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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JENIFER OROZCO ACOSTA,

Petitioner,

v.

SERGIO ALBARRAN, et al.,

Respondents.

CASE NO. 4:25-cv-09601-HSG

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO THE ORDER TO SHOW CAUSE AND OPPOSITION TO THE PRELIMINARY INJUNCTION

INTRODUCTION

Respondents do not contest that Petitioner's re-detention was not based on any individualized determination that she 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 refuse to deviate from their position that Petitioner has no due process rights to challenge her 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 Petitioner, and millions of people like her, to mandatory detention under 8 U.S.C. § 1225(b). However, it is undisputed that Respondents released Petitioner 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 Petitioner. *See* 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 Petitioner'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 Petitioner'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 Petitioner does not have due process rights beyond what is provided for her in § 1225. Opp. at 20 (citing *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 19-20. 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. Petitioner is Not Subject to Mandatory Detention.

As an initial matter, it is important to stress that the basis of the issue at hand is that the Petitioner has 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 Petitioner in this case was 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 statue question, it should find that Petitioner is 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 motion to dismiss Petitioner's case.[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 the Petitioner. *Make the Rd. N.Y. v. Noem*, No. 25-cv-190 (JMC), 2025 LX 389496, at *70 (D.D.C. Aug. 29, 2025). Petitioner reserve all rights and arguments to challenge any future assertion by Respondents of such authority.

Petitioner is also currently subject to § 1226(a) and not § 1225(b)(2), as Respondents continue to claim. 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). Respondents also 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."). Additionally, is has been established that "[e]ven when an initial decision to detain or release an individual is discretionary, the government's subsequent release of the individual from custody creates "an

[1]Petitioner was given time to file an opposition to the motion to dismiss. If the motion to dismiss is granted despite Petitioner's opposition, Petitioner will have the right to appeal the dismissal to the Board of Immigration Appeals, and expedited removal proceedings cannot be initiated against her during the appeal period. In Petitioner's counsel's experience, an appeal to the Board of Immigration Appeals is unlikely to be adjudicated in less than six months.

implicit promise" that the individual's liberty will be revoked only if they fail to abide by the conditions of their release." *Calderon v. Kaiser*, No. 25-CV-06695-AMO, 2025 WL 2430609, at *2 (N.D. Cal. Aug. 22, 2025) (citing Morrissey v. Brewer, 408 U.S. 471, 482 (1972)).

As previously stated, when released the Petitioner was released on her own recognizance under Section 1226. *Jimenez Garcia v. Kaiser*, No. 4:25-cv-06916-YGR at *2 (taking judicial notice of the fact that Form 1-220A, Order of Release on Recognizance cites release subject to 8 U.S.C. Section 1226). *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *11–12 (S.D.N.Y. Aug. 13, 2025). As further evidence of release under section 1226(a), Petitioner was charged with removability pursuant to INA 212(a)(6)(A)(i) codified as 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). Further, the fact that Petitioner was released on her own recognizance itself is evidence that they are 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 v. Rodriguez*, 583 U.S. 281, 300 (2018)).

Respondents now claim, however, that they can revoke their earlier determination at the border and subject Petitioner to mandatory detention under 8 U.S.C. § 1225(b)(2). Opp. at 8. As explained above, Petitioner has a liberty interest that protects her from this type of arbitrary government action. *See also Jimenez Garcia v. Kaiser*, No. 4:25-cv-06916-YGR, 2025 U.S. Dist. LEXIS 178531, at *9 (N.D. Cal. Aug. 19, 2025) (the government may not "unilaterally reclassify [a petitioner] as 'detained' pursuant to Section 1225(b)(2))" after making an initial determination

that they are detained under Section 1226(a)). Still, however, Respondents "steamroll over this line of authority" and claim they have these powers based on a dramatic and implausible reinterpretation of section 1225(b)(2)(A). *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 U.S. Dist. LEXIS 183811, at *27 (E.D. Cal. Sept. 18, 2025). They assert 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 8.

There are many problems with this interpretation. First, the Supreme Court explained in *Jennings v. Rodriguez* that discretionary detention governs the cases of those, like Petitioner, who are "already in the country" and are detained "pending the outcome of removal proceedings." 583 U.S. at 289. In contrast, section 1225(b) concerns decision making by immigration officials at "the Nation's borders and ports of entry." *See id.* at 287. The plain text of section 1225(b)(2)(A) also shows it only applies to people at the border. Section 1225(b)(2)(A) states: "[I]n 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." (emphasis added). The phrase "seeking admission" implies a present-tense action. Someone who is already in the United States is no longer "seeking admission" because they have already entered and, in the case of Petitioner, have lived in the United States for well over a year. If the phrase "seeking 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.* Petitioner 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 13. 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. Additionally, this recent assertion that their overly expansive interpretation of § 1225(a)(3) in relation to any interpretation of § 1225(b) has been addressed by this Court. In *Cordero Pelico v. Kaiser*, the Court addressed the argument that the use of "or otherwise" is referring to an incredibly large category of non-citizens and ultimately determined that "all this language indicates is that there may be noncitizens seeking admission who fall outside the statutory definition of 'applicants for admission." *Pelico v. Kaiser*, 25-cv-07286-EMC (EMC) (N.D. Cal. Oct 03, 2025) at 24. To explain this understanding, the Court provided the example that "those applying for a visa at a consulate abroad would be seeking admission but not be applicants for admission, since they are neither present in the country nor

arriving in it." *Id* at 25. Ultimately the Court came to the conclusion that this language is meant to refer to a category of non-citizens that must be inspected not that every non-admitted citizen within the United States is forever seeking admission. *Id.*

Respondents also cite the Board of Immigration Appeal's recent decision in *Matter of Yajure Hurtado*, 29 I.&N. Dec. 216, 219 (BIA 2025) for the proposition that applicants for admission are forever seeking admission and therefore subject to mandatory detention regardless of how long they have been in the United States. Opp. at 10-11. Within the last couple of weeks, however, a judge in this district directly addressed *Matter of Yajure* and issued a comprehensive and thorough rejection of the government's application of section 1225(b)(2) this way, rooted in the text, structure, agency application, and legislative history of the statute. *See Salcedo Aceros v. Kaiser*, No. 3:25-cv-06924-EMC at *13-21. The BIA is also under the control of the executive branch, and it is well known that the current presidential administration is waging a mass-deportation campaign. The Court should thus give more weight to the statutory construction conducted by an independent judge in *Salcedo Aceros* rather than a novel statutory construction put forth by an agency under control of the Attorney General that advances the administration's anti-immigrant policy goals. The Court should also consider the recent political firings of BIA judges when considering what level of deference to give BIA decisions,[2] especially when those decisions have such dark implications as stripping fundamental constitutional rights from millions of individuals as they do here.

Thus, Petitioner, 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.

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[2] 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.

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 her 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 Petitioner's favor. *Id. See Pinchi*, 2025 WL 2084921, at *7.

CONCLUSION

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

Date: November 14, 2025

Respectfully Submitted,

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