUSTAINABLE**

14 The Fifth Circuit’s analysis proceeds from the premise that because noncitizens present in the  
15 United States without admission are deemed “applicants for admission,” and because applicants for  
16 admission must be detained under 8 U.S.C. § 1225(b)(2), all individuals who entered without inspection  
17 are effectively indistinguishable from arriving aliens and therefore categorically ineligible for bond.  
18 *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330, at \*9–11 (5th Cir. Feb. 6, 2026).

19 That syllogism is unsustainable. While an arriving alien is necessarily an applicant for  
20 admission, the converse does not follow: an applicant for admission is not per se an arriving alien  
21 within the statutory scheme. The INA repeatedly treats these categories as overlapping but distinct,  
22 preserving § 1226(a) custody procedures for numerous noncitizens who, though technically applicants  
23 for admission, are apprehended within the interior rather than at the threshold of entry.

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26 The consequences of the Fifth Circuit’s contrary rule expose its flaw. If all applicants for  
27 admission were subject to mandatory detention under § 1225(b)(2), then visa overstays pursuing  
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1 adjustment of status in removal proceedings, who are likewise applicants for admission, would also be  
2 categorically barred from bond. 8 U.S.C. § 1255(a); 8 U.S.C. § 1229a(c)(2)(A). Yet DHS and EOIR  
3 have long and uniformly recognized that such individuals remain eligible for custody redetermination  
4 under § 1226(a) absent an independent mandatory-detention trigger.  
5

6 This unavoidable contradiction confirms that the Fifth Circuit’s interpretation cannot be  
7 reconciled with the INA’s structure, decades of administrative practice, or the ordinary functioning of  
8 immigration courts, and therefore should not be adopted here.

9 **VI. THE LAKEN RILEY ACT CONFIRMS CONGRESS UNDERSTOOD ALIENS**  
10 **PRESENT WITHOUT HAVING BEEN ADMITTED OR PAROLED TO BE**  
11 **BOND-ELIGIBLE**

12 Congress recently expanded the categories of noncitizens subject to mandatory detention under  
13 8 U.S.C. § 1226(c) through enactment of the Laken Riley Act. That legislation specifically renders  
14 noncitizens who entered without inspection and who have been convicted of certain enumerated  
15 offenses ineligible for both bond and parole, thereby tightening the detention consequences for a  
16 defined subset of EWIs. *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330, at \*14–15 (5th  
17 Cir. Feb. 6, 2026).

18 This targeted expansion would be inexplicable if aliens present without inspection were already  
19 categorically barred from bond under 8 U.S.C. § 1225(b)(2). Congress does not enact superfluous  
20 detention provisions that merely duplicate existing mandatory-detention authority. *See Williams v.*  
21 *Taylor*, 529 U.S. 362, 404 (2000). The very existence of the Laken Riley Act therefore confirms the  
22 opposite premise: that EWIs, as a class, remain within § 1226’s custody framework and are eligible for  
23 bond or parole unless Congress expressly removes that eligibility through § 1226(c)’s enumerated  
24 mandatory-detention triggers.  
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1 Interpreting § 1225(b)(2) to impose blanket, no-bond detention on all EWIs would thus nullify  
2 Congress's recent and deliberate decision to single out only certain criminally convicted EWIs for  
3 mandatory detention—an outcome incompatible with ordinary principles of statutory construction and  
4 with Congress's most recent legislative judgment.

5  
6 **VII. THE FIFTH CIRCUIT DECISION IS NON-BINDING AND UNPERSUASIVE**

7 Respondents correctly acknowledge that *Buenrostro-Mendez* is not binding precedent in this  
8 Circuit. See Respondents' Notice of Supplemental Authority at 3 (citing *United States v. Porter*, 745  
9 F.3d 1035, 1049 (10th Cir. 2014)).

10 In light of (1) the overwhelming weight of contrary authority nationwide, (2) decades of  
11 consistent historical practice applying 8 U.S.C. § 1226 to similarly situated noncitizens, (3)  
12 disagreement among district courts, including courts that have carefully analyzed the same statutory  
13 provisions, (4) the structural inconsistencies and surplusage created by the Fifth Circuit's interpretation,  
14 and (5) Congress's recent confirmation of § 1226's continuing relevance through the Laken Riley Act,  
15 this Court should decline to follow the Fifth Circuit's out-of-circuit decision.

16  
17 Instead, the Court should adhere to the dominant statutory interpretation, historical practice,  
18 and persuasive authority recognizing bond eligibility under § 1226 for noncitizens present in the United  
19 States without admission. Accordingly, *Buenrostro-Mendez* provides no persuasive basis to deny the  
20 relief sought in the pending habeas petition.

21  
22 **CONCLUSION**

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24 The Fifth Circuit's newly issued decision reflects an outlier interpretation that is fundamentally  
25 inconsistent with (1) the nationwide judicial consensus addressing this question, (2) decades of uniform  
26 historical enforcement practice, (3) the text, structure, and internal coherence of the INA's detention  
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1 framework, and (4) Congress's most recent legislative amendments confirming the continuing  
2 operation of 8 U.S.C. § 1226.

3 Because the decision is nonbinding, recently issued, and contrary to the dominant statutory  
4 understanding, this Court should afford it no persuasive weight. Instead, the Court should adhere to the  
5 far more compelling authority, history, and statutory structure supporting bond eligibility under § 1226.  
6

7 Accordingly, the Court should decline to follow the Fifth Circuit's decision, disregard  
8 Respondents' cited supplemental authority, and grant the relief requested in the pending habeas  
9 petition.

10 Dated: February 9, 2026

11 Respectfully submitted,  
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