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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

9 MIRLEY ADRIANA BAUTISTA PICO, et al.,

10 Petitioners,

11 v.

12 SERGIO ALBARRAN, et al.,

13 Respondents.

CASE NO. 4:25-CV-08002-JST (JSC)

**PETITIONERS' REPLY TO
RESPONDENTS' RESPONSE TO
ORDER TO SHOW CAUSE RE:
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 chilling 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.

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 21 (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*

1 v. *Kaiser*, No. 25-cv-07117-BLF, at *7-8 (N.D. Cal. Sept. 18, 2025) (accepting Respondents'
2 request at the PI hearing to consider the applicability of *Thuraissigiam* and finding it does not
3 apply); *Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1170 (W.D. Wash. 2023)
4 (“The Court stands unconvinced that the Supreme Court’s decision in *Thuraissigiam* requires
5 dismissal of Plaintiffs’ due process claim.”); *Jatta v. Clark*, No. 19-cv-2086, 2020 WL 7138006, at
6 *2 (W.D. Wash. Dec. 5, 2020) (finding *Thuraissigiam* “inapposite” to due process challenge to
7 detention); *Leke v. Hott*, 521 F. Supp. 3d 597, 604 (E.D. Va. 2021) (“Quite clearly, *Thuraissigiam*
8 does not govern here, as the Supreme Court there addressed the singular issue of judicial review of
9 credible fear determinations and did not decide the issue of an Immigration Judge’s review of
10 prolonged and indefinite detention.”); *Mbalivoto v. Holt*, 527 F. Supp. 3d 838, 844–48 (E.D. Va.
11 2020) (similar); *see also, e.g., Lopez v. Sessions*, No. 18-cv-4189, 2018 WL 2932726, at *7
12 (S.D.N.Y. June 12, 2018) (ordering release of “arriving” noncitizen who was unlawfully
13 redetained); *Mata Velasquez v. Kurzdorfer*, No. 25-cv-493, 2025 WL 1953796, at *11 (W.D.N.Y.
14 July 16, 2025) (same).

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17 Moreover, Respondents claim that the multi-factor “balancing test” of *Mathews v. Eldridge*,
18 424 U.S. 319, 335 (1976) does not apply because the Supreme Court has not used the test to address
19 mandatory detention challenges. Opp. at 19. However, the Ninth Circuit has “assume[d] without
20 deciding” that *Mathews* applies in the immigration detention context. *See Rodriguez Diaz v.*
21 *Garland*, 53 F.4th 1189, 1206-8 (9th Cir. 2022) (applying *Mathews* to § 1226(a) and explaining “it
22 remains a flexible test”); *accord Pinchi v. Noem*, No. 5:25-cv-05632-PCP, F. Supp. 3d, 2025 WL
23 2084921, at *3 n.2 (N.D. Cal. July 24, 2025) (discussing *Rodriguez-Diaz*); *Landon v. Plasencia*,
24 459 U.S. 21, 34–35 (1982) (applying *Mathews* to due process challenge to immigration hearing
25 procedures). Courts in this circuit also regularly apply *Mathews* in due process challenges in
26 identical or similar circumstances to those here. *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC,
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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 There is also 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 includes Petitioners.

¹Petitioners 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.

1 *Make the Rd. N.Y. v. Noem*, No. 25-cv-190 (JMC), 2025 LX 389496, at *70 (D.D.C. Aug. 29,
2 2025). Petitioners reserve all rights and arguments to challenge any future assertion by
3 Respondents of such authority.

4 Petitioners are also currently subject to § 1226(a) and not § 1225(b)(2), as Respondents
5 now claim. For decades, courts and agencies have recognized that the detention of individuals who
6 entered the U.S. without inspection is governed by 8 U.S.C. § 1226(a), the default discretionary
7 detention statute that permits release by DHS or an immigration judge. Regulations promulgated
8 nearly thirty years ago provide that noncitizens “who are present without having been admitted or
9 paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for
10 bond and bond redetermination” under Section 1226. 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
11 Respondents also consistently adhered to this interpretation. *See, e.g., Matter of Garcia-Garcia*,
12 25 I&N. Dec. 93 (BIA 2009); *Matter of D–J–*, 23 I&N. Dec. 572 (A.G. 2003); Transcript of Oral
13 Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) ([Solicitor General]:
14 “DHS’s long-standing interpretation has been that 1226(a) applies to those who have crossed the
15 border between ports of entry and are shortly thereafter apprehended.”).

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18 Petitioners were released at the border under the discretionary detention authority of
19 Section 236 of the Immigration and Nationality Act (“INA”), codified at 8 U.S.C. § 1226. Opp, 8-
20 1 at 2; *Id.*, 8-2 at 2; *Id.*, 8-3 at 2, *Id.*, 8-4 at 2; *Id.*, 8-5 at 2; *Jimenez Garcia v. Kaiser*, No. 4:25-cv-
21 06916-YGR at *2 (taking judicial notice of the fact that Form 1-220A, Order of Release on
22 Recognizance cites release subject to 8 U.S.C. Section 1226). A district judge in New York
23 recently examined release documents, such as Form I-220A, Order of Release on Recognizance,
24 found that they “unequivocally establish that [the petitioner] was detained pursuant to
25 Respondents’ discretionary authority under § 1226(a).” *Lopez Benitez v. Francis*, No. 25-cv-5937,
26 2025 WL 2371588, at *11–12 (S.D.N.Y. Aug. 13, 2025). As further evidence of release under
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1 section 1226(a), Petitioners were charged with removability pursuant to INA 212(a)(6)(A)(i)
2 which is applicable to noncitizens who are already present in the U.S., not to noncitizens who are
3 considered “arriving.” See *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007);
4 *Opp*, 8-1 at 2; *Id.*, 8-2 at 2; *Id.*, 8-3 at 2; *Id.*, 8-4 at 2; *Id.*, 8-5 at 2. Further, the fact that Petitioners
5 were released on their own recognizance in and of itself is evidence that they are subject to §
6 1226(a) because § 1225(b) only authorizes release on parole. *Martinez v. Hyde*, No. 25-cv-11613,
7 2025 WL 2084238, at *4 (D. Mass. July 24, 2025) (“Respondents’ contrary theory of the
8 procedural history cannot make sense of Petitioner’s release on recognizance because individuals
9 detained following examination under section 1225 can only be paroled into the United States ‘for
10 urgent humanitarian reasons or significant public benefit’”) (citing *Jennings v. Rodriguez*, 583
11 U.S. 281, 300 (2018)).
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13 Respondents now claim, however, that they can revoke their earlier determination at the
14 border and subject Petitioners to mandatory detention under 8 U.S.C. § 1225(b)(2).² *Opp*. at 21.
15 As explained above, Petitioners have a liberty interest that protects them from this type of arbitrary
16 government action. See also *Jimenez Garcia v. Kaiser*, No. 4:25-cv-06916-YGR, 2025 U.S. Dist.
17 LEXIS 178531, at *9 (N.D. Cal. Aug. 19, 2025) (the government may not “unilaterally reclassify
18 [a petitioner] as ‘detained’ pursuant to Section 1225(b)(2))” after making an initial determination
19 that they are detained under Section 1226(a)). To do so would amount to an impermissible post
20 hoc rationalization. *Lopez Benitez*, No. 25-cv-5937 at *13–14. Still, however, Respondents
21 “steamroll over this line of authority” and claim they have these powers based on a dramatic and
22 implausible reinterpretation of section 1225(b)(2)(A). *Espinoza v. Kaiser*, No. 1:25-CV-01101
23 JLT SKO, 2025 U.S. Dist. LEXIS 183811, at *27 (E.D. Cal. Sept. 18, 2025). They assert that
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27 ² Curiously, Respondents frame their argument as “Petitioners’ detention authority cannot be converted to § 1226(a)”,
28 *Opp* at 21, when it is apparently undisputed that the detention authority was always § 1226(a), and the issue is whether
Respondents can now unilaterally convert it to § 1225(b).

1 noncitizens who entered the U.S. without inspection are “applicants for admission” who are still
2 “seeking admission” years after DHS released them into the interior on their own recognizance,
3 and as a result are subject to indefinite mandatory detention under 8 U.S.C. § 1225(b)(2)(A),
4 without access to a bond hearing. Opp. at 21-22.

5 There are many problems with this interpretation. First, the Supreme Court explained in
6 *Jennings v. Rodriguez* that discretionary detention governs the cases of those, like Petitioners, who
7 are “already in the country” and are detained “pending the outcome of removal proceedings.” 583
8 U.S. at 289. In contrast, section 1225(b) concerns decision making by immigration officials at “the
9 Nation’s borders and ports of entry.” *See id.* at 287. The plain text of section 1225(b)(2)(A) also
10 shows it only applies to people at the border. Section 1225(b)(2)(A) states: “[I]n the case of an
11 alien who is an applicant for admission, if the examining immigration officer determines that an
12 alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be
13 detained for a proceeding under section 1229a of this title.” (emphasis added). The phrase
14 “seeking admission” implies a present-tense action. Someone who is already in the United States
15 is no longer “seeking admission” because they have already entered and, in the case of Petitioners,
16 have lived in the United States for well over a year.³ If the phrase “seeking admission” did not
17 modify the phrase “applicant for admission,” then there would be no reason to include it. *See*
18 *Salcedo Aceros*, No. 3:25-cv-06924-EMC, 2025 U.S. Dist. LEXIS 179594, at 16 (invoking the
19 rule against surplusage). Respondents’ reading of the statute that non-citizens who have entered
20 the United States and lived here for years are still “seeking admission” is thus “unnatural and
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25 ³ Several courts have used the following example: “[S]omeone who enters a movie theater without purchasing a ticket
26 and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as ‘seeking
27 admission’ to the theater. Rather, that person would be described as already present there. Even if that person, after
28 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)).

ignores the tense of the term.” *See id.* Petitioners also respectfully refers the Court to the following additional comprehensive explanations for why § 1225(b)(2)(A) does not apply to noncitizens living in the interior of the United States: *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); *Cuevas Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO, 2025 U.S. Dist. LEXIS 176145 at *9-12 (E.D. Cal. Sep. 9, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 U.S. Dist. LEXIS 156344, at *8-32 (D. Ariz. Aug. 11, 2025).

Respondents also argue that “applicants for admission” and “seeking admission” are equivalent because 8 U.S.C. § 1225(a)(3) states: “All aliens (including alien crewmen) who are applicants for admission *or otherwise seeking admission or readmission to or transit through the United States* shall be inspected by immigration officers.” (emphasis added). Opp at 10. However, Congress added the “or otherwise seeking admission” to ensure that even if a noncitizen is not formally an “applicant for admission” under the statutory definition, but is functionally trying to enter the United States, they still must be inspected. In addition, if the statute eliminated the word “otherwise” and read: “all aliens (including alien crewmen) who are applicants for admission or ~~otherwise~~ seeking admission or readmission to or transit through the United States shall be inspected by immigration officers,” then it would apply too broadly to applicants for admission who are in the interior of the United States, which is outside the purview of § 1225, which deals with the inspection of noncitizens at the border. By adding the word “otherwise,” Congress thus avoided the statute being read in the way that Respondents’ now assert it should be read. The court in *Romero v. Hyde* has already considered a similar argument grounded in the text of § 1225(a)(3) and rejected it.” *See* No. 25-11631-BEM, 2025 U.S. Dist. LEXIS 160622, at *22-24 (D. Mass.

1 Aug. 19, 2025). In addition, nothing in *Al Otro Lado v. Exec. Off. for Immigr. Review* holds
2 otherwise. 120 F.4th 606 (9th Cir. 2024). The issue in *Al Otro Lado* is whether the inspection
3 requirement under § 1225(a)(3) applies to “noncitizens stopped right before the border,” thereby
4 requiring an inspecting border official to refer them for an asylum screening, which the court held
5 it does. *Id.* at 621. The dissent also refers to “[t]he several hoops through which aliens must jump
6 when seeking admission to the United States,” further underscoring that, even within the text of
7 this decision, it was contemplated that seeking admission is a discrete act. *Id.* at 641 (Nelson R.,
8 dissenting).
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10 Respondents also cite the Board of Immigration Appeal’s recent decision in *Matter of*
11 *Yajure Hurtado*, 29 I.&N. Dec. 216, 219 (BIA 2025) for the proposition that applicants for
12 admission are forever seeking admission and therefore subject to mandatory detention regardless
13 of how long they have been in the United States. Opp. at 12. Within the last couple of weeks,
14 however, a judge in this district directly addressed *Matter of Yajure* and issued a comprehensive
15 and thorough rejection of the government’s application of section 1225(b)(2) this way, rooted in
16 the text, structure, agency application, and legislative history of the statute. *See Salcedo Aceros v.*
17 *Kaiser*, No. 3:25-cv-06924-EMC at *13-21. The BIA is also under the control of the executive
18 branch, and it is well known that the current presidential administration is waging a mass-
19 deportation campaign. The Court should thus give more weight to the statutory construction
20 conducted by the multiple independent judges who have given their weight to these issues rather
21 than a novel statutory construction put forth by an agency under control of the Attorney General
22 that advances the administration’s anti-immigrant policy goals. The Court should also consider the
23 recent political firings of BIA judges when considering what level of deference to give BIA
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1 decisions,⁴ especially when those decisions have such dark implications as stripping fundamental
2 constitutional rights from millions of individuals as they do here.

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

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

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

14 **CONCLUSION**

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

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17 Date: September 30, 2025

Respectfully Submitted,

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⁴ 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>.