LAWYERS' COMMITTEE FOR CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA
Jordan Wells (SBN 326491)
jwells@lccrsf.org
131 Steuart Street # 400
San Francisco, CA 94105
Telephone: 415 543 9444

Attorney for Petitioner

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Maria Elena Ruiz Otero, as next friend on behalf of Ismael David Caicedo Ruiz,

Petitioner-Plaintiff,

v.

Polly KAISER, Acting Field Office Director of the San Francisco Immigration and Customs Enforcement Office, et al.,

Respondents-Defendants.

Case No. 5:25-cv-06536-NC

REPLY MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Date: August 22, 2025
Time: 11:30 am
Location: Zoom Video Conference
Judge: Hon. Nathanael Cousins

INTRODUCTION

Petitioner's core contention remains entirely uncontested: DHS shunted twenty-year-old Ismael David Caicedo Ruiz into detention on August 1 without any basis or process to revisit its previous determination that he presented neither a flight risk nor 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 based on a finding that detention in these circumstances violates Due Process. Instead, Respondents rest on the assertion that "noncitizens subject to expedited removal like Caicedo Ruiz . . . lack any liberty interest in avoiding removal or to certain additional procedures." ECF 14, Opp. at 9. This Court should reject Respondent's attempt to extend *Thuraissigiam*, a challenge to admission procedures that expressly did not involve a request for release from custody, to this challenge to physical detention. Moreover, this Court should find that Ismael's detention likely violates Due Process—irrespective of the asserted statute of detention—and issue the preliminary injunction.

If the Court reaches the question of the statute of detention, it should reject the government's radical new position that Ismael and millions of people in his position are subject to mandatory detention. First, it is uncontested that Ismael remains in regular removal proceedings, not expedited removal. Second, as a growing number of courts have found, the text and structure of the detention statutes, as well as decades of agency practice, refute the government's position that individuals such as Ismael are properly construed to be forever "seeking an admission." Instead, as the Supreme Court explained in *Jennings v. Rodriguez*, discretionary detention governs the cases of those, like Ismael, who are "already in the country" and are detained "pending the outcome of removal proceedings." 583 U.S. 281, 289 (2018).

ARGUMENT

I. The Due Process Clause Protects Ismael'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 Ismael'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)). But 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'sdecision 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). This Court should likewise reject Respondents' chilling position here.

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 8, 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. For the unrebutted reasons explained in Petitioner's motion, ECF 3 at 3-9, this Court should 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 (converting TRO requiring release of asylum seeker arrested at immigration court into preliminary injunction prohibiting government from re-detaining her without hearing); *Singh v. Andrews*, 2025 WL 1918679, *8-10 (E.D. Cal. July 11, 2025) (similar).

II. Ismael Is Not Subject to Mandatory Detention.

If the Court reaches the issue, it should find that Ismael is not subject to mandatory detention. First, Respondents acknowledge that Ismael's regular removal proceedings remain pending before the immigration court. Opp. at 5-6. Thus, at the time of his arrest and to this day, there is no lawful basis to premise his detention on 8 U.S.C. § 1225(b)(1)(B)(iii)(IV), which applies to individuals who are in expedited removal proceedings. Petitioner reserves all rights and arguments to challenge any future assertion by Respondents of such authority.

Respondents instead rely on a dramatic and implausible reinterpretation of the statutes governing immigration detention as applied to noncitizens who remain in regular removal proceedings. For decades, courts and agencies have recognized that the detention of individuals who entered the U.S. without inspection is governed by 8 U.S.C. § 1226(a), the default discretionary detention statute that permits release by DHS or an immigration judge. Regulations promulgated nearly thirty years ago provide that 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" under Section 1226. 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Until weeks ago, Respondents consistently adhered to this interpretation. *See, e.g., Matter of Garcia-Garcia*, 25 I&N. Dec. 93 (BIA 2009); *Matter of D-J-*, 23 I&N. Dec. 572 (A.G. 2003); Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) ([Solicitor General]: "DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly

thereafter apprehended."). The Court can take note of this longstanding practice in determining the applicable law in this case. *See Loper Bright v. Raimondo*, 603 U.S. 369, 386 (2024).

Respondents now claim, however, that noncitizens who entered the U.S. without inspection are "applicants for admission" who are still "seeking admission" years after DHS released them into the interior on their own recognizance, and as a result are subject to indefinite mandatory detention under 8 U.S.C. § 1225(b)(2)(A), without access to a bond hearing. Opp. at 4; *cf. Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *4 (D. Mass. July 24, 2025) (describing DHS's recent major shift in position). That 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 v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *5-9 (S.D.N.Y. Aug. 13, 2025); *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).

To highlight a couple of salient points, first, courts have concluded that "[t]he phrase 'seeking admission' . . . necessarily implies some sort of present-tense action." *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *6; *accord Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *7 (concluding that this is the "plain, ordinary meaning" of "seeking admission"). Thus, Ismael, who entered the United States in 2023, is not still seeking an admission in 2025.[1] Second, courts have found that adopting the government's broad new interpretation would render superfluous a provision of the detention statute that renders people charged as inadmissible under § 1182(a)(6)(A)(i) (i.e., charged with having entered without inspection) subject to mandatory detention only if they have been arrested, charged with, or

[1] Ismael also is not subject to the reasoning of *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025), which involved the distinct circumstances of an individual whose humanitarian parole was revoked, restoring her to the status of a person seeking entry into the country. *See Martinez,* 2025 WL 2084238, at *3 (D. Mass. July 24, 2025). Like the petitioner in *Martinez*, Ismael was released on his own recognizance—not granted parole. *Id.*

convicted of certain crimes. *See Vazquez*, 2025 WL 1193850, at *12 ("[W]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies.") (quoting *Shady Grove*, 559 U.S. at 400). That specific provision would be unnecessary if entry without inspection alone rendered a person subject to mandatory detention. Thus, Ismael, who has no criminal history, is subject to discretionary detention. In line with the reasoned analysis of these authorities, this Court—if it reaches the question—should reject the government's contrary new statutory interpretation.

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 Ismael'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 Ismael's favor. *Id.*

CONCLUSION

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

Date: August 19, 2025

Respectfully Submitted,

/s/ Jordan Wells

Jordan Wells (SBN 326491)
LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF THE SAN FRANCISCO BAY AREA
jwells@lccrsf.org
131 Steuart Street # 400
San Francisco, CA 94105
Telephone: 415 543 9444

Attorney for Petitioner