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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Jose Guadalupe SIXTOS CHAVEZ; Juan Manuel HERNANDEZ DIAZ; and Jesus HERRERA TORRES;

Petitioners,

v.

Kristi NOEM, Secretary, Department of Homeland Security; Pam BONDI, Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Todd LYONS, Executive Associate Director of ICE Enforcement and Removal Operations (ERO); Gregory J. ARCHAMBEAULT, Director, San Diego Filed Office, Immigration and Customs Enforcement; Christopher J. LAROSE, Warden, Otay Mesa Detention Center.

Respondents.

No. 3:25-cv-02325-CAB-SBC

PETITIONERS SIXTOS CHAVEZ AND HERRERA TORRES' REPLY TO OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

Date: November 3, 2025

Honorable Cathy Ann Bencivengo
United States District Judge

PER CHAMBERS RULES, NO ORAL ARGUMENT UNLESS SEPARATELY ORDERED BY THE COURT

I. INTRODUCTION

Petitioners Jose Guadalupe Sixtos Chavez and Jesus Herrera Torres hereby file their reply to Respondents' Opposition to their Motion for Preliminary Injunction. Dkt # 11.

II. ARGUMENT

A. PETITIONERS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS AND, AT A MINIMUM, RAISE SERIOUS LEGAL QUESTIONS.

Respondents argue that Petitioners have no chance of success on the merits of their claims. Dkt # 11 at 4. That can hardly be stated in good faith given the scores of decisions holding that individuals charged with having entered the United States without inspection or admission are eligible for bond redetermination hearings under 8 U.S.C. § 1226(a). In fact, there are more than 120 district court cases finding that such individuals are eligible for bond redetermination hearings.[1] The district court in the Western District of Washington entered summary judgment and class-wide declaratory relief on September 30, 2025 on this precise issue, after certifying a local class action in the Northwest ICE Processing center in the Western District of Washington. Rodriguez v. Bostock, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *27 (W.D. Wash. Sept. 30, 2025). A nationwide motion for class certification and class-wide declaratory relief is pending in Maldonado Bautista v. Santacruz, 5:25-cv-01873-SSS-BFM (C.D. Cal.), Dkt # 74, and is scheduled for a hearing on November 14, 2025.[2] That court had already granted a Temporary Restraining Order on July 28, 2025. Maldonado Bautista v.

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[1] A list of cases is attached as an addendum for the Court's convenience.

[2] Class-wide injunctive relief is barred by 8 U.S.C. § 1252(f)(1), but declaratory relief remains available.

Santacruz, 5:25-cv-01873-SSS-BFM (C.D. Cal.), Dkt # 14 (attached). Clearly Petitioners raise, at a minimum, serious legal questions for purposes of the Winter factors. Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008).

Under the "sliding scale" variant of the Winter standard, "if a plaintiff can only show that there are 'serious questions going to the merits'—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the 'balance of hardships tips *sharply* in the plaintiff's favor,' and the other two Winter factors are satisfied." Shell Offshore, Inc. v. Greenpeace, Inc., 709 F.3d 1281, 1291 (9th Cir. 2013) (quoting Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011)). Petitioners clearly meet such a standard.

As the court explained in Rodriguez v. Bostock, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *17 (W.D. Wash. Sept. 30, 2025), the plain text of 8 U.S.C. § 1226 supports the finding that those who entered the United States without inspection or admission are eligible for bond hearings before immigration judges, based on the exception to bond eligibility under § 1226(c). Id. ("A plain reading of this exception implies that the default discretionary bond procedures in section 1226(a) apply to noncitizens who, like Bond Denial Class members, are 'present in the United States without being admitted or paroled" under section 1182(a)(6)(A) but *have not been* implicated in any crimes as set forth in section 1226(c).'") The court then reviewed the text of § 1225 and § 1226 and determined that individuals who entered the United States without inspection are not subject to § 1225(b)(2), and are eligible for bond under § 1226(a).

In reaching that determination, the Rodriguez court held that applying § 1225(b)(2) to entrants without admission would render § 1226(c) meaningless, since that section includes entrants without admission. Id. at * 18 ("Put another way, section 1226(c)(1)(E)'s mandatory detention for inadmissible noncitizens

who are implicated in an enumerated crime, including those 'present in the United States without being admitted or paroled,' would be meaningless since all noncitizens 'present in the United States who ha[ve] not been admitted' would already be subject to mandatory detention under the government's reading.") citing 8 U.S.C. § 1226(c)(1)(E). The Court should follow this same reading of the statute. This discussion of § 1226(c)(1)(E) is precisely about the Laken Riley Act. Id. Most courts reviewing the Laken Riley Act's amendment's to § 1226(c) have found that its language would be superfluous if § 1225(b)(2) applied to those who entered without inspection. Patel v. Crowley, No. 25 C 11180, 2025 WL 2996787, at *8 (N.D. Ill. Oct. 24, 2025); Carmona v. Noem, No. 1:25-CV-1131, 2025 WL 2992222, at *6 (W.D. Mich. Oct. 24, 2025); Polo v. Chestnut, No. 1:25-CV-01342 JLT HBK, 2025 WL 2959346, at *9 (E.D. Cal. Oct. 17, 2025); Sanchez v. Wofford, No. 1:25-CV-01187-SKO (HC), 2025 WL 2959274, at *6 (E.D. Cal. Oct. 17, 2025); J.S.H.M v. Wofford, No. 1:25-CV-01309 JLT SKO, 2025 WL 2938808, at *12 (E.D. Cal. Oct. 16, 2025); Pablo Sequen v. Albarran, No. 25-CV-06487-PCP, 2025 WL 2935630, at *9 (N.D. Cal. Oct. 15, 2025).

Respondents also argue that those who are not charged with certain crimes listed under 8 U.S.C. § 1226(c) in the Notice to Appear are subject to discretionary bond under § 1226(a), giving meaning to the statute at § 1226. Dkt # 11 at 6. This is incorrect. Section 1226(c) applies regardless of whether a crime is charged in the Notice to Appear. Matter of Kotliar, 24 I. & N. Dec. 124, 127 (BIA 2007). The same is true for "those previously admitted but deemed deportable." Dkt # 11 at 6. In Re: Sam S. Kennedy A.K.A. Sam Kennedy, 2008 WL 4420106, at *1 (BIA Sept. 23, 2008) (unpublished). Respondents' arguments attempting to give meaning to § 1226(a) are contradicted by agency caselaw itself.

Next, Respondents argue that the Court should reject a finding that § 1226(a) applies to those who entered without inspection or admission because such

a finding puts those who came to the United States unlawfully in a better position than the person who sought admission at the border. Dkt # 11 at 5. However, that reading, in fact, is consistent with precedent restricting due process rights of parolees to the statutory rights afforded by Congress. Dep't of Homeland Sec. v. Thuraissigiam, 591 U.S. 103, 140, 140 S. Ct. 1959, 1983, 207 L. Ed. 2d 427 (2020); Landon v. Plasencia, 459 U.S. 21, 32, 103 S. Ct. 321, 329, 74 L. Ed. 2d 21 (1982). Conversely, full due process rights apply to those who have entered the United States without inspection. Zadvydas v. Davis, 533 U.S. 678, 693, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001) ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law."); Plyler v. Doe, 457 U.S. 202, 210, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982) (rejecting argument that undocumented aliens, because of their immigration status, are not covered by the Fourteenth Amendment, and observing that "[w]hatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of the term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments.").

The language at § 1225(b)(2)(A) states that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." Respondents argue that Petitioners read "applicant for admission" out of § 1225(b)(2)(A), since those who entered without inspection are seeking lawful status. Dkt # 11 at 6. But that argument fails to note that an "applicant for admission" is read synonymously with the term "arriving alien," which is defined as "an applicant for admission *coming or attempting to come into the United States*

at a port-of-entry." 8 C.F.R. § 1.2 (emphasis added). Hence, courts have held that an "applicant for admission" is by statute and regulation one who actively "seeking admission" by "requesting entry into the United States upon arrival." Pablo Sequen v. Albarran, No. 25-CV-06487-PCP, 2025 WL 2935630, at *8 (N.D. Cal. Oct. 15, 2025). See also Echevarria v. Bondi, No. CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282, at *7 (D. Ariz. Oct. 3, 2025); Romero v. Hyde, 2025 WL 2403827, *10 (D. Mass. 2025); Cordero Pelico v. Kaiser, No. 25-CV-07286-EMC, 2025 WL 2822876, at *10 (N.D. Cal. Oct. 3, 2025); Vazquez v. Feeley, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *12 (D. Nev. Sept. 17, 2025). See also Lopez Benitez v. Francis, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025) ("mandatory detention under § 1225(b)(2)(A) applies to a noncitizen who meets three criteria: (1) one who is an 'applicant for admission' (a 'term of art' in the INA that includes noncitizens who "'arrive[ ] in the United States,' as well as those already 'present in the United States who ha[ve] not been admitted,' U.S.C. § 1225(a)(1)); (2) who is actively 'seeking admission' to the country, and (3) whom an examining immigration officer determines 'is not clearly and beyond a doubt entitled to be admitted.'").

Last, Respondents argue that the term "seeking admission" as used in § 1225(b)(2)(A) includes those who entered without inspection or admission. Dkt # 11 at 6. However, this reading has been rejected by other courts, which explain that an individual who entered without inspection and admission has *already entered* the United States and is not presently actively "seeking admission." Rodriguez v. Bostock, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *21 (W.D. Wash. Sept. 30, 2025); Lopez Benitez v. Francis, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025); Romero v. Hyde, No. CV 25-11631-BEM, 2025 WL 2403827, at *9 (D. Mass. Aug. 19, 2025); Maldonado v. Olson, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at *11 (D. Minn. Aug. 15, 2025). Hence, at

a minimum, Petitioners raise serious legal questions.

B. PETITIONERS DEMONSTRATE IRREPERABLE HARM.

Next, incredulously, Respondents assert that Petitioners do not demonstrate irreparable harm. Petitioners are in immigration detention, and separated from their family. They have clearly met the standard for irreparable injury. Ninth Circuit precedent establishes that challenged detention meets the harm standard for an injunction. Hernandez v. Sessions, 872 F.3d 976, 995 (9th Cir. 2017). "Deprivation of physical liberty by detention constitutes irreparable harm." Arevalo v. Hennessy, 882 F.3d 763, 767 (9th Cir. 2018). Respondents cannot in good faith argue that Petitioners have not established irreparable injury.

C. PETITIONERS OTHERWISE WARRANT A PRELIMINARY INJUNCTION.

Last, given the sliding scale in Winter, Petitioners clearly demonstrate that the hardships sharply tip in their favor under the serious legal questions test. They are being detained for the duration of their removal hearing without access to bond hearings to determine if they are a danger or flight risk. Conversely, there is no harm to the government in conducting bond hearings before immigration judges, as the government has been required to do in the over 100 cases granting injunctive relief on this issue. See Pinchi v. Noem, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *6 (N.D. Cal. July 24, 2025) ("Indeed, it is likely that the cost to the government of detaining Ms. Garro Pinchi pending any bond hearing would significantly exceed the cost of providing her with a pre-detention hearing."). "The costs to the public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million." Hernandez v. Sessions, 872 F.3d 976, 996 (9th Cir. 2017)

Last, contrary to Respondents' arguments, there is no interest in requiring exhaustion when the Board has already issued a precedent decision in Matter of YAJURE HURTADO, 29 I&N Dec. 216 (BIA 2025), precisely on this issue. See Vasquez-Rodriguez v. Garland, 7 F.4th 888, 896 (9th Cir. 2021) ("[W]here the agency's position on the question at issue appears already set, and it is very likely what the result of recourse to administrative remedies would be, such recourse would be futile and is not required.")

III. CONCLUSION

For the foregoing reasons, the Court should grant Petitioners' Motion for Preliminary Injunction and order that Petitioners Jose Guadalupe Sixtos Chavez and Jesus Herrera Torres be provided an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a), with instructions that the immigration judge has jurisdiction under 8 U.S.C. § 1226(a) to consider bond.

Dated: October 27, 2025

Respectfully Submitted,

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