UNITED STATES DISTRICT COURT
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

PLAINTIFFS' REPLY IN SUPPORT OF PRELIMINARY INJUNCTION

INTRODUCTION

Defendants' Refugee Detention Policy contravenes section 1159(a), exceeds Defendants' arrest authority, is arbitrary and capricious, and violates the Constitution. The Policy *requires* the arrest and detention of *all* 5,600 unadjusted refugees in Minnesota, regardless of whether the refugee has already applied for adjustment of status or appears for an interview. The Policy's sweeping breadth stands in stark contrast to its purportedly narrow justification—namely, the supposed problem of refugees who hypothetically might refuse to attend their adjustment-of-status interview. Defendants' justification fails on both the facts and the law. First, their brief rehashes statutory arguments that this Court has already rejected, and further *concedes* that the arrest provision of the Immigration and Nationality Act ("INA") does not authorize arrests under the Policy. Second, despite Defendants' attempt to portray the Policy as an enforcement decision, Defendants do not have unreviewable and unlimited discretion in implementing section 1159(a), and their one-sentence memorandum cannot satisfy the Administrative Procedure Act's ("APA") requirement of reasoned decision-making. Third, Defendants' concomitant sweeping intrusions on personal liberty, including warrantless arrests and indefinite physical confinement, violate fundamental constitutional rights.

All the factors set forth in *Dataphase Systems, Inc. v. C L Systems, Inc.*, 640 F.2d 109, 113 (8th Cir. 1981), continue to weigh heavily in favor of this Court issuing a preliminary injunction and relief under APA § 705. Both the merits of Plaintiffs' arguments and the balance of harms support preliminary relief. Defendants do not dispute the irreparable harm that their Policy will cause, and they fail to establish any actual harm to

the government, which continues to conduct "revetting" interviews in non-detained settings under the TRO. The Court should therefore enter a preliminary injunction and stay the Policy under section 705 of the APA.

ARGUMENT

I. Plaintiffs are likely to succeed on the merits.

A. Defendants ask the Court to ignore their actual detention policy in favor of a hypothetical policy that they believe is more justifiable.

Defendants admit that the Policy applies to all 5,600 unadjusted refugees in Minnesota, Defs.' Opp. (ECF 107) at 2, and they do not dispute that they have arrested and detained refugees who already applied for adjustment of status and who voluntarily appeared in response to DHS call-in notices. (*See* Pls.' Opp. to Mot. to Dissolve (ECF 79-1) at 14–15.) Yet, throughout their opposition brief, Defendants misrepresent the Policy by suggesting that it is limited to refugees who "do[] not voluntarily 'return' to DHS custody after the one-year mark passes." (ECF 107 at 4 n.4; *see also id.* at 6, 13.) Not only is this contradicted by the experiences of Plaintiffs and the putative class, but this assertion—like any other basic information about the Policy—is also unsupported by any evidence from the agencies. Defendants' failure to address the Policy they have actually implemented is all the more puzzling given that they possess operations plans and instructions to the ICE Field Office in Minnesota, *see* ECF 56-2 ¶¶ 6–10, but have not provided them, despite the Court's orders directing Defendants to produce documents on which they rely. (*See* ECF 91, 111 (orders to file documents); ECF 112 (providing only three documents, none concerning the actual implementation of Operation PARRIS).)

Defendants' insinuation that the Policy targets only refugees who refuse to seek adjustment of status is no minor mischaracterization: as of October 2025, nearly 100,000 refugees nationwide had submitted applications for adjustment of status.[1] Nearly 50,000 of those refugees had been waiting for at least six months for a decision on their applications, and the average processing time was 8.6 months.[2] There is no evidence that refugees in Minnesota—whether they have already submitted adjustment of status applications or not—have any mechanism to spontaneously present themselves before the agency in order to avoid arrest or detention absent the Court's TRO. And, prior to the TRO, when refugees appeared in response to DHS's "revetting" interview notices, they were immediately arrested and detained. (*See* ECF 79-1 at 14–15.)

Defendants' brief reflects a policy that does not exist. Plaintiffs' evidence of Defendants' actual Policy is uncontroverted. (*See generally* ECF 16-5, 16-6, 16-7, 16-8, 16-9, 16-10, 16-12, 16-13, 16-14 (declarations describing experiences with Defendants' implementation of the Policy, including refugees being targeted for arrest despite having applied for adjustment; being handcuffed, shackled, shipped to Texas; being detained with children as young as four years old; and being detained for days or weeks without interview).) The Court must assess the lawfulness of the policy that Defendants are actually

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[1] USCIS, *FY22 Appropriations Reporting Requirement - Application Processing Data for October, 2025*, Immigr. & Citizenship Data (Dec. 17, 2025), https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data?ddt_mon=12&ddt_yr=2025 (last visited Feb. 15, 2026).

[2] *Id.*; *see also* USCIS, *Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year*, https://egov.uscis.gov/processing-times/historic-pt (last visited Feb. 15, 2026).

implementing: targeting for arrest and detention all of Minnesota's 5,600 unadjusted refugees in long-term ICE facilities, even when those refugees followed the exact application process laid out by regulation (including voluntarily appearing for noticed interviews), and even when there is no basis to question either their refugee status or their entitlement to adjustment. Defendants' actual Policy is unlawful, and this Court should maintain the status quo by continuing to restrain its implementation.

B. Defendants' Policy violates the INA.

1. Section 1159(a) does not authorize detention.

As this Court has found, section 1159(a) does not authorize detention. (*See* TRO (ECF 41) at 18–19; ECF 91 at 7–13.) Defendants' argument to the contrary relies on two assumptions: first, that regardless of context, the term "custody" necessarily means "detention" in the INA; and second, that as a matter of policy, inferring authority to arrest and detain is necessary to ensure refugees "return or be returned." Both assumptions are incorrect.

As the Court correctly concluded, "custody" does not mean detention in section 1159(a). The term "custody" does not only encompass physical confinement; rather, the term "custody" can signify control over a person. Since the passage of the Refugee Act, DHS (and formerly INS) has interpreted the use of "custody" in 1159(a) to require, at most, that refugees appear for an interview. (*See* ECF 16-2 at 17–18, 21–23.) Defendants attempt to dismiss this inconvenient reality, but the uncontested understanding of a provision since the time of its adoption is highly probative of its meaning. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). Likewise, Defendants ignore the Supreme Court's

clear statement that near-identical language found elsewhere in the INA does not "affirmatively authorize[] detention." *Clark v. Martinez*, 543 U.S. 371, 385 (2005); ECF 107 at 14.[3] And Defendants' argument that refugees are always, to some extent, under the 'care and control' of the federal government" by virtue of being noncitizens, ECF 107 at 12, misconstrues this Court's holding. Section 1159(a) requires refugees to be returned to the control of DHS for adjudication of their admissibility as immigrants, which occurs only after the one-year mark. (ECF 16-2 at 22–23.)

Despite the numerous textual indications that "custody" is not synonymous with "detention" in section 1159(a), Defendants insist that the provision "clearly" authorizes arresting and placing refugees in immigration detention pending a decision on their adjustment of status. (ECF 107 at 5–9, 13.) Notably, at the hearing on their motion to dissolve, defense counsel conceded that the text of the statute does not clearly support their reading. (*See, e.g.*, Feb. 4, 2026 Tr. ("Tr.") at 6:24–7:2 ("[W]e concede that Congress, perhaps, could've put it clearer that 'returned to custody' -- you know, there are other ways that Congress could've made clearer that this justified an arrest.").) In any event, Defendants' reliance on cases interpreting the *detention* provisions of the INA, ECF 107 at 8, cannot strip the term "custody" of all context and render it capable of only their preferred meaning. To the contrary, Congress's use of different words in different statutory provisions is meaningful. *See Hamdan v. Rumsfeld*, 548 U.S. 557, 578 (2006) ("[A] negative inference may be drawn from the exclusion of language from one statutory

[3] In any case, Defendants misconstrue *Clark* as relying on the "return to custody" language as a justification for detention, but it did not. *See Clark*, 543 U.S. at 385–86.

provision that is included in other provisions of the same statute."). The context here shows that Congress sought to ensure eligible refugees would be entitled to Lawful Permanent Resident (LPR) status after one year, not to place 50,000 refugees per year in indefinite immigration detention on their 366th day in the United States.[4] (*See* ECF 16-2 at 20–21); 8 U.S.C. § 1157(a); *cf. Immigr. & Naturalization Serv. v. Cardoza-Fonseca*, 480 U.S. 421, 449 (1987) (observing "longstanding principle of construing any lingering ambiguities in deportation statutes in favor of" noncitizen).[5]

Defendants also argue that the Policy is authorized by the statute's statement that refugees shall either "*return or be returned to the custody* of" DHS. (ECF 107 at 5–9 (emphasis in original).) But the Policy entirely eliminates the possibility that a refugee can "return" voluntarily. As noted above, contrary to Defendants' assertions, *see id.* at 6, 13, they have arrested and detained refugees subject to Operation PARRIS merely because those refugees have not been granted adjustment at the one-year mark, regardless of

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[4] The purpose of section 1159(a) is not to "determine whether the alien should be allowed to remain in the country," ECF 107 at 5, but to determine whether the refugee *shall be admitted as an immigrant*—that is, adjusted status to a LPR. 8 U.S.C. § 1159(a)(1), (2). Refugee status termination proceedings and removal proceedings are governed by different provisions of the INA. (*See infra* Part I.B.3.)

[5] The cases from this District upon which Defendants rely are unavailing. (ECF 107 at 8-9.) *Serhii L. v. Bondi* explicitly declined to address whether section 1159(a) authorized detention, No. 26-cv-463, 2026 WL 184736, at *4 n.5 (D. Minn. Jan. 24, 2026), and the order in *E.E. v. Bondi* was issued without argument from petitioner and was later vacated, No. 26-cv-314, ECF 7 (D. Minn. Jan. 22, 2026), vacated at ECF 12 (Jan. 22, 2026). Plaintiffs respectfully disagree with the statutory analysis in *Idle H. v. Bondi,* which did not consider the specific context of section 1159(a), but in any event went on to hold that Defendants' interpretation of section 1159 necessarily "leads to an impermissible outcome": the indefinite detention of refugees in violation of the Fifth Amendment. *See* No. 26-cv-315, 2026 WL 266462, at *6 (D. Minn. Feb. 2, 2026).

whether they had applied for adjustment. (*See supra* Part I.A.) The Policy is unlawful on this basis alone.

It is therefore Defendants' interpretation, not Plaintiffs', that renders part of section 1159(a) superfluous. (*Contra* ECF 107 at 7.) Contrary to Defendants' argument, there are myriad ways that a refugee could "be returned" for inspection and examination of their adjustment of status without inserting an implied grant of arrest and detention authority into the statute. As established, "custody" is required only to ensure that USCIS has sufficient control over the refugee to conduct the inspection and examination for adjustment of status. Defendants can, with sufficient notice and procedural protections, require refugees to appear before the agency if they do not apply for adjustment of status on their own accord. Should a refugee fail to comply after being given notice and an opportunity to do so, Defendants can take other measures authorized by the INA, such as placing a refugee believed to be deportable in proceedings or seeking to terminate the refugee status of an individual believed to have not been a refugee at the time of admission. 8 U.S.C. § 1157(c)(4); *id.* § 1229a. Moreover, Defendants' own regulations recognize that decisions on a LPR application do not even require physical appearance from every applicant. *See* 8 C.F.R. § 209.1(d) ("USCIS will determine, on a case-by-case basis, whether" interviews are necessary).[6]

[6] In addition, when a refugee is detained for other reasons and refuses to fill out an adjustment-of-status application despite multiple attempts, USCIS policy states it can make a decision on the adjustment-of-status application based on the evidence before it. *See* USCIS Policy Manual Vol. 7 Part L Ch. 5, https://www.uscis.gov/policy-manual/volume-7-part-l-chapter-5 (last visited Feb. 15, 2026).

At bottom, Defendants' arguments rest not on statutory authority but on a policy concern that, without detention, refugees would not appear for adjustment interviews. But, as the Court observed, Defendants have created "a solution in search of a problem." (ECF 91 at 19.) Not only is Defendants' conjecture that refugees would flout scheduled interviews entirely unsupported by evidence, *see supra* Part I.A, but it is also logically unfounded. Until refugees' status is adjusted to LPR, they are potentially subject to status termination, making refugee status more precarious than LPR status, which also confers greater protections from removal and a pathway to citizenship. 8 U.S.C. § 1157(c)(4); *see also*, *e.g.*, *id.* § 1229b(a) (cancellation of removal available to LPRs).

Ultimately, even if Defendants' argument that section 1159(a) requires DHS to take some physical control over the refugee were somehow correct, that requirement can be fulfilled by a scheduled in-person inspection before USCIS. There is no basis in the statute for detention in a long-term ICE facility prior to or after the interview. Defendants provide no explanation for why section 1159(a) should be read to authorize ICE to imprison refugees in detention facilities for days, weeks, or even longer.[7] (*See* Tr. at 13:12–15:1 (refusing to put a limit on the length of detention).) Indeed, as Defendants' practice under the TRO demonstrates, the interviews that form the purported basis for the Policy demonstrate that there is no need for detention in order to facilitate status adjustments. (*See generally* Declarations of Allegra Drobnick ("Supp. Drobnick Decl."), Samantha M.

[7] Defendants note that refugees are subject to inspection and are not free to leave the airport upon their arrival like any other noncitizen, *see* ECF 107 at 12, but they are not subject to mandatory detention in long-term ICE detention centers and cannot be "returned" to such detention.

Rollins Murphy ("Murphy Decl."), and Mary Ghandour ("Ghandour Decl.").) These interviews are routinely scheduled to occur in Minnesota during business hours. (Supp. Drobnick Decl. ¶ 11; Murphy Decl. ¶ 6; Ghandour Decl. ¶ 5.) They last several hours and are completed in a single day. (Supp. Drobnick Decl. ¶ 11; Murphy Decl. ¶¶ 4–5; Ghandour Decl. ¶ 10.) They do not require handcuffs, shackles, or the seizure of personal property. (Supp. Drobnick Decl. ¶¶ 9–10; Murphy Decl. ¶ 5; Ghandour Decl. ¶¶ 8–9.) They do not necessitate overnight stays or require removal from the state, and there is ample physical capacity to conduct these interviews in Minnesota. (*See* Supp. Drobnick Decl. ¶¶ 11–12; Murphy Decl. ¶¶ 5, 9; Ghandour Decl. ¶ 10.) Indeed, remote USCIS employees routinely participate in these examinations, in real-time. (*See* Supp. Drobnick Decl. ¶ 13; Murphy Decl. ¶ 8.) So, even if physical custody were required for the inspection itself, the duration of physical restraint would be severely limited and would surely not involve being handcuffed, shackled, and transport to far-flung locales for days on end.[8]

2. Section 1159(a)'s reference to section 1225 does not confer detention authority.

Defendants' reliance on section 1159(a)'s reference to section 1225 fares no better. As explained in Plaintiffs' opposition to Defendants' motion to dissolve, *see* ECF 79-1 at 16–18, and as this Court has already concluded, admitted refugees who are subject to the Policy are not, as Defendants contend, "applicants for admission." (ECF 107 at 10.)

[8] The asylee provision is inapposite. (ECF 107 at 9.) There would be no point in Congress requiring all asylees to return to the agency—that is, apply for adjustment of status—when the agency may, as a matter of discretion, decline to grant them adjustment of status, unlike with refugees for whom adjustment is mandatory if eligible. 8 U.S.C. § 1159(a), (b).

"[A]pplicants for admission" are defined as noncitizens who "ha[ve] not been admitted or who arrive[] in the United States," 8 U.S.C. § 1225(a)(1). Defendants flatly ignore this definition and make no argument that it (or the more specific limitations in paragraphs (b)(1) and (b)(2)) covers refugees who have been admitted and present in the country for over a year. Such individuals necessarily have been admitted and are not arriving.[9] (*See* ECF 79-1 at 16–18.) Rather than serving as a roundabout and illogical authorization for detention, section 1159(a)'s reference to inspection and examination taking place "in accordance with" section 1225 instead incorporates the portions of section 1225 that refer to inspections generally, which apply beyond the subset of noncitizens subject to detention under subsection (b). (*See* ECF 79-1 at 18–19); *see also* 8 U.S.C. § 1225(a) (1980) (outlining inspection authority similar to that found in other subsections of current provision).

3. Section 1159(a) does not authorize detention for the purpose of seeking to terminate refugee status.

While the Court need not reach the issue, the Policy is unlawful for the additional reason that Defendants are detaining refugees for the purpose of terminating refugee status, and not for the purpose of adjusting status to LPR. (*See* ECF 107 at 5–6; ECF 112-3 at 2

[9] Refugee admission is not conditional or temporary. (*Contra* ECF 107 at 1-2, 5, 12.) Nowhere does the statute use the term "conditional," and Defendants cannot add language that is not there by regulation. *See Loper Bright*, 603 U.S. at 388. While refugees who have not yet obtained adjustment-of-status may potentially be subject to termination of their refugee status should they be determined to not have been a refugee at the time of arrival, neither their status nor "admission" expires. *See* 8 U.S.C. § 1157(c)(4); *cf. Coal. for Humane Immigrant Rts. v. Noem*, 805 F. Supp. 3d 48, 84 (D.D.C. 2025) ("admitted . . . refers only to a manner of entry" and not a "status").

(adjudicators conduct "background checks, reinterviews, and *merit reviews of refugee claims*" (emphasis added)).) Importantly, refugee status termination is governed by a separate part of the INA that clearly contains no detention authority. 8 U.S.C. § 1157(c)(4) (refugee status may be terminated only if the refugee "was not in fact a refugee" at the time of admission). Defendants attempt to collapse these two distinct procedures, contending that "§ 1159(a) affirmatively authorizes an inquiry into whether an alien was properly admitted as a refugee." (ECF 107 at 16.) But the inspection under section 1159(a) is limited to whether a refugee is subject to any applicable inadmissibility bar at the time of adjustment. 8 U.S.C. § 1159(a), (c); *cf. id.* § 1159(b)(3) (in asylum adjustment provision, explicitly authorizing assessment of whether applicant "continues to be a refugee").

While some information related to the admissibility determination for adjustment-of-status might be relevant to status termination proceedings and vice versa, section 1159(a)(1) does not contemplate a wide-ranging fishing expedition in an attempt to re-adjudicate their refugee claim,[10] or an end-run around the regulatory requirement that refugees be provided 30 days notice before being required to offer "oral evidence" that their status should not be terminated, 8 C.F.R. 207.9.[11] (*See* ECF 107 (describing one of

[10] This is not a basis for status termination under section 1157(c)(4) either, but Defendants have suggested that they view these interviews as a chance to revisit the initial exercise of discretion. (*See* ECF 16-16 at 2.)

[11] Along with vitiating the 30 days notice requirement, using the authority under section 1159(a) to detain refugees and attempt to elicit testimony for status termination also raises significant due process concerns. As a result of the Policy, these "revetting" interviews—based on Defendants' unfounded suggestion that they themselves may have incorrectly granted refugee status—are conducted with little to no notice and with limited ability to prepare or contact counsel, ECF 16-13 ¶¶ 9–12, while the stakes are exceedingly high. *See*

three outcomes of these interviews as being termination of refugee status); *see also* ECF 112-2 at 2 (describing planned "comprehensive review and . . . re-interview of all refugees admitted from January 20, 2021, to February 20, 2025"); ECF 16-19 (announcing Operation PARRIS's "reexamin[ation]" and "intensive verification of refugee claims").) Thus, the "revetting" interviews that Defendants are engaging in under the guise of conducting adjustment-of-status inspections is disconnected from whatever "custody" is unauthorized by section 1159(a).[12]

4. Defendants concede that section 1357 does not confer arrest authority, and nothing in section 1159(a) authorizes arrest.

Section 1357 of the INA is the only provision of the INA that authorizes warrantless arrests and it does not apply here. Defendants concede that section 1357, which "prohibits a warrantless arrest unless an agent has reason to believe" (i.e., probable cause) that the individual is removable and a flight risk is inapplicable to the Policy. (*See* ECF 107 at 24.) They further acknowledge that even if section 1357 did apply, their Policy only *might*

Martinez v. McAleenan, 385 F. Supp. 3d 349, 363 (S.D.N.Y. 2019) ("[B]efore the Government unilaterally takes away that which is sacred, it must provide *meaningful* process[.]" (emphasis in original)); *Mata Velasquez v. Kurzdorfer,* 794 F. Supp. 3d 128, 150 (W.D.N.Y. 2025) ("[T]his country cannot invite people here and then give them no process when it arbitrarily seeks to revoke that invitation."); *Bliek v. Palmer*, 102 F.3d 1472, 1476 (8th Cir. 1997) (need for adequate notice particularly compelling where concern regarding wrongly issued benefits caused by "state's own error"). The lack of adequate notice is part and parcel of Defendants' Policy. These broader due process concerns, in addition to the constitutional violations discussed below, are an additional reason to doubt Defendants' expansive interpretation of their section 1159 authority.

[12] While Defendants' argument on this point is unclear, *see* ECF 107 at 13, section 1159(a)(1) does not authorize detention for removal proceedings, which is governed by section 1226, not section 1159 *or* section 1229a. In any event, Defendants do not claim to be detaining refugees for removal proceedings.

satisfy the second requirement "in certain circumstances."[13] (*Id.* at 24 n.12.) But it plainly does not, as Defendants have not attempted to show that they performed or plan to perform an individualized assessment of each refugee's likelihood of escape before a warrant can be obtained, an essential requirement for warrantless arrest under section 1357(a)(2). *See, e.g., Escobar Molina v. U.S. Dep't of Homeland Sec.*, No. 25-3417, 2025 WL 3465518 at *27 (D.D.C. Dec. 2, 2025) (granting preliminary injunction based on Defendants' "systemic failure to apply the probable cause standard, including the failure to consider escape risk, [which] directly violates the clear statutory requirements" of section 1357) (collecting cases).

The Supreme Court has confirmed that federal agents have only "limited authority" to arrest noncitizens without a warrant, and that such arrests are authorized when the conditions detailed in section 1357(a)(2) are met. *See Arizona v. U.S.* 567 U.S. 387, 408 (2012) (stating that federal agents may arrest a noncitizen for being in the U.S. "in violation of any [immigration] law or regulation," "but only where the [noncitizen]" "is likely to escape before a warrant can be obtained"); *see also U.S. v. Chavez,* 705 F.3d 381, 383–84 (8th Cir. 2013) (observing that immigration officials have authority to make warrantless arrests where the circumstances outlined in section 1357(a)(2) apply). That holding applies with even more force here because refugees are not removable solely for not yet having adjusted, and Defendants do not consider flight risk.

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[13] Plaintiffs also do not dispute that there may be circumstances in which a refugee could be arrested pursuant to section 1357 should they meet both requirements. But Defendants' Policy of arresting all unadjusted refugees based on no probable cause of removability or flight risk does not satisfy section 1357's criteria.

Given the lack of explicit arrest authority in section 1357, Defendants instead make the novel claim that section 1159 *impliedly* confers upon the agency authority to arrest unadjusted refugees for "probable cause of a § 1159(a)(1) violation." (ECF 107 at 23.) This argument fails for at least two reasons.

First, agencies "literally ha[ve] no power to act . . . unless and until Congress confers power" to do so. *See La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986); *see also U.S. ex rel. O'Keefe v. McDonnell Douglas Corp.*, 132 F.3d 1252, 1257 (8th Cir. 1998) (actions are invalid where Congress has not given authority to act). Section 1159 contains no express arrest authority, and arrest power cannot be implicitly conferred, rather it must be accompanied by specific statutory authority. *See, e.g.*, *United States v. Swarovski*, 557 F.2d 40, 43 (2d Cir. 1977), *cert. denied*, 434 U.S. 1045 (1978) (refusing to read warrantless arrest authority into regulation authorizing Department of Defense "to take appropriate action to ensure compliance with [agency guidance]" and requiring "specific statutory authority to make warrantless arrests").

Second, principles of statutory interpretation forbid Defendants' expansive reading. "The expression of one thing excludes others not expressed." *Watt v. GMAC Mortg. Corp.*, 457 F.3d 781, 783 (8th Cir. 2006). Congress set forth the circumstances under which arrest is authorized in the INA, and a violation of section 1159 is "not included in this group." *Id.* Moreover, Defendants' interpretation would result in the bizarre conclusion that Congress in one part of the INA strictly conditioned warrantless arrest, even for removable noncitizens, while in another part granted free-standing warrantless arrest authority—against lawfully admitted refugees, no less. Under the statutory canon of harmonious

interpretation, provisions should not be construed in a way that would "set them at cross-purposes." *See Jones v. Hendrix,* 599 U.S. 465, 478 (2023). Defendants' interpretation seeks an end-run around the restrictions on warrantless arrest imposed by Congress under section 1357. *Id.* at 479.

C. Defendants' Policy is arbitrary and capricious.

The only explanation Defendants offer for the Policy is their one-sentence memorandum from December 2025 rescinding a longstanding DHS policy prohibiting the detention of refugees because they have not applied for adjustment (the "2010 Policy"). (*See* ECF 107 at 19–20; Charles Memorandum (ECF 107-1).) The rescission memorandum says nothing about the Policy that Defendants began implementing the following month through Operation PARRIS: arresting all 5,600 unadjusted refugees in Minnesota, shipping them to Texas, and detaining them in long-term ICE detention centers, solely based on them not yet having been granted adjustment-of-status. Indeed, Defendants admit that the rescission memorandum "operates only to rescind the [agency's] flat ban on detention." (ECF 107 at 20.) Defendants have therefore offered *no* reasoned explanation for the Policy, which affirmatively *mandates* detention for all unadjusted refugees. *See Motor Vehicle Manufacturers Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 50 (1983) ("It is well-established that an agency's action must be upheld, if at all, on the basis articulated by the agency itself.").

Defendants' argument that Plaintiffs' claim is unreviewable under the APA § 701(a)(2) rests on two false premises: (1) that Defendants have authority to detain refugees under section 1159(a); and (2) that neither section 1159 nor any other provision

of the INA, including section 1357, places any limits on how Defendants can implement that purported authority. The APA has a general presumption of judicial review of agency actions, with only a "very narrow exception" for actions "committed to agency discretion by law." *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977). That exception is applicable only "in those rare instances where 'statutes are drawn in such broad terms that in a given case there is no law to apply,'" *id.*, and not "where statutes provide even minimal guidance to limit agency discretion," *S. Dakota v. Ubbelohde*, 330 F.3d 1014, 1027 (8th Cir. 2003). Defendants do not have unlimited discretion here. Even if the Court were to find that section 1159(a) provides detention authority, that authority is clearly not unbounded; to name just a few relevant constraints, refugees must be able to "return" to the agency voluntarily, any "custody" must be for the purposes of the adjustment-of-status inspection, and section 1357 limits the agency's authority to engage in warrantless arrests.

Defendants invoke the presumption recognized in *Heckler v. Cheney* that an agency's decision *not* to initiate an enforcement action is generally not reviewable under the APA. (ECF 107 at 18–19); *see Heckler v. Chaney*, 470 U.S. 821, 831–32 (1985). Their reliance on this principle fails. First, even setting aside their mischaracterization of Plaintiffs' challenge as one to "the re[s]cission of a non-enforcement policy," none of the cases they cite support their assertion that such rescissions are not reviewable. (ECF 107 at 18.) In *Chaney*, the Court's holding rested on the "general unsuitability for judicial review of agency decisions to *refuse* enforcement," and explicitly distinguished situations in which "an agency *does* act to enforce." *Chaney*, 470 U.S. at 831 (first emphasis added).

Nothing in *Regents* expanded this principle to non-enforcement policies or their rescission. *See Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 17–18 (2020) (noting that the government made this argument for extending *Chaney* but declining to "test this chain of reasoning"); *cf. Kenney v. Glickman*, 96 F.3d 1118, 1123 (8th Cir. 1996) (refusing to extend *Chaney* beyond individual non-enforcement decisions).[14] Second, the 2010 Policy was not a non-enforcement policy: it was a prohibition on detention of refugees who had not yet applied for adjustment-of-status based on a finding that such detention is unauthorized by section 1159(a). (ECF 16-20.) And third, Plaintiffs do not ask the Court to review Defendants' exercise of discretion in deciding against whom to "enforce" section 1159(a). Rather, the question is whether Defendants' reversal of policy to now require arresting and detaining unadjusted refugees in long-term ICE facilities is unlawful or arbitrary and capricious given the restraints of section 1159(a), section 1357, and the Constitution—questions that are clearly capable of judicial resolution.

On the merits, Plaintiffs are likely to succeed in establishing that the Policy is arbitrary and capricious. Defendants' one-sentence memorandum rescinding the 2010 Policy does not come close to satisfying the "requirement that [the agency] provide a reasoned explanation for its action." *Regents*, 591 U.S. at 35. Fatally, it contains no explanation of Defendants' asserted new legal conclusion that detention of unadjusted

[14] Aside from *I.C.C. v. Brotherhood of Locomotive Engineers*, which states the inapposite proposition that the rule in *Chaney* is not displaced merely because the agency gives a reason for declining to enforce that is theoretically reviewable, 482 U.S. 270, 283 (1987), the other cases cited by Defendants do not involve APA § 701(a)(2) at all. (*See* ECF 107 at 18–19.) None have any relevance to the question of whether Defendants' detention Policy is committed to agency discretion.

refugees is mandatory, which is necessary "especially if the legal conclusion upon which the action relies conflicts with the agency's prior view." [15] *Coal. for Humane Immigrant Rts.*, 805 F. Supp. 3d at 94. Nor does the rescission memorandum refer to any actual facts underlying the decision. *Cf. R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 190 (D.D.C. 2015) ("Incantation of the magic words 'national security' without further substantiation is simply not enough to justify significant deprivations of liberty."). Instead, it merely alludes to the "policy" of the travel ban, which by its terms does "not apply . . . to a refugee who has already been admitted to the United States." Pres. Proclamation 10998 § 8(d), 90 FR 59717 (Dec. 16, 2025).

Defendants also failed to: (1) explain their "disregard[of] facts and circumstances that underlay or were engendered by the prior policy" (that is, the 45-year status quo of requiring refugees, at most, to appear for an interview), *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009); (2) weigh any policy alternatives, such as providing refugees with an opportunity to appear voluntarily, *see Regents*, 591 U.S. at 5; or (3) consider the serious reliance interests of refugees who reasonably relied on Defendants' decades of prior practice and wound up terrified and detained thousands of miles from home with no notice or explanation and limited access to counsel, *see id.* at 30. Even if Defendants' meager explanation could justify the rescission of the agency's "flat ban on detention," ECF 107 at 20, it does not justify the aspects of the Policy that go far beyond

[15] Even if they had, "[i]n rescinding a prior action, an agency cannot simply brand it illegal and move on" without further consideration and explanation. *A.C.R. v. Noem*, No. 25-3962, 2025 WL 3228840, at *13 (E.D.N.Y. Nov. 19, 2025) (quoting *Louisiana v. U.S. Dep't of Energy*, 90 F.4th 461, 475 (5th Cir. 2024)).

that. *Cf. Regents*, 591 U.S. at 28–29 (finding DACA rescission arbitrary and capricious where Secretary failed to explain significant part of decision or give "any consideration whatsoever" to a less sweeping policy change).

D. Defendants' Policy violates the Constitution.

Defendants give Plaintiffs' constitutional claims short shrift in their brief. But, as this Court has recognized, the draconian Policy raises "weighty and persuasive" constitutional concerns. (ECF 41 at 20 n.21.) Plaintiffs are likely to succeed on each of their constitutional claims.

1. Defendants' claimed arrest authority violates the Fourth Amendment.

The Fourth Amendment prohibits unreasonable seizures, including arrests without warrants or probable cause. This constraint on law enforcement power applies to immigrants. *See United States v. Quintana*, 623 F.3d 1237, 1239 (8th Cir. 2010) (collecting cases). The Fourth Amendment requires "a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty." *United States v. Chavez*, 705 F.3d 381, 383 (8th Cir. 2013) (citing *Gerstein v. Pugh*, 420 U.S. 103, 125 (1975) (internal citations omitted)). Federal agents do not have free-standing warrantless arrest powers; rather, they must have probable cause to believe that a violation for which arrest power has been expressly granted exists. *See, e.g.*, *Swarovski*, 557 F.2d at 43 (power to make warrantless arrests "is not a natural incident derived from the catalogue of (an agent's) duties but must be separately granted by the act of a sovereign").[16]

[16] Defendants make the confusing argument that even if their purported arrest source, section 1159, does not confer arrest authority, they have committed no Fourth Amendment

When a statute describes both criminal and civil or administrative violations, and provides explicit arrest authority for only some violations, an official who arrests someone based on probable cause of committing an offense for which there is no clear arrest authority violates the Fourth Amendment. *See John Doe v. Metropolitan Police Dep't of the Dist. of Columbia*, 445 F.3d 460, 469 (D.C. Cir. 2006) (arrests for civil or administrative code violations violate Fourth Amendment); *also Tanner v. Heise*, 879 F.2d 572, 579–80 (9th Cir. 1989) (arrest for traffic violation not justified under state law, because specific arrest authority described in state traffic code narrows the general grant of arrest authority to state peace officers). The D.C. Circuit's analysis in *John Doe* is particularly instructive here. In that case, individuals arrested for underage possession of alcohol sued the arresting police department under 42 U.S.C. § 1983 for violating their Fourth Amendment rights. 445 F.3d at 461. The district court dismissed the complaint after determining that the statute was not unambiguously civil in nature. The D.C. Circuit disagreed as to four of the five arrestees, noting that the subsection they were alleged to have violated gave rise to only civil and administrative penalties. *Id.* at 469. Because those four individuals were arrested based on probable cause of a civil offense *for which there was no explicit arrest authority*, the D.C. Circuit found that their claims stated a cause of action under the Fourth Amendment and reversed the federal district court's dismissal. *Id.*

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violation because statutory arrest limits cannot broaden the scope of the Fourth Amendment. (ECF 107 at 22.) But Plaintiffs do not argue that section 1159 contains any arrest limitations according to which the Fourth Amendment should be read, but rather that section 1159 contains no arrest authority at all.

As explained above, pursuant to section 1357, federal immigration officials may make warrantless arrests where there is individualized probable cause of removability. These grounds of removability are specifically enumerated in section 237 of the INA, and a "violation of section 1159" is not one of them. *See* 8 U.S.C. § 1227 (listing removability grounds); *see also Quintana*, 623 F.3d at 1239 (probable cause of removability required for warrantless arrest).

Recognizing that section 1357 does not confer authority to arrest a refugee for a supposed violation of section 1159, Defendants do not even attempt to comply with its requirements. They even concede that if probable cause of removability is required for an arrest (it is), then "Plaintiffs would have a point" concerning their Policy's likely violation of the Fourth Amendment. (ECF 107 at 22–23.) Defendants instead argue that the arrests conducted under the Policy are based on *implicit* independent authority to arrest under section 1159 and are thus unconstrained by the limits placed on ICE's arrest authority by Congress. (*See id.*) The inescapable problem with Defendants' argument is that no such implied authority exists. The INA does not describe any violation under section 1159 for which an arrest could be conducted, either at section 1357 or elsewhere. The specific grant and description of arrest authority in section 1357 narrows arrest authority to enforcement of particular immigration laws. *See Tanner*, 879 F.2d at 579–80; *see also Chavez*, 705 F.3d at 383 (immigration officials can make warrantless arrests "*in certain circumstances*", specifically those enumerated in section 1357(a)) (emphasis added). Arrests based on probable cause of violating section 1159, which is a civil provision for which no explicit

arrest authority has been provided, thus violate the Fourth Amendment. *See John Doe,* 445 F.3d at 469.

Even if failing to appear for an interview were a violation of section 1159 for which arrest power has been granted (it is not), the Policy is not tethered to any such "violation." Instead, it applies to all unadjusted refugees—even those who do exactly what Defendants now say they were supposed to do. It therefore cannot be squared with the Fourth Amendment's protection against unreasonable seizures. *See United Farm Workers v. Noem*, 785 F. Supp. 3d 672, 723–25 (E.D. Cal. 2025) (ICE practice of conducting warrantless arrests *en masse* without individualized probable cause determinations is a cognizable Fourth Amendment injury common across proposed class).

2. The Policy violates Plaintiffs' substantive due process rights.

The government cannot subject people to detention unless doing so is narrowly tailored to achieve a "compelling state interest."[17] *Reno v. Flores*, 507 U.S. 292, 302 (1993); (*see* ECF 16-2 at 39–40); *cf. Jackson v. Indiana*, 406 U.S. 715, 737–38 (1972) (identifying

[17] In *Zadvydas v. Davis*, the Supreme Court stated that, in civil matters, "government detention violates [the Due Process] Clause unless the detention is . . . in certain special and 'narrow' nonpunitive 'circumstances,' where a special justification, such as harm-threatening mental illness, outweighs the 'individual's constitutionally protected interest in avoiding physical restraint.'" 533 U.S. 678, 690 (2001) (internal citations omitted). In practice, courts often use the "special justification" and "compelling interest" language interchangeably. *See, e.g.*, *Mora-Silva v. Noem*, No. 26-00032, 2026 WL 242442, at *4 (D. Nev. Jan. 29, 2026); *Maldonado Vazquez v. Feeley*, 805 F. Supp. 3d 1112, 1149 (D. Nev. 2025); *Leal-Hernandez v. Noem*, 803 F. Supp. 3d 409, 426 (D. Md. 2025); *Lin v. Ashcroft*, 183 F. Supp. 2d 551, 557–58 (D. Conn. 2002). And, for the same reasons Defendants have failed to articulate any "compelling reason" for detaining all unadjusted refugees under the Policy, they have likewise failed to establish any "substantial justification" for that detention.

state's ostensible purpose as providing compulsory treatment to mentally ill criminal defendant who lacked capacity to stand trial). Defendants misconstrue the nature of Plaintiffs' substantive due process claim as a challenge to the *length* of detention and attempt to defend it on that basis. (ECF 107 at 21.) But crucially, Defendants offer no support for their argument that detaining refugees for the adjustment-of-status process is a constitutionally permissible justification for *any* detention. It is not, and even if it was, the sweeping Policy is not narrowly tailored to its purpose. The fact that Defendants' Policy permits them to detain refugees for however long they deem necessary only adds to the egregiousness of the constitutional violation.

Defendants appear to concede that neither of the legitimate justifications for immigration detention recognized by the Supreme Court in *Zadvydas,* ensuring appearance at removal proceedings or preventing danger to the community, are present here. (*See* ECF 107 at 21 n.11.) The actual justification provided by Defendants—fulfilling the supposed statutory mandate of section 1159(a) (*id.* at 21)—falls far short of the strictures of the Fifth Amendment. If merely ensuring statutory compliance was a "compelling" reason to justify detention, then no law mandating civil detention would *ever* offend substantive due process. The government could always defeat strict scrutiny by pointing to the statute itself. This cannot be and, sure enough, Defendants cite no legal authority to support their stunning position.

Nor can Defendants' speculative claim that some refugees might not appear for adjustment interviews establish a compelling interest. *See Cancino Castellar v. McAleenan*, 388 F. Supp. 3d 1218, 1237–38 (S.D. Cal. 2019) (government's desire to "put an end to

continuing violation of the immigration laws" did not outweigh individual's liberty interest). Even if this concern were theoretically compelling enough to justify detention, Defendants have provided *no* evidence to support it. (*See supra* Part I.A); *cf. Consol. Edison Co. of New York v. Pub. Serv. Comm'n of New York, Inc.*, 447 U.S. 530, 543 (1980) ("Mere speculation of harm does not constitute a compelling state interest."); *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 783–84 (9th Cir. 2014) (law requiring pretrial detention of undocumented immigrants violated substantive due process where record contained no evidence showing it "narrowly focuse[d] on a particularly acute problem"). Although not articulated in Defendants' brief, to the extent they rely on generalized allusions to public safety and national security—neither of which are implicated by a refugee's failure to apply for adjustment-of-status—a "significant deprivation of liberty" like detention cannot be justified by "mere lip service" to such concerns. *R.I.L-R*, 80 F. Supp. 3d at 190. There is absolutely no basis for the suggestion that lawfully present refugees, who have been living and working in their communities in which the government has helped them to "become effectively resettled as quickly as possible," 8 U.S.C. § 1522(a), become public safety risks on their 366th day after admission.

Even assuming *arguendo* that Defendants' stated interest was compelling, their blanket policy mandating detention of all unadjusted refugees is unconstitutional because it is not narrowly tailored to achieve that purported interest. "[L]iberty is the norm, and detention . . . without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 738, 750 (1987). The Policy here is anything but "carefully limited": it indiscriminately subjects all unadjusted refugees to mandatory—and potentially

indefinite—detention, without any opportunity for refugees to appear voluntarily and even for refugees who Defendants have no reason to believe will be denied adjustment-of-status. (*See* ECF 56-1 ¶ 24 (asserting that 22 refugees were granted LPR status).) Moreover, the existence of less restrictive alternatives is undeniable. Since the TRO was entered, Defendants have continued inspections and examinations simply by mailing interview notices, and interviews have proceeded without incident, as they did for the 45 years prior to the Policy's enactment. (Supp. Drobnick Decl. ¶¶ 6–13; Murphy Decl. ¶¶ 3–5; Ghandour Decl. ¶¶ 5–11; ECF 16-13 ¶ 7.) That real-world evidence alone defeats any claim that mass detention of unadjusted refugees is necessary. *See R.I.L-R*, 80 F. Supp. 3d at 189 ("Defendants have presented little empirical evidence [] that their detention policy even achieves its only desired effect—i.e., that it actually deters potential immigrants from Central America.").

3. The Policy violates Plaintiffs' procedural due process rights.

Plaintiffs are also likely to succeed on their procedural due process claim. "[T]he government's discretion to incarcerate noncitizens is always constrained by the requirements of due process," *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017), the contours of which depend upon the "particular situation," *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). "Although immigration detention is administrative, it is still subject to due process clause review." *Khutyaev v. Arnott*, No. 25-3393, 2026 WL 67198, at *3 (W.D. Mo. Jan. 8, 2026) (internal citation omitted).

At its core, due process requires the opportunity to be heard "at a meaningful time and in a meaningful manner," *id.* (cleaned up), coupled with "notice reasonably calculated,

under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

Here, there has been no notice whatsoever prior to Defendants' deprivation of refugees' fundamental liberty interests. A noncitizen "'may not be deprived of his life, liberty or property without due process of law,' meaning that *before* [such deprivation] he is entitled to notice'" and a hearing. *United States v. Lopez-Collazo*, 824 F.3d 453, 461 (4th Cir. 2016) (quoting *Kwong Hai Chew v. Colding*, 344 U.S. 590, 596–97 (1953) (emphasis added)).

Defendants argue that no process prior to detention is required because, in their novel view, section 1159(a) implicitly requires arresting and detaining all refugees. (ECF 107 at 21–22.) But even under Defendants' mistaken interpretation of section 1159(a), refugees must have the opportunity to voluntarily "return" (in which case there would be no reason for arrest and detention at all). (*Id.* at 6.) In reality, however, the Policy offers no respite to those who comply. Under the Policy, there is no procedure by which a refugee *can* voluntarily return to the agency and avoid detention, *see supra* Part I.A, let alone a process by which Defendants determine whether a refugee is unlikely to do so based on an assessment of flight risk. (*See* ECF 16-8 ¶ 8; ECF 16-5 ¶¶ 11–12 (ignoring refugees who attempted to show their papers, failing to provide explanation as to why they were being arrested).)

The lack of any assessment of whether refugees have failed to voluntarily return, not to mention the complete disregard of the fact that many refugees have already sought

to return by submitting their adjustment-of-status applications, creates an enormous risk of erroneous deprivation by failing to "account for any individualized facts" in each case. *See Maldonado v. Olson,* 795 F. Supp. 3d 1134, 1153 (D. Minn. 2025) (holding that blanket application of automatic stay provision for bond decisions violated procedural due process rights of detainees because its invocation "fails to account for any individualized facts"); *Gunaydin v. Trump*, 784 F. Supp. 3d 1175, 1188–89 (D. Minn. 2025) (same). Refugees already admitted to the United States, whose detention is based on neither removability nor any crime, naturally face even greater risk of deprivation.

Regardless, Defendants rest on the incorrect presumption that, because in their mistaken view section 1159 impliedly authorizes detention of refugees for the adjustment-of-status process, there is no possibility of erroneous deprivation. (ECF 107 at 22.) But even Defendants do not claim to have unlimited detention authority under section1159(a), and refugees would indisputably face an erroneous deprivation of their liberty should their detention be untethered to its purpose. As Defendants' implementation of the Policy demonstrates, refugees face a significant risk of detention without an adjustment interview even on the horizon, and apparently no process to avoid that unlawful detention except by filing a habeas petition. (*See* ECF 11 at 4 (no effort made to interview U.H.A. for at least six days); ECF 16-13 ¶ 12; ECF 16-14 ¶ 10 (refugees detained for days without interview)); *Idle H.*, 2026 WL 266462 at *3 (refugee continued to be detained after revetting interview); (*cf.* ECF 16-13 ¶ 12 (noting detention of refugee who already had LPR status)); *Gunaydin*, 784 F. Supp. 3d at 1180 (even noncitizens subjected to mandatory detention under 8 U.S.C.

§ 1226 are entitled to a hearing to determine whether they are "properly included" in that category).[18]

There is "an obvious alternative" here that would avoid the risk of erroneous deprivation while being even *less* burdensome on Defendants than the Policy's cross-country arrest-and-detention pipeline. *See Gunaydin*, 784 F.Supp.3d at 1189. As illustrated by the implementation of the TRO, providing refugees with notice of the interview and an opportunity to attend before being detained—and calling refugees in only after an interview has actually been scheduled—is significantly less burdensome than automatically subjecting refugees to detention. (*See, e.g.*, Supp. Drobnick Decl. ¶¶ 6–13; Murphy Decl. ¶¶ 3–9; Ghandour Decl. ¶¶ 8–10.)

II. Defendants do not refute Plaintiffs' showing of irreparable harm or that the balance of the equities and the public interest strongly weigh in Plaintiffs' favor.

Defendants do not dispute that Plaintiffs face an imminent risk of irreparable harm should Defendants be permitted to resume the Policy, which has already wrought profound havoc on the refugee community in Minnesota and Plaintiff AHR. (*Compare* ECF No. 16-2 at 37–40 *with* ECF No. 107.) Nor do they disagree that the public interest—and therefore the interest of the government—supports "having governmental agencies abide by the federal laws that govern their existence and operations." *League of Women Voters of United*

[18] Defendants' suggestion that detention can simply be adjudicated on a case-by-case basis if it lasts "any longer" than reasonably necessary to complete an inspection and examination, ECF 107 at 21, gets due process exactly backwards. The Constitution places the burden on the government to justify detention before it restrains liberty—not on individuals to challenge their unlawful confinement only after it has already occurred.

States v. Newby, 838 F.3d 1, 12 (D.C. Cir. 2016) (internal citation omitted). In light of the unrefuted harm to Plaintiffs and the likelihood that Defendants' Policy is unlawful, the balance of equities heavily favors granting a preliminary injunction and a stay under APA § 705. *See also Goyette v. City of Minneapolis*, 338 F.R.D. 109, 120 (D. Minn. 2021) (where "a plaintiff raises a legitimate constitutional question, the balance of hardships tips sharply in the plaintiff's favor").

Even if they had any legitimate interest in enforcing their unlawful Policy, Defendants' scant analysis of the balance of the equities reveals that Defendants will not suffer any real harm from being required to abide by the same adjustment-of-status process that they have implemented for half a century. Defendants rely on the specter of "recalcitrant" refugees who might refuse to adjust their status, ECF No. 107 at 24, but Defendants have not provided any evidence of there being even an occasional—let alone widespread—problem of refugees failing to turn up for their adjustment interviews in connection with LPR applications. (*See supra* Part I.A.) Through the duration of the TRO, Defendants have continued to schedule refugees for "revetting" interviews, with the only difference being that they are not taking place in detention. (Supp. Drobnick Decl. ¶¶ 6–13; Murphy Decl. ¶¶ 3–9; Ghandour Decl. ¶¶ 8–10.) Staying Defendants' Policy of indiscriminately detaining unadjusted refugees does not come close to "inflict[ing] an irreparable injury" on the government. (ECF No. 107 at 24.)

III. The requested scope of relief is appropriate.

Defendants repeat many of the same arguments against scope of relief that they raised in their motion to dissolve the TRO. (ECF 56.) These arguments fail for the reasons that Plaintiffs provided in their opposition to that motion. (ECF 79-1 at 23–27.)

Class-wide relief is entirely appropriate as to all of Plaintiffs' claims because, as the Court recognized in granting its class-wide TRO, ECF 41 at 27, Plaintiffs assert a *policy* challenge, which applies uniformly to the entire class. Plaintiffs' constitutional claims are no exception. *See, e.g.*, *United Farm Workers v. Noem,* 785 F. Supp. 3d 672, 725 (E.D. Cal. 2025) (class certification appropriate where plaintiffs challenged policy of not performing probable cause determinations); *Ramirez Ovando v. Noem*, No. 25-3183, 2025 WL 3293467, at *18 (D. Colo. Nov. 25, 2025) (issuing class-wide relief in challenge to warrantless arrest policy without probable cause determinations or individualized assessment of flight risk); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1201–05 (N.D. Cal. 2017) (granting class-wide preliminary injunction based on Fifth Amendment due process claim).

And as Plaintiffs have argued, section 1252(f)(1)'s bar does not apply where, as here, the relief sought by Plaintiffs would not enjoin the operation of any provision covered by section 1252(f). (*See* ECF 79-1 at 25–26.) Otherwise, Plaintiffs would have no means of enjoining their unlawful detention at all, even on an individual basis, because they are not in removal proceedings. *See* 8 U.S.C. 1252(f)(1); *Garland v. Aleman Gonzalez*, 596 U.S. 543, 550 (2022) (section "1252(f)(1) does not preclude a court from entering injunctive relief on behalf of a particular alien (so long as 'proceedings' against the alien have been 'initiated'")).

Finally, even if class-wide injunctive relief were not appropriate, Defendants do not dispute that an APA § 705 stay of their Policy is an appropriate remedy. (*See* ECF 107 at 27 n.13.) Such APA relief preliminarily sets aside agency action, rather than enjoins its enforcement against an individual, but would still provide relief benefiting all Plaintiffs. *See Immigr. Defs. L. Ctr. v. Noem*, 145 F.4th 972, 990 (9th Cir. 2025) (citing *Texas v. United States*, 40 F.4th 205, 219–20 (5th Cir. 2022)).

CONCLUSION

Plaintiffs respectfully request that the Court grant their motion for a preliminary injunction and APA § 705 stay. For the same reasons, the Court should deny Defendants' requests for a stay of the injunction pending appeal or an administrative stay. *See Nken v. Holder*, 556 U.S. 418, 434 (2009).

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