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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

ALEJANDRO JOSE PETIT POLEO, Petitioner, vs. PAMELA BONDI, U.S. Attorney General; KRISTI NOEM, Secretary U.S. Department of Homeland Security; RUBEN LEYVA, Acting Field Office Director, Salt Lake City Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; BRIAN HENKE, Filed Office Director for Las Vegas/Salt Lake City; and RYAN ARBON, Weber County Sheriff, Respondents.	Case No. 1:26-cv-00032-HCN **FEDERAL RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS** District Judge Howard C. Nielson, Jr.

1. INTRODUCTION

This is an opposition to a petition for a writ of habeas corpus. Petitioner Alejandro Jose Petit Poleo (Mr. Poleo) is a Venezuelan national who came to the United States over 2 years ago seeking asylum without being lawfully admitted. He claims he was temporarily "paroled" into the United States under 8 U.S.C. § 1226(a)(2)—by a prior presidential administration that neglected

to enforce immigration laws fully.[1] Therefore, he claims that despite the United States' detention mandate under 8 U.S.C. § 1225(b)(2)(A), he may "take cover" under the prior administration's failure to exercise its full enforcement authority to detain him pending removal proceedings, and that he cannot be detained now by an administration willing to enforce the law unless the United States shows some kind of "changed circumstances" in an unspecified manner and forum.

On March 3, 2026, he was cited for an unidentified "traffic violation" and then detained by ICE[2] under 8 U.S.C. § 1225(b)(2)(A) for being "an applicant for admission" who was not "clearly and beyond a doubt entitled to be admitted" to the United States. In his petition for habeas corpus, Mr. Poleo claims he is being unlawfully detained in violation of the APA[3] and "due process" and that he is entitled to be released from ICE custody absent a showing of some "changed circumstances" that would justify his detention despite his temporary, revocable parole.

Mr. Poleo is wrong. Under 8 U.S.C. § 1225(b)(2)(A), his detention is mandatory. As an "applicant for admission" who is "not clearly and beyond a doubt entitled to be admitted to the United States," he has been lawfully detained under 8 U.S.C. § 1225(b)(2)(A), which mandates his detention. The statute is clear on its face. The fact that prior administrations may have deliberately or negligently failed to enforce Section 1225 and related immigration laws "for decades" does not change the law.[4] Nor do prior failures by any administration to "exercise its full

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[1] The United States is looking for records of his "parole."

[2] "ICE" is, of course, the common abbreviation for U.S. Immigration and Customs Enforcement.

[3] The "APA" stands for the Administrative Procedures Act, 5 U.S.C. § 706(2)(A).

[4] *Buenrostro-Mendez v. Bondi*, 166 F. 4th 494, 506 (5th Cir. 2026) (noting that the government's 29-year practice of allowing illegal resident aliens, referring to those present without having been admitted, to seek release on bond under § 1226(a) instead of detaining them pursuant to § 1225(b)(2)(A) did not "vindicate an interpretation [of § 1225] that is inconsistent with [the] statute's plain text").

enforcement authority" under the governing immigration laws and to fulfill its constitutional mandate to see that those immigration laws of the United States be "faithfully executed" permit courts *now* to rewrite (after the fact) the language of Section 1225 or related immigration laws in order to mitigate any consequences of now enforcing those laws as written by Congress. *See Buenrostro-Mendez v. Bondi*, 166 F. 4th 494, 505-06 (5th Cir. 2026).[5]

As properly interpreted and enforced consistent with its plan text and meaning, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) does not require the United States to show any "changed circumstances" as to Mr. Poleo, nor any violation of any conditions of his revocable "parole" before he can be detained.[6] Rather, under 8 U.S.C. § 1225(b)(2)(A), his detention is mandatory. And he is not entitled to be released by any federal court acting consistent with the law. Therefore, the Court should dismiss his habeas petition and enter judgment for the United States. Mr. Poleo should be left in mandatory detention to proceed with his removal proceedings, wherein he will receive "due process" and be able to assert any defenses he has to his removal.[7] He was never guaranteed that the United States would forever look the other way and fail to enforce immigration laws as to him—even if, and especially when, the American people decidedly elected a new administration recommitted to enforcing those laws.

[5] *Buenrostro*, 166 F. 4th at 506 ("Regardless of the government's past practice and regardless of Congress's silence on § 1225(b)(2)(A), the text controls."); *see also* U.S. Const. Art. II, § 3 (The President of the United States of America "shall take Care that the Laws [of the United States] be faithfully executed); *Cisneros v. Noem*,-- F. Supp. 3d --, 2026 WL 396300, at *9-10, n. 5 (D. Utah Feb. 12, 2026) ("[I]t is not this court's 'task to assess the consequences' of competing interpretations 'and [to] adopt the one that produces the least mischief'") (citing *Lewis v. City of Chicago*, 560 U.S. 205, 217 (2010)).

[6] Even if 8 U.S.C. § 1226, applied to Mr. Poleo—which it does not—his parole would be revocable at any time. 8 U.S.C. § 1226(b), "The Attorney General *at any time* may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien." (emphasis added).

[7] Mr. Poleo is currently subject to removal proceedings under 8 U.S.C. § 1182(a)(7)(A)(i)(I).

Because, as a matter of law, Mr. Poleo cannot meet his burden to establish that he has been unlawfully detained, the Court should deny his petition.[8]

2. FACTUAL AND PROCEDURAL BACKGROUND

2.1 About two years ago, Mr. Poleo presented himself at the United States border without lawful immigration documents and claimed to be seeking asylum.

Mr. Poleo is a Venezuelan national who is not a citizen of the United States. (Dkt. 1 [Writ Petition] at 3 ⁋ 15). Just over two years ago, on February 14, 2024, he presented himself at the Brownsville, Texas port of entry seeking admission to the United States. (Dkt. 1 at 2 ⁋ 6; Ex. 1 [Notice to Appear] at 1 ⁋ 3). When he presented himself, he did not have a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Immigration and Nationality Act (INA). Therefore, he was "inadmissible" to the United States. 8 U.S.C. § 1182(a)(7)(A)(i)(I). Mr. Poleo alleges he sought asylum. But even to the extent he sought asylum, under the governing immigration laws, as written, he still would have been subject to mandatory detention pending a "final determination" of whether he had a credible fear of persecution in his homeland or until he was removed.[9] Because he was not so detained, it appears that no such determination was made before he was "paroled."

2.2 Immigration officers released Mr. Poleo on revocable parole, without lawfully admitting him into the United States.

Although Mr. Poleo was subject to mandatory detention, under the prior presidential administration, he nevertheless appears to have been "paroled" into the United States under 8

[8] 28 U.S.C. §§ 2241-2243; *see, also e.g.*, *Espinoza v. Sabol*, 558 F.3d 83, 89 (1st Cir. 2009) ("The burden of proof of showing deprivation of rights leading to unlawful detention [under § 2241] is on the petitioner.").

[9] 8 U.S.C. §§ 1225(b)(1)(A)(ii), 1225(b)(1)(B)(i), 1225(b)(1)(B)(iii)(I) and 1225(b)(1)(B)(iii)(IV).

U.S.C. §§ 1226(a) or 1182(d)(5)(A). (*See* Dkt. 1 at *Id.* at 6 ⁋ 29) (claiming, without any documentary evidence, that he was paroled under § 1226(a)(2)).[10] His apparent extralegal "parole" would not have "lawfully admitted" him into the United States. 8 U.S.C. § 1226(a)(3). It would also have been revocable "at any time," without a showing of changed circumstances. 8 U.S.C. § 1226(b)(3) ("The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.").[11]

On February 14, 2024, Mr. Poleo was issued a Notice to Appear for a hearing on his removal proceedings. (Ex. 1 [Notice to Appear]). The Notice to Appear explained that Mr. Poleo is subject to removal under 8 U.S.C. § 1182(a)(7)(A)(i)(I) for being an immigrant not in possession of a valid unexpired immigrant visa or other valid entry document. (Ex. 1 at 1, 4).

Mr. Poleo appears to have no pending asylum applications.

2.3 On March 3, 2026, Mr. Poleo was stopped for a traffic violation and then detained by ICE.

Just weeks ago, on March 3, 2026, Mr. Poleo admittedly committed an unspecified "traffic code offense." (Dkt. 1 at 2 ⁋ 8). Mr. Poleo conspicuously fails to disclose the nature and gravity of this offense, and counsel for the United States has not been able to discern it. Notwithstanding, Mr. Poleo was then detained by ICE for being an "applicant for admission" who is "not clearly

[10] ICE cannot locate any records of Mr. Poleo's alleged "parole." But we have located his February 14, 2024 Notice to Appear which required him to appear for a December 14, *2028* removal proceeding—over four and one-half years from the date it was issued. (*See* Ex. 1 [Notice to Appear] at 1).

[11] Alternatively, if the "parole" had been issued under 8 U.S.C. § 1182(d)(5)(A), which is just as likely, it likewise would have been revocable without any showing of "changed circumstances." Indeed, the statute clearly states that "such parole of such alien *shall not be regarded as an admission of the alien* and when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served *the alien* shall forthwith return or be returned to the custody from which he was paroled and thereafter his case *shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.*" (*Id.*) (emphasis added).

and beyond a doubt entitled to be admitted to the United States." 8 U.S.C. §§ 1225(b)(2)(A) and 1182(a)(7)(A)(i)(I). (*See* Ex. 1 [Notice to Appear] at 1, 4).

Mr. Poleo appears to have been initially detained in the Weber County Jail. (Dkt. 1 [Petition] at 2 ¶ 2.b.). But because ICE currently lacks a long-term detention center in Utah, and because ICE can generally detain noncitizens at local jails for no more than 72 hours, Mr. Poleo was moved to the BKI California City Correctional Facility in California City, California.

At Mr. Poleo's "master calendar" hearing set for December 14, 2028, he should receive his rights advisal and, if he wishes, a continuance to seek counsel. The immigration judge will likely determine whether the parties are prepared to set a hearing on his removal or to set another status hearing. Mr. Poleo does not appear to have any open asylum case.

Mr. Poleo apparently believes that he is entitled to be released from custody. (*See* Dkt. 1 [Petition] at 1 and 9, Prayer ¶ 3) (asking the Court to "Order Petitioner released from custody based on [alleged] violations of the law"). Federal Respondents[12] disagree.

2.4 Mr. Poleo has filed a petition for writ of habeas corpus regarding a legal issue that is similar to one that has recently been decided by this Court.

On March 6, 2026, Mr. Poleo filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241(a), alleging that he is being unlawfully confined in violation of the Constitution and laws of the United States. (Dkt. 1 at 1, 3-9). The petition is largely based on arguments that Mr. Poleo was improperly detained by ICE (under 8 U.S.C. § 1225) without a purportedly required showing of "a material change in circumstances that would justify his detention," and that the Court should,

[12] Federal Respondents include all respondents other than RYAN ARBON, Weber County Sheriff.

therefore, order his release. (Dkt. 1 at ¶¶ 31, 48 and Prayer ¶ 3). Federal Respondents maintain that Mr. Poleo's detention is lawful and mandated by law. 8 U.S.C. 1225(b)(2)(A).

3. LEGAL ARGUMENT

3.1 The Court should deny the petition because, as a matter of law, Mr. Poleo cannot meet his burden to show that he has been unlawfully detained by Federal Respondents (aka ICE).[13]

As the party seeking habeas relief under 28 U.S.C. § 2241, Mr. Poleo bears the burden of proving by a preponderance of the evidence that he is being unlawfully detained by the Federal Respondents. *See, e.g.*, *Espinoza v. Sabol*, 558 F.3d 83, 89 (1st Cir. 2009) ("The burden of proof of showing deprivation of rights leading to unlawful detention [under § 2241] is on the petitioner."). Indeed, in such cases, the Second Circuit agrees that "it is the petitioner who bears the burden of proving [under § 2241] that he is being held contrary to law; and because the habeas proceeding is civil in nature, the petitioner must satisfy his burden of proof by a preponderance of the evidence." *Skaftouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011). To determine whether the petitioner has met his burden, "the court [hearing the petition] shall summarily hear and determine the facts, and dispose of the matter as law and justice require." 28 U.S.C. § 2243.

Because Mr. Poleo's interpretation of 8 U.S.C. §§ 1225 and 1226 is incorrect, he cannot meet his burden, and the Court should deny his petition and enter judgment for Respondents.

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[13] The Federal Respondents include all the respondents other than RYAN ARBON, Weber County Sheriff.

3.2 As recently decided by a Fifth Circuit panel and by this very Court, noncitizens in Mr. Poleo's position are subject to mandatory detention under 8 U.S.C. § 1225(a) and are not entitled to any bond hearing or "changed circumstances" determination before they are detained.

The Tenth Circuit has yet to rule on the core issue of this case. That issue is whether 8 U.S.C. § 1225 imposes mandatory detention on noncitizens who are present in the United States without admission irrespective of whether they entered the country through a designated port of arrival and irrespective of how long they have been in the United States, and whether the same statute thus denies immigration judges the authority to release such noncitizens on bond under 8 U.S.C. § 1226 pending their ongoing removal proceedings—or, as petitioner claims, alternatively, requires such judges to make some kind of "changed circumstances" determination before detaining revocably "paroled" aliens. *See Matter of Yajure Hurtado,* 29 I. & N. Dec. 216 (BIA 2025) (holding immigration judges lack authority to hold bond hearings or grant bond to such noncitizens who are present in the United States without admission).[14]

But a Fifth Circuit panel has recently ruled on this issue—decisively in the United States' favor—and interpreted Section 1225 to impose mandatory detention on unadmitted aliens in such circumstances. *See Buenrostro-Mendez v. Bondi*, 166 F. 4th 494, 498, 505-06 (5th Cir. 2026) (decided February 6, 2026). And so has this Court. For similar reasons, in a published opinion, this very Court came to the same conclusion as *Buenrostro*. *See Cisneros v. Noem*,-- F. Supp. 3d --, 2026 WL 396300, at *1-6, n. 6 (D. Utah Feb. 12, 2026).

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[14] *See also* DHS Interim Guidance, AILA Doc. No. 25071607 (July 8, 2025), available at: https://perma.cc/5GKM-JYGX (definitively interpreting 8 U.S.C. § 1225 to impose mandatory detention in such cases).

The United States contends that this Court should continue to follow *Buenrostro* and *Cisneros* and to dismiss Mr. Poleo's petition, leaving him to proceed with his removal proceedings while he is detained as mandated by the governing immigration laws.

3.2.1 *Buenrostro* holds that noncitizens who were never admitted to the United States are subject to mandatory detention under 8 U.S.C. § 1225(a) and are not entitled to a bond hearing (or similar hearing)—regardless of how long they have been in the United States.

Confronting the issues at the core of this case, in very similar, if not identical circumstances, in *Buenrostro*, the Fifth Circuit reasoned and held as follows:

The statutory interpretation issue posed by these alien petitioners is novel but not recondite. The petitioners concede that they are deemed to be "applicants for admission," i.e., "alien[s] present within the United States who ha[ve] not been admitted" by lawful means. 8 USC §§ 1225(a)(1), 1101(a)(13)(A) (definition of admission). Each of them entered illegally many years ago. As such, the government contends, because neither petitioner showed himself to be "clearly and beyond a doubt entitled to be admitted," he "shall be detained" pending his removal proceeding. 8 U.S.C. § 1225(b)(2)(A). The petitioners counter that, despite falling squarely within § 1225, they are nonetheless eligible for discretionary release on bond during removal proceedings. Section 1226(a)(2), they contend, applies to them precisely because they did not "seek [lawful] admission" according to § 1225. 8 U.S.C. § 1226(a)(2). These provisions were framed by the IIRIRA immigration reform legislation in 1996, Pub. L. 104-208, 110 Stat. 3009 (1996), but their interrelation had not been adjudicated until the past few months, when the current Presidential Administration began detaining illegal alien residents, like the petitioners here, for removal proceedings without bond, rather than bonding and releasing them. After reviewing carefully the relevant provisions and structure of the Immigration and Naturalization Act, the statutory history,

and Congressional intent, **we conclude that the government's position is correct.** *Buenrostro*, 166 F. 4th at 498 (bold added).[15]

Notably, in *Buenrostro*, the Fifth Circuit roundly rejected arguments like those made by Mr. Poleo that the decisions of prior presidential administrations, over the last 29 years, "to use less than their full enforcement authority" under Section 1225(b)(2)(A), and to essentially ignore the law requiring mandatory detention, somehow precluded the current administration from now enforcing the law as written. *Buenrostro*, 166 F. 4th at 505-06.[16] In essence, the *Buenrostro* Court rejected the notion that the "dead hands" of prior administrations could somehow handcuff the current administration from faithfully executing and enforcing immigration laws today.[17]

Indeed, when confronted with the argument that the "the government ha[d], for twenty-nine years [since the passage of the IIRIRA in 1996[18]], allowed illegal resident aliens, those present without having been admitted, to seek release on bond under § 1226(a) instead of detaining them pursuant to § 1225(b)(2)(A)," the *Buenrostro* Court was undaunted in faithfully applying the plain text of the statutes. *Buenrostro*, 166 F. 4th at 506. The Court noted, that "While [the petitioners' characterization of prior administrative practices was] true, the government's past practice has little to do with the statute's text. *Id.* "The text says what it says, regardless of the decisions of

[15] For ease of reading, block-quotation format was not used.

[16] "In any event, that prior Administrations decided to use less than their full enforcement authority under § 1225(b)(2)(A) does not mean they lacked the authority to do more." *Buenrostro*, 166 F. 4th at 506.

[17] *Cf. F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 527 n. 7 (2009) ("We do not believe that the dead hand of a departed congressional oversight Committee should constrain the discretion that the text of a statute confers. . . .); *and see also* U.S. Const. art. II, § 3 (mandating that the President of the United States of America "shall take Care that the Laws [of the United States] be faithfully executed").

[18] The IIRIRA stands for the "Illegal Immigration Reform and Immigrant Responsibility Act of 1996."

prior Administrations. Years of consistent practice cannot vindicate an interpretation that is inconsistent with a statute's plain text." *Id.* (citing *Pereira v. Sessions*, 585 U.S. 198, 204 (2018)).

The *Buenrostro* Court also highlighted "that the government's interpretation [of 8 U.S.C. §§ 1225 and 1226] better honors [the] predominant goal in [Congress's] enactment of IIRIRA." *Buenrostro*, 166 F. 4th at 508. That goal was to eliminate the dichotomy between how noncitizens had been treated based on how and where they entered the United States. *Id.* "Following the passage of IIRIRA, then, an alien's status as an applicant for admission does not turn on where or how the alien entered the United States." *Id.* at 499. Therefore, "[b]y eliminating the exclusion/deportation dichotomy, IIRIRA put aliens seeking admission lawfully on equal footing with those who entered without inspection." *Id.* The Court further noted that "[i]t seems strange to suggest that Congress would have preserved bond hearings exclusively for unlawful entrants," while denying them to those who tried to enter the United States lawfully through the front door. *Id.* The *Buenrostro* Court rightly rejected such arguments. And so should this Court. Again.[19]

The Court should continue to follow *Buenrostro*, apply the plain language of Section 1225(a)(2)(B), hold that Mr. Poleo is subject to mandatory detention under that Congressionally crafted statute, and deny Mr. Poleo's petition for habeas relief.

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[19] Despite the petitioners' having unlawfully been present in the United States for, respectively, 16 and 24 years, the *Buenrostro* Court was undeterred in faithfully interpreting the plain language of the immigration statutes. *See Buenrostro*, 166 F. 4th at 500 ("Petitioners Victor Buenrostro-Mendez and Jose Padron Covarrubias are citizens of Mexico who entered the US illegally. Buenrostro-Mendez entered in 2009; Covarrubias entered in 2001. DHS encountered each petitioner in 2025, and, upon inspection, immigration officers determined that each was inadmissible as an alien present in the United States without having been admitted or paroled.").

3.2.2 In *Cisneros*, this Court likewise held that noncitizens who were never admitted to the United States are subject to mandatory detention under 8 U.S.C. § 1225(a) and are not entitled to a bond (or similar) hearing.

Notably, this Court has already decided the issues in this case in a recent, published opinion—*Cisneros v. Noem*,--F. Supp. 3d--, 2026 WL 396300, at *1-6, n. 6 (D. Utah Feb. 12, 2026) (*Cisneros*)—that should guide the Court's analysis here as well. In *Cisneros*, the Court denied a similar petition for a writ of habeas corpus that challenged an illegal alien's detention under 8 U.S.C. § 1225(b)(2)(A). Without addressing another recent district court ruling in this district on a similar issue by name—*Tanchez v. Noem*, No. 2:25-CV-1150, 2026 WL 125184, at *1 (D. Utah Jan. 16, 2026)—this Court rejected the reasoning of *Tanchez* and numerous other nonbinding courts that it found unpersuasive. *Cisneros*,-- F. Supp. 3d --, 2026 WL 396300, at *5. Instead, the Court adopted similar reasoning to that of *Buenrostro*, which also ruled—contrary to *Tanchez*—that the plain language of section 8 U.S.C. § 1225 *requires* the United States to detain aliens present in the United States who have not lawfully been admitted to the United States, without a bond hearing (or, for that matter, a "change of circumstances" determination), irrespective of whether the aliens arrived at a designated port of arrival. *Cisneros*,-- F. Supp. 3d --, 2026 WL 396300, at *1-6; *Buenrostro*, 166 F. 4th at 500-501, 505-06, 508; *supra* § 3.2.1.

In *Cisneros*, this Court addressed head on similar arguments to those asserted by Mr. Poleo, here, and roundly rejected them. In *Cisneros*, the petitioner (Mr. Cisneros) was a Mexican citizen who admitted that he had "entered the United States in 2004 without inspection or authorization." *Cisneros*,-- F. Supp. 3d--, 2026 WL 396300, at *1-2. But he nevertheless claimed that because he was not apprehended at or near the border, he was entitled to a bond hearing under 8 U.S.C. § 1226(a) and could not lawfully be detained without one. *Id.* In essence, he claimed the fact that he

unlawfully entered the United States, instead of lawfully applying for admission at a designated port of arrival, entitled him to additional procedural safeguards (including a bond hearing under § 1226(a)) that even those who try to come to America legally and lawfully—like Mr. Poleo unsuccessfully did—are not entitled to. The Court disagreed and denied his petition. *Id.* at *1-6.

The Court found that, under the plain language of 8 U.S.C. § 1225(a)(1), Mr. Cisneros was "an applicant for admission," because he had "not been admitted" to the United States. *Cisneros*, --F. Supp. 3d--, 2026 WL 396300, at *2. Under this governing statue, the Court noted that "[f]or purposes of the immigration code," "admitted" is defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." *Id.* (citing 8 U.S.C. § 1101(a)(13)(A)). Because Mr. Cisneros conceded that he was never inspected and did not argue that any immigration officer authorized him to enter the United States, the Court concluded that he was "thus an 'applicant for admission' under the plain terms of Section 1225(a)(1)." *Cisneros*, --F. Supp. 3d--, 2026 WL 396300, at *2.[20]

The Court next examined Section 1225(b)(2)(A). That statutory provision provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a [removal] proceeding under section 1229a of this title."

[20] Although Mr. Poleo may have been "paroled" into the United States, like Mr. Cisneros, he was also never "admitted" into the United States and remains an "applicant for admission" under Section 1225(a)(1). Temporary parole under 8 U.S.C. § 1182(d)(5), does not cure inadmissibility under § 1182(a)(7). The relevant statutory provision provides that discretionary parole "shall not be regarded as an admission." 8 U.S.C. § 1182(d)(5)(A). The statutory language is plain. And where, as here, "the statutory language is clear," the Court "need not look beyond it." *In re Ballard*, 526 F.3d 634, 638 (10th Cir. 2008) (citations omitted). Based on a plain reading of the relevant statute, "[a] grant of discretionary parole under § 212(d)(5) [§ 1182(d)(5)], does not confer admitted status on the grantee." *Cardoso v. Noem*, No. 2:25-CV-00968-WJ-JMR, 2026 WL 194626 (D.N.M. Jan. 26, 2026) (unpublished). Thus, when parole is revoked in the discretion of the Secretary, the alien is returned to his prior custodial status, and "the alien shall forthwith return or be returned to the custody from which he was paroled." 8 U.S.C. § 1182(d)(5)(A).

Cisneros,--F. Supp. 3d--, 2026 WL 396300, at *2. Given the structure of this sentence, the Court saw no plausible basis for interpreting the phrase "an alien seeking admission" to have a narrower meaning than "an alien who is an applicant for admission." *Id.*

Having examined the statutory language of both sections of 1225(a)(1) and 1225(b)(2)(A), the Court concluded that Mr. Cisneros was an "applicant for admission" and was "seeking admission" within the meaning of Section 1225(b)(2)(A). *Cisneros*,--F. Supp. 3d--, 2026 WL 396300, at *2. Because he offered no evidence or argument, and thus did not prove, that he was "clearly and beyond a doubt entitled to be admitted" into the United States, the Court held that section 1225(b)(2)(A) required his detention while his removal proceedings were pending. *Id.* The same logic and reasoning would apply to Mr. Poleo here.

Further, beyond hewing faithfully to the "plain terms" and "plain text" of the statutory provisions at issue, in *Cisneros*, this Court further confronted and rejected the petitioner's argument that the court's reading of the statute was "inconsistent with the statutory structure, legislative history, and decades of settled agency practice." *Cisneros*,--F. Supp. 3d--, 2026 WL 396300, at *2-5. The Court noted that focusing on prior (but incorrect) agency practice "resulted in an anomaly": "non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who presented themselves at a port of entry for inspection were subjected to more summary exclusion proceedings" (like Mr. Poleo should have been). *Id.* at *4. (citing *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010)). The Court then refuted the petitioner's "legislative history" and "statutory structure arguments," explaining that the IIRIRA sought to address this anomaly "by substituting 'admission' for 'entry' and by replacing deportation and exclusion proceedings

with a general 'removal' proceeding." *Id.* at *4. As noted by the Ninth Circuit, "[b]y expanding Section 1225 to address not only aliens who presented themselves at a port of entry, but all applicants for admission—that is, aliens present in the United States who have not been admitted as well as those arriving at the border—Congress 'ensure[d] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA.'" *Id.* at *4 (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc)). The Court thus reasoned that, consistent with legislative history and statutory structure, "[t]he statute [section 1225] thus eliminated the "equities and privileges" previously afforded "illegal aliens who . . . entered the United States without inspection that were not available to aliens who present[ed] themselves for inspection at a port of entry." *Id.* at *4 (again citing *Torres*, 976 F.3d at 928 (quoting H.R. Rep. 104-469, pt. 1, at 225 (1996)) (cleaned up). Then the Court put the final nail in the coffin of Mr. Cisneros's arguments, noting that "Mr. Cisneros's proposed reading of Section 1225 would undo this legislative fix and reintroduce the anomaly Congress sought to eliminate." *Id.* at *4, n. 4.[21]

Not stopping there, this Court next dismantled the argument that the current presidential administration was somehow barred from enforcing the correct interpretation of Section 1225(b)(2) based on prior administrations' failures to fully enforce the law. The Court noted that "[e]ven if the Bureau of Immigration and Customs Enforcement has not in practice applied Section

[21] To further refute the "legislative history" argument proffered by Mr. Cisneros, the Court noted:

For those who care about such things, the court notes that the House Judiciary Committee Report further confirms this understanding. This report makes clear that the IIRIRA was intended to replace certain aspects of the then-current "entry doctrine" that resulted in illegal aliens who had entered the United States without inspection receiving more favorable treatment in immigration proceedings than aliens who presented themselves for inspection at a port of entry by providing that "aliens who ha[d] entered without inspection" would no longer be "considered to have been admitted." H.R. Rep. No. 104-469, pt. 1, at 225–26.

1225(b)(2) to aliens like Mr. Cisneros [or, by analogy Mr. Poleo] during previous presidential administrations, its current understanding that such aliens are subject to this statute is perfectly clear." *Cisneros*,--F. Supp. 3d--, 2026 WL 396300, at *4 (citing *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 228 (BIA 2025)). The Court reiterated that this current "understanding comports with both the plain terms of Section 1225 and the agency's formal regulations." *Id.* at *4. The Court questioned the validity of a prior administration's "assertions of administrative authority (perhaps akin to prosecutorial discretion) not to enforce the statute as written," concluding that even if a prior administration had such authority, "its representation of how it intended to exercise that purported authority certainly would not forever bar [a later administration] from taking a different approach." *Id.* at n. 6. This reasoning should end the debate as to Mr. Poleo.[22]

Finally, as the Court noted in *Cisneros*, "[i]n all events, the proper interpretation of this statute [section 1225] is a question of law for this court." (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024). Because the "plain terms" and "plain text" of the statute impose mandatory detention without bond, this Court should likewise deny Mr. Poleo's petition.[23]

3.3 The numerous federal courts that have come out the other way are nonbinding and unpersuasive.

This district has recently considered the main issue raised in this petition in other matters: *See, e.g.*, *Tanchez v. Noem*, No. 2:25-cv-1150, 2026 WL 125184 at *10 (D. Utah Jan. 16, 2026) (*Tanchez*) and *Carbajal v. Wimmer*, No. 2:26-CV-00093, 2026 WL 353510, at *1 (D. Utah Feb.

[22] The Court similarly adopted *Buenrostro*'s reasoning that even "[y]ears of consistent practice cannot vindicate an interpretation that is inconsistent with a statute's plain text." *Cisneros*,-- F. Supp. 3d--, 2026 WL 396300, at *4 (citing *Buenrostro*, 166 F. 4th at 506) (using updated citation to the reporter).

[23] The Court also refuted the argument that mandatory detention under Section 1225(b)(2)(A) somehow violated the detainee's due process rights. But that issue is addressed *infra* in Section 3.5.

9, 2026) (*Carbajal*). In both those cases, another judge in this district found to be unlawful the revised interpretation of the Immigration and Nationality Act proposed by the U.S. Department of Homeland Security, under which a large class of immigrants—that included the petitioners and would include Mr. Poleo—is subject to mandatory detention under 8 U.S.C. § 1225. *See Tanchez*, No. 2:25-cv-1150, 2026 WL 125184 at *4-17; *Carbajal*, No. 2:26-CV-00093, 2026 WL 353510, at *1-9. The district court thus ordered the respondents to provide a bond hearing before an immigration judge to the petitioner under 8 U.S.C. § 1226(a). *Tanchez*, No. 2:25-cv-1150, 2026 WL 125184 at *17; *Carbajal*, No. 2:26-CV-00093, 2026 WL 353510, at *9.

In *Montillo* and *Uzcategui*, another district court judge in this district went even further, ordering the release of the petitioners *without a bond hearing* based on their each having pending asylum petitions and each having been released pursuant to conditions of an Order of Release on Recognizance (ORR) that had not been violated. *Montillo v. Brooksby*, No. 4:26-CV-00018-DN-PK, 2026 WL 592355, at *1-11 (D. Utah Mar. 3, 2026); and *Uzcategui v. Brooksby*, No. 4:26-CV-00020-DN-PK, 2026 WL 622751, at *1-13 (D. Utah Mar. 5, 2026) (both relying on the conditions of the ORRs and attempting to distinguish *Buenrostro* and *Cisneros* on the grounds that they did not address situations where petitioners had pending asylum petitions).

However, similar contrary authority was news to neither the *Buenrostro* court nor to this Court in *Cisneros* when ruling the opposite. Such contrary authority is not binding. Nor is it persuasive. Indeed, when the Fifth Circuit panel issued the *Buenrostro* opinion, they noted that "[s]ince [the Department of Homeland Security (DHS)] began to detain unadmitted aliens under § 1225(b)(2)(A), well over a thousand aliens ha[d] filed habeas corpus petitions seeking bond hearings." *Buenrostro*, 166 F. 4th at 500. The Court acknowledged that, "[i]n most of these cases,

the district court [had] found in favor of the petitioner." *Id.* (citing *Barco Mercado v. Francis*, No. 25-cv-6582,--F. Supp. 3d--, 2025 WL 3295903, at *13 (S.D.N.Y. Nov. 26, 2025) (listing, at the time, 350 decisions that found for the habeas petitioner).[24] But irrespective of the hundreds of federal district court decisions that had wrongly interpreted Section 1225 contrary to its plain text, the *Buenrostro* court undauntedly ruled the other way—faithful to the statute's plain text.

In the *Cisneros* opinion, this Court also faithfully went against the grain of other unpersuasive, nonbinding precedent to interpret Section 1225 according to its "plain terms" and "plain text." When confronted with the fact that "numerous district court decisions [had] interpreted Section 1225 in [a contrary manner to his ruling], the Court stuck to its guns, noting that "the persuasiveness of nonbinding precedent turns on quality, not quantity." *Cisneros*,-- F. Supp. 3d--, 2026 WL 396300, at *5. The Court then quoted the Tenth Circuit for the proposition that "the fact that 'several cases from other jurisdictions' have reached one result simply does not matter if their reasoning is 'not persuasive.'" *Id.* (citing *Timmons v. White*, 314 F.3d 1229, 1235 (10th Cir. 2003)). The Court was not persuaded by the contrary authority.

As in *Buenrostro* and *Cisneros*, the Court should again be willing to "go against the grain" in order to remain faithful to the "plain text" of the statute(s) at issue.[25]

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[24] The Court noted that some notable exceptions to those decisions existed at that time. *Buenrostro*, 166 F. 4th at 506, n.4 (citing *e.g.*, *Garibay-Robledo v. Noem*, No. 1:25-CV-177-H,--F.Supp.3d--, 2026 WL 81679 (N.D. Tex. Jan. 9, 2026); *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025)).

[25] In similar habeas petitions, some petitioners have cited litigation related to *Bautista v. Santacruz*,--F.Supp.3d--2025 WL 3713987 (C.D. Cal. Dec. 18, 2025), which purported to vacate DHS policy regarding mandatory detention of noncitizens who were not admitted to the United States under 8 U.S.C. § 1225 and to certify a class of "bond eligible" noncitizens in the United States without lawful status who meet certain criteria. *See id.* at *1, 15-29, 32. But *Bautista* has been administratively "stayed pending a ruling on the government's emergency motion for stay pending appeal, insofar as the district court's judgment extends beyond the Central District of California." (Ex. 2 [Courtesy Copy of *Bautista v. U.S. DHS, et al.*, No. 26-1044 (March 6, 2026 Order)] at 1, ¶ 1).

3.4 Mr. Poleo's argument that, under 8 U.S.C. § 1226, he was entitled to a "changed circumstances" determination before he could be detained after being "paroled" fails because his detention is mandated and controlled by § 1225, and not § 1226.

Mr. Poleo asserts a novel argument that under Section 1226 and related immigration regulations, as he creatively interprets them, after he was temporarily and revocably "paroled," he could not be detained, unless an authorized person first made a determination that there had since been "changed circumstances" that would justify his detention. (Dkt. 1 ¶¶ 24-32, 37, 48). However, this theory runs contrary to the "plain terms" and "plain text" of Section 1225 as interpreted by *Buenrostro* and *Cisneros*. Mr. Poleo is not operating under a Section 1226 regime that could theoretically, in some circumstances, require the kind of determination Mr. Poleo is claiming he was entitled to before he was detained.[26] Because he has not been "admitted" to the United States, his detention is governed and controlled by Section 1225. Section 1226 is thus inapplicable to Mr. Poleo, and he is subject to mandatory detention under Section 1225(b)(2)(A).

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The United States also questions whether applying *Bautista*, a Central District of California opinion, "extraterritorially" against the United States *in this district* would be lawful and constitutional given that it could be viewed as backdoor attempt to impose a "national injunction." *See Trump v. Casa, Inc.*, 606 U.S. 831, 868 (2025) (JJ. Alito and Thomas, concurring) ("Rule 23 may permit the certification of nationwide classes in some *discrete scenarios*. But district courts should not view today's decision as an invitation to certify nationwide classes without scrupulous adherence to the rigors of Rule 23. *Otherwise, the universal injunction will return from the grave under the guise of 'nationwide class relief,'* and today's decision will be of little more than minor academic interest.") (emphasis added).

In any event, decisions of federal district courts generally are not binding on other federal district courts. *United States v. Rhodes*, 834 F. App'x 457, 462 (10th Cir. 2020) (unpublished) ("[D]istrict courts in this circuit are bound by [Tenth Circuit] decisions and those of the United States Supreme Court—they are not bound by decisions of other district courts, much less district courts in other circuits."). Therefore, even absent a stay, it is questionable whether *Bautista*'s purportedly broad class action ruling and vacatur order would be binding on this Court.

[26] Neither the United States nor Federal Respondents concede this is the case for Mr. Poleo.

3.5 Mr. Poleo has no Constitutional "due process" right to have any hearings under 8 U.S.C. § 1226(a) aside from the hearings provided in his removal proceedings.

Mr. Poleo's claims that he has been denied his "Fifth Amendment Right[s]" to "procedural and substantive due process" also fail. (Dkt. 1 ¶¶ 13, 21-23, 43-48). Mr. Poleo claims to have been denied "procedural due process" because he was allegedly denied a right to "notice" and an opportunity to be heard regarding the basis of his detention. (*Id.* ¶¶ 44-45). He also claims to have been denied "substantive due process" because he was purportedly "arbitrarily" denied his liberty without a determination that here had been "a material change in [his] circumstances" since he was "paroled" into the United States, without having been admitted. (*Id.* ¶¶ 46-48). However, both arguments fail. Mr. Poleo will receive "procedural due process" in his ongoing removal proceedings. And his detention did not violate "substantive due process," because it was not arbitrary. His "temporary" parole was revocable without any determination of a "material change in circumstances." 8 U.S.C. §§ 1182(d)(5)(A) and 1226(b).[27] And because he was never "admitted" to the United States, his detention was *mandatory* under Section 1225.

Indeed, in *Cisneros*, this Court already rejected a similar argument. In *Cisneros*, Mr. Cisneros argued, in the alternative, that his detention without a hearing to determine whether he should be detained or released pending a final removal decision amounted to an impermissible, "indefinite" detention, and thus violated his constitutional right to "due process." *Cisneros*,--F. Supp. 3d--, 2026 WL 396300, at *6. The Court rightly rejected this argument.

The Court acknowledged that, "the Due Process Clause applies to all persons within the United States, including aliens." *Cisneros*,--F. Supp. 3d--, 2026 WL 396300, at *6 (citing

[27] The United States does not concede that Mr. Poleo was "paroled" under Section 1226.

Zadvydas v. Davis, 533 U.S. 678, 693 (2001) (cleaned up)). The court also recognized that the Due Process Clause generally requires "the opportunity to be heard before an individual is deprived of liberty." *Id.* (citing *Mathews* v. *Eldridge*, 424 U.S. 319, 332–33 (1976) (cleaned up)). But because "detention is mandatory under § 1225(b)(2)(A)," the Court concluded that "a bond hearing could not remedy Mr. Cisneros's deprivation of liberty and would thus serve no purpose." *Cisneros*,-- F. Supp. 3d--, 2026 WL 396300, at *6. Applying that same logic to this case, because, like Mr. Cisneros, Mr. Poleo is also subject to mandatory detention under Section 1225, a determination of a "material change in circumstances" would also serve no purpose for Mr. Poleo.

In *Cisneros*, the Court also considered whether it violated Mr. Cisneros's "due process rights" to subject him to mandatory detention under Section 1225 pending the completion of his removal proceedings. *Cisneros*,-- F. Supp. 3d--, 2026 WL 396300, at *6. The answer was no. It did not. Rather, the Court was persuaded by *Buenrosto*'s analysis that "*Zadvydas* . . . has no direct application to aliens who are detained and being given due process—that is, notice and the opportunity to be heard—'during removal proceedings.'" *Cisneros*,-- F. Supp. 3d--, 2026 WL 396300, at *6 (citing *Buenrostro*, 166 F.4th at 508) (cleaned up).[28] In *Cisneros*, the Court further noted that the Supreme Court held in *Demore v. Kim* that "[d]etention during removal proceedings is a constitutionally permissible part of that process," so long as it has a "definite termination point." *Id.* at *6 (citing *Demore*, 538 U.S. 510, 529, 531 (2003)). Based on these legal authorities, the Court found that detention pending a final removal decision comports with due process.

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[28] Mr. Poleo cites *Zadvydas* in his petition for the proposition that "due process" applies to noncitizens like himself. (Dkt. 1 ¶ 44). But *Zadvydas* does not prevent him from being mandatorily detained under Section 1225.

Here, the Court should reach the same conclusion. A person, like Mr. Poleo, who is subject to mandatory detention during removal proceedings, is not improperly deprived of any "liberty interest" in violation of "due process" so long as he obtains the notice and opportunities to be heard provided for during his removal proceedings. There is no evidence that any such deprivation has occurred. And Mr. Poleo's detention is not "arbitrary." It is mandated by law.

3.6 ICE's detention of Mr. Poleo under 8 U.S.C. § 1225 does not violate the Administrative Procedures Act.

Mr. Poleo's claim that his detention somehow violates the Administrative Procedures Act (APA) also fails. Mr. Poleo claims that his *Congressionally mandated* detention under Section 1225(b)(2)(A) is somehow "an abuse of discretion," "arbitrary," or "not in accordance with the law." (Dkt. 1 ¶¶ 2, 28, 33-42, 47-48) (citing 5 U.S.C. § 706(2)(A)). This is not the case.

There is nothing "arbitrary" or "capricious" about enforcing the law according to its "plain text" and "plain terms." Nor is there any abuse of discretion in imposing "mandatory detention" under a statutory provision that does not provide for the exercise of discretion in making a custody determination. Further, as noted above, in depth, faithfully complying with the statutory directive of mandatory detention for noncitizens who have not been admitted to the United States under Section 1225(b)(2)(A) is not "contrary to law." Rather, it is faithful to, and complies with, the law. Therefore, the Court should also reject Mr. Poleo's APA claims.

4. CONCLUSION

About two years ago, Mr. Poleo showed up at the border without the required immigration documents that would allow him to be lawfully "admitted" to the United States. For whatever reason, a prior presidential administration that was less than zealous in enforcing immigration laws and securing the United States' southern borders, apparently temporarily and revocably "paroled"

Mr. Poleo into the United States. But he was never "admitted." Regardless of whether his "parole" was ever valid in the first place, that "parole" now has been revoked by the current administration, and he remains subject to mandatory detention under Section 1225. His detention is lawful, and he cannot meet his burden to show he should be released from custody. Therefore, the Court should deny his petition and deny his release and leave him to proceed with his removal proceedings.

DATED: March 18, 2026.

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/s/ Todd C. Bouton

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