Stacy Tolchin (CA SBN #217431)
Law Offices of Stacy Tolchin
776 E. Green St., Ste. 210
Pasadena, CA 91101
Telephone: (213) 622-7450
Facsimile: (213) 622-7233
Email: Stacy@Tolchinimmigration.com

Emily Robinson
Law Office of Emily Robinson
5012 Eagle Rock Blvd
Los Angeles, CA 90041
Telephone: 323-524-7611
Email: eldrobinson@gmail.com

Counsel for Petitioners

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JORGE ARRAZOLA-GONZALEZ, OSWALDO GONZALEZ; Plaintiffs-Petitioners, v. Kristi NOEM, Secretary, Department of Homeland Security; et al. Defendants-Respondents.	Case No. ED CV 25-01789-ODW (DFM) **PLAINTIFFS-PETITIONERS' REPLY IN SUPPORT OF ORDER TO SHOW CAUSE ON ISSUANCE OF PRELIMIARY INJUNCTION** Date: August 26, 2025 Time: 11:30 a.m. Judge: Otis D. Wright II

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I. INTRODUCTION

Plaintiffs-Petitioners (Plaintiffs) entered the United States without inspection and have since lived in this country for over 25 years before being arrested by immigration. They have no criminal history. Yet when they were arrested by immigration authorities, they were denied an individual custody determination and instead subjected to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) pursuant to Respondents-Defendants' (Defendants') new policy—one that departs from more than half a century of statutory interpretation. The Court issued a temporary restraining order (TRO) requiring that the two Plaintiffs be provided a bond hearing by an immigration judge (IJ), and in each case, an IJ ordered their release on bond. They have not yet been release from custody.

Plaintiffs now ask this Court to convert that TRO into a preliminary injunction, to ensure that they are not re-detained during the course of the pending litigation. Defendants fail to demonstrate that the requested relief is moot; nor are they able to demonstrate that the balancing of the factors initially performed as to the TRO has subsequently changed. Instead, Plaintiffs continue to demonstrate their entitlement to preliminary injunctive relief.

II. ARGUMENT

A. STANDARD OF REVIEW

Contrary to Defendants' assertion, Plaintiffs seek a prohibitory preliminary injunction that preserves, rather than alters, the status quo. In determining whether

an injunction sought is prohibitory or mandatory, "the 'status quo' refers to the legally relevant relationship between the parties *before* the controversy arose." *Ariz. Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1061 (9th Cir. 2014) (citation modified); *see also Marlyn Nutraceuticals Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009) ("The *status quo ante litem* . . . means 'the last, uncontested status which preceded the pending controversy.'" (internal quotation marks and citation omitted)). Here, as the Court correctly recognized in its TRO, it is "Whether the new agency policy violates federal law, specifically by forcing Petitioners' detention without bond." The Court correctly found that "**'It is clear that neither equity nor the public's interest are furthered by allowing violations of federal law to continue.'** *Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022). Accordingly, the last two Winter factors weigh in favor of an injunction." Dkt. 10 at 6. Indeed, requiring Defendants to conduct bond hearings to prevent the violation of statutory and constitutional rights is "a classic form of prohibitory injunction." *Hernandez v. Sessions*, 872 F.3d 976, 998 (9th Cir. 2017).

But even assuming that Plaintiffs were subject to the higher standard for a mandatory injunction, they have demonstrated that the "facts and law clearly favor" injunctive relief. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). A mandatory injunction is warranted where, as here, Plaintiffs would be subject to "unlawful detention," and "the merits of th[e] case are not 'doubtful.'" *Hernandez*, 872 F.3d at 999 (citation omitted).

B. PLAINTIFFS CONTINUE TO PRESENT A LIVE CONTROVERSY

Defendants' mootness argument rests on the premise that "the Court granted Petitioners' TRO [Dkt. 10], and Petitioners have obtained the relief they sought—bond hearings [Dkt. 7, 8]." Dkt. 11 at 6. They therefore assert that this case should be dismissed for lack of jurisdiction. That misstates the claim and the remedy: Plaintiffs seek an injunction preserving their eligibility for release on bond under § 1226(a) and a declaration that § 1226(a), not § 1225(b)(2), governs their detention. Furthermore, the TRO is short-lived by definition, Fed. R. Civ. P. 65(b)(2), whereas a preliminary injunction preserves the status quo until "final resolution of the dispute." *Sierra On-line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). A preliminary injunction is thus required to preserve Plaintiffs' rights pending the final resolution of their claims.

Defendant's mootness argument ignores well-established precedent and fails on multiple grounds. Critically, Defendants have not disavowed their policy, let alone made it "absolutely clear" that the mandatory detention provision of § 1225(b)(2) does not apply to Plaintiffs. *Friends of the Earth, Inc. v. Laidlaw Env't Servs., Inc.*, 528 U.S. 167, 189 (2000) (quoting *United States v. Concentrated Phosphate Export Ass'n*, 393 U.S. 199, 203 (1968)). Instead, they squarely maintain that § 1225(b)(2), not § 1226(a), is the applicable detention statute for Plaintiffs. Dkt. 11 at 6-8. Thus, they have not met "the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth,* 528 U.S. at 190; *see also, e.g., F.B.I. v. Fikre*, 601

U.S. 234, 242 (2024) (finding the plaintiff's challenge to his placement on No Fly List was not moot even taking as true the government's declaration that he will not be relisted based on current circumstances).

Finally, it is well-established that detention challenges are "inherently transitory" and "distinctly 'capable of repetition yet evading review.'" *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975) ("Moreover, in this case the constant existence of a class of persons suffering the deprivation is certain."). Courts routinely find that challenges to immigration detention remain live notwithstanding the changes in the custody status of named plaintiffs. *E.g.*, *Hernandez v. Lynch*, No. EDCV 16-00620-JGB (KKx), 2016 WL 7116611, at *12 (C.D. Cal. Nov. 10, 2016) (finding that named plaintiffs' release from custody "has no impact on . . . standing to seek injunctive relief").

C. LIKELIHOOD OF SUCCESS ON THE MERITS.

The text of 8 U.S.C. §§ 1225(b)(2)(a) and 1226(a) demonstrate that Plaintiffs are entitled to be considered for release on bond under § 1226, and that Defendants' policy violates the INA. In issuing the TRO, this Court correctly determined that Plaintiffs raise serious issues, and indeed, have demonstrated a likelihood of success on the merits, because § 1226(a), not § 1225(b)(2)(A), applies "to aliens already present in the United States.' *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018). Except for criminal aliens covered under subsection (c), § 1226(a)(2) permits detained aliens to be released on bond or conditional parole." Dkt. 10 at 4. This interpretation is further supported by the 2025 Laken Riley Act amendments, which created specific exceptions under § 1226(c)(1)(E) for inadmissible noncitizens with

criminal offenses, thereby confirming that non-criminal inadmissible noncitizens like Plaintiffs remain under § 1226(a)'s general detention authority.

1. 8 U.S.C. § 1225(b)(2) Is Limited To Those Noncitizens Seeking Admission.

As the Supreme Court has explained, § 1225(b)(2)'s mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether [a] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). In contrast, § 1226(a) applies to those who, like Plaintiffs, are "already in the country" and are detained "pending the outcome of removal proceedings." *Id.* at 289. Unlike § 1226(a), the whole purpose of § 1225 is to define how DHS inspects, processes, and detains various classes of people arriving at the border or who have just entered the country. *See id.* at 297 ("[Section] 1225(b) applies primarily to [noncitizens] seeking entry into the United States . . . ."); *see also* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29 (explaining the purpose of the new provisions in § 1225 was to address the perceived problem of noncitizens arriving in the United States); H.R. Rep. No. 104-828, at 209 (same).

Defendants' contrary interpretation relies entirely on the breadth of the definition of applicants for admission at § 1225(a)(1). But Defendants fail to acknowledge that this definition does not control who is subject to detention under § 1225(b)(2), which concerns not all "applicants for admission" but instead is limited to those who are "seeking admission." *Id.* By stating that (b)(2) applies only to those "seeking admission," Congress confirmed that it did not intend to sweep into this

section individuals like Plaintiffs, who have already entered and are now residing in the United States, and who did not take affirmative steps to obtain admission when they arrived. *See generally* 8 U.S.C. § 1225; H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209.

"This active construction of the phrase 'seeking admission'" accords with the plain language in § 1225(b)(2)(A), by requiring both that a person be an "applicant for admission" and "also [be] *doing* something" following their arrival to obtain authorized entry. As the en banc Ninth Circuit explained in *Torres v. Barr*, an individual submits an "application for admission" only at "the moment in time when the immigrant actually applies for admission into the United States." 976 F.3d 918, 927 (9th Cir. 2020). Those who entered years ago and are now residing in the United States are not "seeking admission" within the meaning of § 1225(b)(2).

Defendants 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." Dkt. 11 at 7 (quoting *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012)). Defendants ignore that Mr. Lemus was in fact seeking admission—he was applying for adjustment of status to be admitted as a lawful permanent resident. Thus, the statutory references to "seeks admission" at § 1182(a)(9)(B)(i) are readily distinguished from persons in Plaintiffs' situation, and directly undermines Defendants' contention that the phrase "seeking admission" means nothing other than falling under the broad definition of "applicant for admission" at § 1225(a)(1). Defendants further assert that statutory language "is known by the company it keeps" and that both those "present without admission and

those who arrive in the United States" are "understood to be 'seeking admission' under §1225(a)(1)." Dkt. 11 at 7. This circular reasoning fails to explain why Congress would use two distinct phrases—"applicant for admission" and "seeking admission"—if they were meant to be synonymous, rendering one term superfluous in violation of basic canons of statutory construction.

Defendants' construction renders "seeking admission" redundant of "applicant for admission." Under their new policy, inadmissibility alone—i.e., being present without having previously been admitted—triggers mandatory detention under § 1225(b)(2). But as the government itself previously explained, "[n]othing in [§ 1225's] structure suggests that Congress regarded [noncitizens] 'seeking admission' and 'applicants for admission' as equivalent, interchangeable terms. "If that were the case, the statutory reference to noncitizens 'seeking admission' would be redundant; Congress could simply have stated that all 'applicants for admission' 'shall be detained for' removal proceedings, without any reference to noncitizens 'seeking admission.'" As this Court recognized, "to ignore the 'seeking admission' language, Petitioners argue, would render the language purposeless and violate a key rule of statutory construction," because "a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." Dkt. 10 at 5, 4 (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009)).[1]

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[1] Relatedly, Defendants err in asserting Plaintiffs' interpretation "reads 'applicant for admission' out of § 1225(b)(2)(A)." Dkt. 11 at 8. That language instructs that people who *were* admitted are not covered by § 1225(b)(2).

2. 8 U.S.C. § 1226(a) Expressly Covers Noncitizens Who Are Present Without Admission.

Defendants fail to acknowledge how the plain text of § 1226(a)—which affords access to bond—includes people who are inadmissible, like Plaintiffs.[2] Here, DHS alleges in removal proceedings that Plaintiffs are inadmissible because they entered the country without inspection and thus are present without admission. *See* 8 U.S.C. § 1182(a)(6)(A)(i). Section 1226—the INA's default detention authority—expressly applies to people like Plaintiffs who entered without inspection, were never formally admitted to the country, and thus are charged as "inadmissible" under the INA, not just to those people who were originally admitted to the country and thus are charged as "deportable" under the INA. *See id.* § 1226(c).

Subsection 1226(a) provides the general right to seek release on bond. Subsection 1226(c) then carves out discrete categories of noncitizens from being released (primarily those convicted of certain crimes) and subjects them to

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Defendants' reliance on *Florida v. United States*, 660 F. Supp. 3d 1239 (N.D. Fla. 2023) is also misplaced, as Defendants fail to acknowledge the key factual distinction that the *Florida* case "held that 8 U.S.C. § 1225(b) mandates detention of applicants for admission throughout removal proceedings, rejecting the assertion that DHS has discretion to choose to detain an applicant for admission under either section 1225(b) or 1226(a)." Dkt. 11 at 8-9. Unlike the situation here, the *Florida* case did not address the statutory construction issues regarding the distinction between "applicant for admission" and "seeking admission" that are central to this case.

[2] Generally speaking, grounds of deportability (found in 8 U.S.C. § 1227) apply to people like lawful permanents residents and those who were admitted with temporary visas, even if they no longer have lawful status. By contrast, grounds of inadmissibility (found in § 1182) apply to those who have not yet been admitted to the United States. *See, e.g.*, *Barton v. Barr*, 590 U.S. 222, 234 (2020).

mandatory detention instead. *See, e.g.*, *id.* § 1226(c)(1)(A), (D). These carve-outs *include noncitizens who are inadmissible for entering without inspection* who have enumerated criminal offenses. *See id.* § 1226(c)(1)(E). Because § 1226(c)'s exception expressly applies to people who entered without inspection (like Plaintiffs), it reinforces the default rule that § 1226(a)'s general detention authority otherwise must generally apply to Plaintiffs. "[W]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not otherwise cover the excepted conduct).

Notwithstanding the plain text noted above, Defendants assert that anyone present in the United States without being admitted is subject to mandatory detention under § 1225(b)(2)(A). This interpretation "would render significant portions of Section 1226(c) meaningless," *see, e.g.*, *Shulman v. Kaplan*, 58 F.4th 404, 410--11 (9th Cir. 2023).

Moreover, "[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction," courts "generally presume[] the new provision should be understood to work in harmony with what has come before." *Monsalvo Velazquez v. Bondi*, 145 S. Ct. 1232, 1242 (2025) (citation modified). For decades, and across administrations, DHS has acknowledged that § 1226(a) applies to individuals who are present without admission after entering the United States unlawfully, but who were later apprehended within the United States long after their entry.

3. Defendants' Policies Violate EOIR Regulations.

Finally, Defendants' policies also violate EOIR's longstanding regulations considering people like Plaintiffs as detained under § 1226(a) and eligible for bond. When EOIR promulgated regulations implementing the current custody provisions, it explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323; *see also id.* ("[I]nadmissible [noncitizens], except for arriving [noncitizens], have available to them bond redetermination hearings before an immigration judge, while arriving [noncitizens] do not.").

The relevant regulations have not been amended in the decades since. Specifically, the regulation governing IJs' bond jurisdiction—8 C.F.R. § 1003.19(h)(2)—does not limit an IJ's jurisdiction over all inadmissible noncitizens, and instead limits jurisdiction only to inadmissible noncitizens subject to § 1226(c) and certain other classes of noncitizens, like arriving noncitizens. That is how the regulation was drafted when originally promulgated, and that is how it remains today. *Compare* Procedures for the Detention and Release of Criminal Aliens, 63 Fed. Reg. 27441, 27448 (May 19, 1998), *with* 8 C.F.R. § 1003.19(h)(2).

D. IRREPARABLE HARM, PUBLIC INTEREST, AND BALANCE OF EQUITIES

Plaintiffs continue to face a likelihood of irreparable harm as this Court found, Dkt. 10 at 5, notwithstanding receiving a bond hearing following the TRO. As noted

above, *see supra* p. 4, Defendants continue to maintain that § 1225(b)(2), not § 1226(a), governs Plaintiffs' detention, see Dkt. 11 at 6 ("Respondents maintain that the Court should reject Petitioners' argument that § 1226(a) governs their detention instead of § 1225"), and that "the specific detention authority under § 1225 governs over the general authority found at § 1226(a)." Dkt. 11 at 6. Thus, the risk of unlawful detention is ongoing absent a preliminary injunction. *See, e.g.*, *Hernandez*, 872 F.3d at 994–95.

Defendants argue that 'judicial intervention would only disrupt the status quo' and claim 'the purpose of a preliminary injunction is to preserve the status quo pending a determination on the merits.' Dkt. 11 at 10. However, Defendants fail to acknowledge that it is their new agency policy denying bond hearings to individuals like Plaintiffs that constitutes the true disruption to the established legal framework, as this Court recognized when finding that Defendants' new policy 'turns . . . well-established understanding on its heads and violates the statutory scheme.' Dkt. 10 at 2. Any 'institutional interest' in maintaining this unlawful policy does not outweigh Plaintiffs' and the public's interest in preventing violations of federal law.

This Court has already cast doubt on these arguments in granting the TRO, finding that all four *Winter* factors weighed in favor of Plaintiffs, Dkt. 10 at 6. Any 'institutional interest' the government might have in maintaining its new agency policy does not outweigh Plaintiffs' and the public's interest in preventing violations of federal law. Accordingly, the Court should reaffirm its finding that 'it is clear that neither equity nor the public's interest are furthered by allowing violations of federal

law to continue,' and that 'the last two Winter factors weigh in favor of an injunction.' Dkt. 10 at 6 (citing *Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022)).

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court issue an order converting the temporary restraining order into a preliminary injunction.

Respectfully submitted this 22nd day of August, 2025.

S/Stacy Tolchin
Stacy Tolchin (CA SBN #217431)
Law Offices of Stacy Tolchin
776 E. Green St., Ste. 210
Pasadena, CA 91101
Telephone: (213) 622-7450
Facsimile: (213) 622-7233
Email: Stacy@Tolchinimmigration.com

Emily Robinson
Law Office of Emily Robinson
5012 Eagle Rock Blvd
Los Angeles, CA 90041
Telephone: 323-524-7611
Email: eldrobinson@gmail.com

Counsel for Petitioner

CERTIFICATE OF COMPLIANCE

I, Stacy Tolchin, certify that this brief contains 2958 words and complies with the word limit of L.R. 11-6.1.

/s/ Stacy Tolchin
Stacy Tolchin (CA SBN #217431)
Law Offices of Stacy Tolchin
776 E. Green St., Ste. 210
Pasadena, CA 91101
Telephone: (213) 622-7450
Facsimile: (213) 622-7233
Email: Stacy@Tolchinimmigration.com

Emily Robinson
Law Office of Emily Robinson
5012 Eagle Rock Blvd
Los Angeles, CA 90041
Telephone: 323-524-7611
Email: eldrobinson@gmail.com

Counsel for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 22, 2025, I served a copy of PLAINTIFFS-PETITIONERS' REPLY IN SUPPORT OF ORDER TO SHOW CAUSE ON ISSUANCE OF PRELIMIARY INJUNCTION by email to the following individual:

Randy Hsieh | Assistant United States Attorney
United States Attorney's Office | Central District of California
Federal Building, Room 7516
300 N. Los Angeles St. | Los Angeles, California 90012
T: 213.894.6585| F: 213.894.7819| Randy.Hsieh@usdoj.gov

s/ Stacy Tolchin
Stacy Tolchin
Counsel for Petitioners