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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**
13

14 YAMILETH ALDANA SERRANO, et al.,

15 Petitioners,

16 v.

17 SERGIO ALBARRAN, et al.,

18 Respondents.

CASE NO. 5:25-cv-8408-EKL

**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 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. In addition, in *Salcedo Aceros v. Kaiser*, a court in this district recently thoroughly examined the text, structure, agency application, and legislative history of § 1225(b) and determined it cannot be applied to noncitizens in the interior of the United States, like Petitioners. *See* No. 3:25-cv-06924-EMC at *13-21. This Court should adopt the reasoning in *Salcedo Aceros* and hold the same. Subsequently, in *Valera Chuquillanqui v. Kaiser*, a court rejected arguments that said language applies to all applicants. *See Valera Chuquillanqui v. Kaiser et al.* Case 3:25-cv-06320-TLT at 14 (October 02, 2025)

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 19 (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 16-17. However, the Ninth Circuit has "assume[d] without

1 deciding” that *Mathews* applies in the immigration detention context. *See Rodriguez Diaz v.*
2 *Garland*, 53 F.4th 1189, 1206-8 (9th Cir. 2022) (applying *Mathews* to § 1226(a) and explaining “it
3 remains a flexible test”); *accord Pinchi v. Noem*, No. 5:25-cv-05632-PCP, F. Supp. 3d, 2025 WL
4 2084921, at *3 n.2 (N.D. Cal. July 24, 2025) (discussing *Rodriguez-Diaz*); *Landon v. Plasencia*,
5 459 U.S. 21, 34–35 (1982) (applying *Mathews* to due process challenge to immigration hearing
6 procedures). Courts in this circuit also regularly apply *Mathews* in due process challenges in
7 identical or similar circumstances to those here. *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC,
8 at *9. The Court should thus reject Respondents’ unsupported claim and, consistent with recent
9 decisions in factually similar cases, grant the preliminary injunction. *See Pinchi v. Noem*, 2025 WL
10 2084921, at *7 (converting TRO requiring release of asylum seeker arrested at immigration court
11 into preliminary injunction prohibiting Government from re-detaining her without hearing); *Singh v.*
12 *Andrews*, 2025 WL 1918679, *8-10 (E.D. Cal. July 11, 2025); *Castellon v. Kaiser*, No. 1:2-cv-
13 00968, 2025 WL 2373425, at *24 (N.D. Cal. Aug. 14, 2025).

16 **II. Petitioners Are Not Subject to Mandatory Detention.**

17 As an initial matter, it is important to stress that Petitioners have a liberty interest in
18 remaining free regardless of which detention statute applies. As the court in *Espinoza v. Kaiser*
19 pointed out, “even assuming Respondents are correct that § 1225(b) is the applicable detention
20 authority for all ‘applicants for admission,’ Respondents fail to contend with the liberty interests
21 created by the fact that the Petitioners in this case were released on recognizance prior to the
22 manifestation of this interpretation.” *See* No. 1:25-CV-01101 JLT SKO, 2025 U.S. Dist. LEXIS
23 183811, at *28 (E.D. Cal. Sept. 18, 2025). This Court can thus grant preliminary relief without
24 reaching the detention statute question.
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26 Should the Court reach the detention statute question, it should find that Petitioners are not
27 subject to mandatory detention under § 1225(b)(1) or § 1225(b)(2). First, as of the date of this
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1 filing, an immigration judge has not yet ruled on DHS's motions to dismiss any of Petitioners'
2 cases.¹ There is also a stay of the government's implementation of the 2025 Designation Notice
3 and the Huffman Memorandum applying expedited removal to "people living in the interior of the
4 country who have not previously been subject to expedited removal," which includes Petitioners.
5 *Make the Rd. N.Y. v. Noem*, No. 25-cv-190 (JMC), 2025 LX 389496, at *70 (D.D.C. Aug. 29,
6 2025). Petitioners reserve all rights and arguments to challenge any future assertion by
7 Respondents of such authority.

8
9 Petitioners are also currently subject to § 1226(a) and not § 1225(b)(2), as Respondents
10 now claim. For decades, courts and agencies have recognized that the detention of individuals who
11 entered the U.S. without inspection is governed by 8 U.S.C. § 1226(a), the default discretionary
12 detention statute that permits release by DHS or an immigration judge. Regulations promulgated
13 nearly thirty years ago provide that noncitizens "who are present without having been admitted or
14 paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for
15 bond and bond redetermination" under Section 1226. 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
16 Respondents also consistently adhered to this interpretation. *See, e.g., Matter of Garcia-Garcia*,
17 25 I&N. Dec. 93 (BIA 2009); *Matter of D-J-*, 23 I&N. Dec. 572 (A.G. 2003); Transcript of Oral
18 Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) ([Solicitor General]:
19 "DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the
20 border between ports of entry and are shortly thereafter apprehended.").

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22 Upon information and belief, all Petitioners were released under Form I-220A Order of
23 Release on Recognizance when they were released at the border, which states the detention
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26 ¹Petitioners are also in the process of submitting written oppositions to their motions to dismiss. If the motions to
27 dismiss are granted despite Petitioners' opposition, Petitioners will have the right to appeal the dismissals to the Board
28 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 authority as Section 236 of the Immigration and Nationality Act (“INA”), codified at 8 U.S.C. §
 2 1226. *Jimenez Garcia v. Kaiser*, No. 4:25-cv-06916-YGR at *2 (taking judicial notice of the fact
 3 that Form I-220A, Order of Release on Recognizance cites release subject to 8 U.S.C. Section
 4 1226). A district judge in New York recently examined release documents, such as Form I-220A,
 5 Order of Release on Recognizance, found that they “unequivocally establish that [the petitioner]
 6 was detained pursuant to Respondents’ discretionary authority under § 1226(a).” *Lopez Benitez v.*
 7 *Francis*, No. 25-cv-5937, 2025 WL 2371588, at *11–12 (S.D.N.Y. Aug. 13, 2025). Further, the
 8 fact that Petitioners were released on an Order of Release on Recognizance in and of itself is
 9 evidence that they are subject to § 1226(a) because § 1225(b) only authorizes release on parole.
 10 *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *4 (D. Mass. July 24, 2025)
 11 (“Respondents’ contrary theory of the procedural history cannot make sense of Petitioner’s release
 12 on recognizance because individuals detained following examination under section 1225 can only
 13 be paroled into the United States ‘for urgent humanitarian reasons or significant public benefit’”)
 14 (citing *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018)). Respondents also do not dispute that the
 15 government “released [Petitioners] on orders of recognizance.” Opp. at 7-9

18 Respondents now claim, however, that they can revoke their earlier determination at the
 19 border and subject Petitioners to mandatory detention under 8 U.S.C. § 1225(b)(2).² Opp. at 18.
 20 As explained above, Petitioners have a liberty interest that protects them from this type of arbitrary
 21 government action. *See also Jimenez Garcia v. Kaiser*, No. 4:25-cv-06916-YGR, 2025 U.S. Dist.
 22 LEXIS 178531, at *9 (N.D. Cal. Aug. 19, 2025) (the government may not “unilaterally reclassify
 23 [a petitioner] as ‘detained’ pursuant to Section 1225(b)(2))” after making an initial determination
 24 that they are detained under Section 1226(a)). To do so would amount to an impermissible post
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27 ² Curiously, Respondents frame their argument as “Petitioners’ detention authority cannot be converted to § 1226(a)”,
 28 Opp at 8, 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 hoc rationalization. *Lopez Benitez*, No. 25-cv-5937 at *13–14. Still, however, Respondents
 2 “steamroll over this line of authority” and claim they have these powers based on a dramatic and
 3 implausible reinterpretation of section 1225(b)(2)(A). *Espinoza v. Kaiser*, No. 1:25-CV-01101
 4 JLT SKO, 2025 U.S. Dist. LEXIS 183811, at *27 (E.D. Cal. Sept. 18, 2025). They assert that
 5 noncitizens who entered the U.S. without inspection are “applicants for admission” who are still
 6 “seeking admission” years after DHS released them into the interior on their own recognizance,
 7 and as a result are subject to indefinite mandatory detention under 8 U.S.C. § 1225(b)(2)(A),
 8 without access to a bond hearing. Opp. at 19; cf. *Dep’t of Homeland Sec. v. Thuraissigiam*, No.
 9 25-cv-11613, 2025 WL 2084238, at *4 (D. Mass. July 24, 2025) (describing DHS’s recent major
 10 shift in position).

12 There are many problems with this interpretation. First, the Supreme Court explained in
 13 *Jennings v. Rodriguez* that discretionary detention governs the cases of those, like Petitioners, who
 14 are “already in the country” and are detained “pending the outcome of removal proceedings.” 583
 15 U.S. at 289. In contrast, section 1225(b) concerns decision making by immigration officials at “the
 16 Nation’s borders and ports of entry.” See *id.* at 287. The plain text of section 1225(b)(2)(A) also
 17 shows it only applies to people at the border. Section 1225(b)(2)(A) states: “[I]n the case of an
 18 alien who is an applicant for admission, if the examining immigration officer determines that an
 19 alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be
 20 detained for a proceeding under section 1229a of this title.” (emphasis added). The phrase
 21 “seeking admission” implies a present-tense action. Someone who is already in the United States
 22 is no longer “seeking admission” because they have already entered and, in the case of Petitioners,
 23 have lived in the United States for well over a year.³ If the phrase “seeking admission” did not
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 27 ³ Several courts have used the following example: “[S]omeone who enters a movie theater without purchasing a ticket
 28 and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as ‘seeking

1 modify the phrase “applicant for admission,” then there would be no reason to include it. *See*
 2 *Salcedo Aceros*, No. 3:25-cv-06924-EMC, 2025 U.S. Dist. LEXIS 179594, at 16 (invoking the
 3 rule against surplusage). Respondents’ reading of the statute that non-citizens who have entered
 4 the United States and lived here for years are still “seeking admission” is thus “unnatural and
 5 ignores the tense of the term.” *See id.* Additionally, the other conditions of section 1225(b)(2)(A)
 6 have not been met, such as an admissibility determination made by an examining immigration
 7 officer. *Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO, 2025 U.S. Dist. LEXIS 18723, at *10
 8 (E.D. Cal., Sept. 23, 2025). The Notice to Appear is a not a substitute for this determination. *Id.*

10 Petitioners also respectfully refers the Court to the following additional comprehensive
 11 explanations for why § 1225(b)(2)(A) does not apply to noncitizens living in the interior of the
 12 United States: *Lopez Benitez*, No. 25-cv-5937, 2025 WL 2371588, at *5–9. *Martinez*, 2025 WL
 13 2084238, at *2-8; *Gomes v. Hyde*, No. 25-cv-11571 (JEK), 2025 WL 1869299, at *5-9 (D. Mass.
 14 July 7, 2025)); *Rodriguez v. Bostock*, No. 3:25-cv-5240-TMC, 2025 WL 1193850, at *14 (W.D.
 15 Wash. Apr. 24, 2025); *Cuevas Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO, 2025 U.S.
 16 Dist. LEXIS 176145 at *9-12 (E.D. Cal. Sep. 9, 2025); *Rosado v. Figueroa*, No. CV 25-02157
 17 PHX DLR (CDB), 2025 U.S. Dist. LEXIS 156344, at *8-32 (D. Ariz. Aug. 11, 2025).

19 Respondent’s also argue that “applicants for admission” and “seeking admission” are
 20 equivalent because 8 U.S.C. § 1225(a)(3) states: “All aliens (including alien crewmen) who are
 21 applicants for admission *or otherwise seeking admission or readmission to or transit through the*
 22 *United States* shall be inspected by immigration officers.” (emphasis added). Opp at 12. However,
 23 Congress added the “or otherwise seeking admission” to ensure that even if a noncitizen is not
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 26 admission’ to the theater. Rather, that person would be described as already present there. Even if that person, after
 27 being detected, offered to pay for a ticket, one would not ordinarily describe them as ‘seeking admission’ (or ‘seeking’
 28 ‘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 formally an “applicant for admission” under the statutory definition, but is functionally trying to
2 enter the United States, they still must be inspected. In addition, if the statute eliminated the word
3 “otherwise” and read: “all aliens (including alien crewmen) who are applicants for admission or
4 ~~otherwise~~ seeking admission or readmission to or transit through the United States shall be
5 inspected by immigration officers,” then it would apply too broadly to applicants for admission
6 who are in the interior of the United States, which is outside the purview of § 1225, which deals
7 with the inspection of noncitizens at the border. By adding the word “otherwise,” Congress thus
8 avoided the statute being read in the way that Respondents’ now assert it should be read. This
9 interpretation has been rejected by the Court, stating that “interpretation that mandatory detention
10 applies to all ‘applicants for admission’ would make the ‘seeking admission’ language entirely
11 superfluous.” *Cf Vazquez v. Bostock*, 25-cv-5240, 2025 WL 2782499, at * (W.D. Wash. Sept. 30,
12 2025); *United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432, (2023)
13 (“[E]very clause and word of a statute should have meaning.”). *See Valera Chuquillanqui v.*
14 *Kaiser*, . et al. Case 3:25-cv-06320-TLT at 14 (October 02, 2025)

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17 Respondents also cite the Board of Immigration Appeal’s recent decision in *Matter of*
18 *Yajure Hurtado*, 29 I.&N. Dec. 216, 219 (BIA 2025) for the proposition that applicants for
19 admission are forever seeking admission and therefore subject to mandatory detention regardless
20 of how long they have been in the United States. Opp. at 10. Within the last couple of weeks,
21 however, a judge in this district directly addressed *Matter of Yajure* and issued a comprehensive
22 and thorough rejection of the government’s application of section 1225(b)(2) this way, rooted in
23 the text, structure, agency application, and legislative history of the statute. *See Salcedo Aceros v.*
24 *Kaiser*, No. 3:25-cv-06924-EMC at *13-21. The BIA is also under the control of the executive
25 branch, and it is well known that the current presidential administration is waging a mass-
26 deportation campaign. The Court should thus give more weight to the statutory construction
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1 conducted by an independent judge in *Salcedo Aceros* rather than a novel statutory construction
 2 put forth by an agency under control of the Attorney General that advances the administration's
 3 anti-immigrant policy goals. The Court should also consider the recent political firings of BIA
 4 judges when considering what level of deference to give BIA decisions,⁴ especially when those
 5 decisions have such dark implications as stripping fundamental constitutional rights from millions
 6 of individuals as they do here.

7 Thus, Petitioners, who have no criminal history, are subject to discretionary detention. In
 8 line with the reasoned analysis of these authorities, this Court—if it reaches the question—should
 9 reject the government's contrary new statutory interpretation.
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11 **III. The Balance of the Equities and the Public Interest Weigh Strongly in Petitioner's**
 12 **Favor.**

13 Respondents do not rebut Petitioners' showing that the remaining factors weigh in their
 14 favor. They face irreparable injury in the form of constitutional harm of the highest order if the
 15 preliminary injunction is not granted. *See Pinchi*, 2025 WL 2084921, at *7 (collecting cases). The
 16 public interest likewise weighs strongly in Petitioners' favor. *Id. See Pinchi*, 2025 WL 2084921, at
 17 *7.
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19 **CONCLUSION**

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

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 22 Date: October 9, 2025

Respectfully Submitted,

23 /s/ Diana Mariscal

24 Diana Mariscal

25 *Attorney for Petitioners*
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27 ⁴ Rachel Uranga, *Trump fires more immigration judges in what some suspect is a move to bend courts to his will*, *LA*
 28 *Times*, April 23, 2025, <https://www.latimes.com/california/story/2025-04-23/immigration-judges>.

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