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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

Lazaro MALDONADO BAUTISTA, et al., on behalf of themselves and others similarly situated,

Plaintiffs-Petitioners,

v.

Kristi NOEM, Secretary, Department of Homeland Security; et al.

Defendants-Respondents.

Case No. 5:25-cv-01873-SSS-BFM

RESPONSE TO ORDER TO SHOW CAUSE

Hearing
Date: October 17, 2025
Time: 1:00 p.m.
Courtroom: 2
Judge: Sunshine S. Sykes

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I. INTRODUCTION

Plaintiffs submit this response to the Court's order denying their request for a preliminary injunction and ordering them to show cause as to why this matter is not moot in light of Plaintiffs' release pursuant to the Court's temporary restraining order (TRO). *See* Dkt. 58. It is black-letter law that a case continues to present a live controversy where the plaintiffs obtained only temporary relief from the court and defendants have not overcome the high bar for voluntary cessation—particularly where the plaintiffs seek to represent a class with inherently transitory claims.

In fact, the Supreme Court has explained that cases involving *this very scenario* do not become moot simply because a person is released from immigration detention pursuant to bond based on a court order providing temporary relief. *See Nielsen v. Preap*, 586 U.S. 392, 403 (2019) (plurality opinion) (claims of plaintiffs released on bond not moot "[u]nless th[e] preliminary [relief] was made permanent" because they still "faced the threat of re-arrest and mandatory detention"). The Court also noted that a case itself is not moot when it involves a putative class action with inherently transitory claims. *Id*. ("[T]he fact that a class 'was not certified until after the named plaintiffs' claims had become moot does not deprive [a court] of jurisdiction' when, as in these cases, the harms alleged are transitory enough to elude review." (quoting *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991))); *see also Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1090 (9th Cir. 2011) (same). Cases involving claims challenging immigration detention and pre-trial detention are the paradigmatic example of such "inherently transitory" claims. *See Lyon v. U.S. Immigr. & Customs Enf't*, 300 F.R.D. 628, 639 (N.D. Cal. 2014).

Accordingly, even assuming the Individual Plaintiffs' claims were moot, this case continues to present a live controversy because it also presents classwide claims that are inherently transitory. The Court should therefore proceed to adjudicate the motions for class certification and summary judgment.

II. PROCEDURAL HISTORY

Plaintiffs filed this case on July 23, 2025. *See* Dkt 1. In their petition, they challenged the Department of Homeland Security's (DHS) and the Adelanto Immigration Court's policy of considering them subject to mandatory detention under 8 U.S.C. § 1225(b)(2) because DHS alleged they entered the United States without admission or parole. They explained that, instead, under the Immigration and Nationality Act (INA), they are properly considered subject to the detention authority of 8 U.S.C. § 1226(a), which allows for consideration of release on bond. *See generally* Dkt. 1. Along with their petition, Plaintiffs filed a motion for a TRO, Dkt. 5, to which Defendants filed a response, Dkt. 8.

On July 28, 2025, the Court granted a TRO and ordered that the Individual Plaintiffs should receive bond hearings under 8 U.S.C. § 1226(a). Dkt 14. In the TRO, the Court ordered Defendants to show cause why a preliminary injunction should not issue. *Id.* at 13.

That same day—while Plaintiffs were still in custody—Plaintiffs filed an amended complaint. Dkt. 15. The amended complaint similarly alleged that Defendants' policy violates the detention statutes, implementing regulations, and the Due Process Clause. *Id.* ¶¶ 99–123. The amended complaint also seeks to certify a nationwide class to challenge Defendants' policy of erroneously subjecting all noncitizens who entered without admission or parole and who were not apprehended upon arrival to the United States to detention under § 1225(b)(2)(A), denying them the possibility of release on bond. *Id.* ¶¶ 88–93. Notably, in addition to seeking their immediate release, Plaintiffs' prayer for relief specifically requests that this Court "[d]eclare that Defendants' policy and practice of denying consideration for bond on the basis of § 1225(b)(2) to Plaintiffs Maldonado, Pascual, Franco, and De Aquino, Bond Eligible Class members, and Adelanto Class members, violates the INA, its implementing regulations, the APA, and the Due Process Clause, " *id.* at 31, and

further requests that this Court, "[s]et aside Defendants' unlawful detention policy under the APA, 5 U.S.C. § 706(2), as contrary to law, arbitrary and capricious, and contrary to constitutional right," *id*. at 32.

In their August 8 response to the TRO, Defendants asserted, inter alia, that this case is now moot, noting that the Individual Plaintiffs had been released pursuant to the Court's TRO. Dkt. 40 at 5. Shortly thereafter, on August 11, 2025, Plaintiffs moved for class certification and filed a motion for partial summary judgment, seeking classwide declaratory relief on their claims that Defendants' policies violate the INA and asking the Court to set aside those policies. *See* Dkts. 41, 42. Briefing on those motions has since been completed. *See* Dkts. 59–62.

Initially, the Court scheduled a preliminary injunction hearing for August 22, which was later rescheduled to September 12, 2025. *See* Dkts. 48, 51. Prior to that hearing, the Court denied a preliminary injunction, stating that it was moot and ordering Plaintiffs to show cause as to "why the entire case should not be dismissed as moot." Dkt. 58 at 3.

Since this case was filed, one important factual development has occurred. On September 5, 2025, Defendant Board of Immigration Appeals (Board or BIA) issued a decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). That decision formally adopted DHS's position that all persons who entered without admission or parole (and indeed, *all inadmissible persons*) are subject to the mandatory detention authority of 8 U.S.C. § 1225(b)(2)(A) and not the discretionary detention authority of § 1226(a). As the parties acknowledge, this makes Plaintiffs' second proposed class redundant, and Plaintiffs now seek only to certify a single nationwide class that challenges all Defendants' unlawful interpretation of the INA. *See* Dkt. 61 at 1 n.1.

Plaintiffs now respond to the Court's September 11, 2025, Order to Show Cause regarding mootness.

III. ARGUMENT

A. The Individual Plaintiffs' Claims Are Not Moot.

While Plaintiffs have been released pursuant to this Court's TRO, their claims are not moot because Defendants have not disavowed their unlawful interpretation of the detention statutes. In addition to APA vacatur, Plaintiffs seek permanent habeas relief for themselves and declaratory relief. Such relief will ensure they will not be redetained during their removal proceedings pursuant to Defendants' new policy that all persons who entered without admission or inspection are subject to mandatory detention under § 1225(b)(2)(A). This is no empty threat. Indeed, Defendants continue to redetain persons like Plaintiffs and subject them to mandatory detention under § 1225(b)(2)(A), instead of lawfully applying the detention provision at § 1226(a), which allows for their release on bond. *See, e.g.*, Pet. for Writ of Habeas Corpus, *Ortiz Martinez v. Wamsley*, No. 2:25-cv-1822-TMC (W.D. Wash. Sept. 19, 2025), Dkt. 1 ¶¶ 50–55, 62–68 (two petitioners previously released on bond who were rearrested and subjected to Defendants' policy); *see also infra* n.1.

As the Supreme Court explained in *Preap*, it is precisely because Plaintiffs remain vulnerable to being redetained under Defendants' interpretation of the detention statutes that the Individual Plaintiffs' cases are not moot even after their release. *See* 586 U.S. at 403 (explaining that "there was at least one named plaintiff with a live claim" where "at least one plaintiff . . . had obtained release on bond . . . and that release had been granted following a preliminary [court order]").

Defendants' actions since this case commenced only underscore that a live controversy remains. Rather than backing away from their policy, they have extended it to all immigration courts nationwide. *See Yajure Hurtado*, 29 I. & N. Dec. 216. By issuing this precedential decision, Defendants have ensured this policy is now "binding on all officers and employees of [DHS] or immigration judges in

the administration of the immigration laws of the United States." 8 C.F.R. § 103.10(b).

As noted above, the undisputed facts reflect that, at the time Plaintiffs filed this case, they were detained pursuant to the unlawful government policy they sought to challenge, which subjected them to mandatory detention without bond. *See, e.g.*, Dkt. 1 ¶¶ 41–60; Dkt. 14 at 1–2; Dkt. 62-1 ¶¶ 18–24, 26–32, 34–40, 42–47. After filing this case, Plaintiffs were released *only* because this Court ordered temporary relief. *See generally* Dkt. 14. Since then, Defendants have continued to implement their policy with respect to other putative class members, *see, e.g.*, Dkt. 56 (collecting decisions nationwide granting habeas petitions challenging Defendants' bond denial policy), have expanded their policy to all immigration courts nationwide, *see Yajure Hurtado*, 29 I. & N. Dec. 216, and have defended their policy before this Court, *see, e.g.*, Dkt. 60. Moreover, there is nothing to impede Defendants from redetaining Individual Plaintiffs. *See Preap*, 586 U.S. at 403.

Courts have repeatedly held that where—as here—the government complies with a district court order that results in release, that does not render a case moot. Instead, the government is free to appeal that order, and a party who received only temporary relief may continue to seek final relief. The Supreme Court has spoken directly to this point. *See id.*; *see also Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (explaining that, under the federal habeas statute, "once . . . federal jurisdiction has attached in the District Court, it is not defeated by the release of the petitioner prior to completion of proceedings on such application"). Similarly, in *Rodriguez Diaz v. Garland*, the Ninth Circuit affirmed that the case was not moot where the government held a bond hearing ordered by the district court. 53 F.4th 1189, 1195 n.2 (9th Cir. 2022) ("The government's compliance with the district court's order does not moot its appeal." (citing *United States v. Golden Valley Elec. Ass'n*, 689 F.3d 1108, 1112–13 (9th Cir. 2012))). Thus, "[t]he law is clear that release does not

necessarily moot a petition, and because the Petitioners could foreseeably be redetained and later face the same [detention] practices that they contest today, they continue to have a legally cognizable interest in the outcome of th[e] suit." *Moran v. U.S. Dep't of Homeland Sec.*, No. EDCV2000696DOCJDE, 2020 WL 6083445, at *7 (C.D. Cal. Aug. 21, 2020).[1]

At no point have Defendants claimed otherwise. If they did so, they would face a very heavy burden of demonstrating that any such claim of "voluntary cessation" is sufficient to moot out the case. "It is well settled that a 'defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.'" *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.*, 528 U.S. 167, 189 (2000) (citation omitted). This principle ensures that "a resumption of the challenged conduct" does not recur "as soon as the case is dismissed." *Knox v. Serv. Emps. Int'l Union*, 567 U.S. 298, 307 (2012). Accordingly, when a party claims mootness because they voluntarily stopped engaging in unlawful behavior, they "bear[] a heavy burden" to demonstrate dismissal is appropriate. *Rosebrock v. Mathis*, 745 F.3d 963, 971 (9th Cir. 2014) (internal quotation marks omitted); *see also Friends of the Earth*, 567 U.S. at 190 (defendant "bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur").

[1] As discussed above, redetention is not speculative. Habeas petitions filed around the country reflect that Defendants are redetaining—and subjecting to their new mandatory detention policy—people previously released. *See, e.g.*, *Hinestroza v. Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983, at *1 (N.D. Cal. Sept. 9, 2025) (three petitioners originally released on their own recognizance before being subject to Defendants' mandatory detention policy); *Hernandez Nieves v. Kaiser*, No. 25-CV-06921-LB, 2025 WL 2533110, at *1 (N.D. Cal. Sept. 3, 2025) (same for one petitioner); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *2 (N.D. Cal. Aug. 21, 2025) (same); *Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256, at *2 (E.D. Cal. Sept. 9, 2025) (bond revoked for petitioner who was later subjected to Defendants' mandatory detention policy).

The Ninth Circuit has identified several factors that determine whether a claim of voluntary cessation moots a case, but none of them support Defendants. *See Rosebrock*, 745 F.3d at 972. First, while a claim may be moot if there is a "policy change [that] is evidenced by language that is . . . 'unequivocal in tone,'" *id.* (citation omitted), here, to the contrary, Defendants have only doubled down on their unlawful policy, issuing a precedential BIA decision that binds all immigration courts and all DHS officers to refuse bond to Plaintiffs and the putative class. And of course, Defendants continue to defend their unlawful practice. *See generally* Dkt. 60. "It has long been recognized that the likelihood of recurrence of challenged activity is more substantial when the cessation is not based upon a recognition of the initial illegality of that conduct." *Armster v. U.S. Dist. Court for Cent. Dist. of Cal.*, 806 F.2d 1347, 1359 (9th Cir. 1986). Indeed, where "a controversy between the parties over the legality of [a practice] still remains," a case is not moot. *Walling v. Helmerich & Payne, Inc.*, 323 U.S. 37, 43 (1944).

Likewise, the second and third *Rosebrock* factors weigh against Defendants. There is no "policy change [that] fully addresses all of the objectionable measures that the Government officials took against the plaintiffs in the case." 745 F.3d at 972 (citation modified). Rather than disavowing their policy, they have expanded it, leaving Plaintiffs' requests for permanent habeas relief, declaratory relief, and APA vacatur of Defendants' mandatory detention policy unaddressed. Moreover, the only reason for Defendants' cessation of their unlawful conduct against the Individual Plaintiffs is the Court's TRO. Where Defendants act in response to a court order, a case is not moot unless "it is absolutely clear that [Defendants'] wrongful activities are not reasonably likely to recur." *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1238 (9th Cir. 1999) (citation modified) (voluntary cessation pursuant to a preliminary injunction did not render case moot). But Defendants have "allege[d]

nothing that would suggest that it is 'absolutely clear'" they will not continue to apply their policy, including if and when Plaintiffs are redetained. *Id*.

Fourth, the time that has passed since the lawsuit allegedly became moot similarly favors Plaintiffs: they have only been released a matter of weeks, and of course, the unlawful policy they challenge *remains agency policy*. *See Rosebrock*, 745 F.3d at 972. Finally, Defendants plainly fail the last *Rosebrock* prong, which asks whether the "agency's officials have not engaged in conduct similar to that challenged by the plaintiff." *Id.* (citation modified). Defendants do not (and cannot) contest that, both in this District and across the country, they have continued to subject other similarly situated individuals to their policy of considering all persons who entered without admission or parole as subject to detention under § 1225(b)(2). *See, e.g.*, Dkt. 59 at 19 (citing cases in the District); Dkt. 56 at 4–5 (citing cases in the District and across the country).

In sum, the law here is clear: the Individual Plaintiffs retain a significant stake in the outcome of this case, and Defendants have made no showing of voluntary cessation that would moot the case.

B. The Class's Claims Are Not Moot.

Even if the Individual Plaintiffs no longer had live claims (which they do), this case as a whole is not moot. Well-established principles regarding class actions demonstrate why this is so. Again, *Preap* is instructive. There, the Court explained that even if the individual claims were moot, the class action claims preserved a live controversy: "the fact that a class 'was not certified until after the named plaintiffs' claims had become moot does not deprive [the court] of jurisdiction'" because "as in these cases, the harms alleged are transitory enough to elude review." *Preap*, 586 U.S. at 403 (citation omitted). Critically, *Preap* involved a situation where the proposed class representatives had been released on bond based on the lower courts' orders prior to class certification, making it analogous to this one. *Id*.

The principle from *Preap* flows from a long line of caselaw. As the Ninth Circuit has explained, "mooting [a] putative class representative's claims will not necessarily moot the class action," because "some claims are so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative's individual interest expires." *Pitts*, 653 F.3d at 1090 (citation modified). Quintessential examples of such claims are ones involving detention or jails, where an individual often enters and is released long before the class is certified. *See, e.g.*, *McLaughlin*, 500 U.S. at 51–52 (explaining case was not moot in class action lawsuit challenging a county's failure to provide "prompt" determinations of probable cause before a magistrate because such claims are "inherently transitory"); *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975) (similar); *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 398–99 (1980) (explaining why inherently transitory claims do not render a putative class action moot because they are "capable of repetition, yet evading review"); *Wade v. Kirkland*, 118 F.3d 667, 670 (9th Cir. 1997) (where "claims are indeed 'inherently transitory,' then the action qualifies for an exception to mootness *even if* there is no indication that [the plaintiff] or other current class members may again be subject to the acts that gave rise to the claims" (quoting *Geraghty*, 445 U.S. at 399)).

In such "inherently transitory" cases, the "'relation back' doctrine is properly invoked to preserve the merits of the case for judicial resolution." *McLaughlin*, 500 at 52. In other words, for mootness and standing purposes, the Court must consider the case as of the time the complaint is filed. *See Sosna v. Iowa*, 419 U.S. 393, 402 n.11 (1975). Notably, the fact that Plaintiffs amended their complaint here does not matter. Under Rule 15, an amendment to a complaint relates back to the initial filing where it "asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out . . . in the original pleading." Fed. R. Civ. P. 15(c)(1)(B); *see also Miller v. Laird*, 464 F.2d 533, 534 (9th Cir. 1972) ("[D]id the filing of the second

amended petition relate back to the date of the original petition, so as to keep jurisdiction in the district court . . . ? We hold that it did[.]"). Here, when Plaintiffs initially filed this case, they alleged that they were subject to Defendants' unlawful policy subjecting them to mandatory detention under 8 U.S.C. § 1225(b)(2), and they continued to challenge the same policies in their amended pleading. *Compare* Dkt. 1 ¶¶ 32–40, *with* Dkt. 15 ¶¶ 41–55. As a result, the class claims are not moot.

These principles have been affirmed and applied in case after case addressing claims brought on behalf of a putative class of noncitizens challenging various aspects of immigration detention and enforcement. For instance, in *Lyon*, the court examined the impact of a class representative's removal from the country on the putative class's claims challenging access to counsel policies in certain immigration detention facilities. 300 F.R.D. at 637. After an in-depth analysis of *Gerstein*, *MacLaughlin*, and *Wade*, the court readily concluded that the "class claims are 'inherently transitory,'" thereby triggering the "relation back" doctrine and keeping the case alive because "the length of detention cannot be ascertained at the outset and may be ended before class certification by various circumstances." *Id*. at 639. This reasoning has been applied in various other immigration contexts. *See, e.g.*, *Torres v. U.S. Dep't of Homeland Sec.*, 411 F. Supp. 3d 1036, 1056 (C.D. Cal. 2019); *Rivera v. Holder*, 307 F.R.D. 539, 548 (W.D. Wash. 2015); *see also Gonzalez v. U.S. Immigr. & Customs Enf't*, 975 F.3d 788, 811 (9th Cir. 2020); *Doe v. Wolf*, 424 F. Supp. 3d 1028, 1039 (S.D. Cal. 2020); *Nw. Immigrant Rts. Project v. U.S. Citizenship & Immigr. Servs.*, 325 F.R.D. 671, 684 (W.D. Wash. 2016).

As the caselaw demonstrates, the class's claims remain alive, and the Court can (and should) proceed to certify the class and address the class's motion for partial summary judgment.

IV. CONCLUSION

For the foregoing reasons, this case is not moot.

Respectfully submitted this 24th day of September, 2025.

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CERTIFICATE OF COMPLIANCE

I, Aaron Korthuis, certify that this brief contains 3,362 words, which complies with the word limit set by L.R. 11-6.

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