UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

U.H.A., K.A., H.D., D. Doe, M. Doe, on behalf of themselves and others similarly situated, *and* **THE ADVOCATES FOR HUMAN RIGHTS**,
Plaintiff-Petitioner and Plaintiffs,

v.

PAMELA BONDI, in their official capacity as Attorney General of the United States;
KRISTI NOEM, in her capacity as Secretary of the United States Department of Homeland Security;
TODD M. LYONS, in his official capacity as Acting Director of the United States Immigration and Customs Enforcement;
DAVID EASTERWOOD, in his official capacity as Acting Director, St. Paul Field Office, U.S. Immigration and Customs Enforcement; *and*
JOSEPH B. EDLOW, in his official capacity as Director, U.S. Citizenship and Immigration Services,

Defendants-Respondents.

Case No. 0:26-cv-00417-JRT-DLM

DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

After a year of physical presence in the United States, a conditionally admitted refugee "*shall* … return or *be returned* to *the custody* of the Department of Homeland Security [(DHS)] for inspection and examination for admission" as a lawful permanent resident "in accordance with the provisions of sections 1225, 1229a, and 1231." 8 U.S.C. § 1159(a)(1) (emphases added). The ordinary meaning of custody, and indeed the meaning of the word as used elsewhere in Title 8, encompasses physical confinement. That § 1159(a)'s reference to "custody" means physical confinement is further confirmed by an explicit cross-reference to 8 U.S.C. § 1225—which mandates detention of applicants for admission pending certain proceedings.

Through Operation PARRIS, DHS is fulfilling § 1159's statutory mandate by arresting refugees who have not adjusted status—or "return[ing]" them to "custody"—and then detaining arrestees pending the necessary "inspection and examination." No amount of agency practice can overcome Congress's clear instruction or DHS's enforcement discretion. No provision of the Constitution facially preempts Operation PARRIS. No existing regulation prevents DHS from implementing Operation PARRIS. And given the public safety threat that motivated Operation PARRIS, any preliminary injunction would work irreparable harm to the government and the public. Accordingly, the Court should deny the motion for a preliminary injunction.

BACKGROUND

I. Operation PARRIS

DHS launched Operation PARRIS in early January. ECF No. 56-1 (Kernan Decl.) ¶ 19. After identifying 5,600 refugees in Minnesota who had yet to secure permanent residence status, DHS began detaining some of these refugees for inspection and examination under § 1159(a)(1), which requires that such refugees "return or be returned to the custody of [DHS]" after one year. ECF No. 56-2 (Rich Decl.) ¶¶ 8-10. Since this initiative began, many of the seventy-two aliens detained for inspection and examination under § 1159(a)(1) have already been released after USCIS approved their adjustment of status. *Id.* ¶ 14; Kernan Decl. ¶ 24.[1]

II. Procedural History

On January 18, 2026, Plaintiff U.H.A.—a refugee conditionally admitted in September 2024—filed a petition for writ of habeas corpus, claiming that DHS was unlawfully detaining him pursuant to Operation PARRIS. ECF No. 1. The same day, the Court issued an order enjoining the government from removing U.H.A. from the District of Minnesota, or, if the government had already removed U.H.A., ordering the government to return U.H.A. to Minnesota. ECF No. 3. Defendants opposed Plaintiff's petition on the merits. ECF No. 5.

On January 24, 2026, U.H.A., along with other individuals and an organization, filed an amended petition and a complaint on behalf of a putative class. ECF No. 12. Plaintiffs

[1] Now, pursuant to the TRO, all members of the putative Detained Subclass have been released. *See* ECF No. 101 at 4 & n.1.

raise various claims challenging Operation PARRIS on statutory and constitutional grounds. *Id.* ¶ 6. In the amended petition, Plaintiffs seek to represent a proposed class of "[a]ll individuals with refugee status who are residing in the state of Minnesota, who have not yet adjusted to lawful permanent resident status, and who have not been charged with any ground for removal under the INA," and U.H.A seeks to represent a subclass of "[a]ll members of the Class who are or will be detained by DHS pursuant to the Refugee Detention Policy." *Id.* ¶ 101.

Shortly after filing the amended petition, Plaintiffs moved for a TRO. ECF No. 17. On January 28, 2026, the Court granted the motion. ECF No. 41 (the "Order") at 31-32. On January 29, 2026, the Court issued an order in which it found good cause to extend the TRO for 14 additional days, until February 25, 2026, or until the Court issues an order on the preliminary injunction—whichever is earlier. ECF No. 45 at 7. Then, Defendants moved to dissolve the TRO. *See* ECF Nos. 55, 56. On February 9, 2026, the Court denied that motion. ECF No. 91.

LEGAL STANDARD

In evaluating a motion for a preliminary injunction,[2] a court must consider "(1) the likelihood of the movant's success on the merits; (2) the threat of irreparable harm to the movant in the absence of relief; (3) the balance between that harm and the harm that the relief would cause to the other litigants; and (4) the public interest." *Watkins Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003). The movant has the burden on each factor. *See id.*

[2] The same factors apply with respect to a motion for an administrative stay under 5 U.S.C. § 705. *See Branstad v. Glickman*, 118 F. Supp. 2d 925, 934 (N.D. Iowa 2000).

With respect to the first factor, which is the "most important," *Missouri v. Trump*, 128 F.4th 979, 991 (8th Cir. 2025), Plaintiffs—seeking to enjoin "the enforcement of [a] federal statute[]"—must demonstrate that they are "likely to prevail on the merits." *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 731-32 (8th Cir. 2008) (en banc) (citation omitted); *see id.* at 732 n.6.[3]

ARGUMENT

The Court should deny the motion for a preliminary injunction because Plaintiffs are not likely to succeed on the merits and because the balance of hardships and public interest weigh in Defendants' favor. At a bare minimum, any relief should be limited to named Plaintiffs and not class-based.

I. Plaintiffs Are Not Likely to Succeed On the Merits.

In 8 U.S.C. § 1159, Congress provided DHS with the authority to arrest and detain a refugee who has been present for over a year for "inspection and examination for admission" as a lawful permanent resident. 8 U.S.C. § 1159(a)(1).[4] Accordingly, Operation PARRIS is in accordance with the law and within DHS's statutory authority. Operation PARRIS is also in line with applicable procedures and eminently reasonable. To the extent Plaintiffs' claim rests on Defendants' recission of prior policy, this recission is not reviewable and, in any case, is reasonable and reasonably explained. Finally, Plaintiffs

[3] Even if the "fair chance of prevailing standard" applied, ECF No. 41 at 9, the Court should still deny Plaintiffs' motion.

[4] This assumes that the refugee does not voluntarily "return" to DHS custody after the one-year mark passes. *See infra* at 6 ("DHS sometimes schedules an appointment and the alien 'return[s]' to custody for an interview.").

lack a likelihood of success in arguing that Operation PARRIS violates the Fourth and Fifth Amendments.

A. Operation PARRIS is Within DHS's Statutory Authority.

Congress made clear—in two different ways—that DHS must arrest and detain a refugee who has been present for over a year for "inspection and examination for admission" as a lawful permanent resident. 8 U.S.C. § 1159(a)(1). First, § 1159(a)(1) expressly provides this authority. Second, § 1159(a)(1) cross-references 8 U.S.C. § 1225, which also mandates detention.

1. Section 1159 Provides for Arrest and Detention Pending Inspection and Examination for Admission.

8 U.S.C. § 1159(a) governs adjustment of status of refugees. When a refugee is admitted into the United States, that admission is conditional. *See* 8 C.F.R. § 207.4 (providing that approval of a refugee application authorizes the conditional admission of an alien as a refugee). A refugee who has been physically present in the United States for at least one year, whose refugee statues has not been terminated, and who has not acquired permanent resident status "*shall*, at the end of such year period, *return or be returned to the custody* of the Department of Homeland Security for inspection and examination for admission to the United States as an immigrant in accordance with the provisions of sections 1225, 1229a, and 1231 of this title." 8 U.S.C. § 1159(a)(1) (emphasis added).

The purpose of such "inspection and examination" at the one-year mark is to determine whether the alien should be allowed to remain in the country. As part of the inspection and examination, DHS may determine that the alien was not a "refugee" at the

time of admission and terminate the alien's "refugee" status. ECF No. 16-16 at 4. DHS may also find grounds for removal and initiate removal proceedings under § 1229a. And DHS may determine that the alien should be admitted as an LPR and adjust the alien's status accordingly. *See* 8 U.S.C. § 1159(a)(2) ("Any [individual] who is found upon inspection and examination by an immigration officer … to be admissible ... shall, notwithstanding any numerical limitation ... be regarded as lawfully admitted to the United States for permanent residence.").

Under § 1159, an alien may voluntarily "return" for inspection and examination. 8 U.S.C. § 1159(a)(1). For example, DHS sometimes schedules an appointment and the alien "return[s]" to custody for an interview. But if an alien fails to voluntarily return, § 1159 requires that the alien "shall ... be returned" to DHS "custody." *Id.*; *see Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018) ("[T]he word 'shall' usually connotes a requirement." (quotation omitted)). And the only way for an alien to "be returned" to DHS custody is for DHS to arrest the alien.

If § 1159 did not authorize arrests, then refugees would be free to flout the statutory requirement that they return for an inspection after a year—which, at present, is exactly what a "portion" of them are doing, likely content with remaining a refugee rather than risking termination of status or removal. Kernan Decl. ¶ 6. Indeed, under Plaintiffs' theory, a refugee could knowingly refuse an interview, and that alone would not be enough to justify an arrest under § 1159(a). Although other arrest authority could apply in certain circumstances, *see, e.g.*, 8 U.S.C. §§ 1226(a), 1357(a)(2), the Court should not conclude that Congress created a scheme whose effectuation depends on the potential applicability

of other statutes. "Congress presumably does not enact useless laws." *Garland v. Cargill*, 602 U.S. 406, 427 (2024) (quotation omitted)); *see Irving v. Clark*, 758 F.2d 1260, 1263 (8th Cir. 1985) ("A statute should be construed to make sense."). Nor does Congress "paralyze with one hand what it sought to promote with the other." *Am. Paper Inst., Inc. v. Am. Elec. Power Serv. Corp.*, 461 U.S. 402, 421 (1983) (quotation omitted). And reading § 1159 not to permit arrests would render the "or *be returned*" language of the statute superfluous, contrary to the "cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word." *Wash. Mkt. Co. v. Hoffman*, 101 U.S. 112, 115 (1879).[5]

Section 1159 also authorizes temporary detention. Section 1159 provides that the alien "shall ... be returned" to DHS's "custody" "*for* inspection and examination for admission to the United States" as a lawful permanent resident. 8 U.S.C. § 1159(a)(1) (emphasis added). Here, as in other detention provisions in the INA, "for" means "during or throughout, as well as with the object or purpose of." *Jennings*, 583 U.S. at 301 (brackets, citation, and internal quotation marks omitted). The statutory language thus authorizes DHS to keep the alien in "custody" during or throughout the "inspection and examination." And "custody," in turn, encompasses not just responsibility and control, but also "physical confinement and restraint." *Id.* at 311 (explaining that *Zadvydas v. Davis*, 533 U.S. 678 (2001), "consistently used the words 'detain' and 'custody' to refer

[5] Despite multiple bites at the apple, Plaintiffs fail to provide a plausible alternative reading. For example, a refugee returning on his own volition after receiving a notice is hardly a refugee that has been "returned." *See* ECF No. 64 at 16.

exclusively to physical confinement and restraint"); *see* Custody, Oxford English Dictionary (2d ed. 1989) (def. 2) ("The keeping of the officers of justice (for some presumed offence against the law); confinement, imprisonment, durance."); *see also Garcia-Garcia v. Comfort*, 66 F. App'x 155, 157–58 (10th Cir. 2003) ("Being taken into custody by the INS usually means detention in an INS facility or in a non-Service facility approved by its Jail Inspection Program or under contract with the INS.").

That is what "custody" means elsewhere in the INA, including in 8 U.S.C. § 1226(c), where it undisputedly refers to detention. *See Jennings*, 583 U.S. at 307-12. The Court should interpret "custody" to mean the same in § 1159. *See Azar v. Allina Health Servs.*, 587 U.S. 566, 576 (2019) ("[W]hen Congress uses a term in multiple places within a single statute, the term bears a consistent meaning throughout."). And indeed, other courts in this District have interpreted "custody" in § 1159 to encompass detention. *See, e.g.*, *Idle H. v. Bondi*, No. 26-CV-315 (LMP/SGE), 2026 WL 266462, at *2 (D. Minn. Feb. 2, 2026) ("As a matter of plain meaning, 8 U.S.C. § 1159(a)(1) provides authority for the Government to detain a refugee like Idle H. who has lived in the United States for at least one year and has not acquired legal permanent residency."); *Serhii L. v. Bondi*, No. 26-cv-463, 2026 WL 184736, at *3 (D. Minn. Jan. 24, 2026) ("The text of § 1159(a) further makes apparent that *continued* detention of a refugee following 'inspection and examination for admission' under § 1159(a) must flow from §§ 1225, 1229a, and 1231." (emphasis added)); *E.E. v. Bondi*, No. 26-cv-314, Dkt. No. 7 at 7 (D. Minn. Jan. 17, 2026) ("Nothing in § 1159

authorizes detention untethered from ... a specific and limited function: to allow DHS to conduct the inspection necessary to adjudicate adjustment of status under § 1159(a)(2).").[6]

Further confirming Defendants' reading is the fact that Congress—in 8 U.S.C. § 1159(b)—did not mandate a "return to custody" for asylees seeking adjustment of status. The Court should interpret § 1159(a) in the light of this difference. *See Dean v. United States*, 556 U.S. 568, 573 (2009) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (alteration adopted and quotation omitted)). Plaintiffs' response only confirms that the two subsections employ different processes and does not provide a reason for the Court to overlook these differences when interpreting § 1159(a). *See* ECF No. 64 at 8 n.2.

In short, § 1159(a) authorizes DHS to arrest and detain a refugee for the limited duration of the statutorily mandated inspection and examination. This is exactly what DHS is doing pursuant to Operation PARRIS.

2. Alternatively, Section 1159(a)'s Cross-Reference of Section 1225 Provides a Basis for Detention.

If any doubt remained as to DHS's detention authority, Congress's inclusion in § 1159(a) of a cross-reference to 8 U.S.C. § 1225 dispels it. As explained above, under

[6] Section 1159(a)'s authorization of detention is evidence in favor of the conclusion that § 1159(a) also authorizes arrest. The grant of a power—here the power to detain—is normally understood to include any subsidiary powers, like the power to arrest, necessary to exercise the principal power. *See United States v. El Herman*, 971 F.3d 784, 786 (8th Cir. 2020) ("The statutory grant of a greater power typically includes the grant of a lesser power.").

§ 1159(a)(1), any "inspection and examination for admission to the United States as an immigrant" must be done "in accordance" with, among other provisions, § 1225. In turn, 8 U.S.C. § 1225(b)(1) and (b)(2) "mandate detention of applicants for admission until certain proceedings have concluded." *Jennings*, 583 U.S. at 297; *see* 8 U.S.C. § 1225(b)(1)(b)(ii) (providing that aliens processed for expedited removal who claim a credible fear of persecution "shall be detained for further consideration of the application for asylum"); *id.* § 1225(b)(2) (providing that certain inadmissible aliens "shall be detained" for removal proceedings).

Even though a refugee is admitted once upon arrival in the country, *see* 8 U.S.C. § 1157(c), § 1159 makes clear that, once returned to DHS custody, the refugee is an applicant for admission, *see* ECF No. 41 at 12-13 (recognizing this second "admission").[7] Accordingly, the cross-reference to § 1225's detention-and-inspection process supports Defendants' position that detention is required under § 1159. Because § 1225 mandates detention of applicants for admission pending certain proceedings, § 1159's cross-reference to § 1225 implies refugees taken into custody will be detained during the inspection process to determine whether the refugee will be placed into such proceedings.

The statutory history confirms this reading. Since its enactment in 1980, § 1159 has cross-referenced § 1225. 94 Stat. 102, 105 (1980). In 1980, and up until 1996, § 1225 required the detention of "[e]very alien"—not only "applicants for admission"—"who may

[7] Because refugees are again "applicants for admission" at the one-year mark, the government's position here is not inconsistent with its position elsewhere that 8 U.S.C. § 1226 applies to admitted aliens. *See* ECF No. 91 at 14.

not appear to the examining immigration officer at the port of arrival to be clearly and beyond a doubt entitled to land." 8 U.S.C. § 1225(b) (1980). Thus, any doubts that § 1159(a)(1)'s use of the word "custody" encompasses physical detention during the inspection process are eliminated by the explicit cross-reference to § 1225, which mandates detention.[8]

3. Plaintiffs' Arguments to the Contrary are Unavailing.

Plaintiffs offer a handful of arguments in support of their reading of § 1159(a). None holds up.

a. Plaintiffs start by relying on agency practice. ECF No. 16-2 at 17-18, 21-24. Although agency practice can be evidence of statutory meaning, *see Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024), "text and structure take priority," *Coney Island Auto Parts Unlimited, Inc. v. Burton Tr. for Vista-Pro Auto., LLC*, No. 24-808, 2026 WL 135998, at *4 (U.S. Jan. 20, 2026) (quotation omitted); *see United States v. Rahimi*, 602 U.S. 680, 718 n.2 (2024) (Kavanaugh, J., concurring) ("Text controls over contrary historical practices."); *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330, at *8 (5th Cir. Feb. 6, 2026) ("[T]he government's past practice has little to do with the statute's text. The text says what it says, regardless of the decisions of prior Administrations. Years of consistent practice cannot vindicate an interpretation that is inconsistent with a statute's plain text."); *cf. Pereira v. Sessions*, 585 U.S. 198, 204-05, 219

[8] At the least, § 1225 provides a basis for detention for aliens who go through the inspection and examination required by § 1159 and are found to be inadmissible, such that proceedings against them can begin, either through the expedited removal process or removal proceedings before an immigration judge. *See* 8 U.S.C. §§ 1225(b); 1229a.

(2018) (rejecting government's reading of the statute despite twenty-one years of governmental practice). And here, both text and structure support Defendants. *See supra* at 5-11.

b. Plaintiffs next rely on context. ECF No. 16-2 at 18-19. Plaintiffs claim that, when read in context, "custody" must mean "care or control," not "detention." Again, Plaintiffs fail to persuade.

Plaintiffs argue that refugees are not detained upon arrival in the country and thus refugees cannot be "returning" to detention. *Id.* at 18-19; *see* ECF No. 91 at 9 (adopting this argument). But arriving refugees are subject to inspection at the point of entry and are admitted only after a finding of eligibility. *See* ECF No. 41 at 12; ECF No. 104 at 13-14. DHS is not precluded from holding a refugee while conducting this process, nor is a refugee free to depart before it concludes. Plaintiffs' conception of voluntary custody therefore does not line up the reality of the entry process.

Also, Plaintiffs' definition of "custody"—"care or control"—does not fit any better in the statute. The only way refugees "return" to "custody" is if their custodial status somehow changes. But under Plaintiffs' definition, there would be no such change. After their initial admission, refugees are always, to some extent, under the "care or control" of the federal government, as they are aliens who have only temporarily been allowed into the country and are subject to federal regulation. *Cf. Toll v. Moreno*, 458 U.S. 1, 11 (1982) ("The Federal Government has broad constitutional powers in determining . . . the period [aliens] may remain [and] regulation of their conduct before naturalization." (quotation omitted)). Under Defendants' definition, though, there would be a clear change in custodial

status: a refugee would go from being free to being detained. Thus, it is Defendants' definition that makes better sense of the statute as a whole.

Plaintiffs also contend that Congress's inclusion of "return" in § 1159(a) "evinces an intent that refugees present themselves voluntarily for an interview." ECF No. 16-2 at 19. To be sure, voluntary compliance is one method by which § 1159(a)'s mandate can be satisfied. But Operation PARRIS is directed primarily at those that do *not* comply voluntarily. For example, some refugees may realize that they would fail the inspection and then be subject to removal proceedings. And for these aliens, Congress provided an alternative—that the refugees "shall ... be returned." 8 U.S.C. § 1159(a)(1). Congress thus provided DHS with the option to arrest refugees after the one-year mark. The statute "plainly establishes both a voluntary option for a refugee to return to custody ('return') and a nonvoluntary option for a refugee to return to custody ('be returned')." *Idle H.*, 2026 WL 266462, at *3. The only way for this "nonvoluntary option" to be employed is for DHS to arrest the refugee.

Plaintiffs end the context section of their argument by erroneously contending that Defendants' reading is wrong because § 1159(a) does not authorize detention "for other purposes, including revetting a previously approved application or subjecting a refugee to removal proceedings." ECF No. 16-2 at 19. But § 1159(a)'s inspection and examination is done "in accordance with," among other statutes, § 1229a—the statute that governs removal proceedings—and thus clearly authorizes detention for revetting and removal, subject to the limited exception in § 1159(c). Indeed, the main point of § 1159(a)'s process is to determine whether an alien should be allowed to remain in the country. Consideration

of whether an alien was in fact a refugee to begin with, or if there are grounds for removal, comes squarely within this inquiry.

c. Plaintiffs also rely on the Supreme Court's decision in *Clark v. Martinez*, 543 U.S. 371 (2005). But that decision is inapposite. *Cf. Idle H.*, 2026 WL 266462, at *3. At issue there was DHS's authority to detain an inadmissible alien beyond the period prescribed in *Zadvydas*. *Clark*, 543 U.S. at 378. Section 1182(d)(5)(A) states that "the alien shall ... be returned to the custody from which he was paroled and thereafter *his case shall continue to be dealt with in the same manner as that of any other applicant for admission*." 8 U.S.C. § 1182(d)(5)(A) (emphasis added). The Court held that § 1182(d)(5)(A) did not authorize detention beyond the period prescribed in *Zadvydas* because any "other applicant" would be "dealt with" under 8 U.S.C. § 1231(a)(6), which the Supreme Court interpreted in *Zadvydas*. *Clark*, 543 U.S. at 386.

Clark's holding is inapplicable here for two reasons. First, unlike § 1182(d)(5)(A), § 1159 does not merely authorize detention "in the same manner" as another statute; it authorizes returning an alien to custody for a specific purpose: "inspection and examination for admission." Section 1159 is thus more naturally read as a standalone grant of detention authority. Second, § 1159 requires returning an alien to custody "for inspection and examination for admission … in accordance with the provisions of sections 1225, 1229a, and 1231." And as explained above, § 1225 authorizes detention here.

Any reading of § 1159 as *not* authorizing detention would undercut the scheme Congress enacted. After all, if the phrase "shall ... be returned to [DHS] custody" did not authorize any detention at all, refugees could simply opt out of re-vetting by refusing to

present themselves to DHS after a year in the United States. This is not a plausible interpretation of the statute. *See United States v. Tohono O'Odham Nation*, 563 U.S. 307, 315 (2011) ("Courts should not render statutes nugatory through construction.").

d. Plaintiffs next argue that Defendants' reading is "illogical." ECF No. 16-2 at 20-21. But there is nothing "illogical" about detaining aliens during the process of inspecting and examining them; for aliens covered by § 1225, Congress mandated precisely such detention. *Jennings*, 583 U.S. at 297; *supra* at 9-10. There is likewise nothing illogical about such detention here, particularly given that § 1159 explicitly cross-references the inspection-and-admission process of § 1225. Given that cross-reference to a provision that expressly mandates detention, it would be anomalous to conclude that "custody" in § 1159 cannot refer to the same thing. Also, to accept Plaintiffs' reading would be to accept the proposition that Congress intended for a refugee to be free to opt out of § 1159's "inspection and examination" process unless DHS could find applicable arrest authority in another statute. As explained above, it is "inconceivable" that Congress would enact such a self-defeating scheme. ECF No. 16-2 at 21.

There is also nothing illogical about the timing of § 1159(a)(1)'s "inspection and examination." In placing it at the one-year mark rather than at the time of entry, Congress accommodated the refugee's interests in escaping what is often imminent persecution in his home country. But after a year, in the interests of public safety, Congress treats a refugee like any other applicant for admission. When viewed in this light, § 1159(a)(1) is not an arbitrary policy, but instead a logical choice to address all relevant interests.

e. Finally, Plaintiffs turn to the constitutional avoidance canon. ECF No. 16-2 at 24; ECF No. 91 at 11-12. But there is no constitutional problem to avoid. *See infra* at 21-24. And, in any case, Defendants' interpretation is the only plausible one. Accordingly, the canon does not apply. *See Jennings*, 583 U.S. at 296 ("The canon of constitutional avoidance comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction." (quotation omitted)).

4. DHS is Detaining Refugees for Inspection and Examination Pursuant to Section 1159(a).

Perhaps sensing the untenable nature of their custody-doesn't-mean-detention construction, Plaintiffs argue that, even if § 1159(a) authorized detention, Operation PARRIS would remain unlawful because its detentions are intended to terminate refugee status or to find grounds for removal. ECF No. 16-2 at 25-27. Plaintiffs are not likely to succeed in making this argument. First, as explained above, § 1159(a) affirmatively authorizes an inquiry into whether an alien was property admitted as a refugee or whether an alien is removal. *See supra* at 13. This is indeed the main point of the inspection-and-admission process. *Cf.* 8 U.S.C. § 1255(c) (listing reasons why an alien would be ineligible for adjustment of status).

Plaintiffs next argue that the Edlow Memorandum, which suspended adjustment of status applications for refugees, "undermine[s]" Defendants' argument. But, as Plaintiffs appear to recognize, ECF 16-2 at 27 n.16, this suspension has been lifted with respect to refugees subject to Operation PARRIS, and over twenty refugees have been admitted as

LPRs, *see* Kernan Decl. ¶ 24. Accordingly, the results support, and do not undermine, Defendants' arguments.

The circumstances of detention also do not support Plaintiffs' arguments. Limited bed space in Minnesota often requires the use of out-of-state facilities, which lengthens the time of detention. Rich Decl. ¶ 13. And once in an adequate facility, interviews are normally scheduled to occur within 48 hours, with USCIS ordinarily rendering a decision within 48 hours of the interview. Kernan Decl. ¶ 23. To the extent a specific detention takes longer than necessary to fulfill § 1159(a)'s mandate, the answer is a case-specific adjudication, not a class action lawsuit.

* * *

For the above reasons, Plaintiffs are unlikely to succeed in arguing that Defendants have acted in excess of statutory authority.

B. Operation PARRIS Does Not Violate Agency Procedures.

Plaintiffs next argue that Operation PARRIS is unlawful because it fails to "conform to the agency's own internal procedures." ECF No. 16-2 at 27 (quotation omitted). In making this argument, Plaintiffs rely on a 2010 ICE Directive that instructed officers not to arrest unadjusted refuges who had been present in the United States for over a year. *Id.*; *see* ECF No. 16-20 at 2. But DHS rescinded this guidance in December 2025, and thus it no longer directs agency practice. Rich Decl. ¶ 6; Ex. A (Charles Memorandum).[9] And,

[9] Nothing in 8 C.F.R. § 209.1 leads to a different conclusion. Although the regulation "makes no reference to arrest or detention," ECF No. 91 at 11, that does not mean the regulation affirmatively prohibits arrest or detention. And, indeed, there is nothing inconsistent between the regulation's application-and-interview process and

in any case, guidance cannot override clear statutory duties. *See, e.g.*, *City & Cnty. of San Francisco v. EPA*, 604 U.S. 334, 355 (2025) (noting that courts "are not obligated to accept administrative guidance that conflicts with the statutory language it purports to implement."). Accordingly, Plaintiffs are not likely to succeed in making this argument.

C. Operation PARRIS is Not Arbitrary and Capricious.

Plaintiffs claim that Operation PARRIS is arbitrary and capricious because it constitutes a "sub silentio" reversal of agency practice and because DHS failed to properly explain their new policy. ECF No. 16-2 at 28-29. Plaintiffs are not likely to succeed in these arguments.

First, DHS's enforcement decisions are not reviewable under the APA. Under 5 U.S.C. § 701(a)(2), judicial review is unavailable when "agency action is committed to agency discretion by law." Although this language is construed "quite narrowly," *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.*, 586 U.S. 9, 23 (2018), the Supreme Court has strongly suggested that it applies to "the recission of a non-enforcement policy," *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 18 (2020); *see id.* at 19 ("Because the DACA program is more than a non-enforcement policy, its rescission is subject to review under the APA."); *cf. United States v. Lee*, 274 F.3d 485, 493 (8th Cir. 2001) (recognizing that the *Accardi* rule "has not been applied to criminal law enforcement policies and procedure"); *In re U.S.*, 197 F.3d 310, 315 (8th Cir. 1999). This makes good sense given

---

Operation PARRIS's arrest-and-detention process. Section 209.1 does not forbid the government from making the decision to arrest, detain, and interview a refugee for the purposes of adjudicating that refugee's application.

that the Constitution vests in Article II, not Article III, the final say on enforcement decisions. *See, e.g.*, *Trump v. United States*, 603 U.S. 593, 620 (2024); *United States v. Texas*, 599 U.S. 670, 678-79 (2023). Any change with respect to the enforcement and implementation of 8 U.S.C. § 1159(a)'s mandate is like a change in policy as to prosecutorial discretion, and such a change—which involves a "balancing of a number of factors which are peculiarly within [DHS's] expertise," *Heckler v. Chaney*, 470 U.S. 821, 831 (1985)—is not amenable to judicial review.[10]

Even if reviewable, Plaintiffs are not likely to succeed in arguing that the recission is arbitrary and capricious. "The APA's arbitrary-and-capricious standard requires that agency action be reasonable and reasonably explained." *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). "A court simply ensures that the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision." *Id.*

Here, as the December 18 memorandum explains, the recission of the 2010 policy—which forbade detention in all circumstances—was motivated by national security and public safety concerns. *See* Charles Memorandum. For an explanation as to why recission

---

[10] The fact that DHS's prior enforcement policy was based on a certain interpretation of 8 U.S.C. § 1159(a) does not mean DHS's decisions are reviewable. *Cf. I.C.C. v. Bhd. of Locomotive Eng'rs*, 482 U.S. 270, 283 (1987) (rejecting "the principle that if the agency gives a 'reviewable' reason for otherwise unreviewable action, the action becomes reviewable"). For example, a "common reason for failure to prosecute an alleged criminal violation is the prosecutor's belief (sometimes publicly stated) that the law will not sustain a conviction." *Id.* Even though that belief is "an eminently 'reviewable' proposition, in the sense that courts are well qualified to consider the point," it remains "entirely clear that the refusal to prosecute cannot be the subject of judicial review." *Id.* The same is true here.

is warranted, the memorandum cites a December 16, 2025, Presidential Proclamation. *Id.*; *see Restricting and Limiting the Entry of Foreign Nationals to Protect the Security of the United States*, https://www.whitehouse.gov/presidential-actions/2025/12/restricting-and-limiting-the-entry-of-foreign-nationals-to-protect-the-security-of-the-united-states/. When viewed in the light of this Proclamation, the recission memo—which operates only to rescind the flat ban on detention for purposes of enforcing 8 U.S.C. § 1159—is eminently reasonable and DHS's reasons for acting "may reasonably be discerned." *Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc.*, 419 U.S. 281, 286 (1974).

Plaintiffs also fail to demonstrate a likelihood of success in challenging the adoption of new screening procedures, especially because Congress specifically authorized arrest and detention. As the Kernan Declaration explains, these new procedures are the result of review of past practices that "favored admissions over necessary and appropriate scrutiny." Kernan Decl. ¶ 11; *see id.* ¶¶ 9-10; *see also* Rich ¶ 7. Plaintiffs' guesswork as to what the administrative record will reveal as to DHS's decision-making process is not enough to demonstrate a likelihood of success in meeting the "highly deferential" arbitrary-and-capricious standard. *Firearms Regul. Accountability Coal., Inc. v. Garland*, 112 F.4th 507, 519 (8th Cir. 2024). Plaintiffs also provide no basis for concluding that DHS cannot consider "fraud" when evaluating how to administer § 1159(a)'s inspection and examination process. ECF No. 16-2 at 29. If, for example, a refugee fraudulently obtained his status, that would certainly be relevant to determining whether to admit that refugee as an LPR and whether termination of refugee status may be appropriate.

For these reasons, Plaintiffs are unlikely to succeed on the merits on their arbitrary and capricious challenge.

D. Operation PARRIS does not Violate the Constitution.

Plaintiffs claim that Operation PARRIS violates the Constitution in three ways. ECF No. 16-2 at 30-37. They are unlikely to succeed in all three claims.

First, Plaintiffs claim that detention under 8 U.S.C. § 1159 violates substantive due process. To the contrary, so long as the detention's duration "bear[s] some reasonable relation to the purpose for which the individual is [detained]," *Jackson v. Indiana*, 406 U.S. 715, 738 (1972), then there is no substantive due process issue. And here, detentions under Operation PARRIS are limited to the amount of time reasonably necessary for DHS to comply with its statutory obligations. Kernan Decl. ¶ 22. Fulfilling this statutory mandate is clearly a "legitimate justification for detention," ECF No. 16-2 at 31, and Plaintiffs fail to point to any authority that says otherwise.[11] To the extent any detention lasts any longer, that specific case can be adjudicated on its own rather than as part of a class action. But Plaintiffs' claim here is necessarily a facial one—*i.e.*, that even *one minute* of detention violates substantive due process. That extraordinary contention cannot remotely satisfy the demanding standard for substantive due process claims.

Second, Plaintiffs claim that Operation PARRIS violates their procedural due process rights "because it provides no notice or opportunity to be heard at all prior to

[11] *Zadvydas* did not enumerate the "only legitimate justifications for immigration detention," ECF No. 16-2 at 31, but instead evaluated the constitutionality of detention based on the justifications the government offered in that case, *see* 533 U.S. at 690.

detention or even after the individuals are detained." ECF No. 16-2 at 32-34. But the Supreme Court has held that "[p]laintiffs who assert a right to a hearing under the Due Process Clause must show that the facts they seek to establish in that hearing are relevant under the statutory scheme." *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1, 8 (2003). And here, Plaintiffs do not explain how any evidentiary hearing would produce a fact "material to" § 1159(a). *Id.* Plaintiffs do not dispute any of the underlying facts necessary for 8 U.S.C. § 1159(a)'s application, nor do they provide any evidence that a hearing is necessary to ensure that DHS is accurately applying the statute. Accordingly, any such hearing would be "a bootless exercise," *id.*, and one the Constitution does not require. *Cf. Doe v. Miller*, 405 F.3d 700, 709 (8th Cir. 2005) ("[T]he absence of an individualized hearing in connection with a statute that offers no exemptions does not offend principles of procedural due process.").

Third, Plaintiffs claim that Defendants' arrest policy violates the Fourth Amendment, along with the INA, the APA, and DHS's own regulations. ECF No. 16-2 at 34-37. Plaintiffs start by arguing that § 1159(a) does not grant DHS any arrest authority. *Id.* at 34-35. That is wrong. *See supra* at 6-7. But even if it were otherwise, that would be a statutory claim and not a constitutional one. *See Virginia v. Moore*, 553 U.S. 164, 171-176 (2008) (declining to incorporate statutory arrest limitations into the Fourth Amendment).

Next, Plaintiffs argue that "probable cause of removability" is necessary before DHS can make a warrantless arrest of an alien. ECF No. 16-2 at 35. If any warrantless arrest at issue in this case was justified based on removability alone, then Plaintiffs would

have a point. *See United States v. Quintana*, 623 F.3d 1237, 1239 (8th Cir. 2010). But when an arrest is made pursuant to a different statute for a different reason, Plaintiffs fail to explain why "probable cause of removability," rather than probable cause of a § 1159(a)(1) violation, is necessary.

Plaintiffs' attempt to import the requirements of 8 U.S.C. § 1357(a)(2)—which prohibits a warrantless arrest unless an agent has "'reason to believe' that the noncitizen to be arrested is (1) is in the United States in violation of any law or regulation that is made in pursuance of 'law regulating the admission, exclusion, expulsion, or removal' of noncitizens and (2) 'likely to escape before a warrant can be obtained for his arrest,'" ECF No. 16-2 at 35—is unavailing for the same reason. Defendants are not relying on § 1357(a)(2), and Plaintiffs do not argue that warrantless arrests are constitutional only if they comply with § 1357(a)(2). The same is true about Plaintiffs' reliance on 8 C.F.R. § 287.8, which implements § 1357. *See Quintana*, 623 F.3d at 1239-40. Because § 1159(a) provides an independent arrest authority, the Court should not subject Defendants to the restrictions of a separate arrest regime.[12]

Plaintiffs' Fourth Amendment arguments are especially ill-suited for a case like this. "The touchstone of the Fourth Amendment is reasonableness," *Florida v. Jimeno*, 500 U.S. 248, 250 (1991), and reasonableness is "measured in objective terms by examining the totality of the circumstances," *Ohio v. Robinette*, 519 U.S. 33, 39 (1996). Thus, to

[12] Even if § 1357(a)(2) applied, given that § 1159(a) calls for the arrest of refugees that have not returned for inspection and examination as required by the law, it is possible that § 1357(a)(2)'s second prerequisite will be satisfied in certain circumstances.

determine reasonableness, a court must ordinarily engage in a "case by case," not a class by class, inquiry. *United States v. Sherrod*, 966 F.3d 748, 753 (8th Cir. 2020). Because factual differences could "translate into significant legal differences," *In re Baycol Prods. Litig.*, 218 F.R.D. 197, 211 (D. Minn. 2003) (quotation omitted)), the Court should not take up Plaintiffs' invitation to enter class-wide relief based on the Fourth Amendment.

II. The Balance of Harms and the Public Interest Favor Defendants.

When the government is the defendant, the balance of the harms and the public interest "merge." *Morehouse Enters., LLC v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 78 F.4th 1011, 1018 (8th Cir. 2023). This merged factor cuts in favor of Defendants.

If the Court granted Plaintiffs' motion, Defendants would be impeded from fulfilling their duties under 8 U.S.C. § 1159. No matter how recalcitrant the alien or how long they have failed to adjust their status, the Government would be limited in their ability to inspect them. Compliance with § 1159's inspection requirement would largely be a voluntary matter for Minnesota's refugees.

As a result, a preliminary injunction would inflict an irreparable injury on the Government. *See, e.g.*, *Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025) ("Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." (alteration adopted) (quoting *Maryland v. King,* 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (citation omitted))). That is particularly true in the immigration context. *See Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952) (noting that "any policy towards aliens is vitally and intricately interwoven

with contemporaneous policies in regard to … the maintenance of a republican form of government," and are "exclusively entrusted to the political branches of government"). Nor are the harms here abstract or theoretical: November's shooting just blocks from the White House makes clear that, when the vetting process is inadequate, harm to the public will likely follow.

III. The Court Should Not Enter Class-Wide Relief.

Even if convinced on the merits of Plaintiffs' individual claims, the Court should not enter a class-wide preliminary injunction.

First, the fact-bound nature of many of the issues cuts against class-wide relief. Whether the duration of detention is sufficiently related to the detention's justification is not a question suited for a class-wide answer. The same is true of whether a specific seizure is reasonable under the Fourth Amendment. Although factual differences within the putative class may not always foreclose class certification, *see Coley v. Clinton*, 635 F.2d 1364, 1378 (8th Cir. 1980), factual differences in this case affect the commonality of the legal questions presented. It is simply not the case that Defendants' practices "can be enjoined or declared unlawful only as to all of the class members or as to none of them." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011). Accordingly, class-wide relief is not appropriate. *See Tincher v. Noem*, No. 26-1105, 2026 WL 194768, at *1 (8th Cir. Jan. 26, 2026) (considering whether the class will be certified in determining the propriety of temporary relief on a class-wide basis).

The Eighth Circuit's opinion in *Tincher* also suggests that temporary relief to a putative class is unnecessary when the Court is not at risk of losing jurisdiction. *Id.*; *see A.*

A. R. P. v. Trump, 605 U.S. 91, 97 (2025) (granting temporary injunctive relief to a putative class to preserve the Court's "jurisdiction while the question of what notice is due is adjudicated"). Here, there is no such threat to the Court's jurisdiction.

Also, any class-wide injunctive relief would also flout an explicit congressional limitation on lower courts' remedial jurisdiction. Under 8 U.S.C. § 1252(f)(1), no court (save the Supreme Court) has "jurisdiction or authority to enjoin or restrain the operation of the provisions of [8 U.S.C. §§ 1221-31] other than with respect to the application of such provisions to an individual alien against whom proceedings under [those provisions] have been initiated." In other words, Section 1252(f)(1) "prohibits lower courts from entering injunctions"—"on behalf of an entire class of aliens"—"that order federal officials to take or refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions." *Garland v. Aleman Gonzalez*, 596 U.S. 543, 550-51 (2022).

Although § 1159 is not a covered statute, § 1225 is. And, as explained above and under § 1159(a)'s explicit cross-reference to § 1225, Defendants are detaining and inspecting refugees "in accordance" with § 1225. *See supra* at 9-11. Accordingly, any order enjoining Defendants from detaining any member of the putative class on the basis that they are a refugee who has not been adjusted to lawful permanent resident status and, critically, from carrying out the necessary inspection—in effect ordering Defendants to

"refrain from actions … that are allowed by [§ 1225]"—would be barred under § 1252(f)(1). *Aleman Gonzalez*, 596 U.S. at 551.[13]

IV. Alternatively, the Court Should Stay Any Preliminary Injunction Pending Appeal.

If the Court grant Plaintiffs' motion, Defendants request that the preliminary injunction be stayed pending the disposition of any appeal, or at a minimum, administratively stayed for seven days to allow Defendants to seek emergency relief. The reasons that Defendants have given for denying the motion satisfy, at a minimum, the requirements for a stay pending appeal. *See Nken v. Holder*, 556 U.S. 418, 434 (2009).

CONCLUSION

For the foregoing reasons, the Court should deny the motion for a preliminary injunction. In the alternative, the Court should stay the preliminary injunction pending appeal.

Dated: February 11, 2026

Respectfully Submitted,

DAN N. ROSEN
United States Attorney

BRETT A. SHUMATE
Assistant Attorney General
Civil Division

DREW C. ENSIGN
Deputy Assistant Attorney General

/s/ Brantley T. Mayers
BRANTLEY T. MAYERS (FL #1039996)
Counsel to the Assistant Attorney General

[13] Even if 8 U.S.C. § 1252(f)(1) does not prohibit "courts from setting aside unlawful agency actions under the APA," ECF No. 91 at 17 n.14, that does not mean Plaintiffs are allowed to seek class-wide injunctive relief, *cf. United States v. Texas*, 599 U.S. 670, 690 (2023) (Gorsuch, J., concurring in the judgment).

CATHERINE M. RENO
Acting Assistant Director
United States Department of Justice
Civil Division
Office of Immigration Litigation
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
Telephone: (202) 353-8557
Fax: (202) 305-7000
Email: catherine.m.reno@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon Plaintiffs' counsel by the Electronic Case Filing system on February 11, 2026.

/s/ Brantley T. Mayers

CERTIFICATE OF COMPLIANCE

I certify that this memorandum complies with the Local Rules. Specifically, the memorandum complies with the limits in LR 7.1(f) because it contains 7,451 words, as counted by Microsoft Word for Microsoft 365 MSO (Version 2512), which counts all text, including headings, footnotes, and quotations. It also complies with LR 7.1(h) because it is written in Times New Roman in size 13 and double spaced (except as allowed by LR 7.1(h)(1)).

/s/ Brantley T. Mayers