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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JOSE IVAR PINEDA CAMPOS,

Petitioner,

v.

POLLY KAISER et al.,

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 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 Mr. Pineda Campos has no due process rights to challenge his detention outside of what is statutorily provided for him, 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 Mr. Pineda Campos, and millions of people like him, to mandatory detention under 8 U.S.C. § 1225(b). However, the text and structure of the detention statutes, as well as decades of agency practice, show Mr. Pineda Campos is subject to discretionary detention under § 1226(a). Notably, a few days ago, a court in this district conducted a comprehensive statutory analysis rejecting the Governments new interpretation of § 1225(b). *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, at *13-21 (N.D. Cal. Sept. 12, 2025). This Court should adopt the reasoning in *Salcedo Aceros* and grant the preliminary injunction.

ARGUMENT

I. The Due Process Clause Protects Mr. Pineda Campos'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 Mr. Pineda Campos'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 Mr. Pineda Campos "does not have due process rights beyond what § 1225(b) provides." 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 Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, at *10; *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 due process claims raised by noncitizens. Opp. at 9-10. 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. Mr. Pineda Campos is Not Subject to Mandatory Detention.

Even though Mr. Pineda Campos has due process protections regardless of which statute applies, the Court should reject Respondents' argument that he is subject to mandatory detention. First, although the Immigration Judge recently granted DHS's motion to dismiss Mr. Pineda Campos's immigration proceedings, Respondents acknowledge the Government cannot place him into expedited removal during his appeal period, which expires on October 6, 2025. *See* Opp. at 9. Further, even if Mr. Pineda Campo's appeal period were to expire without him filing a notice of appeal, the Government still could not initiate expedited removal proceedings against him because there is currently a stay of the Government's application of Section 1225(b)(1)'s expedited removal proceedings to "people living in the interior of the country who have not previously been subject to expedited removal," which would include Mr. Pineda Campos. *Make the Rd. N.Y. v. Noem*, No. 25-cv-190 (JMC), 2025 LX 389496, at *70 (D.D.C. Aug. 29, 2025). If that stay were to be lifted, Mr. Pineda Campos reserves all rights and arguments to challenge any future assertion by Respondents of such authority.

Mr. Pineda Campos is also currently subject to § 1226(a) and not § 1225(b)(2), as Respondents now 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.").

Consistent with this longstanding practice, Mr. Pineda Campos was issued a Form I-220A, Order of Release on Recognizance when he was released at the border in April 2024, which states the detention authority as Section 236 of the Immigration and Nationality Act ("INA"), codified at 8 U.S.C. § 1226. Opp., 17-1, Ex. 4; *see also 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). A district judge in New York recently examined similar release documents and found that they "unequivocally establish that [the petitioner] was detained pursuant to Respondents' discretionary authority under § 1226(a)." *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), under Mr. Pineda Campos was charged with removability pursuant to 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); Opp., 17-1, Ex.1. Further, the fact that Mr. Pineda Campos was released on an Order of Release on Recognizance in and of itself is evidence that he is 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*, 583 U.S. at 300).

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 5; *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). District courts have found in recent weeks, however, that 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). *Jimenez Garcia v. Kaiser*, No. 4:25-cv-06916-YGR at *7-8 (citing six recent cases). To do so would amount to an impermissible post hoc rationalization. *Lopez Benitez*, No. 25-cv-5937 at *13–14. Respondents' assert that these recent district court decisions "do not grapple with the textual argument" of Section 1225(b)(2), citing the BIA's recent decision in *Matter of Yajure Hurtado*, 29 I.&N. Dec. 216, 219-220 (BIA 2025). In *Hurtado*, the BIA expanded its application of section 1225(b)(2)(A) to anyone who entered the country without inspection regardless of how long they have been in the United States, relying on the same basic statutory arguments that Respondents make here. *Id.* However, a few days ago, a judge in this district directly addressed *Matter of Yajure* and issued a comprehensive and thorough rejection of the Government's new

interpretation of Section 1225(b)(2), 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. Petitioner also respectfully refers the Court to the following additional explanations for why § 1225(b)(2)(A) is not applicable to Mr. Pineda Campos: *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).

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.

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 Mr. Pineda Campos's favor. He 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 Mr. Pineda Campos's favor. *Id. See Pinchi*, 2025 WL 2084921, at *7.

CONCLUSION

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

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Respectfully Submitted,

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