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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

Lazaro MALDONADO BAUTISTA, et al., on behalf of themselves and others similarly situated, Plaintiffs-Petitioners, v. Kristi NOEM, Secretary, Department of Homeland Security; et al. Defendants-Respondents.	Case No. 5:25-cv-01873-SSS-BFM **PLAINTIFFS-PETITIONERS' REPLY IN SUPPORT OF ISSUANCE OF PRELIMINARY INJUNCTION** Hearing Date: August 22, 2025 Time: 1:00 p.m. Courtroom: 2 Judge: Sunshine S. Sykes

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I. INTRODUCTION

Plaintiffs-Petitioners (Plaintiffs) all entered the United States without inspection and have since lived in this country for years before being arrested by immigration—two of them for more than twenty years. They have no criminal history. Yet when they were arrested by immigration authorities, they were all 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 each of the four Plaintiffs be provided a bond hearing by an immigration judge (IJ), and in each case, an IJ ordered their release on bond.

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 Coal. v. Brewer, 757 F.3d 1053, 1061 (9th Cir. 2014) (emphasis removed and added); *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.'" (citation modified)). Here, as the Court correctly recognized in its TRO, it is "the change in [Defendants'] policy" that "stands to jeopardize [Plaintiffs'] rights." Dkt. 14 at 9. 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) (citation omitted). 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 (quoting *Marlyn Nutraceuticals*, 571 F.3d at 879).

B. Plaintiffs Continue to Present a Live Controversy

Defendants' mootness argument rests on the premise that "the most [Plaintiffs] would be entitled to if they won this case" is a single bond hearing supplied by the TRO. Dkt. 40 at 5 (citation omitted). 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.

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, 190 (2000). Instead, they squarely maintain that § 1225(b)(2), not § 1226(a), is the applicable detention statute for Plaintiffs and similarly situated individuals. Dkt. 40 at 5–9. 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," *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 399 (1980), and "distinctly capable of repetition, yet evading review," *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975) (citation modified); *see also id.* ("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, particularly where they seek class certification. *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"); *Rivera v. Holder*, 307 F.R.D. 539, 548 (W.D. Wash. 2015) ("[W]here a plaintiff's claim becomes moot while she seeks to certify a class, her action will not be rendered moot if her claims are 'inherently transitory.'").

C. Likelihood of Success on the Merits

The text of 8 U.S.C. §§ 1225 and 1226 demonstrate that Plaintiffs are entitled to be considered for release on bond under § 1226(a), and that Defendants' policy violates the Immigration and Nationality Act (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 "when an individual is 'already in the country.'" Dkt. 14 at 7 n.2 (quoting *Diaz Martinez v. Hyde*, --- F. Supp. 3d ---, No. CV 25-11613-BEM, 2025 WL 2084238, at *2–3 (D. Mass. July 24, 2025)). Other district courts have concluded the same. *See, e.g.*, *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d ---, No. 3:25-cv-05240-TMC, 2025 WL 1193850, at *16 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); *Lopez Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2267803, at *9 (S.D.N.Y. Aug. 8, 2025).

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 Rodriguez Vazquez*, 2025 WL 1193850, at *14 (similar); *Diaz Martinez*, 2025 WL 2084238, at *8 (similar).

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." 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; *see also* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29 (1996) (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 (1996) (Conf. Rep.) (same).

"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. *Diaz Martinez*, 2025 WL 2084238, at *6–7; *see also Lopez Benitez*, 2025 WL 2267803, at *7 (stating the same and also explaining, "For example, someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as 'seeking admission' to the theater. Rather, that person would be described as already present there.").

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. 40 at 6 (quoting *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012)). But Mr. Lemus was in fact seeking admission—he was applying for adjustment of status to be admitted as a lawful permanent resident. *See Matter of Lemus-Losa*, 25 I. & N. Dec. at 735. Thus, the statutory references to "seeks admission" at § 1182(a)(9)(B)(i) are readily distinguished from persons in Plaintiffs' situation and directly undermine 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' 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,

> Nothing 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."

Dkt. 42-2 at 16.[1]

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

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[1] Relatedly, Defendants err in asserting "[Plaintiffs'] interpretation . . . reads 'applicant for admission' out of § 1225(b)(2)(A)." Dkt. 40 at 7. That language instructs that people who *were* admitted are not covered by § 1252(a)(2)(B). Defendants' reliance on *Florida v. United States* is also misplaced as that case addressed only persons arrested while entering the southwest border, and thus "[a]ll parties agree[d], and the Court ha[d] found, that the [noncitizens] at issue in this case meet the statutory definition for applicants for admission and are subject to inspection under § 1225." 660 F. Supp. 3d 1239, 1273 (N.D. Fla. 2023).

[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).

released (primarily those convicted of certain crimes) and subjects them to 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 also fall under an enumerated criminal ground. *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." *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (quoting *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *6 (similar); *Diaz Martinez*, 2025 WL 2084238, at *7 (similar).

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," *Rodriguez Vazquez*, 2025 WL 1193850, at *13, violating the canon of statutory construction counseling against rendering text superfluous. *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). Here, "Congress adopted the new amendments to Section 1226(c) against the

backdrop of decades of post-IIRIRA agency practice applying discretionary detention under Section 1226(a) to inadmissible noncitizens such as [Plaintiffs]." *Rodriguez Vazquez*, 2025 WL 1193850, at *15.

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." Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997); *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. 14 at 8–9, notwithstanding their release following the TRO. As noted above, *see supra* p. 3, Defendants have not disavowed their interpretation of § 1225(b)(2), including as to those "previously released," Dkt. 5-2, Ex. I (noting that new policy could warrant re-detention). Thus, the risk of unlawful detention is ongoing absent a preliminary injunction. *See, e.g.*, *Hernandez*, 872 F.3d at 994–95.

The balance of hardships and public interest factors likewise continue to favor Plaintiffs. Defendants again misconstrue the "status quo" and the relief requested, Dkt. 40 at 10, failing to acknowledge that it is their new bond-denial policy that "require[s] a 'broad change' in immigration bond procedure" and thus "disrupt[s]" the status quo (citation omitted). The Court has already cast doubt on these arguments in granting the TRO, Dkt. 14 at 9, and should reject them here. Any "institutional interest" the BIA might have in protecting its own "administrative agency authority," Dkt. 40 at 11, does not outweigh Plaintiffs' and the public's interest in preventing the violation of federal laws. Accordingly, the Court should reaffirm its finding that "the public interest weighs in favor" of Plaintiffs to prevent "continued violations of federal law." Dkt. 14 at 9.

III. CONCLUSION

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

Respectfully submitted this 13th day of August, 2025.

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CERTIFICATE OF COMPLIANCE

I, Matt Adams, certify that this brief does not exceed 10 pages and complies with the page limit of Civil Standing Order, VII.D.

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