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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JORGE WILLY VALERA CHUQUILLANQUI,

Petitioner,

v.

POLLY KAISER, Acting Field Office Director of the San Francisco Immigration and Customs Enforcement Office; TODD LYONS, Acting Director of United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the United States Department of Homeland Security, PAMELA BONDI, Attorney General of the United States, acting in their official capacities,

Respondents.

CASE NO. 3:25-cv-06320-TLT

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE AND OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

Respondents do not contest that Petitioner Jorge Willy Valera Chuquillanqui's re-detention was not based on any individualized determination that he posed a flight risk or a danger to the community. Respondents do not even attempt to distinguish the decisions of numerous courts in recent weeks that have issued preliminary relief to noncitizens detained in nearly identical circumstances. Instead, Respondents take the dangerous position that Mr. Valera has no due process rights to challenge his detention because of how he entered the United States. Putting aside the worrisome implications of this assertion, a district court in this circuit has already squarely rejected this argument in the last few days in a case with nearly identical facts. *See Hernandez v. Wofford*, No. 1:25-cv-00986, 2025 U.S. Dist. LEXIS 162801, at *7–8 (N.D. Cal. Aug. 21, 2025).

If the Court reaches the question of the statute of detention, it should reject the government's radical new position that Mr. Valera and millions of people in his position are subject to mandatory detention under 8 U.S.C. § 1225(b). First, it is uncontested that Mr. Valera remains in regular removal proceedings, not expedited removal. Second, Respondents' documents reflect that, as recently as July 30, 2025, Department of Homeland Security ("DHS") officials determined that Mr. Valera is subject to discretionary detention under 8 U.S.C. § 1226(a). There is also no evidence that Respondents ever attempted to characterize Mr. Valera as subject to § 1225(b) before this litigation, amounting to a post hoc rationalization. Individuals subject to § 1225(b) can also only be released under parole, and Mr. Valera was released on his own recognizance, further casting doubt on Respondents' re-characterization of Mr. Valera's detention authority. In addition, as the Supreme Court explained in *Jennings v. Rodriguez*, discretionary detention governs the cases of those, like Mr. Valera, who are "already in the country" and are detained "pending the outcome of removal proceedings." 583 U.S. 281, 289 (2018). As a growing

number of courts have found, the text and structure of the detention statutes, as well as decades of agency practice, also refute the government's position that individuals such as Mr. Valera are subject to mandatory detention under § 1225(b).

ARGUMENT

I. The Due Process Clause Protects Mr. Valera's Liberty Interests.

The Due Process Clause applies to noncitizens regardless of whether they are "seeking admission" or are "admitted" under immigration law. *Wong v. United States*, 373 F.3d 952, 973 (9th Cir. 2004), abrogated on other grounds by *Wilkie v. Robbins*, 551 U.S. 537 (2007). Respondents do not allege that Mr. Valera's re-detention resulted from an assessment of either danger or flight risk, the sole lawful bases for immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Rather, Respondents claim that "noncitizens subject to expedited removal cannot assert a protected property or liberty interest in additional procedures not provided by the statute." Opp. at 9 (citing *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020)). First, as the government acknowledges, Mr. Valera is not currently in expedited removal proceedings. Opp. at 6 ("Petitioner is currently subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)"). Thus *Thuraissigiam*, which involves the rights of a noncitizen in expedited removal proceedings, does not apply to Mr. Valera, who is in regular removal proceedings. In addition, even if Mr. Valera were subject to expedited removal, numerous courts have rejected attempts to extend *Thuraissigiam's* holding—which addressed a due process challenge admission procedures—to extinguish challenges to detention. *See, e.g., Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1170 (W.D. Wash. 2023), ("The Court stands unconvinced that the Supreme Court's decision in *Thuraissigiam* requires dismissal of Plaintiffs' due process claim."); *Jatta v. Clark*, No. 19-cv-2086, 2020 WL 7138006, at *2 (W.D. Wash. Dec. 5, 2020) (finding *Thuraissigiam* "inapposite" to due process challenge to detention); *Leke v. Hott*, 521 F. Supp. 3d 597, 604 (E.D. Va. 2021) ("Quite clearly,

Thuraissigiam does not govern here, as the Supreme Court there addressed the singular issue of judicial review of credible fear determinations and did not decide the issue of an Immigration Judge's review of prolonged and indefinite detention."); *Mbalivoto v. Holt*, 527 F. Supp. 3d 838, 844–48 (E.D. Va. 2020) (similar); *see also, e.g., Lopez v. Sessions*, No. 18-cv-4189, 2018 WL 2932726, at *7 (S.D.N.Y. June 12, 2018) (ordering release of "arriving" noncitizen who was unlawfully redetained); *Mata Velasquez v. Kurzdorfer*, No. 25-cv-493, 2025 WL 1953796, at *11 (W.D.N.Y. July 16, 2025) (same). Most recently, a district court in this circuit considered *Thuraissigiam* in the context of an immigration court re-detention case and also found it did not apply. *See Hernandez*, 2025 WL 2084921, at *7–8.

Moreover, Respondents claim that the multi-factor "balancing test" of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), does not apply here. But the very cases Respondents cite, Opp. at 9, did apply *Mathews*. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206-8 (9th Cir. 2022) (applying *Mathews* to § 1226(a) and explaining "it remains a flexible test"); *accord Pinchi v. Noem*, No. 5:25-cv-05632-PCP, F. Supp. 3d, 2025 WL 2084921, at *3 n.2 (N.D. Cal. July 24, 2025) (discussing *Rodriguez-Diaz*); *Landon v. Plasencia*, 459 U.S. 21, 34–35 (1982) (applying *Mathews* to due process challenge to immigration hearing procedures). And aside from this erroneous contention, Respondents offer no principled reason why *Mathews* should not apply here. The Court should thus reject Respondents' unsupported claim and, consistent with recent decisions in factually similar cases, grant the preliminary injunction. *See Pinchi v. Noem*, 2025 WL 2084921, at *7; *Singh v. Andrews*, 2025 WL 1918679, *8-10 (E.D. Cal. July 11, 2025); *Castellon v. Kaiser*, No. 1:2-cv-00968, 2025 WL 2373425, at *24 (N.D. Cal. Aug. 14, 2025).

II. Mr. Valera is Not Subject to Mandatory Detention.

Even though it is not necessary to reach Mr. Valera's due process claims, the Court should reject Respondents' position Mr. Valera is subject to mandatory detention. First, as mentioned

above, Respondents acknowledge that Mr. Valera is not currently in expedited removal proceedings.[1] In addition, it is too late for DHS to initiate expedited removal against Mr. Valera in the future because has been physically present in the United States for more than two years. 8 U.S.C. § 1225(b)(1)(A)(i), (b)(1)(A)(iii)(II).

Mr. Valera is also currently subject to discretionary detention under § 1226(a) and not § 1225(b), as Respondents now claim. Section 1225(b) applies to noncitizens arriving at the border, and Mr. Valera has been living in United States since 2022, has a pending asylum application, and has obtained work authorization. *Jennings*, 583 U.S. at 288–89. Further, the documents DHS issued to Mr. Valera when he was apprehended at the border in 2022 and, again, when he was arrested at immigration court in 2025, all state his detention authority as Section 236 of the Immigration and Nationality Act ("INA"), which is codified at 8 U.S.C. § 1226. Exs. 1–3. As such, they reflect DHS's determination that, as recently as July 30, 2025, Mr. Valera is subject to § 1226(a). Exs. 1–2. A district judge in New York recently examined the same documents in substance in another case and found that they "unequivocally establish that [the petitioner] was detained pursuant to Respondents' discretionary authority under § 1226(a)." *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *11–12 (S.D.N.Y. Aug. 13, 2025). Mr. Valera was also charged with removability pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), which is a statute applicable to noncitizens who are already present in the U.S., not to noncitizens who are considered "arriving." *See Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007); Opp., Ex. 1. ¶ 5. Mr. Valera's Order of Release on Recognizance itself also shows he is subject to § 1226(a) because § 1225(b) only authorizes release on parole. *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *4 (D. Mass. July 24, 2025). To the extent that Respondents argue

[1] Petitioner reserves all rights and arguments to challenge any future assertion by Respondents of such authority.

Mr. Valera's detention authority has since shifted to § 1225(b), the Court in *Benitez* found this to be an impermissible post hoc rationalization that was raised for the first time in litigation. *Id.* at *13–14.

Further, in claiming that Mr. Valera is "currently subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)," Respondents rely on a dramatic and implausible reinterpretation of the statutes governing immigration detention as applied to noncitizens who remain in regular removal proceedings. This new position has been thoroughly refuted by several district courts in recent weeks, and Petitioner respectfully refers the Court to the following extensive explanations, rooted primarily in the text and structure of the statute: *Lopez Benitez*, No. 25-cv-5937, 2025 WL 2371588, at *5–9; *Martinez*, 2025 WL 2084238, at *2-8; *Gomes v. Hyde*, No. 25-cv-11571 (JEK), 2025 WL 1869299, at *5-9 (D. Mass. July 7, 2025)); *Rodriguez v. Bostock*, No. 3:25-cv-5240-TMC, 2025 WL 1193850, at *14 (W.D. Wash. Apr. 24, 2025).

III. The Balance of the Equities and the Public Interest Weigh Strongly in Petitioner's Favor.

Respondents do not rebut Petitioner's showing that the remaining factors weigh in Mr. Valera's favor. He faces irreparable injury in the form of constitutional harm of the highest order if the preliminary injunction is not granted. *See Pinchi*, 2025 WL 2084921, at *7 (collecting cases). The public interest likewise weighs strongly in Mr. Valera's favor. *Id. See Pinchi*, 2025 WL 2084921, at *7.

CONCLUSION

For the foregoing reasons, this Court should grant the preliminary injunction

Date: August 25, 2025

Respectfully Submitted,

/s/ Jordan Weiner
Jordan Weiner