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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 NARCILO CAICEDO HINESTROZA et al.,

12 Petitioners,

13 v.

14 SERGIO ALBARRAN et al.,

15 Respondents.

CASE NO. 3:25-cv-07559-JD

**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 unsupported 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, the text and structure of the detention statutes, as well as decades of agency practice, show Petitioners are subject to discretionary detention under § 1226(a). Last week, a court in this district conducted a comprehensive statutory analysis rejecting the government's 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 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 § 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 mandatory detention challenges. Opp. at 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*,

1 459 U.S. 21, 34–35 (1982) (applying *Mathews* to due process challenge to immigration hearing
2 procedures). Courts in this circuit also regularly apply *Mathews* in due process challenges in
3 identical or similar circumstances to those here. *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC,
4 at *9. The Court should thus reject Respondents’ unsupported claim and, consistent with recent
5 decisions in factually similar cases, grant the preliminary injunction. See *Pinchi v. Noem*, 2025 WL
6 2084921, at *7 (converting TRO requiring release of asylum seeker arrested at immigration court
7 into preliminary injunction prohibiting Government from re-detaining her without hearing); *Singh v.*
8 *Andrews*, 2025 WL 1918679, *8-10 (E.D. Cal. July 11, 2025); *Castellon v. Kaiser*, No. 1:2-cv-
9 00968, 2025 WL 2373425, at *24 (N.D. Cal. Aug. 14, 2025).

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

12 Even though Petitioners have a liberty interest in remaining free regardless of which statute
13 applies, the Court should reject Respondents’ argument that they are subject to mandatory
14 detention. First, Respondents acknowledge that Petitioners are not currently in expedited removal
15 proceedings, Opp. at 9 (“Petitioners remain individuals PWAP who are amenable to expedited
16 removal,” and an immigration judge has not yet ruled on DHS’s motions to dismiss their full
17 removal proceedings. Even if their removal proceedings were dismissed, however, the government
18 currently cannot initiate expedited removal proceedings against them because there is a stay of the
19 government’s application of expedited removal to “people living in the interior of the country who
20 have not previously been subject to expedited removal,” which includes Petitioners. *Make the Rd.*
21 *N.Y. v. Noem*, No. 25-cv-190 (JMC), 2025 LX 389496, at *70 (D.D.C. Aug. 29, 2025). If that stay
22 were to be lifted, Petitioners reserve all rights and arguments to challenge any future assertion by
23 Respondents of such authority.

24 Petitioners are also currently subject to § 1226(a) and not § 1225(b)(2), as Respondents

1 now claim. For decades, courts and agencies have recognized that the detention of individuals who
2 entered the U.S. without inspection is governed by 8 U.S.C. § 1226(a), the default discretionary
3 detention statute that permits release by DHS or an immigration judge. Regulations promulgated
4 nearly thirty years ago provide that noncitizens “who are present without having been admitted or
5 paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for
6 bond and bond redetermination” under Section 1226. 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
7 Respondents also consistently adhered to this interpretation. *See, e.g., Matter of Garcia-Garcia*,
8 25 I&N. Dec. 93 (BIA 2009); *Matter of D–J–*, 23 I&N. Dec. 572 (A.G. 2003); Transcript of Oral
9 Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954) ([Solicitor General]:
10 “DHS’s long-standing interpretation has been that 1226(a) applies to those who have crossed the
11 border between ports of entry and are shortly thereafter apprehended.”).

13 Consistent with this longstanding practice, Petitioners were issued Form I-220A, Order of
14 Release on Recognizance when they were released, which states the detention authority as Section
15 236 of the Immigration and Nationality Act (“INA”), codified at 8 U.S.C. § 1226. Exs. A-C;
16 *Jimenez Garcia v. Kaiser*, No. 4:25-cv-06916-YGR at *2 (taking judicial notice of the fact that
17 Form I-220A, Order of Release on Recognizance cites release subject to 8 U.S.C. Section 1226).
18 A district judge in New York recently examined similar release documents and found that they
19 “unequivocally establish that [the petitioner] was detained pursuant to Respondents’ discretionary
20 authority under § 1226(a).” *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *11–
21 12 (S.D.N.Y. Aug. 13, 2025). As further evidence of release under section 1226(a), Petitioners
22 were charged with removability pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), which is a statute
23 applicable to noncitizens who are already present in the U.S., not to noncitizens who are
24 considered “arriving.” *See Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007);
25 Opp., 11-1, at ¶ 6; *id.*, 11-2, at ¶ 5; *id.*, 11-3, at 5. Further, the fact that Petitioners were released on
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1 an Order of Release on Recognizance in and of itself is evidence that they are subject to § 1226(a)
2 because § 1225(b) only authorizes release on parole. *Martinez v. Hyde*, No. 25-cv-11613, 2025
3 WL 2084238, at *4 (D. Mass. July 24, 2025) (“Respondents’ contrary theory of the procedural
4 history cannot make sense of Petitioner’s release on recognizance because individuals detained
5 following examination under section 1225 can only be paroled into the United States ‘for urgent
6 humanitarian reasons or significant public benefit’”) (citing *Jennings*, 583 U.S. at 300).

7 Respondents now claim, however, that noncitizens who entered the U.S. without
8 inspection are “applicants for admission” who are still “seeking admission” years after DHS
9 released them into the interior on their own recognizance, and as a result are subject to indefinite
10 mandatory detention under 8 U.S.C. § 1225(b)(2)(A), without access to a bond hearing. Opp. at 5;
11 *cf. Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *4 (D. Mass. July 24, 2025)
12 (describing DHS’s recent major shift in position).¹ District courts have found in recent weeks,
13 however, that the government may not “unilaterally reclassify [a petitioner] as ‘detained’ pursuant
14 to Section 1225(b)(2))” after making an initial determination that they are detained under Section
15 1226(a). *Jimenez Garcia v. Kaiser*, No. 4:25-cv-06916-YGR at *7-8 (citing six recent cases). To
16 do so would amount to an impermissible post hoc rationalization. *Lopez Benitez*, No. 25-cv-5937
17 at *13–14. Respondents’ assert that these recent district court decisions “do not grapple with the
18 textual argument” of Section 1225(b)(2), citing the BIA’s recent decision in *Matter of Yajure*
19 *Hurtado*, 29 I.&N. Dec. 216, 219-220 (BIA 2025). In *Hurtado*, the BIA expanded its application
20 of section 1225(b)(2)(A) to anyone who entered the country without inspection regardless of how
21 long they have been in the United States, relying on the same basic statutory arguments that
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27 ¹ Paradoxically, Respondents imply that Petitioners are the ones trying to “convert[]” the detention authority
28 to § 1226(a), Opp at 11, when it is well established that the government has always considered people in this
posture subject to § 1226(a).

1 Respondents make here. *Id.* However, a few days ago, a judge in this district directly addressed
2 *Matter of Yajure* and issued a comprehensive and thorough rejection of the Government's new
3 interpretation of Section 1225(b)(2), rooted in the text, structure, agency application, and
4 legislative history of the statute. *See Salcedo Aceros v. Kaiser*, No. 3:25-cv-06924-EMC at *13-
5 21. Petitioners also respectfully refers the Court to the following additional explanations for why §
6 1225(b)(2)(A) is not applicable to them: *Lopez Benitez*, No. 25-cv-5937, 2025 WL 2371588, at
7 *5–9. *Martinez*, 2025 WL 2084238, at *2-8; *Gomes v. Hyde*, No. 25-cv-11571 (JEK), 2025 WL
8 1869299, at *5-9 (D. Mass. July 7, 2025)); *Rodriguez v. Bostock*, No. 3:25-cv-5240-TMC, 2025
9 WL 1193850, at *14 (W.D. Wash. Apr. 24, 2025); *Cuevas Guzman v. Andrews*, No. 1:25-cv-
10 01015-KES-SKO, 2025 U.S. Dist. LEXIS 176145 at *9-12 (E.D. Cal. Sep. 9, 2025); *Rosado v.*
11 *Figuerroa*, No. CV 25-02157 PHX DLR (CDB), 2025 U.S. Dist. LEXIS 156344, at *8-32 (D. Ariz.
12 Aug. 11, 2025).

13
14 Thus, Petitioners, who have no criminal history, are subject to discretionary detention. In
15 line with the reasoned analysis of these authorities, this Court—if it reaches the question—should
16 reject the Government's contrary new statutory interpretation.
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18 **III. The Balance of the Equities and the Public Interest Weigh Strongly in Petitioner's**
19 **Favor.**

20 Respondents do not rebut Petitioners' showing that the remaining factors weigh in their
21 favor. They face irreparable injury in the form of constitutional harm of the highest order if the
22 preliminary injunction is not granted. *See Pinchi*, 2025 WL 2084921, at *7 (collecting cases). The
23 public interest likewise weighs strongly in Petitioners' favor. *Id.* *See Pinchi*, 2025 WL 2084921, at
24 *7.
25

26 **CONCLUSION**

27 For the foregoing reasons, this Court should grant the preliminary injunction
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Respectfully Submitted,

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