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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

VICTOR KALID JACOBO RAMIREZ; EDGAR MICHEL GUEVARA ALCANTAR; on behalf of themselves and others similarly situated, *et al*.,

Plaintiffs-Petitioners,

vs.

KRISTI NOEM, *et al*.,

Defendants-Respondents.

Case No.: 2:25-cv-02136

PLAINTIFFS-PETITIONERS' REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

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**Admitted pro hac vice*

Plaintiffs-Petitioners ("Plaintiffs"), through counsel, submit this reply in support of their Motion for Partial Summary Judgment (ECF No. 74) and in response to Defendants-Respondents' ("Defendants") Opposition (ECF No. 84).

Dated this 5th day of March 2026.

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MEMORANDUM OF POINTS AND AUTHORITIES

Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment fails to provide any reason why this Court should not grant Plaintiffs' motion. Defendants have failed to assert that any material facts are genuinely in dispute and have not properly addressed the Plaintiffs' assertion of undisputed facts. Fed. R. Civ. P. 56(e). Legally, Defendants rely on essentially the same erroneous arguments as those in their Response to Verified Petition for a Writ of Habeas Corpus and Class Action Complaint, arguments that this Court has already rejected based on the plain language of the statutory provisions, legislative history, and decades of agency practice. In the sole new development, Defendants ask this Court to overturn its prior rulings on this issue and adopt the Fifth Circuit's flawed interpretation of § 1225(b)(2)(A) and the history of the IIRIRA, but the Defendants cherry-picking the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), does not alter the findings of this Court or the hundreds of other decisions across the country that people like class members—apprehended inside the United States and placed into removal proceedings—are detained under § 1226, not § 1225(b)(2)(A). For the reasons stated below, the Court should decline to do so and instead apply its prior related rulings to the certified class and reaffirm class members' right to be considered for release on bond.

Accordingly, class-wide partial summary judgment, vacatur of the policies, and granting of the Named Plaintiffs' habeas petitions are appropriate.

I. THERE IS NO GENUINE ISSUE OF MATERIAL FACTS IN DISPUTE.

To defeat a motion for summary judgment, the responding party must present admissible evidence sufficient to establish any of the elements that are essential to the moving party's case and for which that party will bear the burden of proof at trial. Fed. R. Civ. P. 56(c); *Taylor v. List*, 880 F. 2d 1040, 1045 (9th Cir. 1989). If a party fails to properly support an assertion of fact or

fails to properly address another party's assertion of fact as required by Rule 56(c), the court may consider the fact undisputed for the purposes of the motion. Fed. R. Civ. P. 56(e)(2). Under the local rules, Defendants must include a concise statement of the disputed facts with citations to evidence in the record as support. *See* LR 56-1 ("[m]otions for summary judgment and responses thereto must include a concise statement setting forth each fact material to the disposition of the motion that the party claims is or is not genuinely in issue, citing the particular portions of any pleading, affidavit, deposition, interrogatory, answer, admission, or other evidence on which the party relies."). Defendants have not disputed the following material facts identified in the Plaintiffs' motion:

1) Noncitizens subject to § 1226(a) can be released by ICE on bond or conditional parole, and if release is denied, can seek a custody redetermination before an immigration judge;

2) Noncitizens subject to § 1225(b)(2) are subject to mandatory detention and receive no bond hearing;

3) Prior to July 2025, DHS, ICE, and the Las Vegas Immigration Court considered anyone who entered the United States without inspection to be detained under 8 U.S.C. § 1226(a) unless that person was subject to the expedited removal provisions of 8 U.S.C. § 1225(b)(1) or the detention provisions of § 1226(c) or § 1231;

4) The prior interpretation has been consistent during the nearly thirty years that the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) has been in effect;

5) DOJ published statements stating that noncitizens arrested inside the United States have access to bond hearings pursuant to § 1226(a), and that mandatory detention pursuant to § 1225(b)(2) applies only to noncitizens detained while arriving at or near the border;

6) On July 8, 2025, DHS, "in coordination with the Department of Justice," directed its personnel nationwide to classify bond-eligible detainees under § 1226(a) as bond ineligible § 1225(b)(2) detainees if they originally entered the country without inspection;

7) On September 5, 2025, the BIA issued a precedential decision, *Matter of Yajure Hurtado*, and held that any noncitizen who is present in the United

States without having been inspected and admitted is subject to detention under § 1225(b)(2), and the policy is legally binding on all IJs;

8) Class members are routinely and systematically misclassified and detained without any consideration for bond;

9) Plaintiffs Victor Kalid Jacobo-Ramirez and Edgar Michel Guevara-Alcantar are both longtime residents of the United States who were subjected to mandatory detention under Defendants' new policies;

10) Both Named Plaintiffs entered the United States without inspection as minors many years ago and have since built their lives here with their U.S. citizen children and loved ones; and

11) Neither of the Named Plaintiffs has criminal records disqualifying them from consideration for bond or had any prior contact with immigration authorities.

As such, the Court should consider the facts outlined above undisputed for the purposes of this motion.

II. THIS COURT HAS ALREADY REJECTED THE ARGUMENTS RAISED IN DEFENDANTS' BRIEF, AND THE FIFTH CIRCUIT DECISION IS NOT APPLICABLE.

To date, nearly 400 judges have rejected Defendants' arguments, including this Court within this case and over 60 others that came before it. *See* Class Cert. Order at 2 n.1 (collecting cases); Class Cert. Order at 2 n.2 (noting "more than 300 federal judges in over 1,600 cases have rejected the government's new detention policy); *see also* Kyle Cheney, *Our running list of judges who have ruled on ICE's mass detention policy, Politico* (updated March 4, 2026), https://www.politico.com/news/2026/02/18/trumpjudges-immigration-detention-00784614 (listing over 390 judges that have rejected Defendants' position). Defendants do not raise new arguments in their opposition but rather rely on the Fifth Circuit's split panel decision in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) to continue to push the same erroneous reasonings for subjecting Named Plaintiffs and class members to mandatory detention under

§ 1225(b)(2)(A). As this Court is certainly aware, *Buenrostro-Mendez* is not binding precedent for this Court, and while the majority in that case adopted the government's position, *Buenrostro-Mendez*, 166 F.4th at 498, the dissent, consistent with this Court's previous orders, forcefully explained how that position distorts the statutory text, context, and history. *Id*. at 508-21. The *Buenrostro-Mendez* majority's, and Defendants', position are "based on little more than an apparent conviction that Congress *must have* wanted these noncitizens detained." *Id.* at 509 (Douglas, J., dissenting). Speculation of this sort cannot trump statutory text, context, and history which this Court has exhaustively analyzed and thereafter concluded that the plaintiffs and class members are subject to § 1226, not § 1225(b)(2)(A). Prelim. Inj. Order at 12; Class Cert. Order at 2–3 & n.1. This is especially true when it would mean that Congress enacted a detention mandate covering millions of people living inside the country that somehow escaped the attention of five Presidential administrations, the courts, and Congress itself for 30 years.

This Court should reject Defendants' arguments for all the reasons stated in its previous orders and reject adopting the Fifth Circuit's decision for the reasons outlined below.

A. The plain language of 8 U.S.C. § 1226 and § 1225(b)(2)(A), when read together, makes clear that individuals like class members are detained under § 1226, not § 1225(b)(2)(A).

When read side by side with § 1226, § 1225(b) applies to noncitizens "arriving" in the U.S. at the border, not those already present within its borders. *Escobar Salgado v. Mattos*, No. 2:25-CV-01872-RFB-EJY, 2025 WL 3205356, at *13 (D. Nev. Nov. 17, 2025). Rather than address the plain text within § 1226, Defendants merely focus on the plain language of § 1225 and point to *Buenrostro-Mendez* to conclude that "similarly situated aliens are subject to mandatory detention under 8 U.S.C. § 1225." Opp. at p. 12. Notably, both Defendants and the panel majority in *Buenrostro-Mendez* failed to read § 1225 (b)(2)(A) in the context of the overall statutory scheme consistent with fundamental canons of statutory interpretation. As this Court noted, the canons of

statutory construction aid in the interpretation of the statutory text here because "the INA is a 'dense statute' with 'complex provisions' and […] the court must 'use every tool at [its] disposal to determine the best reading of the statute.'" *Escobar Salgado*, 2025 WL 3205356, at *11 (first citing *Torres v. Barr*, 976 F.3d 918, 923 (9th Cir. 2020); then citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024)).

In line with this approach, this Court noted that "a straightforward and simplistic review of the plain text of § 1225 by itself would seem to indicate that any noncitizen unlawfully in the country is subject to detention until removal proceedings conclude," but "when read in context, and harmoniously with § 1226, […] the plain meaning conveyed by the text of § 1225(b) is that it applies within a specific context: at or near the border, to noncitizens 'arriving' in the U.S.—not those already present within its borders." *Id.* at *12-13.

B. Defendants' argument that an "applicant for admission" is necessarily "seeking admission" finds no support in the statute, creates surplusage, and nullifies § 1226(a)'s authorization of bond for such individuals.

Defendants insists that an "applicant for admission" is necessarily "seeking admission." Opp. at 13-14. But Defendants can point to nothing in the statute that makes the equivalency it claims.[1] The crux of the Defendants' argument is that because § 1225(a)(1) "deems" Plaintiffs and class members "applicant[s] for admission," they therefore must be "seeking admission" for purposes of § 1225(b)(2). *Id.*; *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 221 (BIA 2025). But this reading is flawed for several reasons.

[1] Recognizing that § 1225(b)(2) does not create the equivalency it is looking for, Defendants simply rewrite the provision, substituting the word "the" for the word "an" before the term "alien seeking admission" in order to equate that term with the preceding reference to "an applicant for admission." Opp. at 13. But that is not what the statute says: Congress provided only that "*an* applicant for admission" who is also "*an* alien seeking admission" is subject to detention. 8 U.S.C. § 1225(b)(2)(A) (emphases added); *see also United States Sugar Corp. v. E.P.A.*, 113 F.4th 984, 993 (D.C. Cir. 2024) ("Congress's choice between a definite and indefinite article matters when determining statutory meaning.") (citing *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 817 (2024))).

First, it is contradicted by the very provision at issue. As this Court underlined, if all applicants for admission are necessarily seeking admission, there would have been no reason for Congress to have included "seeking admission" in § 1225(b)(2)(A), and the government's reading would render part of § 1225(b)(2)(A) superfluous. *Escobar Salgado*, 2025 WL 3205356, at *15.

Defendants' attempt to find support from a neighboring provision, 8 U.S.C. § 1225(a)(3), fails for the same reason. That provision requires the inspection of "[a]ll aliens . . . who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States." *Id*. Defendants rely on the term "or otherwise" to argue that it makes "applicants for admission" a subset of "seeking admission." Opp. at 13-14. But if Defendants' reading were correct, the entire first clause of the provision would be superfluous. Congress could just have said that "[a]ll aliens seeking admission shall be inspected by immigration officers." Because courts must give effect to every word of a statute, *Escobar Salgado*, 2025 WL 3205356, at *15 (citing *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023)), and because such a reading is possible, the government is wrong that this provision proves the equivalency that it is trying to manufacture.

Rather, giving effect to every word in the provision, § 1225(a)(3) requires the inspection of *all* "applicants for admission"—some of whom will be seeking admission and others not—as well as any noncitizens who are *not* applicants for admission but are "otherwise seeking admission or readmission to or transit through the United States," *id.*, i.e., "in a different way or manner" than applicants for admission do. *See Otherwise*, Webster's Ninth New Collegiate Dictionary 835 (1984). Indeed, the *only* way to avoid creating surplusage in § 1225(a)(3) is to recognize that only *some* applicants for admission are "seeking admission" while others, like Plaintiffs, are not. Thus, far from supporting the government's argument that "applicant for admission" is synonymous with "seeking admission," this provision stands for the opposite.

Defendants downplay the redundancy its interpretation creates, invoking *Barton v. Barr,* 590 U.S. 222 (2020). *See* Opp. at 32–33. But in *Barton*, the Supreme Court rejected an interpretation that, to avoid redundancy would "rewrite or eviscerate another portion of the statute contrary to its text." 590 U.S. at 239. Here, it is the *government's* reading of "seeking admission" as necessarily applying to *all* "applicants for admission," including those who are present in the country after having entered without inspection, that would eviscerate part of § 1225(b)(2) *and* another portion of the INA, § 1226, which provides bond to those noncitizens whom the government claims to be "seeking admission" within the meaning of § 1225(b)(2). *See Escobar Salgado*, 2025 WL 3205356, at *16 (rejecting Respondents assertion that the phrases "applicants for admission" and "seeking admission" are "synonymous," because the use of the two different phrases by Congress conveys a meaningful difference and such interpretation comports with canons of statutory interpretation).

Unable to find support for its position in the statutory language, the government invokes the ordinary meaning of an "applicant" and argues instead that "*applying* for something is necessarily *seeking* it," analogizing to the situation of a person who is "applying for admission" and "seeking admission" to a college or club. Opp. at 14. But the dispute is not about whether the action of "*applying* for admission" necessarily means one is "seeking admission." It is whether being an "*applicant for admission*"—the term of art that Congress used in § 1225(a)(1) and § 1225(b)(2)(A)—necessarily means the person is also "seeking admission"—the additional condition Congress included in § 1225(b)(2)(A). Had Congress intended that all "applicants for admission" should be deemed "seeking admission," it could have included a provision saying this. But that is not what § 1225(a)(1) says. *See Castañon-Nava v. U.S. Dep't. of Homeland Sec.*, 161 F.4th 1048, 1061 (7th Cir. 2025). Rather, by specifying that noncitizens present in the country without having been admitted were "deemed" "applicants for admission," Congress was making

clear that they were to be treated as inadmissible in removal proceedings and would bear the burden of proof in such proceedings— not that they would also be deemed to be "seeking admission." *See* H.R. Rep. No. 104-469, pt. 1, at 231 (1996) (designation as "an alien applicant for admission" means that a noncitizen "shall have the burden to establish that he or she is beyond doubt entitled to be admitted"); H.R. Rep. No. 104-828, at 212 (1996) (Conf. Rep.) (same). And as explained in Plaintiffs' motion, such individuals are not "seeking admission" as the plain meaning of the term is understood since they are already present in the country and are not engaged in any action to obtain a lawful entry.

Finally, Defendants attempt to avoid the meaning of "seeking admission" entirely by relying on § 1225(a)(1) to argue that "many people who are not actually requesting permission to enter the United States in the ordinary sense are nevertheless deemed to be 'seeking admission' under the immigration laws." Opp. at 14 (quoting *Matter of Lemus-Losa*, 25 I & N. Dec. 734, 743 n.6 (BIA 2012)). But the operative term here is "seeking admission," and absent evidence that Congress is "defin[ing] a word or phrase in a specialized way," language in a statute should be interpreted by its "ordinary meaning." *Feliciano v. Dep't of Transp.*, 605 U.S. 38, 45 (2025). The Board in *Lemus-Losa* simply repeats the same error the government makes here by equating the term "applicant for admission" with "seeking admission," despite Congress's choice to use different words.[2] *See Loper Bright*, 603 U.S. at 373 ("agencies have no special competence in resolving statutory ambiguities").

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[2] Moreover, *Lemus-Losa* addressed a different statute, 8 U.S.C. § 1182(a)(9)(A)–(C), which pertains to grounds of inadmissibility. And even in that statute, Congress exhibited its awareness of the difference between a noncitizen who enters unlawfully and one who makes "a request for permission to enter." *Matter of Lemus-Losa*, 25 I. & N. Dec. at 743.

C. A noncitizen's decision to not voluntarily depart the United States does not automatically translate to "seeking admission" as used in §1225(b)(2).

Defendants contend that a noncitizen's decision not to depart the country pursuant to § 1225(a)(4) and instead remain in Section 240 proceedings translates into the statutory act of "seeking admission." Opp. at 16. But Defendants ignore that this conflicts with this Court's finding that § 1225 (b)(2) does not apply to noncitizens already in the United States, *Escobar Salgado*, 2025 WL 3205356, at *12-13, and § 1225(a)(4) codified a longstanding mechanism for noncitizens who have not yet entered to withdraw an application for admission and depart immediately to avoid the entry of a removal order. *See* 62 Fed. Reg. at 10, 313, 10, 358. Such statutory withdrawal is not available to Plaintiffs, who entered decade(s) ago. *See, e.g.,* 8 C.F.R. § 1240.1(d) ("only an arriving alien" may withdraw application for admission before the immigration judge). Instead, Plaintiffs have access to a distinct form of discretionary relief to avoid removal proceedings: voluntary departure. 8 U.S.C. § 1229c; *Dada v. Mukasey*, 554 U.S. 1, 8–12 (2008). Notably, the government identifies no mechanism for Plaintiffs to rely on § 1225(a)(4)'s withdrawal authority.

Defendants again suggest that a noncitizen who is residing in the country and applies for immigration relief may be deemed as "seeking admission" pursuant to 8 U.S.C. § 1225(b)(2)(A). Opp. at 16-17. Specifically, Defendants point to Plaintiff Guevara-Alcantar's U-visa application. *Id*. However, as raised in previous briefings, this argument is contradicted both by the Supreme Court's decision in *Sanchez v. Mayorkas*, 593 U.S. 409 (2021), which held that a noncitizen inside the country applying for a U visa, or other forms of immigration relief like cancellation of removal and TPS, is "seeking lawful status" and not "seeking admission", and Defendants' own policy guidance clarifying that, like TPS, a grant of U nonimmigrant status is not an "admission" that renders the noncitizen eligible for adjustment under 8 U.S.C. § 1255(a). *See* U.S. Citizenship & Immigr. Servs., Policy Alert: Admission for Adjustment of Status under INA 245(a), PA-2025-25

(Nov. 3, 2025), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20251103-AOSAdmission.pdf.

D. The text and history of the IIRIRA confirms that § 1225(b)(2) does not apply to millions of noncitizens living in the United States, including hundreds of thousands living in Nevada.

IIRIRA confirms that § 1225(b)(2) cannot apply to the Named Plaintiffs and class members. In passing IIRIRA, Congress was acutely concerned about the strain on detention capacity that § 1226(c)'s new detention mandate would impose by requiring the detention of an estimated 45,000 noncitizens subject to removal on criminal grounds each year. *See* H.R. Rep. No. 104-469, pt. 1, at 118, 120, 123. To address the problem, Congress authorized the Executive to defer implementation of § 1226(c) for two years while the agency built up its detention capacity—an option the government promptly invoked. IIRIRA § 303(b), 110 Stat. 3009-586 to 3009-587; Doris Meissner, Comm'r, INS to Henry J. Hyde, Chairman, Comm. on the Judiciary, U.S. House of Representatives, Letter Invoking IIRIRA Transitional Period Custody Rules (Oct. 3, 1997), https://perma.cc/HFF9-MY3N. It is implausible that the same Congress that deferred § 1226(c)'s detention mandate simultaneously enacted the largest expansion of mandatory detention in U.S. history by imposing a new detention rule for *millions* of people in the United States under § 1225(b)(2)—without a whisper in the statutory text or congressional record.[3] Surely, "if Congress had such an intent, Congress would have made it." *Chisom v. Roemer*, 501 U.S. 380, 396 (1991).

Despite this incongruity, Defendants insist that because Congress wanted to abrogate advantages that noncitizens who entered the country without inspection gained in removal proceedings over noncitizens who presented at ports of entry, it must have required the detention

[3] The estimated population of noncitizens in the United States who entered without inspection was about two million in 1996 and is around six million today. *See* H.R. Rep. No. 104-469, pt. 1, at 111 (1996) (estimating that such individuals made up about half of the four million "illegal alien[s]" then living in the United States); Jill Wilson et al., Cong. Rsch. Serv., R47848, Nonimmigrant Overstays: Overview and Policy Issues 1 n.6 (2023).

of every noncitizen who entered without inspection. Opp. at 4. Defendants do not point to a single provision to support this position, and "ensur[ing] that all immigrants who have not been lawfully admitted […] are placed on equal footing in removal proceedings under the INA" cannot override Congress's specific statements preserving eligibility for bond for those arrested and placed into proceedings in the United States. *See* H.R. Rep. No. 104-469, pt. 1, at 229; H.R. Rep. No. 104-828, at 210; *see also Buenrostro-Mendez*, 166 F.4th at 519 (Douglas, J., dissenting) ("a statement of general purpose attached to a separate definition provision . . . must carry less weight than statements about the specific issue disputed here" (citing cases)).

E. Plaintiffs State Claims Under the APA.

Defendants raise four objections to Plaintiffs' Administrative Procedures Act (APA) claims which mimic arguments made in their response to the petition and class complaint. Opp. at 18. Plaintiffs addressed each argument in their reply to Defendants' response to the petition and class complaint and incorporate them by reference herein. *See* ECF No. 55 at 10-12.

III. CONCLUSION

For the foregoing reasons, the Court should apply its prior related rulings to the certified class and reaffirm class members' right to be considered for release on bond, which has been the practice for decades and the law according to the INA's plain text and implemented regulations. Plaintiffs respectfully request that the Court (a) grant class wide partial summary judgment on Count I and II of the complaint, and Count III insofar as the agency action here is "not in accordance with law"; (b) enter declaratory relief that class members are entitled to bond hearings upon request; and (c) enter its ruling as a partial judgment under Rule 54(b).

Dated: March 5, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **PLAINTIFFS-PETITIONERS' REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT** with the Clerk of the Court for the United States District Court of Nevada by using the court's CM/ECF system on March 5, 2026. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished on all participants by:

☒ CM/ECF
☐ Electronic mail; or
☐ US Mail or Carrier Service

/s/ Suzanne Lara
ACLU of Nevada Employee