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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 SAUL HERNANDO ACOSTA ROA, et al.,

12 Petitioners,

13 v.

14 SERGIO ALBARRAN, et al.,

15 Respondents.

CASE NO. 3:25-cv-07802-RS

**PETITIONERS' REPLY TO
RESPONDENTS' RESPONSE AND
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

INTRODUCTION

Respondents do not contest that Petitioners' re-detention was not based on any individualized determination that they posed a flight risk or a danger to the community. Respondents are also unable to distinguish this case from the "tsunami" of district court decisions in recent weeks that have issued preliminary relief in nearly identical circumstances. *See Caicedo Hinestroza et al., v. Kaiser*, No. 3:25-cv-07559-JD, 2025 LX 333950 at *4 (Sept. 9, 2025). Instead, Respondents double down on their unsupported position that Petitioners have no due process rights to challenge their detention outside of what is statutorily provided for them, despite many courts squarely rejecting this argument. Respondents also try to draw attention away from the due process question by introducing a dramatic and implausible new statutory scheme that they claim subjects Petitioners, and millions of people like them, to mandatory detention under 8 U.S.C. § 1225(b). However, it is undisputed that Respondents released Petitioners at the border subject to discretionary detention under § 1226(a). They cannot now reverse course. In addition, a court in this district, along with several other district courts, thoroughly examined the text, structure, agency application, and legislative history of § 1225(b) and determined it does not support Respondents' position. *See Salcedo Aceros v. Kaiser*, No. 3:25-cv-06924-EMC at *13-21. This Court should adopt the reasoning in *Salcedo Aceros* and hold the same.

ARGUMENT

I. The Due Process Clause Protects Petitioners' 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 Petitioners' 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 Petitioners do not have due process rights beyond what is provided for them in § 1225. Opp. at 12 (citing *Landon v. Plasencia*, 459 U.S. 21 (1982) and *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, (2020)). However, numerous courts have found that Respondents’ contention is not supported by the cases on which it relies. *See, e.g., Jaraba Olivero v. Kaiser*, No. 25-cv-07117-BLF, at *7-8 (N.D. Cal. Sept. 18, 2025) (accepting Respondents’ request at the PI hearing to consider the applicability of *Thuraissigiam* and finding it does not apply); *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).

Moreover, Respondents claim that the multi-factor “balancing test” of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) does not apply because the Supreme Court has not used the test to address mandatory detention challenges. Opp. at 9. However, the Ninth Circuit has “assume[d] without deciding” that *Mathews* applies in the immigration detention context. *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). Courts in this circuit also regularly apply *Mathews* in due process challenges in identical or similar circumstances to those here. *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, at *9. 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).

II. Petitioners Are Not Subject to Mandatory Detention.

As an initial matter, it is important to stress that Petitioners have a liberty interest in remaining free regardless of which detention statute applies. As the court in *Espinoza v. Kaiser* pointed out, “even assuming Respondents are correct that § 1225(b) is the applicable detention authority for all ‘applicants for admission,’ Respondents fail to contend with the liberty interests created by the fact that the Petitioners in this case were released on recognizance prior to the manifestation of this interpretation.” *See* No. 1:25-CV-01101 JLT SKO, 2025 U.S. Dist. LEXIS 183811, at *28 (E.D. Cal. Sept. 18, 2025). This Court can thus grant preliminary relief without reaching the detention statute question.

Should the Court reach the detention statute question, it should find that Petitioners are not subject to mandatory detention under § 1225(b)(1) or § 1225(b)(2). First, as of the date of this filing, an immigration judge has not yet ruled on DHS’s motions to dismiss any of Petitioners’

cases.¹ None of the Petitioners are thus currently subject to expedited removal. Moreover, Petitioners Cristian Alberto Cedeno Correa and Geni Viviana Henao Zambrano have been in the United States for over two years. As such, even if an immigration judge were to grant their motions to dismiss, DHS could not initiate expedited removal proceedings against them because expedited removal under § 1225(b)(1)(A)(iii) only applies to people who have not been physically present in the United States continuously for the 2-year period immediately prior to the date of a determination of inadmissibility.² With regards to the five other Petitioners, there is a stay of the government's implementation of the 2025 Designation Notice and the Huffman Memorandum applying expedited removal to "people living in the interior of the country who have not previously been subject to expedited removal," which applies to all Petitioners. *Make the Rd. N.Y. v. Noem*, No. 25-cv-190 (JMC), 2025 LX 389496, at *70 (D.D.C. Aug. 29, 2025).

Respondents also argue that Petitioners "fell within the scope of the 2004 expedited removal designation that was in place at the time of their arrival... [b]ecause they were apprehended by CBP officers within 14 days of their entry and within 100 miles of the border." Opp. at 8. However, it is too late for DHS to assert this authority. The determination of inadmissibility under the 2004 designation must take place within 14 days of entry without inspection. Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877-01, 48879 (Aug. 11, 2004). To make an inadmissibility determination under § 1225(b)(1)(A)(iii)(II), DHS must follow

¹ An immigration judge is also not likely to rule on the motions to dismiss anytime soon. When Petitioners were arrested by ICE, their immigration cases were transferred to detained dockets in Adelanto and Otay Mesa. Since they were released, their cases are in the process of being transferred back to the non-detained docket in San Francisco. Once they are returned to SF Immigration Court, they will then either be assigned to a different immigration or the same immigration judge but for a hearing that is farther out. Petitioners are also in the process of submitting written oppositions to their motions to dismiss. If the motions to dismiss are granted despite Petitioners' opposition, Petitioners will have the right to appeal the dismissals to the Board of Immigration Appeals, and expedited removal proceedings cannot be initiated against them during the appeal period. In Petitioners' counsel's experience, an appeal to the Board of Immigration Appeals is unlikely to be adjudicated in less than six months.

² The other five petitioners will have been in the United States for over two years by December 12, 2023 and, as such, the same reasoning will soon apply to them. Opp. at 6-7.

1 the multi-step implementing regulations. *See* 8 C.F.R. § 235.3(b)(2). Here, DHS did not make a
2 determination of inadmissibility under subparagraph 1225(b)(1)(A)(i) within 14 days of any of the
3 Petitioners' entries. The mere allegation of inadmissibility in a Notice to Appear cannot serve as a
4 substitute for the mandatory procedures.

5 Petitioners are also currently subject to § 1226(a) and not § 1225(b)(2), as Respondents
6 now claim. For decades, courts and agencies have recognized that the detention of individuals who
7 entered the U.S. without inspection is governed by 8 U.S.C. § 1226(a), the default discretionary
8 detention statute that permits release by DHS or an immigration judge. Regulations promulgated
9 nearly thirty years ago provide that noncitizens "who are present without having been admitted or
10 paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for
11 bond and bond redetermination" under Section 1226. 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
12 Respondents also consistently adhered to this interpretation. *See, e.g., Matter of Garcia-Garcia*,
13 25 I&N. Dec. 93 (BIA 2009); *Matter of D-J-*, 23 I&N. Dec. 572 (A.G. 2003); Transcript of Oral
14 Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) ([Solicitor General]:
15 "DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the
16 border between ports of entry and are shortly thereafter apprehended."").
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18 Consistent with this longstanding practice, Petitioners were issued Form I-220A, Order of
19 Release on Recognizance when they were released at the border, which states the detention
20 authority as Section 236 of the Immigration and Nationality Act ("INA"), codified at 8 U.S.C. §
21 1226. Opp at 7; *Jimenez Garcia v. Kaiser*, No. 4:25-cv-06916-YGR at *2 (taking judicial notice of
22 the fact that Form I-220A, Order of Release on Recognizance cites release subject to 8 U.S.C.
23 Section 1226). A district judge in New York recently examined release documents, such as Form
24 I-220A, Order of Release on Recognizance, found that they "unequivocally establish that [the
25 petitioner] was detained pursuant to Respondents' discretionary authority under § 1226(a)." *Lopez*
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1 *Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *11–12 (S.D.N.Y. Aug. 13, 2025). As
 2 further evidence of release under section 1226(a), Petitioners were charged with removability
 3 pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), which is a statute applicable to noncitizens who are
 4 already present in the U.S., not to noncitizens who are considered “arriving.” *See Ortega-*
 5 *Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007); *Opp.*, 8-1, Exs. 1, 3, 5; *Id.*, 8-2, Ex.
 6 1; *Id.*, 8-3, Exs. 1, 3; *Id.*, 8-4, Ex. 1; 8-5, Ex. 1. Further, the fact that Petitioners were released on
 7 an Order of Release on Recognizance in and of itself is evidence that they are subject to § 1226(a)
 8 because § 1225(b) only authorizes release on parole. *Martinez v. Hyde*, No. 25-cv-11613, 2025
 9 WL 2084238, at *4 (D. Mass. July 24, 2025) (“Respondents’ contrary theory of the procedural
 10 history cannot make sense of Petitioner’s release on recognizance because individuals detained
 11 following examination under section 1225 can only be paroled into the United States ‘for urgent
 12 humanitarian reasons or significant public benefit’”) (citing *Jennings v. Rodriguez*, 583 U.S. 281,
 13 300 (2018)). Respondents also do not dispute that “the government previously released
 14 [Petitioners] under 8 U.S.C. § 1226(a).” *Opp.* at 11.

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 16 Respondents now claim, however, that they can revoke their earlier determination and
 17 subject Petitioners to mandatory detention under 8 U.S.C. § 1225(b)(2).³ *Opp.* at 11. As explained
 18 above, Petitioners have a liberty interest that protects them from this type of arbitrary government
 19 action. *See also Jimenez Garcia v. Kaiser*, No. 4:25-cv-06916-YGR, 2025 U.S. Dist. LEXIS
 20 178531, at *9 (N.D. Cal. Aug. 19, 2025) (the government may not “unilaterally reclassify [a
 21 petitioner] as ‘detained’ pursuant to Section 1225(b)(2))” after making an initial determination that
 22 they are detained under Section 1226(a)). To do so would amount to an impermissible post hoc
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 27 ³ Curiously, Respondents frame their argument as “Petitioners’ detention authority cannot be converted to § 1226(a)”,
 28 *Opp.* at 11, when it is undisputed that the detention authority was always § 1226(a), and the issue is whether
 Respondents can now unilaterally convert it to § 1225(b).

1 rationalization. *Lopez Benitez*, No. 25-cv-5937 at *13–14. Still, however, Respondents “steamroll
 2 over this line of authority” and claim they have these powers based on a dramatic and implausible
 3 reinterpretation of section 1225(b)(2)(A). *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025
 4 U.S. Dist. LEXIS 183811, at *27 (E.D. Cal. Sept. 18, 2025). They claim that noncitizens who
 5 entered the U.S. without inspection are “applicants for admission” who are still “seeking
 6 admission” years after DHS released them into the interior on their own recognizance, and as a
 7 result are subject to indefinite mandatory detention under 8 U.S.C. § 1225(b)(2)(A), without
 8 access to a bond hearing. Opp. at 5; cf. *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at
 9 *4 (D. Mass. July 24, 2025) (describing DHS’s recent major shift in position).

11 There are many problems with this interpretation. First, the Supreme Court explained in
 12 *Jennings v. Rodriguez* that discretionary detention governs the cases of those, like Petitioners, who
 13 are “already in the country” and are detained “pending the outcome of removal proceedings.” 583
 14 U.S. at 289. In contrast, section 1225(b) concerns decision making about admissibility by
 15 immigration officials at “the Nation’s borders and ports of entry.” See *id.* at 287. The plain text of
 16 section 1225(b)(2)(A) also shows it only applies to people at the border. Section 1225(b)(2)(A)
 17 states: “[I]n the case of an alien who is an applicant for admission, if the examining immigration
 18 officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be
 19 admitted, the alien shall be detained for a proceeding under section 1229a of this title.” (emphasis
 20 added). The phrase “seeking admission” implies a present-tense action. Someone who is already in
 21 the United States is no longer “seeking admission” because they have already entered and, in the
 22 case of Petitioners, have lived in the United States for well over a year.⁴ If the phrase “seeking
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 26 ⁴ Several courts have used the following example: “[S]omeone who enters a movie theater without purchasing a ticket
 27 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. Even if that person, after

admission” did not modify the phrase “applicant for admission,” then there would be no reason to include it. *See Salcedo Aceros*, No. 3:25-cv-06924-EMC, 2025 U.S. Dist. LEXIS 179594, at 16 (invoking the rule against surplusage). Respondents’ reading of the statute that non-citizens who have entered the United States and lived here for years are still “seeking admission” is thus “unnatural and ignores the tense of the term.” *See id.*

In contrast, the plain text of § 1226 demonstrates that subsection (a) applies to Petitioners. By its own terms, § 1226(a) applies to anyone who is detained “pending a decision on whether the [noncitizen] is to be removed from the United States.” 8 U.S.C. § 1226(a). Section 1226 explicitly confirms that this authority includes not just noncitizens who are deportable pursuant to 8 U.S.C. § 1227(a), but also noncitizens, such as Petitioners, who are inadmissible pursuant to 8 U.S.C. § 1182(a). While § 1226(a) provides the right to seek release, § 1226(c) carves out specific categories of noncitizens from being released—including certain categories of inadmissible noncitizens—and subjects them instead to mandatory detention. *See, e.g.*, § 1226(c)(1)(A), (C).

If Respondents’ position that § 1226(a) did not apply to inadmissible noncitizens such as Petitioners who entered the United States without inspection were correct, there would be no reason to specify that § 1226(c) governs certain persons who are inadmissible; instead, the statute would only have needed to address people who are deportable for certain offenses. Notably, recent amendments to § 1226 dramatically reinforce that this section covers people like Petitioners who DHS alleges to be present without admission. The Laken Riley Act added language to § 1226 that directly references people who have entered without inspection, those who are inadmissible because they are present without admission. *See Laken Riley Act (LRA)*, Pub. L. No. 119-1, 139

being detected, offered to pay for a ticket, one would not ordinarily describe them as ‘seeking admission’ (or ‘seeking’ ‘lawful entry’) at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there.” *Salcedo Aceros*, No. 3:25-cv-06924-EMC at *17 (citing *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025)).

1 Stat. 3 (2025); *Salcedo Aceros*, No. 3:25-cv-06924-EMC, 2025 U.S. Dist. LEXIS 179594, at *27-
2 28. Petitioners also respectfully refers the Court to the following additional explanations for why §
3 1225(b)(2)(A) is not applicable to them: *Lopez Benitez*, No. 25-cv-5937, 2025 WL 2371588, at
4 *5–9. *Martinez*, 2025 WL 2084238, at *2-8; *Gomes v. Hyde*, No. 25-cv-11571 (JEK), 2025 WL
5 1869299, at *5-9 (D. Mass. July 7, 2025)); *Rodriguez v. Bostock*, No. 3:25-cv-5240-TMC, 2025
6 WL 1193850, at *14 (W.D. Wash. Apr. 24, 2025); *Cuevas Guzman v. Andrews*, No. 1:25-cv-
7 01015-KES-SKO, 2025 U.S. Dist. LEXIS 176145 at *9-12 (E.D. Cal. Sep. 9, 2025); *Rosado v.*
8 *Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 U.S. Dist. LEXIS 156344, at *8-32 (D. Ariz.
9 Aug. 11, 2025).

11 Respondents also cite the Board of Immigration Appeal’s recent decision in *Matter of*
12 *Yajure Hurtado*, 29 I.&N. Dec. 216, 219 (BIA 2025) as “confirm[ation] that Petitioners are subject
13 to expedited removal and mandatory detention under § 1225(b).” Opp. at 8-9. In *Hurtado*, the BIA
14 expanded its application of section 1225(b)(2)(A) to anyone who entered the country without
15 inspection regardless of how long they have been in the United States, relying on the same basic
16 statutory arguments that Respondents make here. *Id.* Last week, however, a judge in this district
17 directly addressed *Matter of Yajure* and issued a comprehensive and thorough rejection of the
18 government’s new interpretation of Section 1225(b)(2), rooted in the text, structure, agency
19 application, and legislative history of the statute. *See Salcedo Aceros v. Kaiser*, No. 3:25-cv-
20 06924-EMC at *13-21. Further, the BIA is under the control of the executive branch, and it is well
21 known that the current presidential administration is waging a mass-deportation campaign. The
22 Court should thus give more weight to the statutory construction conducted by an independent
23 judge in *Salcedo Aceros* rather than the statutory construction advanced by the Attorney General
24 to advance the administration’s policy goals. The Court should also consider the recent political
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1 firings of BIA judges when considering what level of deference to give BIA decisions,⁵ especially
 2 when those decisions have such dark implications as stripping fundamental constitutional rights
 3 away from millions of individuals as they do here.

4 Thus, Petitioners, who have no criminal history,⁶ are subject to discretionary detention. In
 5 line with the reasoned analysis of these authorities, this Court—if it reaches the question—should
 6 reject the government’s contrary new statutory interpretation.

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 8 **III. The Balance of the Equities and the Public Interest Weigh Strongly in Petitioner’s**
 9 **Favor.**

10 Respondents do not rebut Petitioners’ showing that the remaining factors weigh in their
 11 favor. They face irreparable injury in the form of constitutional harm of the highest order if the
 12 preliminary injunction is not granted. *See Pinchi*, 2025 WL 2084921, at *7 (collecting cases). The
 13 public interest likewise weighs strongly in Petitioners’ favor. *Id. See Pinchi*, 2025 WL 2084921, at
 14 *7.

15 **CONCLUSION**

16 For the foregoing reasons, this Court should grant the preliminary injunction
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24 ⁵ Rachel Uranga, *Trump fires more immigration judges in what some suspect is a move to bend courts to his will*, *LA Times*, April 23, 2025, <https://www.latimes.com/california/story/2025-04-23/immigration-judges>.

25 ⁶ Petitioner Yeison Fabiany Garcia Hurtatis was arrested on October 20, 2024 and charged with § 273.5(A) PC –
 26 Corporal Injury to a Spouse or Cohabitant. Opp., 8-2, Ex. 3 at 14-15. However, Mr. Garcia Hurtatis contends he was
 27 arrested wrongfully because he intervened in a fight between neighbors, and he believes the charge was dropped.
 Respondents do not allege that this dropped charge is the basis for his detention on September 12, 2025. Rather,
 Respondents state he was detained because he is purportedly subject to mandatory detention based on his presence in
 the United States without having been either admitted or paroled. Opp. at 7-8.

1 Date: September 21, 2025

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