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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

JOSE IVAR PINEDA CAMPOS,

Petitioner,

v.

POLLY KAISER, Acting Field Office Director
of the San Francisco Immigration and Customs
Enforcement Office; TODD LYONS, Acting
Director of United States Immigration and
Customs Enforcement; KRISTI NOEM,
Secretary of the United States Department of
Homeland Security, PAMELA BONDI,
Attorney General of the United States, acting in
their official capacities,

Respondents.

CASE NO. 3:25-cv-06920-JD

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

INTRODUCTION

Respondents do not contest that Petitioner Jose Ivar Pineda Campos's re-detention was not based on any individualized determination that he posed a flight risk or a danger to the community. Respondents do not even attempt to distinguish the decisions of numerous courts in recent weeks that have issued preliminary relief to noncitizens detained in nearly identical circumstances. Instead, Respondents take the dangerous position that Mr. Pineda Campos has no due process rights to challenge his detention because of how he entered the United States. Putting aside the worrisome implications of this assertion, a district court in this circuit has already squarely rejected this argument in the last few days in a case with nearly identical facts. *See Hernandez v. Wofford*, No. 1:25-cv-00986, 2025 U.S. Dist. LEXIS 162801, at *7–8 (N.D. Cal. August 21, 2025) (declining to extend *Thuraissigiam*, a challenge to admission procedures that expressly did not involve a request for release from custody, to a challenge to physical detention).

If the Court reaches the question of the statute of detention, it should reject the government's radical new position that Mr. Pineda Campos and millions of people in his position are subject to mandatory detention under 8 U.S.C. § 1225(b). First, it is uncontested that Mr. Pineda Campos remains in regular removal proceedings, not expedited removal. Second, Respondents' own exhibits reflect that Department of Homeland Security ("DHS") officials determined as recently as August 16, 2025 that Mr. Pineda Campos is subject to discretionary detention under 8 U.S.C. § 1226(a). There is also no evidence that Respondents ever attempted to characterize Mr. Pineda Campos as subject to § 1225(b) before this litigation, amounting to a post hoc rationalization. Individuals subject to § 1225(b) can also only be released under parole, and Mr. Pineda Campos was released on his own recognizance, further casting doubt on Respondents' re-characterization of Mr. Pineda Campos's detention authority. In addition, as the Supreme Court explained in *Jennings v. Rodriguez*, discretionary detention governs the cases of those, like Mr.

1 Pineda Campos, who are “already in the country” and are detained “pending the outcome of
2 removal proceedings.” 583 U.S. 281, 289 (2018). The text and structure of the detention statutes,
3 as well as decades of agency practice, also refute the government’s position that individuals such
4 as Mr. Pineda Campos are subject to mandatory detention under § 1225(b).

6 ARGUMENT

7 I. The Due Process Clause Protects Mr. Pineda Campos’s Liberty Interests.

8 The Due Process Clause applies to noncitizens regardless of whether they are “seeking
9 admission” or are “admitted” under immigration law. *Wong v. United States*, 373 F.3d 952, 973 (9th
10 Cir. 2004), abrogated on other grounds by *Wilkie v. Robbins*, 551 U.S. 537 (2007). Respondents do
11 not allege that Mr. Pineda Campos’s re-detention resulted from an assessment of either danger or
12 flight risk, the sole lawful bases for immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678,
13 690 (2001). Rather, Respondents claim that “noncitizens subject to expedited removal cannot assert
14 a protected property or liberty interest in additional procedures not provided by the statute.” Opp. at
15 9 (citing *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020)). First, as the
16 government acknowledges, Mr. Pineda Campos is not currently in expedited removal proceedings.
17 Opp. at 6 (“Petitioner is currently subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)”).
18 Thus *Thuraissigiam*, which involves the rights of a noncitizen in expedited removal proceedings,
19 does not apply to Mr. Pineda Campos, who is in regular removal proceedings. In addition, even if
20 Mr. Pineda Campos were subject to expedited removal, numerous courts have rejected attempts to
21 extend *Thuraissigiam*’s holding—which addressed a due process challenge admission procedures—
22 to extinguish challenges to detention. *See, e.g., Padilla v. U.S. Immigr. & Customs Enf’t*, 704 F.
23 Supp. 3d 1163, 1170 (W.D. Wash. 2023), (“The Court stands unconvinced that the Supreme Court’s
24 decision in *Thuraissigiam* requires dismissal of Plaintiffs’ due process claim.”); *Jatta v. Clark*, No.

1 19-cv-2086, 2020 WL 7138006, at *2 (W.D. Wash. Dec. 5, 2020) (finding *Thuraissigiam*
2 “inapposite” to due process challenge to detention); *Leke v. Hott*, 521 F. Supp. 3d 597, 604 (E.D.
3 Va. 2021) (“Quite clearly, *Thuraissigiam* does not govern here, as the Supreme Court there
4 addressed the singular issue of judicial review of credible fear determinations and did not decide the
5 issue of an Immigration Judge’s review of prolonged and indefinite detention.”); *Mbalivoto v. Holt*,
6 527 F. Supp. 3d 838, 844–48 (E.D. Va. 2020) (similar); *see also, e.g., Lopez v. Sessions*, No. 18-cv-
7 4189, 2018 WL 2932726, at *7 (S.D.N.Y. June 12, 2018) (ordering release of “arriving” noncitizen
8 who was unlawfully redetained); *Mata Velasquez v. Kurzdorfer*, No. 25-cv-493, 2025 WL 1953796,
9 at *11 (W.D.N.Y. July 16, 2025) (same). Most recently, a district court in this circuit considered
10 *Thuraissigiam* in the context of an immigration court re-detention case and also found it did not
11 apply. *See Hernandez*, 2025 WL 2084921, at *7–8. This Court should likewise reject the
12 Respondents’ chilling argument that Mr. Pineda Campos has no due process rights to challenge his
13 detention.
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15 Moreover, Respondents claim that the multi-factor “balancing test” of *Mathews v. Eldridge*,
16 424 U.S. 319, 335 (1976), does not apply here. But the very cases Respondents cite, Opp. at 9, did
17 apply *Mathews*. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206-8 (9th Cir. 2022) (applying
18 *Mathews* to § 1226(a) and explaining “it remains a flexible test”); *accord Pinchi v. Noem*, No. 5:25-
19 cv-05632-PCP, F. Supp. 3d, 2025 WL 2084921, at *3 n.2 (N.D. Cal. July 24, 2025) (discussing
20 *Rodriguez-Diaz*); *Landon v. Plasencia*, 459 U.S. 21, 34–35 (1982) (applying *Mathews* to due
21 process challenge to immigration hearing procedures). And aside from this erroneous contention,
22 Respondents offer no principled reason why *Mathews* should not apply here. The Court should thus
23 reject Respondents’ unsupported claim and, consistent with recent decisions in factually similar
24 cases, grant the preliminary injunction. *See Pinchi v. Noem*, 2025 WL 2084921, at *7 (converting
25 TRO requiring release of asylum seeker arrested at immigration court into preliminary injunction
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1 prohibiting government from re-detaining her without hearing); *Singh v. Andrews*, 2025 WL
2 1918679, *8-10 (E.D. Cal. July 11, 2025); *Castellon v. Kaiser*, No. 1:2-cv-00968, 2025 WL
3 2373425, at *24 (N.D. Cal. Aug. 14, 2025).

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5 **II. Mr. Pineda Campos is Not Subject to Mandatory Detention.**

6 Even though it is not necessary to reach Mr. Pineda Campos's due process claims, the
7 Court should reject Respondents' position Mr. Pineda Campos is subject to mandatory detention.
8 First, as mentioned above, Respondents acknowledge that Mr. Pineda Campos's regular removal
9 proceedings remain pending before the immigration court. Opp. at 9. Thus, at the time of his arrest
10 and to this day, there is no lawful basis to premise his detention on 8 U.S.C. §
11 1225(b)(1)(B)(iii)(IV), which applies to individuals who are in expedited removal proceedings.
12 Petitioner reserves all rights and arguments to challenge any future assertion by Respondents of
13 such authority.
14

15 Mr. Pineda Campos is also currently subject to § 1226(a) and not § 1225(b), as
16 Respondents now claim. Section 1225(b) applies to noncitizens arriving at the border, and Mr.
17 Pineda Campos has been living in United States since April 2024, has a pending asylum
18 application, and has work authorization. *Jennings*, 583 U.S. at 288–89. The documents DHS
19 issued to Mr. Pineda Campos when he was arrested at the border – Order of Release on
20 Recognizance and Notice of Custody Determination – and the Order of Release on Recognizance
21 he was issued on August 16, 2025 after he was arrested at immigration court state the detention
22 authority as Section 236 of the Immigration and Nationality Act (“INA”), which is codified at 8
23 U.S.C. § 1226. Opp., Exs. 4–5, 9. As such, they reflect DHS's determination that Mr. Pineda
24 Campos is subject to § 1226(a). A district judge in New York recently examined the same
25 documents in substance and found that they “unequivocally establish that [the petitioner] was
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1 detained pursuant to Respondents' discretionary authority under § 1226(a)." *Lopez Benitez v.*
2 *Francis*, No. 25-cv-5937, 2025 WL 2371588, at *11–12 (S.D.N.Y. Aug. 13, 2025). Mr. Pineda
3 Campos was also charged with removability pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), which is a
4 statute applicable to noncitizens who are already present in the U.S., not to noncitizens who are
5 considered "arriving." See *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007);
6 *Opp.*, Ex. 1. Mr. Pineda Campos was also released on an Order of Release on Recognizance when
7 he entered the United States, which in and of itself shows he is subject to § 1226(a) because §
8 1225(b) only authorizes release on parole. *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL
9 2084238, at *4 (D. Mass. July 24, 2025) ("Respondents' contrary theory of the procedural history
10 cannot make sense of Petitioner's release on recognizance because individuals detained following
11 examination under section 1225 can only be paroled into the United States 'for urgent
12 humanitarian reasons or significant public benefit'" (citing *Jennings*, 583 U.S. at 300). To the
13 extent that Respondents argue Mr. Pineda Campos's detention authority has since shifted to §
14 1225(b), the Court in *Benitez* found this to be an impermissible post hoc rationalization that was
15 raised for the first time in litigation. *Id.* at *13–14.

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18 Further, in claiming that Mr. Pineda Campos is "currently subject to mandatory detention
19 pursuant to 8 U.S.C. § 1225(b)," Respondents rely on a dramatic and implausible reinterpretation
20 of the statutes governing immigration detention as applied to noncitizens who remain in regular
21 removal proceedings. For decades, courts and agencies have recognized that the detention of
22 individuals who entered the U.S. without inspection is governed by 8 U.S.C. § 1226(a), the default
23 discretionary detention statute that permits release by DHS or an immigration judge. Regulations
24 promulgated nearly thirty years ago provide that noncitizens "who are present without having been
25 admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be
26 eligible for bond and bond redetermination" under Section 1226. 62 Fed. Reg. 10312, 10323 (Mar.

6, 1997). Until weeks ago, Respondents 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.”). The Court can take note of this longstanding practice in determining the applicable law in this case. *See Loper Bright v. Raimondo*, 603 U.S. 369, 386 (2024).

Respondents now claim, however, 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 4; *cf. Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *4 (D. Mass. July 24, 2025) (describing DHS’s recent major shift in position). As noted above, that new position has been thoroughly refuted by several district courts in recent weeks, and Petitioner respectfully refers the Court to the following extensive explanations, rooted primarily in the text and structure of the statute: *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).

Thus, Mr. Pineda Campos, 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.

1 **III. The Balance of the Equities and the Public Interest Weigh Strongly in Petitioner's**
2 **Favor.**

3 Respondents do not rebut Petitioner's showing that the remaining factors weigh in Mr.
4 Pineda Campos's favor. He faces irreparable injury in the form of constitutional harm of the highest
5 order if the preliminary injunction is not granted. *See Pinchi*, 2025 WL 2084921, at *7 (collecting
6 cases). The public interest likewise weighs strongly in Mr. Pineda Campos's favor. *Id. See Pinchi*,
7 2025 WL 2084921, at *7.

8
9 **CONCLUSION**

10 For the foregoing reasons, this Court should grant the preliminary injunction
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13 Date: August 25, 2025

Respectfully Submitted,

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