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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

ALEXANDER JOSE SERRANO REYES, Petitioner, v. KRISTI NOEM, et al., Respondents.	Case No. 1:26-cv-00040-AMA **RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE WHY PETITION FOR HABEAS CORPUS SHOULD BE DENIED** Judge Ann Marie McIff Allen

Pursuant to this Court's Order to Show Cause entered on March 31, 2026 (Docket Text Entry No. 10), Respondents *Kristi Noem*, in her official capacity as Secretary of the Department of Homeland Security, *Pamela 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* (Document No. 1; the "Motion") ask this Court to deny the Motion in its entirety and dismiss the action because Petitioner has waived his right to review his current detention

and because his interpretation of 8 U.S.C. §§ 1225 and 1226 is unsupported by the plain language of the statutes.

A. INTRODUCTION AND FACTUAL SUMMARY

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).

According to Department of Homeland Security records (Respondent Exhibit 1), Petitioner was arrested by Border Patrol on December 15, 2023. Petitioner admitted that he entered the United States on or about that date, at or near El Paso, Texas without inspection by United States Immigration Officers (*Id.*). This was not at a designated port of entry by the Attorney General of the United States or the Secretary of the Department of Homeland Security (*Id.*). Petitioner indicated that was his first and only entry into the United States (*Id.*). Petitioner is not a United States citizen or national and is a native and citizen of Venezuela (ECF No. 1, Exhibit 1). Petitioner was issued a Notice to Appear which indicated that Petitioner is "an alien present in the United States who has not been admitted or paroled." (*Id.*). The second page of the Notice to Appear states that there is a

"one-year asylum application deadline." (*Id.*). Petitioner was released on his own recognizance on December 18, 2023, and ordered to appear before an immigration judge of the United States Department of Justice on January 5, 2027 (ECF No. 1, Exhibits 1 and 3), on the following conditions:

- You must not change your place of residence without first securing written permission from the officer listed above.
- You must not violate any local, State, or Federal laws, or ordinances.
- You must assist the Department of Homeland Security in obtaining any necessary travel documents.
- Other: employment not authorized.

Petitioner acknowledged these conditions of release by signing after the following statement:

> I hereby acknowledge that I have (read) (had interpreted and explained to me in the Spanish language) and understand the conditions of my release as set forth in this order. I further understand that if I do not comply with these conditions, the Department of Homeland Security may revoke my release without further notice.

According to Petitioner, "in 2025" Respondent "filed an application for asylum" (ECF. No. 1 at pg. 3). This is more than a year after his initial entry into the United States, and more than a year after his Notice to Appear was issued (December 15, 2023).

Petitioner was encountered by United States immigration officials at the Weber County Jail on March 23, 2026. Officials learned of the Petitioner's following arrests since his release on December 18, 2023:

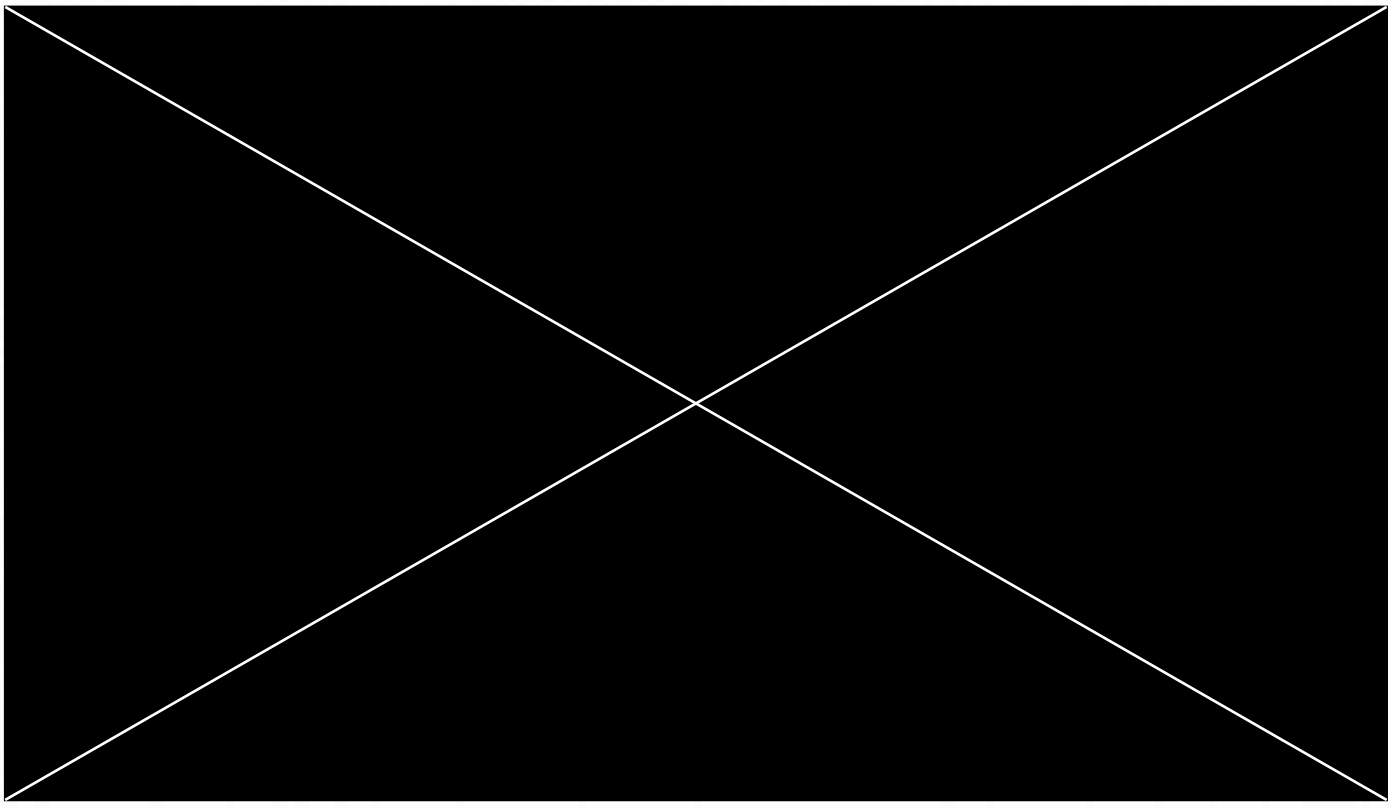
- February 27, 2025, Petitioner was arrested by the Pleasant View Police Department, for the offenses of, (1) "Drive on Suspended or Revoke License", in

violation of UCA 53-3-227(1), and (2) Operating Vehicle without Insurance, in violation of UCA 41-12A-302, a Misdemeanor, for which the case is currently pending (Case No. 25PV1425).

- On February 28, 2025, Petitioner was arrested by the Weber County Sheriff's Office, for the offense of, "Driving on Denied", in violation of UCA 53-3-227, a Misdemeanor, for which the case is currently pending (Case No. 25WC6961).

- On March 23, 2026, Petitioner was arrested by the Weber County Sheriff's Office, for the offense of Driving on Denied, in violation of UCA 53-3-227, a Misdemeanor, for which the case is currently pending (Case No. 26WC9405).

What's more, a check of local state records shows Petitioner's entire record of alleged Utah State and/or local law violations as follows:



Some of the above cases were dismissed, some were resolved via "bail forfeiture" and at least one was resolved via fine payment. Case Number [redacted] in Farr West Justice Court is pending as Petitioner is on an "ICE hold." (Respondent Exhibit 3).

Regarding Case Number 255301845 in Roy/Weber Co. Justice Court, Petitioner pleaded guilty to, "Drive on Suspended or Revoke License – Class C Misdemeanor" on or about June 4, 2025 and was sentenced to, "a term of 90 day(s) in the Weber County Jail. The total time suspended for this charge is 88 day(s)." (Respondent Exhibit 4).

Regarding Case Number 255000204 in Pleasant View Justice Court, Petitioner pleaded guilty to, "Drive on Suspended or Revoke License – Class C Misdemeanor" on or about March 18, 2025 (Respondent Exhibit 5).

Regarding Case Number 255000126 in Farr West Justice Court, Petitioner pleaded guilty to, "Drive on Suspended or Revoke License – Class C Misdemeanor" on or about April 29, 2025, 2025 (Respondent Exhibit 6). An outstanding Order to Show Cause "why [the Petitioner] has failed to comply with the order of this court" is outstanding on this case (*Id.*).

Regarding Case Number 245302643 in Roy/Weber Co. Justice Court, Petitioner pleaded guilty to, "Never Obtained a License – Infraction" on or about August 19, 2024 (Respondent Exhibit 7), but a warrant was issued because "Defendant failed to appear or contact court for scheduled hearing. Judge orders bail to be forfeited and case to be closed." (*Id.*).

Regarding Case Number 245301988 in South Ogden Justice Court, Petitioner pleaded guilty to, "Fail to Remove Plates Transfer Ownership - Infraction" and "No Valid License – Never Obtained License – Infraction" on or about July 12, 2024 (Respondent Exhibit 8), but a warrant was issued because Petitioner "[f]ailed to appear for scheduled hearing." Petitioner was arrested on the warrant on March 3, 2025 and the

case was resolved via Bail Forfeiture. (*Id.*).

Regarding Case Number 245000526 in Roy/Weber Co. Justice Court, Petitioner pleaded guilty to, "Fail to Remove Plates Transfer Ownership - Infraction" and "No Proof of Insurance – Infraction" on or about August 19, 2024 (Respondent Exhibit 9), but a warrant was issued because "Defendant failed to appear or contact court for scheduled hearing. Judge orders bail to be forfeited and case to be closed." (*Id.*).

Subsequent to his arrest on March 23, 2026, officials with the Department of Homeland Security were notified and Respondents lodged a detainer (Respondent Exhibit 2) under which Petitioner is currently being held in the Weber County Jail.

B. PETITIONER WAIVED ANY REVIEW OF HIS CURRENT DETENTION

Before even addressing the statutory arguments the Petitioner makes regarding whether this Court should apply 8 U.S.C. § 1225 or § 1226 in this case, this Court can and should deny the Motion on the grounds that the Respondent specifically waived any opportunity to address his current immigration detention because he clearly violated the terms of his prior release.

On December 18, 2023, Petitioner agreed to abide by certain conditions of release (one of which being to, "not violate any local, State, or Federal laws or ordinances") subject to "revo[cation] of my release without further notice." The recourse he now seeks is specifically foreclosed by this knowing and voluntary waiver because, as stated above, the Petitioner has been convicted of multiple misdemeanors – among other law violations and failures to comply/appear. Each is an obvious and clear violation of Utah State and/or local law – specifically what Petitioner agreed could lead to revocation of his prior

release. Immigration officials have merely given effect to what the Petitioner agreed to regarding his ability to maintain his release status:

> I hereby acknowledge that I have (read) (had interpreted and explained to me in the Spanish language) and understand the conditions of my release as set forth in this order. I further understand that if I do not comply with these conditions, the Department of Homeland Security may revoke my release without further notice.

The Department of Homeland Security has justifiably revoked his release given the numerous violations described above. Petitioner cannot now come in and assert a statutory right to release in contravention of what he previously knowingly and voluntarily agreed to.

What's more, Petitioner completely fails to account for these law violations in suggesting that "[h]e (the Petitioner) complied fully with the ORR by filing asylum application" and that "[h]e was rearrested without cause" such that "this court should order his immediate release back on ORR." (ECF. No. 1 at pg. 12). To be sure, one particular paragraph in the Petition also proves the Respondent's point on this matter:

> However, once DHS decides to begin removal proceedings under § 1229a and to release under § 1226(a), the statute provides no mechanism to reverse that decision in the absence of changed circumstances: "[W]here a previous bond determination has been made by an immigration judge, no change should be made . . . absent a change of circumstance." *Saravia for A.H. v. Sessions*, 905 F.3d 1137, 1145 n.10 (9th Cir. 2018) (quoting *Matter of Sugay*, 17 I. & N.637, 640 (B.I.A. 1981)).

(*Id.* at pg. 11). There has been a change of circumstances since Petitioner's release – a host of misdemeanor (and other) convictions against Petitioner – convictions that this Petitioner specifically agreed could lead to the revocation of his prior release order.

The Court should deny Petitioner's Motion for release on this ground alone.

C. RESPONDENTS' POSITION REGARDING 8 U.S.C. §§ 1225 and 1226

Even assuming Petitioner did not waive his right to challenge his current detention with his signature on the Order of Release on Recognizance (ECF No. 1, Exhibit 3), thereafter violating terms of his release, the central legal issue presented in this case would otherwise be whether a noncitizen who is present in the United States and has not been admitted is subject to mandatory detention by U.S. Immigration and Customs Enforcement ("ICE") under 8 U.S.C. § 1225(b), or whether such a noncitizen is entitled by § 1226(a) to seek a bond hearing.

Respondents' position is that the Petitioner is "an applicant for admission" and is therefore subject to mandatory detention under 8 U.S.C. § 1225(b), even if, as here, the Petitioner is seeking asylum and/or has previously been released on bond under § 1226.

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

Petitioner's Motion makes 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

[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.

> consistent with U.S. immigration law. § 1225(a)(3).
>
> 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).
>
> 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).
>
> 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). 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 asserts his claim under 8 U.S.C. § 1226. Respondents' position regarding Petitioner's waiver for noncompliance notwithstanding, 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' 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

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

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).

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

[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."

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.[6]

The Court should follow *Buenrostro*, apply the plain language of Section

[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.").

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 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.

[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.

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

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 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:

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

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

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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).

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, 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, although it appears the instant Petitioner's asylum claim may still pending, 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 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. That is, the Petitioner is detained under 8 U.S.C. § 1225 and not § 1226, because he is "an applicant for admission", and therefore is not entitled to the relief he seeks. Accordingly, Petitioner's claim should be denied.

D. RESPONSE TO PETITIONER'S SPECIFIC CLAIMS FOR RELIEF

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

[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)).

is Misplaced.

Petitioner "challenges Respondents' decision to take him into custody and hold him without the possibility of release under 8 U.S.C. § 1226", because "DHS [previously] chose to release Mr. Serrano on his own recognizance (ORR), pursuant to 18 U.S.C. § 1226". (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.

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 that the applicant "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, apparently some time later, 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.

Accordingly, his Motion should be denied.

II. 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, "[r]egardless 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.

What's more, Petitioner entirely fails to account for the holdings of the very caselaw he cites in his support on this issue:

> When DHS arrested Mr. Serrano near the border three years ago, it had discretion whether to proceed under 8 U.S.C. § 1225 or 8 U.S.C. § 1229a. But once it decided to proceed under § 1229a, and it released him under § 1226, it could not reverse that choice ex post facto, absent a material change in circumstances. Velasquez-Montillo v. Brooksby, 4:26-cv-18 DN, ECF No. 23 at 8-17 (D. Utah Mar. 3, 2026); Saravia for A.H. v. Sessions,

> 905 F.3d 1137, 1145 n.10 (9th Cir. 2018) (quoting Matter of Sugay, 17 I. & N. Dec. 637, 640 (B.I.A. 1981)). Once that choice was made, DHS had to abide by that choice and cannot revoke detention without first showing a material change in the individual's circumstances prior to redetaining any previously processed person. A government policy change does not constitute a material change in the individual's circumstances.

(*Id.*). Petitioner again misses the mark because, as relates to him, there *was* a material change in circumstances justifying his "redetention" – several misdemeanor convictions and other local law violations. Having justifiably "redetained" the Petitioner then, immigration officials, in their lawful discretion (ECF No. 1 at pg. 11, paragraph 66), have now chosen to proceed under 8 U.S.C. § 1225 such that Petitioner is not being "arbitrar[ily] re-det[ained] without process, in violation of the law" as he suggests. (ECF No. 1 at pg. 17).

III. 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. 13-16). 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. What's more, and as described above, Petitioner specifically waived his right to have his current detention reviewed by violating the conditions of his release – a provision he not only had notice of, but agreed to.

IV. 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. 16-17 (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.

E. CONCLUSION

Because Petitioner has waived his right to review his current detention and because his interpretation of 8 U.S.C. §§ 1225 and 1226 is unsupported by the plain language of the statutes, the Court should dismiss and/or deny the Petition. However, if the Court disagrees and determines that Petitioner has not waived his right to have his current detention reviewed and is currently detained under § 1226(a) rather than § 1225(b), the appropriate relief upon granting the Petition is for the Court to direct a bond hearing be conducted pursuant to § 1226(a) before an immigration judge and not order immediate release.

Respectfully submitted this 3rd day of April, 2026.

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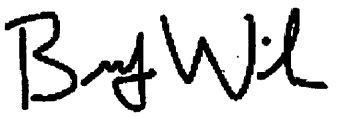

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