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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

REPLY TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE

Hearing
Date: November 14, 2025
Time: 2:00 p.m.
Courtroom: 2
Judge: Sunshine S. Sykes

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I. INTRODUCTION

Absent this Court issuing a final judgment, Defendants remain empowered to redetain Individual Plaintiffs (Plaintiffs) under their unlawful interpretation of the detention statutes. That alone demonstrates this Court has authority to adjudicate the claims presented to ensure Plaintiffs have permanent relief. In arguing otherwise, Defendants ask this Court to ignore caselaw directly on point confirming that the initial release provided by temporary emergency relief does not moot out Plaintiffs' claims. Defendants also ignore the additional relief sought by Plaintiffs, including declaratory relief and an order setting aside Defendants' unlawful policy under the Administrative Procedure Act (APA).

Moreover, Defendants wrongly insist that this Court may not certify a class when the named representative's claim becomes moot prior to certification where the claims are inherently transitory—in other words, capable of repetition yet evading review. Defendants disregard caselaw from the Supreme Court and Ninth Circuit which directly counters their speculation that Plaintiffs' detention is sufficiently lengthy to fall outside of this exception. As neither Plaintiffs' claims nor the claims on behalf of the proposed class are moot, this Court should adjudicate Plaintiffs' motions for class certification and partial summary judgment.

II. ARGUMENT

A. Plaintiffs' Claims Are Not Moot.

Plaintiffs continue to have live claims before this Court because this Court's temporary restraining order (TRO) did not afford them permanent relief. The TRO ordered only—on a preliminary basis—that Plaintiffs be released or receive bond hearings under the correct statutory authority, 8 U.S.C. § 1226(a). *See* Dkt. 14 at 13. Nothing in that TRO secures their continued liberty, and the threat of redetention remains omnipresent. Nor did the TRO provide the declaratory relief Plaintiffs seek against Defendants' unlawful detention policies for themselves and the Bond

Eligible Class members, or their vacatur under the APA. *See* Dkt. 15 at 31–32 ¶¶ B.1–2, 5.

First, Defendants err in dismissing Plaintiffs' concerns of future redetention as "speculative." Dkt. 69 at 4. Defendants do not contest that the Department of Homeland Security (DHS) routinely redetains persons in removal proceedings—including those who were previously released. Instead, they argue that "[t]hese cases are distinct because in each case the petitioners were previously in government custody and released when they should have been subject to mandatory detention under § 1225(b)(2)." *Id.* at 4–5. Yet this is precisely the threat that Plaintiffs face. In Defendants' view, as articulated in their litigation position here and in their nationwide policy, Plaintiffs *are* noncitizens who "were previously in government custody and released when they should have been subject to mandatory detention under § 1225(b)(2)." *Id*. Absent a final judgment from this Court declaring that Plaintiffs are properly subject to § 1226(a) or otherwise granting permanent relief in the form of a permanent injunction, habeas, or vacatur, there is nothing constraining Defendants from again subjecting Plaintiffs to their mandatory detention policy.

Defendants also err in their treatment of the voluntary cessation exception. *See id.* at 4 (noting "the bond hearings provided were pursuant to this Court's order," so the "voluntary cessation doctrine [is] inapplicable"). Defendants plainly miss the point: the question is not how Plaintiffs were released, but whether Defendants will refrain in the future from asserting that Plaintiffs are subject to § 1225(b)(2)(A), rather than § 1226(a). To the contrary, Defendants have doubled down on their policy *after* this Court entered its TRO by issuing the precedent decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025)—obligating all immigration judges and DHS officers to treat Plaintiffs and similarly situated individuals as subject to detention under § 1225(b)(2)(A).

As to Defendants' protestations that the redetention threat is premised on the "assumption that the government will violate this Courts' [sic] order," Dkt. 69 at 5, that fails to recognize the TRO required no more than release or a bond hearing within that time period. It does not prevent Defendants from redetaining Plaintiffs in the future because it is temporary in nature. *See* Dkt. 14 at 13.

Defendants ask this Court to ignore the plurality opinion in *Nielsen v. Preap*, which found that the claims of plaintiffs released on bond were not moot "[u]nless th[e] preliminary [relief] was made permanent" because they still "faced the threat of re-arrest and mandatory detention." 586 U.S. 392, 403 (2019). Instead, they point to Justice Thomas's analysis, Dkt. 69 at 3–4, which was effectively the dissenting opinion as to the Court's jurisdiction, supported by only one of the other nine Justices.[1] And even in cases where there is no majority, the Ninth Circuit "follow[s] [a] [Supreme Court] plurality opinion as persuasive authority." *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1127 n. 5 (9th Cir. 2011), *overruled on other grounds by Bd. of Trs. of Glazing Health & Welfare Tr. v. Chambers*, 941 F.3d 1195 (9th Cir. 2019); *see also Texas v. Brown*, 460 U.S. 730, 737 (1983) (plurality opinion) (declaring a plurality opinion, "as the considered opinion of four Members of this Court[,] should obviously be the point of reference for further discussion of the issue"). Accordingly, in a case concerning the same detention policies at issue here, another court in this circuit recently applied *Preap*'s reasoning to find that, because of the threat of redetention, the habeas petitioners' claim "that their mandatory

[1] Notably, Justice Thomas did not take issue with the fact that a threat of re-detention *could* be sufficient to overcome mootness; rather, he took issue with "whether this future contingency was sufficiently imminent" to support jurisdiction in that case because "the parties" had not "addressed" "whether the plaintiffs actually faced that threat." *Preap*, 586 U.S. at 426 (Thomas, J., concurring in part and concurring in the judgment). Here, however, Plaintiffs have presented sufficient evidence that the government's aggressive enforcement tactics make the threat of redetention significant. *See* Dkt. 63 at 6 n.1.

detention was unlawful" was not moot despite having been released on bond. *Ortiz Martinez v. Wamsley*, No. 2:25-CV-01822-TMC, 2025 WL 2899116, at *3 (W.D. Wash. Oct. 10, 2025).

Defendants' attempts to distinguish Plaintiffs' other cited authorities fare no better. *Carafas v. LaVallee*, 391 U.S. 234 (1968), supports Plaintiffs' position because, as Judge Cartwright explained in *Ortiz Martinez*, "absent 'permanent' relief from unlawful detention in the form of a final judgment," petitioners who were released on bond pursuant to the court's grant of a TRO "could suffer 'collateral consequences' and face an ongoing threat of actual injury" in the form of "'re-arrest and mandatory detention' under the same detention scheme this Court has already declared unlawful as applied to them." *Id*. at *4 (quoting *Preap*, 586 U.S. at 403, *Abdala v. INS*, 488 F.3d 1061, 1064 (9th Cir. 2007), and *Spencer v. Kemna*, 523 U.S. 1, 7–8 (1998)). As for *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1195 n.2 (9th Cir. 2022), the fact that the government's appeal was not moot demonstrates that a live controversy continued to exist in the case despite the habeas petitioner's release. Defendants' reliance on a footnote in *Flores-Torres v. Mukasey*, Dkt. 69 at 3, moreover, is misplaced because there, the person's challenge to prolonged detention without a bond hearing under 8 U.S.C. § 1226(c) became moot after he received the bond hearing requested and was denied release on bond, 548 F.3d 708, 710 & n.3 (9th Cir. 2008). Accordingly, there was no further relief he could have requested with respect to his prolonged detention claim.

Finally, Defendants' argument that Plaintiffs' claims are moot does not address the existence of the declaratory and vacatur claims at all. *See* Dkt. 69 at 2–5.[2] Defendants' apparent objection to the fact that "counsel from outside this district

[2] By contrast, the petitioners in *Ceja Gonzalez v. Noem*, No. 5:25-cv-02054-ODW (BFMx), focused their requested relief on release or a bond hearing. *See*

intervened by filing an amended petition," *id.* at 2, does not make that amended petition improper. Plaintiffs had a right to amend their complaint as a matter of course and did so in accordance with the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 15(a)(1)(A) (noting a party may amend their pleading "once as a matter of course" within 21 days of service). Plaintiffs are the masters of their complaint and Defendants err in asking this Court to ignore the additional claims for relief in the amended complaint.

As Supreme Court and Ninth Circuit caselaw thus make clear, Plaintiffs' claims are not moot.

B. The Putative Class's Claims Are Not Moot.

The class claims are additionally not moot because this case satisfies the "inherently transitory" exception. *See Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1090 (9th Cir. 2011) (citation omitted).

Defendants first contend that as a general matter, "a putative class action is moot if the named class representative's claims become moot before a class is certified," but the very case they cite for that proposition did not address a class context. Dkt. 69 at 5 (citing *United States v. Sanchez-Gomez*, 584 U.S. 381 (2018)). There, the Court explained that the lower court erred in applying class action precedents like *Gerstein v. Pugh*, 420 U.S. 103 (1975), because the plaintiffs only raised their challenges in the context of their individual cases, and did not "involve *any* formal mechanism for aggregating claims." *Sanchez-Gomez*, 584 U.S. at 383, 389. But that is plainly not the case here where Plaintiffs do allege class claims in

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Dkt. 54-1 at 1 (noting "Petitioners seek the following relief: (1) a Writ of Habeas Corpus requiring Respondents to release Petitioners or, in the alternative, provide Petitioners with a bond hearing"); *id.* at 2 ("Here, Petitioners requested a bond hearing or release[.]").

their amended complaint and have a fully briefed pending motion for class certification.

The "inherently transitory" exception applies and the putative class's claims are not moot even if the motion for class certification is filed after the mooting of an individual plaintiff's claims. That is because the class's claims relate back to the filing of the *complaint,* not the class motion. *See, e.g.*, *Hernandez v. Cnty. of Monterey*, 70 F. Supp. 3d 963, 971–72 (N.D. Cal. 2014) ("If class claims fall within the [inherently] transitory exception, a plaintiff need not file a motion for class certification before the mooting of the plaintiff's claim for injunctive relief. . . ."); *Nw. Immigrant Rts. Project v. USCIS*, 325 F.R.D. 671, 684 (W.D. Wash. 2016) ("Until the court issues a final determination on the merits of class certification, the remaining Individual Plaintiffs constitute putative class representatives whose claims are inherently transitory and relate back to the filing of the amended complaint.").[3]

Defendants assert the exception does not apply because, by virtue of being placed in mandatory detention, the detention putative class members face "is not so short to be inherently transitory such that a court could not rule on class certification before the named representatives' claims became moot." Dkt. 69 at 6–7. But *Preap*, again, forcefully rejects this argument, explaining why the class claims here satisfy the exception. There, it was understood that noncitizens were "held, on average, for one year, and sometimes longer." *Preap*, 586 U.S. at 426 (Thomas, J., concurring in part and concurring in the judgment). Yet the plurality opinion recognized that "the harms alleged are transitory enough to elude review" because they "end[] as soon as the decision on removal is made." *Id.* at 403–404. The same rationale applies here.

[3] Moreover, in this case, Defendants do not dispute that the amended complaint must date back to the initial filing because it "continue[s] to challenge the same policies" as the original complaint. *Compare* Dkt. 63 at 9–10, *with* Dkt. 69 at 5–8.

Indeed, as in *Gerstein*, the length of immigration detention "may be ended at any time by" a number of possibilities, including "dismissal of the charges," a grant of immigration relief, the entry of a removal order, an individual giving up on their claims, or, as in this case, the grant of relief via litigation. 420 U.S. at 110 n. 11. "It is by no means certain that any given individual, named as plaintiff, would be in [immigration] custody long enough for a district judge to certify the class. Moreover, in this case the constant existence of a class of persons suffering the deprivation is certain." *Id.* This is precisely why the exception has been applied to various class actions arising in the immigration context, especially detention. *See* Dkt. 63 at 10 (listing cases).

Here, it is almost certain that any class member able to retain counsel for purposes of challenging their unlawful detention in district court would be granted a bond hearing prior to any grant of class certification. Given the fundamental liberty interest at stake and the irreparable harm caused by unlawful mandatory detention, any competent attorney would move for emergency relief to secure a bond hearing for their client as soon as possible—as happened here, *see* Dkts. 1 & 5 (application for TRO filed concurrently with habeas petition), and in other similar cases, *see, e.g.*, *Rodriguez Vazquez v. Bostock*, No. 3:25-cv-5240-TMC, Dkts. 1 & 3 (W.D. Wash. filed Mar. 20, 2025) (motion for preliminary injunction (PI) filed concurrently with habeas petition); *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, Dkts. 10 & 14 (D. Mass. filed Sept. 22 and 23, 2025) (motion for PI filed one day after amended habeas petition). Notably, in *Rodriguez Vazquez*, although the motion for class certification was also filed concurrently with the petition and the PI motion, No. 3:25-cv-5240-TMC, Dkts. 1–3, the judge granted the PI for a bond hearing *before* deciding class certification, further demonstrating the inherently transitory nature of a case raising this type of claim, *see id.* Dkts. 29 & 32 (granting class certification in part one week after granting PI). It is precisely because of "the reality of the claim

that otherwise the issue would evade review," *Sosna v. Iowa*, 419 U.S. 393, 402 n.11 (1975), that the inherently transitory exception applies here.

Defendants plainly err in asserting that "[n]one of these cases establish that a court can certify a class when a named representative's claim becomes moot prior to certification." Dkt. 69 at 8. The cases cited by Plaintiffs all reinforce this point. *See Gerstein*, 420 U.S. at 110 n.11 (explaining the "case is a suitable exception to th[e] [mootness] requirement" because, although "the record does not indicate whether any of [the respondents] were still in custody awaiting trial when the District Court certified the class," "[i]t is by no means certain that any given individual . . . would be in pretrial custody long enough for a district judge to certify the class," and "the constant existence of a class of persons suffering the deprivation is certain"); *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 398 (1980) ("Although one might argue that *Sosna* contains at least an implication that the critical factor for Art. III purposes is the timing of class certification, other cases, applying a 'relation back' approach, clearly demonstrate that timing is not crucial."); *Wade v. Kirkland*, 118 F.3d 667, 670 (9th Cir. 1997) ("Moreover, if transitory, the court could validly certify a class on remand, even though the named plaintiff's claims are already moot, since the 'relation back' doctrine will relate to Wade's standing at the outset of the case in order 'to preserve the merits of the case for judicial resolution.'" (quoting *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 52, 111 (1991))).

Because the claims at issue here are inherently transitory and thus capable of evading review, class certification must relate back to the filing of the initial complaint. The class claims thus continue to remain live irrespective of the status of Plaintiffs' claims.

III. CONCLUSION

Because neither Plaintiffs' claims nor the class claims are moot, the Court should grant the pending motion for class certification and partial summary judgment.

Respectfully submitted this 15th day of October, 2025.

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CERTIFICATE OF COMPLIANCE

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