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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

ADAM BRYANT PENA-BECERRA, Petitioner, v. KRISTI NOEM, et al., Respondents.	Case No. 2:26-cv-00212-JNP RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE WHY PETITION FOR *HABEAS CORPUS* SHOULD BE DENIED Judge Jill N. Parrish

Pursuant to this Court's Order to Show Cause entered on March 12, 2026 (ECF No. 5), Respondents *Kristi Noem*, in her official capacity as Secretary of the Department of Homeland Security, *Pamela J. Bondi,* in her official capacity as Attorney General of the United States, *Evan Tjaden*, in his official capacity as Acting Director of the Salt Lake Field Office of the Immigration and Customs Enforcement and Removal Operations Division, and *United States Immigration and Customs Enforcement*, in the above-entitled action, in response to Petitioner's Petition for Writ of *Habeus Corpus* (ECF No. 1; the "Motion") ask this Court to deny the Motion in its entirety for the reasons stated below and dismiss the action.

INTRODUCTION AND FACTUAL SUMMARY

According to Petitioner's Motion, it is not in dispute that he entered the United States without

legal status. (ECF No. 1, pg. 3). According to records attached to the Motion, Petitioner was "encountered by Border Patrol Agents in the bush in the Del Rio Sector area of operations. After a brief interview, it was determined that this subject was not a citizen or resident of the United States. Subject was placed under arrest, transported to a Border Patrol Station for further proceedings, and advised of their rights." (ECF No. 1-3, Record of Deportable/Inadmissible Alien). This encounter was on or about August 2, 2023.

On or about August 12, 2023, Petitioner was granted release on his own recognizance. (ECF No. 1-4, Notice of Custody Determination). As a condition of this release, Petitioner was given a list conditions, including that "You must not violate any local, State, or Federal laws or ordinances." (ECF No. 1-5, Order of Release on Recognizance). Also on or about August 12, 2023, Petitioner received a Notice to Appear (NTA) document that, among other things, indicated he had not been admitted or paroled into the United States, that he was subject to removal under 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA), which reads "An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible." (ECF 1-2, Notice to Appear dated August 12, 2023; 8 U.S.C. § 1182(a)(6)(A)(i)). The second page of this states that there is a "one-year asylum application deadline." (ECF 1-2, Notice to Appear dated August 12, 2023).

Subsequent to this NTA, a superseding NTA was issued. (*See Exhibit 1*, Notice to Appear Dated December 5, 2023). Exhibit 1 indicates it supersedes the prior NTA dated August 12, 2023 and also states at the top "allegations: admits all; charges: concedes all." *Id.* Both NTA's also contain a provision that states "mandatory duty to surrender to removal." *Id.*

Petitioner then made a claim of asylum that is dated September 16, 2024 and received on or about September 26, 2024 (ECF No. 1-1). This is more than a year after his initial entry to the

United States, and more than a year after his first NTA was issued on or about August 12, 2023.

On or about October 3, 2025, Petitioner appeared in immigration court. At this time, Petitioner was informed that his application for asylum was denied and that he was ordered removed to Venezuela. Petitioner has appealed his removal order that is still pending before the Board of Immigration Appeals (BIA).

On or about March 5, 2026, Petitioner was arrested for operating a vehicle without a license, valid insurance, possession or marijuana, and possession of drug paraphernalia. (*See Exhibit 2,* Affidavit of Probable Cause in Case No. 261000097). Subsequent to his arrest, BIA was notified and Respondents lodged a detainer. As such, he was transferred to Respondents' custody upon his release from a state facility.

LEGAL ARGUMENT

As the party seeking habeas relief under 28 U.S.C. § 2241, Petitioner 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). Because Petitioner's interpretation of 8 U.S.C. §§ 1225 and 1226 is unsupported by the plain language of the statutes, he cannot meet this burden.

I. The General Statutory Framework Supports Detention in Immigration Proceedings.

Petitioner's Motion makes brief reference to three bases for detention in immigration proceedings. A summary has also been provided by the United States Supreme Court as to the provisions pertinent issue here.[1]

> That process of decision generally begins at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible. Under § 302, 110 Stat. 3009–579, 8 U.S.C. § 1225, an alien who "arrives in the United States," or "is present" in this country but "has not been admitted," is treated as "an applicant for admission." § 1225(a)(1). Applicants for admission must "be inspected by immigration officers" to ensure that they may be admitted into the country consistent with U.S. immigration law. § 1225(a)(3).
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> As relevant here, applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2). Section 1225(b)(1) applies to aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation. See § 1225(b)(1)(A)(i) (citing §§ 1182(a)(6)(C), (a)(7)). Section 1225(b)(1) also applies to certain other aliens designated by the Attorney General in his discretion. See § 1225(b)(1)(A)(iii). Section 1225(b)(2) is broader. It serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with specific exceptions not relevant here). See §§ 1225(b)(2)(A), (B).
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> Both § 1225(b)(1) and § 1225(b)(2) authorize the detention of certain aliens. Aliens covered by § 1225(b)(1) are normally ordered removed "without further hearing or review" pursuant to an expedited removal process. § 1225(b)(1)(A)(i). But if a § 1225(b)(1) alien "indicates either an intention to apply for asylum ... or a fear of persecution," then that alien is referred for an asylum interview. § 1225(b)(1)(A)(ii). If an immigration officer determines after that interview that the alien has a credible fear of persecution, "the alien shall be detained for further consideration of the application for asylum." § 1225(b)(1)(B)(ii). Aliens who are instead covered by § 1225(b)(2) are detained pursuant to a different process. Those aliens "shall be detained for a [removal] proceeding" if an immigration officer "determines that [they are] not clearly and beyond a doubt entitled to be admitted" into the country. § 1225(b)(2)(A).
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> Regardless of which of those two sections authorizes their detention, applicants for

1 The third provision, 8 U.S.C. § 1231 applies to parties subject to a prior order of removal. While this Petitioner has been ordered removed, this order remains under appeal. Without waiving this argument, the Respondents focus on the other two provisions for the purpose of this response.

> admission may be temporarily released on parole "for urgent humanitarian reasons or significant public benefit." § 1182(d)(5)(A); see also 8 C.F.R §§ 212.5(b), 235.3 (2017). Such parole, however, "shall not be regarded as an admission of the alien." 8 U.S.C. § 1182(d)(5)(A). Instead, when the purpose of the parole has 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." *Ibid.*

Jennings v. Rodriguez, 583 U.S. 281, 287–288 (2018). As such, the law provides for "applicants for admission" to be detained, regardless of whether the applicant intends to claim asylum and/or has credible fear of persecution.

Contrary to these provisions, Petitioner assets his claim under 8 U.S.C. § 1226. As detailed below, Respondents aver Petitioner has remained an "applicant for admission" and as such should remain detained without bond.

II. Recent Fifth Circuit and District Court Precedent Supports Respondents' Position.

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. *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).[2]

In the Fifth Circuit, a panel has recently ruled on this issue—decisively in the United States'

2 *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). However, on February 18, 2026, District Court Judge Sunshine Suzanne Sykes of the Central District of California granted

favor, and interpreting Section 1225 to impose mandatory detention 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 another judge in this district—District Judge Howard C. Nielson, Jr. For similar reasons, in a published opinion, Judge Nielson 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).

The United States contends that this Court should follow *Buenrostro* and *Cisneros*.

a. *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, 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 (emphasis added).

Plaintiffs' motion to enforce and issued an order vacating the Board's decision in Matter of Yajure Hurtado.

Notably, in *Buenrostro*, the Fifth Circuit roundly rejected arguments like those made by Petitioner 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.[3] 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.[4]

Indeed, when confronted with the argument that the "the government ha[d], for twenty-nine years [since the passage of the IIRIRA in 1996[5]], 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 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."

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3 "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.

4 *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* 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").

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

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.[6]

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

b. *Cisneros* likewise 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.

Notably, in this district, Judge Nielson recently issued a published opinion in *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.[7] In *Cisneros*, the court denied a similar petition for habeas corpus that challenged an illegal alien's detention under 8 U.S.C. § 1225(b)(2)(A). Without addressing

6 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.").

7 The United States acknowledges that both *Buenrostro* and *Cisneros* are nonbinding on this Court. But the United States believes they are well reasoned and correctly decided and should be followed.

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)—the 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 *Cisneros* 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 permits 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, 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*, 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 those who try to come to America legally and lawfully are not entitled to. The Court disagreed and denied his petition. *Id.* at *1-6.

Judge Nielson 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 the statue, the court noted that "[f]or

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Cisneros is currently on appeal. *Cisneros v. Noem*, No. 26-4015 (10th Cir. 2026).

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, Judge Nielson 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.

The *Cisneros* 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." *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.*

Judge Nielson used the "plain terms" and "plain text" of the statutory provisions at issue, *Cisneros*, -- F. Supp. 3d --, 2026 WL 396300, at *2-5, and 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." *Id.* at *2. 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." *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 Cisneros court thus reasoned that, consistent with legislative history and statutory structure, "The statute 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.[8]

8 To further refute the "legislative history" argument proffered by Mr. Cisneros, the *Cisneros* court noted:

Not stopping there, the *Cisneros* 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 1225(b)(2) to aliens like Mr. Cisneros 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.[9]

Finally, as Judge Nielson 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).

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.

9 The *Cisneros* 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).

Because the "plain terms" and "plain text" of the statute, Petitioner was an "applicant for admission" when he arrived in 2023 and remains an "applicant for admission," regardless of the amount of time he has been in the United States or whether he arrived at a designated port of entry (which he did not). Accordingly he is subject to mandatory detention without bond under 8 U.S.C. § 1225(b)(2)(A), "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 proceeding under section 1229a of this title." Accordingly, this Court should impose mandatory detention, without bond, and deny the Motion.

c. Contrary authority is nonbinding and/or distinguishable.

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. 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 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, the instant Petitioner's asylum claim has been denied, and he has violated his conditions of Release on his Own Recognizance, making *Montillo* and *Uzcategui* distinguishable and poor comparisons.

Additionally, such contrary authority was discussed in the *Buenrostro* and *Cisneros*. 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 have 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 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).[10] 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.

In the *Cisneros* opinion, Judge Nielson also went against the grain to interpret Section 1225 according to its "plain terms" and "plain text." When confronted with the fact that "numerous district

10 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)).

court decisions [had] interpreted Section 1225 in [a contrary manner to his ruling], the court, notwithstanding, still held "the persuasiveness of nonbinding precedent turns on quality, not quantity." *Cisneros*, -- F. Supp. 3d --, 2026 WL 396300, at *5. The *Cisneros* 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 Respondents maintain that the plain language of the law, as detailed in *Buenrostro* and *Cisneros* is the most persuasive. Accordingly, Petitioner's claim should still be denied.

III. Petitioner's Claim that He Must be Considered Under 8 U.S.C. § 1226(a) is Misplaced.

Petitioner asserts that "this case necessarily involves the detention provision at § 1226(a) because that is only legal basis by which he could have been released after his arrest near the border." (ECF No. 1, pg. 11). Respondents maintain that Petitioner is an "applicant for admission" and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). Petitioner's claim that his prior release changes that is a misstep.

Under 8 U.S.C.§ 1225(a) defines "applicant for admission" and § 1225(b) discusses their inspection, including procedures for asylum interviews. This procedure remains a subsection of "applicants for admission." If the officer finds the applicant to "has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii). In the alternative, if the opposite is true, "if the officer determines that an alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States without further hearing or review . . . any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of

persecution and, if found not to have such a fear, until removed." 8 U.S.C. § 1225(b)(1)(B)(iii).

Under this framework, Petitioner was encountered and claimed asylum and fear of persecution as detailed in his Motion. Based on the statutory language however, Petitioner was to be detained: (1) pending determination of is credible fear claim; (2) if found to not have fear, until removed; and (3) if found to have credible fear, pending consideration of his asylum application. Petitioner's release does not change the statutory framework that required his detention, nor did it change the statutory framework of Petitioner's removal.

Petitioner further concedes Respondents maintain discretion in which statutory framework they use for his removal. (ECF No. 1, pg. 11, paragraph 71). Petitioner's removal remains in the 8 U.S.C. § 1225 framework, making his detention mandatory. Accordingly, his Motion should be denied.

IV. Petitioner's Release Does Not Change His Status as an Applicant for Admission.

Petitioner claims that his prior release also means his removal proceedings were under 8 U.S.C. § 1229(a). (ECF No. 1, pg. 12-13). However, there are other possible explanations. As previously stated, "Regardless of which of those two sections authorizes their detention, applicants for admission may be temporarily released on parole 'for urgent humanitarian reasons or significant public benefit.' § 1182(d)(5)(A); see also 8 C.F.R §§ 212.5(b), 235.3 (2017). Such parole, however, 'shall not be regarded as an admission of the alien' 8 U.S.C. § 1182(d)(5)(A)." *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018). While Respondents do not concede Petitioner was paroled, even if he had been, the statutory framework for his removal and mandatory detention did not shift. A parole does not constitute and admission, and a parolee would remain an "applicant for admission" for the purposes of removal and detention analysis.

Additionally, Respondents believe Petitioner did violate his conditions of release with his

recent arrest. As such, there may be a basis to revoke his release conditions.

V. Petitioner Has Not Been Deprived of His Due Process Rights.

Petitioner's claim that he has been denied a "Fifth Amendment right to Procedural Due Process" also fails. (ECF No. 1, pg. 15-18). He claims to have been denied a right to notice and an opportunity to be heard. More specifically, he claims that he has been denied "due process" under *Mathews v. Eldrige*, 424 U.S. 319, 335 (1976). His arguments fail.

In *Cisneros*, the court 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 *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*, 424 U.S. at 332–33 (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. The court then considered whether it violated Mr. Cisneros's "due process rights" to subject him to mandatory detention pending the completion of his removal proceedings. *Id.* 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). The *Cisneros* 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.

This Court should find the same. A person, like Petitioner, 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.

VI. Petitioner's Detention under 8 U.S.C. § 1225 Does Not Violate the Administrative Procedures Act.

Petitioner's claim that his detention somehow violates the Administrative Procedures Act (APA) also fails. Petitioner claims that his *Congressionally mandated* detention under Section 1225(b)(2)(A) is somehow "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." (ECF No. 1, pg. 18-19 (citing 5 U.S.C. § 706(2)(A)). This is not the case.

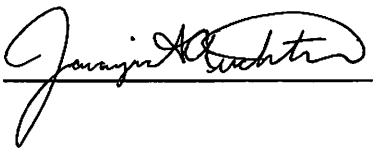
There is nothing "arbitrary" or "capricious" about enforcing the law according to its "plain text" and "plain terms." Nor is there any abuse of discretion in imposing "mandatory detention" under a statutory provision that does not provide for the exercise of discretion in making a custody determination. Further, as noted above, in depth, 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 adhering to the black letter law, and complies with, the law. Therefore, the Court should also reject Petitioner's APA claim.

CONCLUSION

For the reasons discussed above, the Court should dismiss or deny the Petition.

RESPECTFULLY SUBMITTED on this 16th day of March, 2026.

MELISSA HOLYOAK
United States Attorney



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CERTIFICATE OF SERVICE

I hereby certify that on the 16th of March, 2026, the foregoing document has been filed electronically through the District of Utah ECF system, is available for viewing and downloading, and will be sent electronically to the counsel who are registered participants identified on the Notice of Electronic Filing.

/s/ Jawayria Z. Auchter
JAWAYRIA Z. AUCHTER
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