Jordan Weiner (SBN 356297)
jordan@lrcl.org
La Raza Centro Legal
474 Valencia St., Ste. 295
San Francisco, CA 94103
Telephone: (415) 553-3435

Attorney for Petitioner

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MARIA JOSE JARABA OLIVEROS,

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. 5:25-cv-07117-BLF

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

INTRODUCTION

Respondents do not contest that Petitioner Maria Jose Jaraba Olivero's re-detention was not based on any individualized determination that she 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 Ms. Jaraba Oliveros has no due process rights to challenge her detention because of how she 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. August 21, 2025) (declining to extend *Thuraissigiam*, a challenge to admission procedures that expressly did not involve a request for release from custody, to a challenge to physical detention).

If the Court reaches the question of the statute of detention, it should reject the government's radical new position that Ms. Jaraba Oliveros and millions of people in her position are subject to mandatory detention under 8 U.S.C. § 1225(b). First, it is uncontested that Ms. Jaraba Oliveros remains in regular removal proceedings, not expedited removal. Second, Respondents' documents reflect that, as recently as August 22, 2025, Department of Homeland Security ("DHS") officials determined that Ms. Jaraba Oliveros is subject to discretionary detention under 8 U.S.C. § 1226(a). There is also no evidence that Respondents ever attempted to characterize Ms. Jaraba Oliveros 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 Ms. Jaraba Oliveros was released on her own recognizance, further casting doubt on Respondents' re-characterization of Ms. Jaraba Oliveros's detention authority. In addition, as the Supreme Court explained in *Jennings v. Rodriguez*, discretionary detention governs the cases of those, like Ms.

Jaraba Oliveros, who are "already in the country" and are detained "pending the outcome of removal proceedings." 583 U.S. 281, 289 (2018). 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 Ms. Jaraba Oliveros are subject to mandatory detention under § 1225(b).

ARGUMENT

I. The Due Process Clause Protects Ms. Jaraba Oliveros'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 Ms. Jaraba Oliveros'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, Ms. Jaraba Oliveros 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 Ms. Jaraba Oliveros, who is in regular removal proceedings. In addition, even if Ms. Jaraba Oliveros 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. This Court should likewise reject the Respondents' chilling argument that Mr. Pineda Campos has no due process rights to challenge her detention.

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 (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); *Castellon v. Kaiser*, No. 1:2-cv-00968, 2025 WL 2373425, at *24 (N.D. Cal. Aug. 14, 2025); *Prieto v. Kaiser*, No. 1:25-CV-01017-JLT-SAB (E.D. Cal. Aug. 26, 2025).

II. Ms. Jaraba Oliveros is Not Subject to Mandatory Detention.

Even though it is not necessary to reach Ms. Jaraba Oliveros's due process claims, the Court should reject Respondents' position Ms. Jaraba Oliveros is subject to mandatory detention. First, as mentioned above, Respondents acknowledge that Ms. Jaraba Oliveros's regular removal proceedings remain pending before the immigration court. Opp. at 8–9. Thus, at the time of her arrest and to this day, there is no lawful basis to premise her 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.

Ms. Jaraba Oliveros is also currently subject to § 1226(a) and not § 1225(b), as Respondents now claim. Section 1225(b) applies to noncitizens arriving at the border, and Ms. Jaraba Oliveros has been living in United States since December 2023, has a pending asylum application, and obtained work authorization. *Jennings*, 583 U.S. at 288–89. Importantly, the documents titled Notice of Custody Determination and Order of Release on Recognizance DHS issued to Ms. Jaraba Oliveros at the border state the detention authority as Section 236 of the Immigration and Nationality Act ("INA"), which is codified at 8 U.S.C. § 1226. Opp., Exs. 4–5. Her Order of Release on Recognizance issued to her after she was arrested at immigration court on August 22, 2025 also cites Section 236 as the detention authority. *Id.*, Ex. 9. As such, these documents reflect DHS's determination that Ms. Jaraba Oliveros is subject to § 1226(a). A district

judge in New York recently examined similar documents 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). Ms. Jaraba Oliveros 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. Ms. Jaraba Oliveros was also released on an Order of Release on Recognizance when she entered the United States, which in and of itself shows she 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) ("Respondents' contrary theory of the procedural history cannot make sense of Petitioner's release on recognizance because individuals detained following examination under section 1225 can only be paroled into the United States 'for urgent humanitarian reasons or significant public benefit'") (citing *Jennings*, 583 U.S. at 300). To the extent that Respondents argue Ms. Jaraba Oliveros'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 Ms. Jaraba Oliveros 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. 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). As noted above, 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*, 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).

Thus, Ms. Jaraba Oliveros, 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 Ms. Jaraba Oliveros's favor. She 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 Ms. Jaraba Oliveros's favor. *Id.* *See Pinchi*, 2025 WL 2084921, at *7.

CONCLUSION

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

Date: August 26, 2025

Respectfully Submitted,

/s/ Jordan Weiner

Jordan Weiner
jordan@lrcl.org
La Raza Centro Legal
474 Valencia St., Ste. 295
San Francisco, CA 94103
Telephone: (415) 553-3435

Attorney for Petitioner