Niels W. Frenzen (CA SBN # 139064)
Jean E. Reisz (CA SBN # 242957)
USC Gould School of Law
Immigration Clinic
699 Exposition Blvd.
Los Angeles, CA 90089-0071
Telephone: (213) 740-8933
nfrenzen@law.usc.edu
jreisz@law.usc.edu

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

Javier CEJA GONZALEZ; Reynaldo CUERVO-SILVERIO; Juan Francisco DONIS-MANCILLA; Mario Francisco GARCIA AGUILAR; Gregorio MARTINEZ ZAMORA; Marlon Adilson VELASQUEZ CINTO,

Petitioners,

v.

Kristi NOEM, Secretary, Department of Homeland Security, *et al.*,

Respondents.

Case No. 5:25-cv-02054-ODW-BFM

PETITIONERS' REPLY IN SUPPORT OF ISSUANCE OF PRELIMINARY INJUNCTION

Hearing
Date: August 26, 2025
Time: 10:00 a.m.
Courtroom: Via Zoom
Judge: Otis D. Wright, II

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Rules

Legislative History

Agency Decisions

Other Authorities

I. INTRODUCTION

Petitioners all entered the United States without inspection and have since resided in this country before being arrested by immigration authorities—three of the six petitioners for more than fifteen years. 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' 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 six Petitioners be provided a bond hearing by an immigration judge (IJ), and in each case, an IJ ordered their release on bond.

Petitioners 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. Respondents 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, Petitioners continue to demonstrate their entitlement to preliminary injunctive relief.

II. ARGUMENT

A. Standard of Review

Contrary to Respondents' assertion, Dkt. 13 at 5, Petitioners 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, it is the change in Respondents' policy that jeopardizes Petitioners' rights. Indeed, requiring Respondents 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 Petitioners 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, Petitioners 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. Petitioners Continue to Present a Live Controversy

Respondents' mootness argument rests on the premise that "Petitioners have obtained the relief they sought – bond hearings." Dkt. 13 at 6. That misstates the claim and the remedy: Petitioners seek an injunction preserving their eligibility for release on bond under § 1226(a). 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 Petitioners' rights pending the final resolution of their claims.

Critically, Respondents have not disavowed their policy, let alone made it "absolutely clear" that the mandatory detention provision of § 1225(b)(2) does not apply to Petitioners. *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 Petitioners and similarly situated individuals. Dkt. 13 at 6–9. 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).

C. Likelihood of Success on the Merits

The text of 8 U.S.C. §§ 1225 and 1226 demonstrate that Petitioners are entitled to be released on bond under § 1226(a), and that Respondents' policy violates the Immigration and Nationality Act (INA). In issuing the TRO, this Court correctly determined that Petitioners have demonstrated a likelihood of success on the merits, because § 1226(a), not § 1225(b)(2)(A), governs Petitioners' situation. Dkt. 12 at 6-9. *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); *Maldonado Bautista v. Santacruz,* No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July 28, 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 Petitioners, 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).

Respondents' contrary interpretation relies entirely on the breadth of the definition of "applicants for admission" at § 1225(a)(1). But Respondents 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 Petitioners, 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.").

Respondents 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. 13 at 8 (quoting *Matter of Lemus-Losa*, 25 I. & N. Dec. 734, 743 (BIA 2012)). But Lemus-Losa 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 Petitioners' situation and directly undermine Respondents' contention that the phrase "seeking admission" means nothing other than falling under the broad definition of "applicant for admission" at § 1225(a)(1).

Respondents' 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). Relatedly, Respondents err in asserting "Petitioners' interpretation . . . reads 'applicant for admission' out of § 1225(b)(2)(A)." Dkt. 13 at 8. That language instructs that people who *were* admitted are not covered by § 1252(a)(2)(B). Respondents' 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. 8 U.S.C. § 1226(a) expressly covers noncitizens who are present without admission.

Respondents fail to acknowledge how the plain text of § 1226(a)—which affords access to bond—includes people who are inadmissible, like Petitioners.[1] Here, DHS alleges in removal proceedings that Petitioners 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 Petitioners 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).

[1] Generally speaking, grounds of deportability (found in 8 U.S.C. § 1227) apply to people like lawful permanent 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).

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 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 Petitioners), it reinforces the default rule that § 1226(a)'s general detention authority otherwise must generally apply to Petitioners. "[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, Respondents 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 [Petitioners]." *Rodriguez Vazquez*, 2025 WL 1193850, at *15.

3. Respondents' policies violate EOIR regulations.

Finally, Respondents' policies also violate EOIR's longstanding regulations considering people like Petitioners 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

Petitioners continue to face a likelihood of irreparable harm as this Court found, Dkt. 12 at 10–11, notwithstanding their release following the TRO. As noted above, *see supra* p. 3, Respondents have not disavowed their interpretation of § 1225(b)(2), including as to those "previously released," Dkt. 5-2 at 89-90, Ex. T (noting that new ICE 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 Petitioners. Respondents again misconstrue the "status quo" and the relief requested, Dkt. 13 at 9-10, 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. 12 at 11, and should reject them here. Accordingly, the Court should reaffirm its finding that the balance of equities and public interest weigh in favor of Petitioners. Dkt. 12 at 11.

///

///

///

///

///

III. CONCLUSION

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

Respectfully submitted this 21st day of August, 2025.

/s/ Niels W. Frenzen
Niels W. Frenzen

Jean E. Reisz (CA SBN # 242957)
USC Gould School of Law
Immigration Clinic
699 Exposition Blvd.
Los Angeles, CA 90089-0071
Telephone: (213) 740-8933
nfrenzen@law.usc.edu
jreisz@law.usc.edu

WORD COUNT CERTIFICATION

The undersigned, counsel of record for Petitioners certifies that this Memo contains 2,388 words, which complies with the word limit of L.R. 11-6.1.

s/ Niels W. Frenzen

NIELS W. FRENZEN
Attorney for Petitioners