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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

EDWIN ADOLFO LEMUS CRISTALES, Petitioner, vs. RYAN ARBON, Weber County Sheriff; RUBEN LEYVA, Acting Field Office Director, Salt Lake City Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement (ICE/ERO); BRIAN HENKE Field Office Director for Las Vegas/Salt Lake City; KRISTI NOEM, Secretary United States Department of Homeland Security; and PAMELA BONDI, U.S. Attorney General, Respondents.	Case No. 2:26-cv-00217 **FEDERAL RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE WHY PETITION FOR HABEAS CORPUS SHOULD NOT BE GRANTED** District Judge Jill N. Parrish

1. INTRODUCTION

This is a response to an order to show cause why a petition for habeas corpus should not be granted (in essence) to order an immigration judge to provide a bond hearing to an alien who has been detained under 8 U.S.C. § 1225 for not being lawfully admitted to the United States.

More specifically, this case involves a Salvadoran national named Edwin Adolfo Lemus Cristales (Mr. Lemus). Over four years ago, Mr. Lemus unlawfully entered the United States. He

was convicted of impaired driving in Utah and arrested two more times in Utah for intoxication-related offenses. After his most recent arrest by the State of Utah, ICE[1] detained him 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—the very country that he admittedly unlawfully entered over four years ago by evading border patrol agents or other immigration officials to sneak into the United States. He is currently in ICE custody and subject to removal proceedings under 8 U.S.C. §§ 1182(a)(6)(A)(i) and (a)(7)(A)(i)(I).

Through counsel, Mr. Lemus now claims he is being unlawfully detained in violation of immigration laws and the United States Constitution, and that the Court should order he be given a custody redetermination hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a).

None of Mr. Lemus's claims have merit. 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.[2] Nor do prior failures by any administration to "exercise its full enforcement authority" under the Immigration and Nationality Act (INA) and to fulfill its Constitutional mandate to see that the immigration laws of the United States be "faithfully executed" permit courts to rewrite the language of Section 1225

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

[2] *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").

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).[3]

A federal court's duty is to "say what the law is" and to faithfully interpret the law. *Marbury v. Madison*, 5 U.S. 137, 177 (1803). It is not, as Mr. Lemus invites this Court to do, to creatively reimagine or "rewrite" the law to dictate a preferred result.[4] Because Mr. Lemus cannot meet his burden to establish that he has been unlawfully detained, the Court should deny his petition.[5]

2. FACTUAL AND PROCEDURAL BACKGROUND

2.1 Over four years ago, Mr. Lemus left El Salvador and unlawfully entered the United States, evading any immigration officials patrolling the border.

Mr. Lemus is a Salvadoran national who is not a citizen of the United States. (Ex. 1 [Form I-213] at 2; Dkt. 1 [Pet.] at 2 ¶ 5). By his own admission, over four years ago, he illegally entered the United States. (Dkt. 1 [Pet.] at 2 ¶ 4). He did not come through the front door at a designated port of entry and seek legal entry into the United States. (*Ibid.*) Instead, he apparently deliberately evaded immigration officials.

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[3] *Id.* ("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)).

[4] *Bostock v. Clayton Cnty., Georgia*, 590 U.S. 644, 780–81 (2020) (Kavanaugh, J., dissenting) ("Under the Constitution's separation of powers, our role as judges is to interpret and follow the law as written, regardless of whether we like the result. *Cf. Texas v. Johnson*, 491 U.S. 397, 420–421 (1989) (Kennedy, J., concurring))." "Our role is not to make or amend the law." *Bostock*, 590 U.S. at 781.

[5] *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."); *Skaftouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011) ("Because we accord a presumption of validity to a judgment on collateral review, 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.").

2.2 During his multi-year stay in the United States, Mr. Lemus did not regularize his immigration status.

The mere fact that Mr. Lemus remained in the United States for a lengthy period of time following entry without inspection does not, by itself, constitute an "admission" pursuant to 8 U.S.C. § 1101(a)(13)(A) (defining "admission"). Moreover, at the time of Mr. Lemus' arrest and detention by ICE on March 16, 2026, ICE authorities reported that he had "no immigration petitions or applications pending or approved with USCIS."[6] (Ex. 1 [Form I-213] at 3).

In his petition, Mr. Lemus's attorney stated that Mr. Lemus came to the United States "after fleeing gang-related violence in El Salvador in search of safety and a better life." (Dkt. 1 [Pet.] at 15 ¶ 60). Yet, Mr. Lemus did not present any evidence to show that he applied for or received asylum in the United States pursuant to 8 U.S.C. § 1158. To the contrary, he reported to immigration authorities that he had "no fear of persecution or torture if removed to El Salvador." (Ex. 1 [Form I-213] at 3). Additionally, in his petition, Mr. Lemus's attorney states that Mr. Lemus has a U.S. citizen wife. (Dkt. 1 [Pet.] at 15 ¶ 61). Yet, there is no evidence that his wife filed any family-based petition for him to receive an immigrant visa pursuant to 8 U.S.C. § 1151(b)(2)(A)(i). Finally, in his petition, Mr. Lemus's attorney makes the unsupported statement that Mr. Lemus "has a pending U-visa application with USCIS based on a qualifying crime that occurred on March 19, 2023." (Dkt. 1 [Pet.] at 17 ¶ 68). In the absence of a signed consent to disclose information generally protected from disclosure by 8 U.S.C. § 1367, the respondents cannot comment on this

[6] USCIS refers to "U.S. Citizenship and Immigration Services."

allegation.[7] In any event, Mr. Lemus does not claim that he has ever received a U visa or any other kind of authorization to remain in the United States.

2.3 Mr. Lemus was detained by ICE in the wake of his third arrest by state authorities on suspicion of an intoxication-related offense.

On June 20, 2024, Mr. Lemus was convicted of Impaired Driving in violation of Utah Code § 41-6A-502.5. (Dkt. 1 [Pet.] at 17 ¶ 70; Ex. 1 [Form I-213] at 2). On February 7, 2026, Mr. Lemus was arrested for the offense of Public Intoxication in violation of Utah Code § 76-9-110. (Dkt. 1 [Pet.] at 17 ¶ 71; Ex. 1 [Form I-213] at 2). Approximately one month later, on March 15, 2026, Mr. Lemus was again arrested for the offense of Public Intoxication in violation of Utah Code § 76-9-110 and Property Damage in violation of Utah Code § 76-6-106.1. (Dkt. 1 [Pet.] at 18 ¶ 73; Ex. 1 [Form I-213] at 2).

The day after Mr. Lemus' third arrest, on March 16, 2026, ICE Deportation Officer Downey found Mr. Lemus at the Cache Valley Jail and detained him pursuant to 8 U.S.C. § 1225(b)(2)(A). (Ex. 1 [Form I-213] at 2). This appears to be Mr. Lemus' first encounter with immigration officers.[8] He was transferred to ICE custody at Weber County Jail, 1400 Depot Dr, Ogden, Utah. (Dkt. 1 [Pet.] at 18 ¶ 73; Ex. 2 [Notice to Appear] at 1). ICE Acting Supervisory Detention and Deportation Officer Pledger issued a Notice to Appear to Mr. Lemus ordering him to appear before an immigration judge on March 27, 2026 to show why he should not be removed

[7] On March 18, 2026, copy of a Consent to Disclose form was emailed to the petitioner's attorney with a request for the petitioner's signature. To date, no response has been received.

[8] The Petition refers to Mr. Lemus as being among "those who were previously released under § 1226(a) and then re-apprehended by Defendants [i.e, Respondents]." (Dkt. 1 [Pet.] at 20 ¶ 80). However, aside from this reference, there is no evidence that he ever had ever been detained and released by ICE. As mentioned above, the March 16, 2026 encounter was Mr. Lemus's first encounter with immigration officers.

from the United States. (Ex. 2 [Notice to Appear] at 1). The Notice to Appear charges Mr. Lemus with removability pursuant to 8 U.S.C. §§ 1182(a)(6)(A)(i) and (a)(7)(A)(i)(I)[9] for (1) being an alien present in the United States without being admitted or for arriving in the United States at any time or place other than as designated by the Attorney General, and (2) for being an immigrant who, at the time of application for admission, was not in possession of a valid entry document and a document of identity and nationality. (Ex. 2 [Notice to Appear] at 4).

Due to a lack of long-term detention space in Utah, on March 19, 2026, ICE transferred Mr. Lemus to the California City Detention Facility at 22844 Virginia Blvd., California City, California. (Exh. 3 [Form I-830] at 1). Venue for the immigration proceedings was transferred to Adelanto, California, and it is expected that the Adelanto Immigration Court will issue a hearing notice shortly with a new hearing date, time, and place so that Mr. Lemus may have the opportunity to show why he should not be removed from the United States.

2.4 Mr. Lemus has filed a petition for writ of habeas corpus regarding a legal issue that is similar to one that has recently been decided by other judges in this court.

On March 16, 2026, Mr. Lemus 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 [Pet.] at 3). The petition is largely based on arguments that Mr. Lemus was improperly detained by ICE under 8 U.S.C. § 1225 without a custody redetermination (bond hearing) by an immigration judge (authorized for those detained under 8 U.S.C. § 1226(a)), and that ICE cannot continue to detain him without providing him a bond hearing. (Dkt. 1 [Pet.] at 3 ¶¶ 9-12).

[9] These are the codified forms of INA § 212

On March 17, 2026, this Court issued an Order directing the respondents to show cause why the Petition for Writ of Habeas Corpus should not be granted. (Dkt. 5 [OSC] at 3).

As set forth below, the Court should reject Mr. Lemus's arguments.

3. LEGAL ARGUMENT[10]

3.1 Mr. Lemus cannot meet his burden to show that he has been unlawfully detained by Federal Respondents (aka ICE).

As the party seeking habeas relief under 28 U.S.C. § 2241, Mr. Lemus 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 Mr. Lemus's interpretation of 8 U.S.C. §§ 1225 and 1226 is incorrect, he cannot meet this burden.

3.2 As recently decided by a Fifth Circuit panel and by another district court judge in this Court, individuals in Mr. Lemus' position are subject to mandatory detention under 8 U.S.C. § 1225 and are not entitled to a bond hearing.

The Tenth Circuit has yet to rule on the core issue of this case.[11] That issue is whether 8 U.S.C. § 1225 imposes mandatory detention on aliens who are present in the United States without

[10] The United States does not challenge the Court's jurisdiction to hear this matter. *See* 28 U.S.C. § 2241(a); Const. art. I, § 9, cl. 2; *United States v. Mine Workers of Am.*, 330 U.S. 258, 293 (1947) (district courts may preserve existing conditions in order to determine their authority to grant injunctive relief).

[11] The Tenth Circuit is considering this issue in *Cisneros v. Noem, et al.*, No. 26-4015. The United States' brief in that case is due on April 1, 2026 and oral argument is scheduled for May 12, 2026.

admission irrespective of whether they entered the country through a designated port of entry 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 aliens 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 aliens who are present in the United States without admission).[12]

But a Fifth Circuit panel has recently ruled on this issue—decisively in the United States' 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*.

3.2.1 *Buenrostro* holds that aliens who were never "admitted" to the United States are subject to mandatory detention under 8 U.S.C. § 1225(b) 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 concluded 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 §§

[12] *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).

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 [Illegal Immigration Reform and Responsibility Act] 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).[13]

Notably, in *Buenrostro*, the Fifth Circuit roundly rejected arguments like those made by Mr. Lemus 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.[14] In essence, the *Buenrostro* Court

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

[14] "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.

rejected the notion that the "dead hands" of prior administrations could somehow handcuff the current administration from faithfully executing and enforcing immigration laws today.[15]

Indeed, when confronted with the argument that the "the government ha[d], for twenty-nine years [since the passage of the Illegal Immigration Reform and Immigrant Responsibility Act, known as "IIRIRA" in 1996], 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 applied 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." *Buenrostro*, 166 F. 4th at 508. That goal was to eliminate the dichotomy between how aliens 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

[15] *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").

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.[16]

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

3.2.2 *Cisneros* likewise holds that aliens who were never admitted to the United States are subject to mandatory detention under 8 U.S.C. § 1225(b) 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 was consistent with *Buenrostro* and should likewise guide the Court's analysis.[17] 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 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

[16] Despite the *Buenrostro* petitioners' having unlawfully been present in the United States for, respectively, 16 and 24 years, the *Buenrostro* Court applied 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.").

[17] 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.

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

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*, Judge Nielson addressed head on similar arguments to those asserted by Mr. Lemus, 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, like Mr. Lemus, 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)) to which those who try to come to America lawfully are not entitled. 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 statute, 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, 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.*

Beyond hewing faithfully to the "plain terms" and "plain text" of the statutory provisions at issue, *Cisneros*, -- F. Supp. 3d --, 2026 WL 396300, at *2-5, the *Cisneros* 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." *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.[18]

[18] 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 the practice of prior administrations. 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.[19]

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.*

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.

[19] 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).

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 deny Mr. Lemus's petition.[20]

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. 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. Lemus—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

[20] The *Cisneros* 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 3.4.

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).

But such contrary authority was news to neither the *Buenrostro* nor the *Cisneros* court. It 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 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).[21] But irrespective of the hundreds of federal district court decisions that had wrongly interpreted Section 1225 contrary to its plain text, the *Buenrostro* court ruled the other way.

In the *Cisneros* opinion, Judge Nielson also rejected the reasoning of contrary cases that failed 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 explained that "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

[21] 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)).

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)).

Like *Buenrostro* and *Cisneros*, the Court should be willing to "go against the grain" in order to remain faithful to the "plain text" of the statute(s) at issue.[22]

3.4 Mr. Lemus 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. Lemus's claim that he has been denied "Fifth Amendment rights to procedural and substantive due process under the Constitution" also fails. (Dkt. 1 [Pet.] at 11 ¶ 47). 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.

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[22] Mr. Lemus cites 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 aliens who were not admitted to the United States under 8 U.S.C. § 1225 and to certify a class of "bond eligible" aliens in the United States without lawful status who meet certain criteria. *See id.* at *1, 15-29, 32 (cited in Dkt. 1 [Pet.] at 10 ¶¶ 44-45). 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. 4 [Courtesy Copy of *Bautista v. U.S. DHS, et al.*, No. 26-1044 (March 6, 2026 Order)] at 1, ⁋ 1).

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.

Indeed, 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.

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 Mr. Lemus, 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 the United States does have an interest in not preferencing with bond hearings those aliens who unlawfully enter the United States without going through the front door.

4. CONCLUSION

Over four years ago, Mr. Lemus unlawfully entered the United States. He deliberately avoided and evaded immigration officials and snuck into the United States. He was taken into ICE custody for the first and only time following his third arrest by Utah state authorities on suspicion of an intoxication-related offense. He is, by definition, "not admitted" to the United States, and under Section 1225, his detention is mandatory. The Court should deny his petition and deny him a bond hearing to which he is not entitled.

DATED: March 23, 2026.

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