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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 FRESCIA GARRO PINCHI, JUANY GALO
18 SANTOS, and JOSE TELETOR SENTE, on
behalf of themselves and others similarly
19 situated,

20 Plaintiffs-Petitioners,

21 v.

22 SERGIO ALBARRAN, Field Office Director
of the San Francisco Immigration and
Customs Enforcement Office; KRISTI
23 NOEM, Secretary of the United States
Department of Homeland Security; TODD
24 LYONS, Acting Director of United States
Immigration and Customs Enforcement,
25 acting in their official capacities; U.S.
DEPARTMENT OF HOMELAND
26 SECURITY; U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT,

27 Defendants-Respondents.
28

Case No. 5:25-cv-5632-PCP

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS**

Date: January 22, 2026
Time: 10:00 a.m.
Dept: Courtroom 8 - 4th Floor
Judge: Hon. P. Casey Pitts

Date Filed: July 3, 2025

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1 **I. INTRODUCTION**

2 In May 2025, without providing notice or rationale, Defendants began a campaign of
 3 arbitrarily re-arresting and re-detaining noncitizens whom the government had already released
 4 pending removal proceedings. These noncitizens had trusted in the government’s promise that, so
 5 long as they complied with their requirements of release, they would remain free while pursuing
 6 relief in their immigration cases. Relying on the government’s word, they established lives in the
 7 United States—having and raising children, obtaining employment, and becoming integral
 8 members of their communities. Still, without any regard for its decades-long prior policy, the
 9 government created and began to carry out a new policy of re-arresting and re-detaining non-
 10 citizens who had been doing everything the government asked of them. In doing so, the
 11 government has upended the lives of those subject to its Re-Detention Policy, inflicting harms of
 12 both detention itself and widespread, and rational, fear of imminent detention.

13 This Court should deny Defendants’ Motion to Dismiss (“MTD”) (ECF 66). First,
 14 Plaintiffs indisputably have standing, and their claims are ripe and not moot. Second, nothing in
 15 the Immigration and Nationality Act (“INA”) deprives this Court of jurisdiction to grant the relief
 16 that Plaintiffs seek. Third, Defendants’ Re-Detention Policy constitutes final agency action and is
 17 arbitrary and capricious under the Administrative Procedure Act (“APA”). Fourth, Plaintiffs have
 18 adequately alleged due process and Fourth Amendment violations. Last, Plaintiffs’ individual
 19 habeas claims are proper and fall within the traditional core of habeas relief.¹

20 **II. BACKGROUND**

21 **A. Defendants’ Re-Detention Policy**

22 For nearly half a century, immigration officials adhered to a policy of not re-detaining
 23 noncitizens who were previously released pending removal proceedings, absent an individualized
 24 determination that there has been a material change as to whether the individual posed a flight
 25 risk or a danger to the community. First Amended Complaint (“Am. Compl.”) (ECF 38) ¶¶ 41-42.

26
 27 ¹ Plaintiffs acknowledge the Court has severed the individual habeas claims from the class action.
 28 *See* Order Granting Motion to Sever (ECF 84). However, Plaintiffs understand that they should
 respond to all of the arguments in Defendants’ Motion to Dismiss, notwithstanding that the
 individual habeas claims are no longer pending in the class action.

1 In 1981, the Board of Immigration Appeals explained the government could not re-detain an
2 individual absent such a change in circumstances. *Id.* ¶ 42. Federal officials have repeatedly
3 reiterated that policy, *Id.* ¶ 43, and courts have repeatedly acknowledged DHS’s prior practice.
4 *See, e.g., United States v. Cisneros*, 2021 WL 5908407, at *3-4 (N.D. Cal. Dec. 14, 2021);
5 *Bermeo Sicha v. Bernal*, 2025 WL 2494530, at *4 (D. Me. Aug. 29, 2025); *Dos Santos v. Noem*,
6 2025 WL 2370988, at *9 (D. Mass. Aug. 14, 2025); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968
7 (N.D. Cal. 2019).

8 Then, in May 2025, DHS abruptly abandoned its longstanding policy and began carrying
9 out a new policy of arbitrarily re-arresting and re-detaining noncitizens without consideration of
10 their individualized circumstances. Am. Compl. ¶ 48. In the subsequent months, Defendants
11 arbitrarily re-detained dozens of noncitizens within the jurisdiction of the San Francisco ICE
12 Field Office without explanation. *Id.* ¶ 51. For example, on July 3, 2025, Plaintiff Garro Pinchi
13 was re-arrested by masked ICE agents waiting outside the immigration courtroom where she had
14 just appeared for a hearing. Defendants, who had initially released Ms. Garro Pinchi soon after
15 her entry into the country upon determining she was neither a flight risk or danger, re-detained
16 her despite the fact that there had been no change in circumstances to justify altering their original
17 determination. *Id.* ¶¶ 74-75. Instead, they re-detained her as part of their massive push to detain
18 and deport as many noncitizens as possible, without regard to those noncitizens’ constitutional or
19 statutory rights. *Id.* ¶¶ 54-64. Without this Court’s intervention, Plaintiff Garro Pinchi may well
20 have remained detained.

21 Noncitizens, like Plaintiffs, who were released pending their removal proceedings,
22 previously understood that so long as they complied with their requirements of release and
23 avoided criminal activity, they could remain free of detention while litigating their right to remain
24 in the United States. Am. Compl. ¶ 47. In reliance on this longstanding policy, noncitizens,
25 including Plaintiffs, established lives in the United States: they sought work authorization and
26 employment, signed leases, invested in their education, developed community ties, participated in
27 religious life, and grew and took care of their families. *Id.*

1 Defendants' arbitrary change in policy has resulted in the arrest and detention of at least
2 forty putative class members (at a minimum) and has resulted in many more being placed in
3 imminent danger of re-arrest and re-detention. Am. Compl. ¶¶ 58, 65.

4 **B. Plaintiffs**

5 Plaintiffs Garro Pinchi, Teletor Sente, and Galo Santos have pending removal proceedings
6 in immigration court and are subject to Defendants' Re-Detention Policy. They have complied
7 with their conditions of release and built significant community ties in the United States.

8 Plaintiff Frescia Garro Pinchi is pursuing asylum based on her fear of persecution in Peru.
9 Am. Compl. ¶¶ 14, 66. After she entered the United States without inspection in 2023, DHS
10 released Ms. Garro Pinchi on her own recognizance and placed her into removal proceedings
11 under 8 U.S.C. § 1229a. *Id.* ¶ 66. In doing so, agents determined she was not a danger or a flight
12 risk. *Id.* She has fully complied with the conditions of her release and has no criminal history. *Id.*
13 Ms. Garro Pinchi attended a master calendar hearing at the San Francisco Immigration Court on
14 July 3, 2025. *Id.* ¶ 69. Pursuant to Defendants' Re-Detention Policy, ICE agents arrested Ms.
15 Garro Pinchi after she exited the courtroom. *Id.* ¶ 71. Ms. Garro Pinchi was released following
16 this Court's preliminary injunction requiring her release. *Id.* ¶ 73. Ms. Garro Pinchi remains at
17 risk of arbitrary re-detention absent final court intervention. *Id.* ¶ 71.

18 Plaintiff Jose Teletor Sente is pursuing asylum based on his fear of violence in Guatemala.
19 Am. Compl. ¶ 16. After entering the United States without inspection in 2019, Mr. Teletor Sente
20 was placed in removal proceedings under 8 U.S.C. § 1229a and released on his own
21 recognizance. *Id.* Mr. Teletor Sente has fully complied with the conditions of his release and has
22 no criminal history. *Id.* Mr. Teletor Sente is subject to ICE and ISAP check-ins. *Id.* ¶ 80. Mr.
23 Teletor Sente is at risk of being re-detained under Defendants' Re-Detention Policy, despite his
24 compliance with his terms of release and his lack of criminal history. *Id.* ¶ 82.

25 Plaintiff Juany Galo Santos is pursuing asylum based on her fear of violence and
26 persecution in Honduras. Am. Compl. ¶ 76. After entering the United States without inspection in
27 December 2023, she was placed in removal proceedings under 8 U.S.C. § 1229a and released on
28 her own recognizance. *Id.* Since her release, she has fully complied with the conditions of her

1 release and has no criminal history. *Id.* ¶ 77. Ms. Galo Santos has an upcoming ICE check-in on
 2 January 16, 2026 and a master calendar hearing on February 19, 2026. *Id.* Pursuant to
 3 Defendants’ Re-Detention Policy, she risks being re-detained. *Id.*

4 C. Claims for Relief

5 Plaintiffs raise seven claims for relief. Their First, Second, Third, and Fourth claims raise
 6 class-wide APA claims pursuant to 28 U.S.C. § 1331 and the APA. Am. Compl. ¶¶ 12, 112-31.
 7 Specifically, Plaintiffs allege on behalf of themselves and the proposed class that the Re-
 8 Detention Policy violates the APA because it is arbitrary and capricious, *id.* ¶¶ 112-118 (First
 9 Claim), violates the INA, *id.* ¶¶ 119-121 (Second Claim), violates the *Accardi* doctrine, *id.* ¶¶
 10 122-126 (Third Claim), and violates the Fourth Amendment, *id.* ¶¶ 127-31 (Fourth Claim).
 11 Plaintiffs do not bring a class-wide claim that the Re-Detention Policy violates the Fifth
 12 Amendment.

13 Plaintiffs’ Fifth, Sixth, and Seventh claims raise claims for the three individual Plaintiffs
 14 only, pursuant to 28 U.S.C. § 2241 (habeas corpus) and the U.S. Constitution. *Id.* ¶¶ 12, 132-145.
 15 Specifically, Plaintiffs bring individual claims that Defendants’ Re-Detention Policy violates their
 16 substantive due process rights, *id.* ¶¶ 132-136 (Fifth Claim), their procedural due process rights,
 17 *id.* ¶¶ 137-139 (Sixth Claim), and the Fourth Amendment, *id.* ¶¶ 140-145 (Seventh Claim). The
 18 Court has severed these claims from the class action, ECF 84, and they will be litigated separately
 19 in each plaintiff’s individual habeas action.

20 III. LEGAL STANDARD

21 A motion to dismiss under Rule 12(b)(1) tests the subject matter jurisdiction of the court,
 22 while a motion under Rule 12(b)(6) tests the legal sufficiency of a claim. *See* Fed. R. Civ. P.
 23 12(b)(1), (6). Under both rules, courts must accept the plaintiff’s allegations as true and draw all
 24 reasonable inferences in the plaintiff’s favor. *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir.
 25 2014).² To survive a motion to dismiss at the pleading stage, a plaintiff need only allege enough
 26 facts to make the claim plausible on its face. Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*,

27 ² To the extent the Rule 12(b)(1) motion mounts a factual attack on jurisdiction, the court “may
 28 review evidence beyond the complaint without converting the motion to dismiss into a motion for
 summary judgment.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004).

1 550 U.S. 544, 570 (2007). A claim is facially plausible when a plaintiff “pleads factual content
 2 that allows the court to draw the reasonable inference that the defendant is liable for the
 3 misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

4 **IV. ARGUMENT**

5 **A. Plaintiffs’ claims are justiciable under Article III.**

6 As Plaintiffs have already explained, Defendants’ Article III arguments are baseless and
 7 should be rejected. *See* ECF 74 at 3-4; ECF 75 at 12-14.

8 To start, Plaintiffs have standing. Courts assess a plaintiff’s standing at the time the
 9 complaint is filed. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 569 n.4 (1992); *Gonzalez v. U.S.*
 10 *Immigr. & Customs Enf’t*, 975 F.3d 788, 803 (9th Cir. 2020). Here, at the time she filed this
 11 action, Ms. Garro Pinchi was re-detained pursuant to the challenged Re-Detention Policy. Am.
 12 Compl. (ECF 38) ¶¶ 70-72, 74. And she *still* would be in detention if not for this Court’s order
 13 temporarily releasing her from custody. *Id.* ¶ 73; *see* ECF 6, 33. Ms. Garro Pinchi’s Article III
 14 injury is enough to establish this Court’s jurisdiction. *See Bates v. United Parcel Serv., Inc.*, 511
 15 F.3d 974, 985 (9th Cir. 2007) (“standing is satisfied if at least one named plaintiff meets the
 16 requirements”). In any event, Ms. Galo Santos and Mr. Teletor Sente have likewise established
 17 Article III standing to seek injunctive relief, because they faced, and continue to face, the
 18 imminent risk of being arbitrarily re-arrested and re-detained at their upcoming immigration
 19 hearings and ICE check-ins pursuant to Defendants’ Re-Detention Policy. Am. Compl. ¶¶ 77-81.³
 20 Tellingly, Defendants have never disclaimed their plans to re-detain Ms. Galo Santos and Mr.
 21 Teletor Sente—and indeed maintain that they are subject to mandatory detention under 8 U.S.C. §
 22 1225(b)(2)—highlighting the imminent threat that Plaintiffs and proposed class members face.

23 Plaintiffs’ claims are ripe for essentially the same reasons. *See Thomas v. Anchorage*
 24 *Equal Rts. Comm’n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (explaining that “the ripeness inquiry
 25 merges almost completely with standing.”). A case is ripe if it “present[s] ‘concrete legal issues,

26
 27 ³ Although standing is assessed as of the time the action was filed, “[t]he standing of a later-
 28 added plaintiff is determined as of the date of the amended complaint which brought him into the
 action.” *Gonzalez v. I.C.E.*, No. CV 31-04416 BRO (FFMx), 2014 WL 12605369, at *3 (C.D.
 Cal., Oct. 24, 2014).

1 presented in actual cases, not abstractions.” *Planned Parenthood Great Nw., Haw., Alaska, Ind.,*
 2 *Ky. v. Labrador*, 122 F.4th 825, 839 (9th Cir. 2024) (citations omitted). Here, Plaintiffs challenge
 3 a policy that they were actively or imminently subject to and harmed by at the time of filing—and
 4 that challenged policy has tangible real-world impact. Simply put, there is no risk that this case
 5 presents “hypothetical or speculative disputes” or “abstract disagreements.” *Flaxman v.*
 6 *Ferguson*, 151 F.4th 1178, 1184 (9th Cir. 2025).

7 Finally, Defendants’ vague mootness arguments should be rejected. ECF 66 at 6. First,
 8 this Court’s preliminary injunction ordering Ms. Garro Pinchi’s release does not moot this class
 9 action, because it “is temporary in nature” and does not fully resolve Plaintiffs’ claims and
 10 requested relief. *See Pablo Sequen v. Albarran*, No. 25-cv-06487-PCP, 2025 WL 3283283, at *16
 11 (N.D. Cal. Nov. 25, 2025). Second, Ms. Galo Santos and Mr. Teletor Sente remain subject to
 12 imminent re-arrest and re-detention, so their claims remain live. Last, the class claims here are not
 13 moot because they are inherently transitory and capable of repetition, yet evading review. *See*
 14 ECF 75 at 13–14; *see also, e.g., U.S. Parole Comm’n v. Geraghty*, 445 U.S. 388, 399 (1980);
 15 *Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1090 (9th Cir. 2011); *Pablo Sequen*, 2025 WL
 16 3283283, at *16. Plaintiffs’ claims are plainly justiciable.

17 **B. The INA does not bar this Court’s review.**

18 This Court has jurisdiction to grant Plaintiffs the relief they seek. None of the INA
 19 provisions Defendants cite command otherwise.

20 **1. 8 U.S.C. § 1252(b)(9)**

21 Section 1252(b)(9) is a “targeted” and “narrow” provision that channels judicial review of
 22 all claims related to a *removal order* into a single petition for review to the court of appeals. It
 23 does not apply “where, as here, the parties are not challenging any removal proceedings.” *DHS v.*
 24 *Regents of the Univ. of Cal.*, 591 U.S. 1, 19 (2020) (“*Regents*”). Defendants argue that
 25 § 1252(b)(9) bars Plaintiffs’ claims because, in their view, detention is an action taken in service
 26 of removal. MTD at 7. But Plaintiffs have not been ordered removed and may never be ordered
 27 removed. Requiring them to wait to raise their detention claims in the context of a removal order
 28 that may never come would strip those claims of any meaningful review. For precisely this

1 reason, in *Jennings*, the Supreme Court rejected the reading of § 1252(b)(9) that Defendants
 2 advance here, holding that applying the statute to bar a detention challenge “[would] lead[] to
 3 results that no sensible person would have intended.” *Jennings v. Rodriguez*, 583 U.S. 281, 293-
 4 94 (2018); *see also Gonzalez*, 975 F.3d at 810 (holding that § 1252(b)(9) does not apply to claims
 5 “challenging the legality of detention”). *Ruiz v. Mukasey* does not hold otherwise; there, the court
 6 did not address the scope of § 1252(b)(9) and held only that the statute allowed for district-court
 7 jurisdiction over the denial of an immigration application that was “unrelated to any removal
 8 actions or proceedings.” 552 F.3d 269, 274 & n.3 (2d Cir. 2009). Because detention is likewise
 9 “collateral to the removal process,” § 1252(b)(9) does not apply here. *See J.E.F.M. v. Lynch*, 837
 10 F.3d 1026, 1032 (9th Cir. 2016).

11 2. 8 U.S.C. § 1252(g)

12 “Section 1252(g) is similarly narrow.” *Regents*, 591 U.S. at 19. It covers only challenges
 13 to three discretionary actions not at issue here: the decision to “commence proceedings,”
 14 “adjudicate cases,” or “execute removal orders,” not “all claims arising from deportation
 15 proceedings.” *Id.* The statute also preserves jurisdiction over “purely legal question[s] ... even if
 16 the answer to that legal question forms the backdrop against which the Attorney General later will
 17 exercise discretionary authority.” *Ibarra-Perez v. United States*, 154 F.4th 989, 996 (9th Cir.
 18 2025). Courts similarly retain jurisdiction over “general collateral challenges to unconstitutional
 19 practices and policies,” like this suit. *Id.* at 998. Defendants are wrong that the statute somehow
 20 covers detention; the Supreme Court has rejected that argument and held that § 1252(g) *does not*
 21 “sweep in any claim that can technically be said to arise from the three listed actions,” such as
 22 detention claims. *Jennings*, 583 U.S. at 293-94.

23 Defendants’ cases are inapposite. MTD at 7. The Supreme Court’s decision in *Reno v.*
 24 *American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 483 (1999), does not even
 25 mention detention, let alone apply § 1252(g) to a detention claim. *Sissoko v. Rocha*, 509 F.3d 947,
 26 950 (9th Cir. 2007), applied § 1252(g) only to “th[e] limited context” of a *Bivens* claim for false
 27 arrest, and its broad read of the statute’s ambit has since been foreclosed by the Supreme Court’s
 28 decision in *Jennings*. Defendants’ out-of-circuit cases are also unavailing; unlike this case, they

1 concern detention at the commencement of proceedings or for the purpose of executing a removal
 2 order. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (detention at commencement of
 3 proceedings); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298 (3d Cir. 2020) (detention to execute
 4 removal order). In contrast, courts in this circuit have repeatedly held that neither § 1252(b)(9)
 5 nor § 1252(g) bars challenges to re-detention pending removal proceedings. *See, e.g., Faizyan v.*
 6 *Casey*, No. 3:25-cv-02884-RBM-JLB, 2025 WL 3208844, at *2–3 (S.D. Cal. Nov. 17, 2025);
 7 *Rodriguez v. Kaiser*, No. 1:25-cv-01111- KES-SAB (HC), 2025 WL 2855193, at *3–4 (E.D. Cal.
 8 Oct. 8, 2025); *Mosqueda v. Noem*, No. 5:25-cv-02304 CAS (BFM), 2025 WL 2591530, at *3
 9 (C.D. Cal. Sept. 8, 2025); *Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025 WL 2243616, at *4
 10 (N.D. Cal. Aug. 6, 2025).

11 3. 8 U.S.C. § 1252(e)(3)

12 Plaintiffs’ claims do not fall within the ambit of 8 U.S.C. § 1252(e)(3)’s channeling
 13 provision for two reasons. First, Plaintiffs do not challenge the implementation of 8 U.S.C. §
 14 1225(b) *at all*. Second, § 1252(e)(3) applies only to challenges to expedited removal, which this
 15 case does not involve.

16 As a threshold matter, this case does not challenge the implementation of any provision of
 17 § 1225(b). According to Defendants’ own exhibits, they initially released all three individual
 18 Plaintiffs under § 1226(a), *see* ECF 68-1 ¶¶ 8, 18; ECF 68-2 ¶ 9, and Defendants have conceded
 19 that Plaintiff Garro Pinchi was subject to § 1226(a) at the time of her re-detention. *See* ECF 20.
 20 Although Defendants now seek to justify their new Re-Detention Policy by invoking
 21 § 1225(b)(2), for the reasons explained below, that statute does not apply to people like Plaintiffs
 22 and the putative class, who were previously detained and released but now face re-detention while
 23 living in the United States. Courts have repeatedly held that challenges to such re-detention do
 24 not challenge the implementation of § 1225(b)(2) and thus fall outside of § 1225(e)’s ambit. *See,*
 25 *e.g., Guerrero Orellana v. Moniz*, No. 25-cv-12664-PBS, 2025 WL 3033769, at *6 (D. Mass.
 26 Oct. 30, 2025); *Guerra v. Noem*, No. 1:25-cv-1341, 2025 WL 3204289, at *3 (W.D. Mich. Nov.
 27 17, 2025); *J.A.M. v. Streeval*, No. 4:25-cv-342 (CDL), 2025 WL 3050094, at *1 (M.D. Ga. Nov.
 28 1, 2025).

1 Second, § 1252(e)(3) applies only to claims challenging the expedited removal system,
2 which is codified at § 1225(b)(1), and which has no application to this case. The scope of
3 § 1252(e) is plain on the statute’s face; it is titled “Judicial review of orders under section
4 **1225(b)(1).**” 8 U.S.C. § 1252(e) (emphasis added); *see also Mendoza-Linares v. Garland*, 51
5 F.4th 1146, 1156–57 (9th Cir. 2022) (holding that § 1252(e) applies only to expedited removal
6 policies); *East Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 667 (9th Cir. 2021) (same).

7 This is the only interpretation of § 1252(e) consistent with the text and structure of § 1252
8 as a whole. *Cf. Home Depot U. S. A., Inc. v. Jackson*, 587 U.S. 435, 441 (2019) (“[T]he words of
9 a statute must be read in their context and with a view to their place in the overall statutory
10 scheme.”). Section 1252(e) is the corollary statute to § 1252(a)(2)(A), which ***expressly applies***
11 ***only to § 1225(b)(1).*** Section 1252(a)(2)(A) provides the general rules setting limits on judicial
12 review of expedited removal issues, whereas § 1252(e) is the source of exceptions to those
13 general rules. Section 1252(e) can thus be understood only in relation to § 1252(a)(2)(A); it
14 serves no purpose other than providing the exceptions to § 1252(a)(2)(A)’s limits on judicial
15 review of expedited removal.

16 For example, § 1252(a)(2)(A)(i) states that individual determinations under § 1225(b)(1)
17 are unreviewable “except as provided in subsection (e).” Section 1252(e)(2) then sets forth the
18 exceptions to § 1252(a)(2)(A)(i) by listing specific determinations made under § 1225(b)(1) that
19 remain reviewable in habeas corpus actions. Similarly, §§ 1252(a)(2)(A)(ii) and (iv) set forth the
20 general rule that ***policies*** invoking and implementing § 1225(b)(1) are unreviewable, “except as
21 provided in subsection (e).” Section 1252(e)(3) then provides the exception that certain
22 “[c]hallenges on validity of the system” remain justiciable. Section 1252(e)(3) exists only to set
23 forth the exceptions to the rules in §§ 1252(a)(2)(A)(ii) and (iv). And §§ 1252(a)(2)(A)(ii) and
24 (iv) expressly apply only to § 1225(b)(1)—***not*** § 1225(b)(2). The venue provision at
25 § 1225(e)(3)(A) thus applies only to the limited set of justiciable cases challenging § 1225(b)(1)
26 that § 1252(e)(3) permits. *M.M.V. v. Garland*, *see* MTD at 9, does not hold otherwise; there, the
27 plaintiffs challenged expedited removal policies under § 1225(b)(1), which are not at issue here.
28 1 F.4th 1100, 1109 (D.C. Cir. 2021). Because § 1252(e)(3) does not apply to Plaintiffs’ claims,

1 venue is proper in this District.

2 **C. Defendants’ incorrect re-interpretation of the detention statutes does not**
 3 **require dismissal of any of Plaintiffs’ claims.**

4 Defendants spend multiple pages of their motion arguing that their re-interpretation of
 5 § 1225(b)(2) *justifies* the Re-Detention Policy, but they do not explain how this requires
 6 dismissal of *any* of Plaintiffs’ claims. *Compare* MTD at 10-15 with Am. Compl. ¶¶ 30-35. They
 7 cannot make such an argument, because Plaintiffs do not challenge § 1225(b) at all. Instead,
 8 Plaintiffs challenge a broad Re-Detention Policy, which Plaintiffs allege Defendants adopted
 9 *before* they developed their post-hoc § 1225(b) rationale, without considering reliance and liberty
 10 interests. *See Regents*, 591 U.S. at 23-24 (rejecting post hoc explanations and requiring
 11 consideration of reliance interests and legal constraints). This Court should reject Defendants’
 12 inaccurate attempt to characterize Plaintiffs’ APA action against the policy as a statutory
 13 challenge to § 1225(b).

14 In any event, as district courts have concluded at least 350 times, Defendants’ new
 15 interpretation of § 1225(b)(2)—the mandatory detention statute that Defendants now claim
 16 applies here—is incorrect. *See Barco Mercado v. Francis*, No. 25-CV-6582 (LAK), --- F. Supp.
 17 3d ---, 2025 WL 3295903 (S.D.N.Y. Nov. 26, 2025) (listing 350 decisions rejecting Defendants’
 18 position, and only 12 decisions adopting it). This Court, too, has already held that § 1225(b)(2)
 19 does not apply to noncitizens like Plaintiffs and members of the proposed class. *See Pablo Sequen*
 20 *v. Albarran*, --- F. Supp. 3d ---, 2025 WL 2935630, at *7-10 (N.D. Cal. Oct. 15, 2025). Instead,
 21 this Court held that individuals like Plaintiff Garro Pinchi, who at the time of her most recent
 22 apprehension and detention was residing in the country after having entered without inspection,
 23 are subject to non-mandatory detention under § 1226(a). *Id.* at *8 (citing, *inter alia*, *Jennings*, 583
 24 U.S. at 289 (contrasting “[noncitizens] seeking admission into the country” subject to § 1225(b),
 25 with “[noncitizens] already in the country pending the outcome of removal proceedings” subject
 26 to § 1226(a)). Defendants offer no reason to revisit this Court’s analysis.

27 Defendants nonetheless insist that § 1225(b)(2)(A)’s plain language requires the detention
 28 of Plaintiffs and the proposed class because all “applicants for admission” are “seeking
 admission” and because “seeking” denotes an ongoing status. MTD at 10-11. But, as this Court

1 explained in *Pablo Sequen*, the present-tense term “seeking admission” does not apply to
2 inadmissible noncitizens like the Plaintiffs who are “simply residing in the country.” 2025 WL
3 2935630, at *8. Rather, it applies only to those noncitizens who are “arriving and seeking
4 admission.” *Id.* (citation omitted). Defendants’ proffered interpretation cannot be squared with the
5 definition of “admission” in the INA, which states that “admission” refers only to a “lawful entry
6 ... after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13). People
7 like Plaintiffs, who are in removal proceedings in the U.S., are not seeking a “lawful entry,” and
8 thus cannot be “seeking admission” as that term is defined by statute. *See Sanchez v. Mayorkas*,
9 593 U.S. 409, 413-15 (2021) (recognizing that “admission and status are separate concepts in
10 immigration law” such that a grant of asylum does not confer “admission”).

11 In fact, it is Defendants who ignore the statute’s plain language. In arguing that
12 § 1225(b)(2) covers all inadmissible noncitizens who are not included in § 1225(b)(1), MTD at
13 11, Defendants disregard § 1226, which provides that DHS “may” arrest and detain a noncitizen
14 “pending a decision on whether the alien is to be *removed* from the United States”—i.e., pending
15 removal proceedings—while also permitting the noncitizen’s release “on bond” or other
16 conditions. 8 U.S.C. § 1226(a) (emphasis added). The word “removed” is significant because,
17 unlike the prior version of the statute, which applied only to individuals “[p]ending a
18 determination of *deportability*,” *see* 8 U.S.C. § 1252(a)(1) (1994) (emphasis added), “removed”
19 applies both to individuals facing charges of deportability *or*, like Plaintiffs and the putative class,
20 inadmissibility. *See* 8 U.S.C. § 1229a(a)(1) (providing that removal proceedings may decide “the
21 inadmissibility ... of [a noncitizen]”). Thus, Congress clearly intended § 1226(a) to apply to
22 people like the Plaintiffs who are in removal proceedings based on charges of inadmissibility.

23 This is reenforced by the plain language of 1226(c), which *expressly* carves out from
24 1226(a)’s authorization of discretionary detention broad categories of inadmissible noncitizens. *See*
25 8 U.S.C. §§ 1226(c)(1)(A), (D), (E)(i) (mandating detention of noncitizens inadmissible on certain
26 criminal or national security grounds). *See Jennings*, 583 U.S. at 288 (describing § 1226(a) as the
27 “default rule” providing for discretionary detention of noncitizens inside the country, and § 1226(c)
28 as a limited exception). Section 1226(c) is thus the exception that proves the rule: that is, unless

1 they have the required criminal history, Section 1226(a) generally affords bond to people arrested
2 in the U.S. for a removal proceeding, including individuals like Plaintiffs who are “inadmissible”
3 for having entered without inspection. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins.*
4 *Co.*, 559 U.S. 393, 400 (2010) (the fact that Congress has created specific exceptions to the statute
5 “proves” that the statute applies generally).

6 Just last year, Congress confirmed this plain reading when it enacted the Laken Riley Act
7 (“LRA”), Pub. L. 119–1, 139 Stat. 3 (2025). The LRA added a new ground of mandatory detention
8 to Section 1226(c) that specifically targets people, like Plaintiffs, who entered the country without
9 inspection and, unlike Plaintiffs, are also charged with, arrested for, convicted of, or admit to
10 committing an additional list of crimes. *See* 8 U.S.C. § 1226(c)(1)(E). The LRA thus confirms
11 Congress’s understanding that § 1226(a) generally applies to people, like Plaintiffs, who entered
12 the country without inspection and are placed in removal proceedings. Otherwise, there would have
13 been no need for Congress to specifically exclude certain entrants from release on bond.

14 In short, Section 1226(a)—not Section 1225—is the general detention authority for
15 noncitizens, like Plaintiffs, who are “already in the country” and are detained “pending the
16 outcome of removal proceedings.” *Jennings*, 583 U.S. at 289.

17 Resisting this conclusion, Defendants seek support in the changes Congress sought to
18 make in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”).
19 MTD at 12-13. But they fail here as well. Before IIRIRA, noncitizens in the interior of the United
20 States were subject to discretionary detention under prior 8 U.S.C. § 1252(a)(1), regardless of
21 whether they had been formally admitted. In enacting IIRIRA, Congress expressly stated that the
22 new § 1226(a) merely “restates” that prior discretionary framework. H.R. Rep. No. 104-469, pt.
23 1, at 229 (1996); *see also* H.R. Rep. No. 104-828, at 210 (1996). Had Congress intended a
24 dramatic expansion of mandatory detention for millions of inadmissible noncitizens residing
25 inside the country, it would have said so. The executive branch has also treated noncitizens like
26 Plaintiffs as subject to discretionary detention under § 1226(a) since then. In 1997, just months
27 after IIRIRA’s passage, the Executive explained that “[d]espite being applicants for admission,
28 [noncitizens] who are present without having been admitted or paroled ... will be eligible for bond

1 and bond redetermination.” 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). That contemporaneous
 2 interpretation, mirroring § 1226(a)(2), “is powerful evidence that interpreting the Act in [this]
 3 way is natural and reasonable[.]” *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J.,
 4 dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (similar).

5 Instead, Congress resolved the “problem” Defendants allege—the disparity between the
 6 “procedural rights” of those who entered without inspection and those who sought entry lawfully,
 7 MTD at 12—by amending the statutes governing those procedural rights. Congress eliminated
 8 “exclusion proceedings” that previously applied to non-citizens at ports of entry who had not yet
 9 entered the country and put all non-admitted noncitizens “on equal footing ... in immigration
 10 proceedings” that extended more procedural protections to admitted noncitizens than noncitizens
 11 without admission. *Torres v. Barr*, 976 F.3d 918, 927-28 (9th Cir. 2020) (describing changes).
 12 The cases Defendants cite, which do not address detention, merely interpret the concept of
 13 “admissibility” that these amendments adopted, and do not address the detention statutes at all.
 14 *See United States v. Gambino-Ruiz*, 91 F. 4th 981, 988-90 (9th Cir. 2024) (interpreting
 15 inadmissibility statute); *Torres*, 976 F.3d at 928 (same).

16 Finally, the canon that the specific governs the general supports Plaintiffs, not Defendants.
 17 *See* MTD at 14. Section 1225(b)(2) is clear that it covers only noncitizens who meet three specific
 18 criteria: (1) applicants for admission, who (2) are not covered by § 1225(b)(1), and (3) who are
 19 “seeking admission,” as “admission” is defined in the INA. *See Pablo Sequen*, 2025 WL
 20 2935630, at *8. Section 1226, which has no language limiting its scope to people who have been
 21 admitted, covers *everyone else*. Section 1225(b)(2) thus does not apply here.⁴

22
 23
 24 ⁴ Although Plaintiffs do not raise a constitutional avoidance argument as to Defendants’ incorrect
 25 interpretation of § 1225(b)(2), Defendants’ assertion that the Supreme Court has upheld “similar”
 26 detention regimes vastly overstates the precedent they cite. *Dep’t of Homeland Sec. v.*
 27 *Thuraissigiam* did not involve a detention challenge at all. 591 U.S. 103, 139-40 (2020). And in
 28 *Demore v. Kim*, the Court upheld § 1226(c) because that statute covered people with criminal
 histories that were related to flight risk and danger to the community. 538 U.S. 510, 527-28
 (2003). Nothing in *Demore* endorses Defendants’ breathtaking new argument that the INA
 requires the detention without bond of *every inadmissible noncitizen present in the U.S.*,
 regardless of their criminal history or attendance at court proceedings.

1 **D. Plaintiffs adequately allege that the Re-Detention Policy is final agency action,**
 2 **and that it violates the APA because it is arbitrary and capricious.**

3 Conspicuously, Defendants never argue that Plaintiffs’ allegations are insufficient to state
 4 claims under the APA. Instead, as they have repeatedly done in this case, Defendants improperly
 5 attempt to hide behind § 1225 instead of addressing the alleged APA violations. This Court
 6 should find that Plaintiffs’ allegations are sufficient to establish “final agency action” for
 7 purposes of their APA claims, and that the Re-Detention Policy is arbitrary and capricious.

8 **1. Plaintiffs adequately allege the Re-Detention Policy is “final agency**
 9 **action.”**

10 Plaintiffs have sufficiently alleged that the Re-Detention Policy constitutes final agency
 11 action. *See* Am. Compl. ¶¶ 41-64. The Re-Detention Policy is neither tentative nor interlocutory,
 12 and it imposes severe legal consequences on a vast set of noncitizens. *See Bennet v. Spear*, 520
 13 U.S. 154, 177–78 (1997). Despite Defendants’ claims to the contrary, Plaintiffs need not allege a
 14 written or formally promulgated policy for the agency action at issue to be “final.” *See, e.g.,*
 15 *Amadei v. Nielsen*, 348 F. Supp. 3d 145, 165 (E.D.N.Y. 2018) (noting that “numerous courts have
 16 found that a plaintiff can satisfy the finality requirement without offering evidence of a formal or
 17 official statement regarding the agency’s position,” and collecting cases); *Aracely R. v. Nielsen*,
 18 319 F. Supp. 3d 110, 138 (D.D.C. 2018) (“Despite Defendants’ assertions to the contrary, agency
 19 action need not be in writing to be judicially reviewable as a final action.”); *see also Ctr. for*
 20 *Taxpayer Rights, et al. v. Internal Revenue Serv.*, No. 25-0457(CKK), 2025 WL 3251044, at *17-
 21 18 (D.D.C. Nov. 21, 2025) (finding IRS’s unwritten policy of sharing private data with ICE to be
 22 “final agency action”). A requirement that a policy be written down or formally issued to be final
 23 “would allow an agency to shield its decisions from judicial review simply by refusing to put
 24 those decisions in writing.” *Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d 1168, 1206-07
 25 (S.D. Cal. 2019).

26 Plaintiffs allege that for decades, DHS has followed a policy of re-detaining noncitizens
 27 only after a material change in circumstances related to their flight risk or danger to the
 28 community. Am. Compl. ¶¶ 41-47. This policy was rooted in *Matter of Sugay*, I. & N. Dec. 637,
 640 (BIA 1981), which prohibited the re-arrest of a noncitizen released on bond “absent a change

1 of circumstances” warranting detention. *Id.* ¶ 42. The Immigration and Naturalization Service and
 2 its successor agency, ICE, have long had a policy of applying *Matter of Sugay* to noncitizens
 3 released pursuant to agency discretion, which they have published in guidance documents and
 4 articulated in federal court. Am. Compl. ¶¶ 43-44. But around May 2025, as Plaintiffs allege,
 5 DHS reversed its prior policy and implemented the Re-Detention Policy, which permits re-arrest
 6 and re-detention without any change in circumstances related to flight risk or danger to the
 7 community. *Id.* ¶¶ 48-64. Indeed, Defendants have repeatedly conceded on the record before
 8 many courts that habeas petitioners challenging their re-detention under this policy were re-
 9 detained without any finding of materially changed circumstances. *Id.* ¶¶ 88-90.

10 Courts regularly hold that such a dramatic shift in practice suffices to show the existence
 11 of an unwritten yet *final* policy. *See, e.g., Al Otro Lado, Inc.*, 394 F. Supp. 3d at 1208
 12 (“[E]xtensive allegations of alleged turnbacks of asylum seekers by CBP officers at POEs along
 13 U.S.-Mexico border based on assertions of lack of capacity . . . plausibly point to the existence of
 14 an unwritten policy.”); *Ramirez Ovando v. Noem*, No. 1:25-cv-03183-RBJ, 2025 WL 3293467, at
 15 *20 (D. Colo. Nov. 25, 2025) (new pattern in enforcement practice likely showed final agency
 16 action). Defendants offer no support for their argument that only written policies are reviewable
 17 under the APA. *See* MTD at 15, 18.

18 Instead, Defendants again seek refuge in § 1225(b). MTD at 15-16. But their unsupported,
 19 post-hoc rationale that § 1225(b)(2) justifies their change in re-detention policy does not
 20 undermine Plaintiffs’ allegations. Even if Defendants’ re-interpretation of § 1225(b)(2) were
 21 legally sound—and, as discussed above, it is not—categorical re-detention under § 1225(b)(2) *is*
 22 re-detention without a material change in circumstances related to flight risk or danger. It
 23 therefore constitutes final agency action for purposes of the APA. Moreover, the Re-Detention
 24 Policy cannot be reasonably explained by the government’s purported new interpretation of
 25 § 1225(b)(2), because the policy precedes this new interpretation. *See* Am. Compl. ¶¶ 90-96. This
 26 Court need not look any further than the government’s proffered rationale for detaining Plaintiff
 27 Garro Pinchi: before this very Court, the government argued that Ms. Garro Pinchi was re-
 28 detained under § 1226, not § 1225. Gov. Response to OSC (ECF 20).

1 Next, Defendants again mischaracterize the Re-Detention Policy as an unreviewable
 2 “aggregation of individual enforcement actions and resource judgments.” MTD at 15. In so doing,
 3 Defendants seek to have it both ways: Defendants argue that detention decisions are now based
 4 on their blanket re-interpretation of § 1225(b)(2) while simultaneously arguing that the sea
 5 change in detention is merely a result of individual enforcement decisions. In fact, the Re-
 6 Detention Policy is a single, cohesive policy which authorizes detention of noncitizens without a
 7 material change in their circumstances as to flight risk or danger. Am. Compl. ¶¶ 48-49. It is not a
 8 “programmatically” agency action like the ones the Supreme Court found unreviewable in *Lujan* and
 9 *Norton*. MTD at 15-16. In those cases, unlike here, the plaintiffs attempted to package a slew of
 10 different Bureau of Land Management (“BLM”) policies and practices into a single APA claim.
 11 See *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 891 (1990) (plaintiff stitched together various
 12 BLM practices, ranging from “failure to revise land use plans” to “failure to provide required
 13 public notice” of decisions, as a single alleged agency action); *Norton v. S. Utah Wilderness All.*,
 14 542 U.S. 55, 66 (2004) (plaintiff claimed that various “[g]eneral deficiencies in compliance” with
 15 a broad statutory mandate constituted a single failure to act by the BLM).

16 Courts regularly distinguish claims like the ones at issue here from the claims rejected in
 17 *Lujan* and *Norton*. See *Al Otro Lado, Inc. v. Mayorkas*, No. 17-cv-02366-BAS-KSC, 2021 WL
 18 3931890, at *9 (S.D. Cal. Sept. 2, 2021), *aff’d in relevant part* 138 F.4th 1102 (9th Cir. 2025)
 19 (finding “the record does not contain a grab bag of miscellaneous CBP practices which have been
 20 merged under an amorphous and broad programmatic umbrella,” in contrast to *Lujan*); *Nava v.*
 21 *Dep’t of Homeland Sec.*, 435 F. Supp. 3d 880, 902-03 (N.D. Ill. 2020) (“Because Plaintiffs
 22 challenge the adoption of an alleged policy that allows Defendants to violate a specific statutory
 23 provision, as well as specific applications of that policy, their APA claim is ... distinguishable
 24 from . . . *Lujan* [.]”); *Ramirez v. U.S. Immigr. & Customs Enf’t*, 310 F. Supp. 3d 7, 21 (D.D.C.
 25 2018) (distinguishing claims “that many people were injured in similar ways by the same type of
 26 agency action” from the claims rejected in *Lujan* and *Norton*).

27 Defendants’ argument that Plaintiffs challenge unreviewable matters committed to agency
 28 discretion under 5 U.S.C. § 701(a)(2) also fails. See MTD at 16-17. Because Plaintiffs bring both

1 “legal and constitutional” challenges to the Re-Detention Policy, courts are “not precluded from
 2 reviewing” their claims regardless of the agency’s discretion. *See Bonilla v. Lynch*, 840 F.3d 575,
 3 587 (9th Cir. 2016). None of Defendants’ cases suggest otherwise. *Heckler v. Cheney* held only
 4 that an agency’s decision *not* to take enforcement action against an individual—which is not at
 5 issue here—was an unreviewable matter of discretion. 470 U.S. 821, 832 (1985). Defendants
 6 otherwise cite cases that do not arise under the APA and stand only for the unremarkable
 7 proposition that immigration agencies have some discretion over *individual* enforcement
 8 decisions, which are not at issue here. MTD at 16; *see Arizona v. U.S.*, 567 U.S. 387, 396-97
 9 (2012); *Clark v. Smith*, 967 F.2d 1329, 1331 (9th Cir. 1992).

10 **2. Plaintiffs adequately allege the Re-Detention Policy is arbitrary and**
 11 **capricious.**

12 Defendants do not meaningfully address Plaintiffs’ allegations that the Re-Detention
 13 Policy (1) lacks a contemporaneous, reasoned explanation (Am. Compl. ¶¶ 87-96, 116); (2) did
 14 not account for reliance interests (*id.* ¶¶ 3, 47, 87, 117); and (3) failed to consider important
 15 aspects of the problem, including the liberty interest that accrues after a conditional release (*id.* ¶¶
 16 2-3, 34-39, 117). Each of these sets of allegations independently states a claim that the Re-
 17 Detention Policy is arbitrary and capricious in violation of the APA.

18 First, Plaintiffs have adequately alleged the Re-Detention Policy is arbitrary and
 19 capricious for failure to engage in reasoned decision making. As Defendants concede, *see* MTD
 20 at 17, when an agency changes its position, it must provide a “reasoned explanation for the
 21 change.” *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016). In this case, Defendants
 22 provided no explanation whatsoever, let alone a reasoned one, when they adopted the Re-
 23 Detention Policy. Am. Compl. ¶ 87. To be sure, in the following months, Defendants provided a
 24 variety of *post hoc* explanations. *Id.* ¶¶ 88-93. But “[a]n agency must defend its actions based on
 25 the reasons it gave *when it acted*,” and *post hoc* explanations from the agency or its attorneys do
 26 not suffice. *Regents*, 591 U.S. 1, 24 (2020) (emphasis added). Because Plaintiffs allege that
 27 Defendants gave *no* contemporaneous reason for adopting the Re-Detention Policy, they have
 28 stated a claim under the APA. *Id.* ¶¶ 88-90; *see Regents*, 591 U.S. at 23.

Second, Plaintiffs sufficiently allege that the Re-Detention Policy is arbitrary and

1 capricious because Defendants failed to consider reliance interests. When an agency changes or
2 rescinds a prior policy, it is “required to assess whether there were reliance interests, determine
3 whether they were significant, and weigh any such interests against [any] competing policy
4 concerns.” *Regents*, 591 U.S. at 33; see also *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502,
5 516 (2009) (an agency must provide reasons “for disregarding facts and circumstances that
6 underlay or were engendered by the prior policy”). As Plaintiffs explain, noncitizens like them
7 relied on their release to “pursue[] relief from removal, grow[] their families, invest[] in their
8 education, and develop[] extensive community and family ties.” Am. Compl. ¶ 3. As the Supreme
9 Court held in *Regents*, a change in agency policy that fails to consider exactly these interests is
10 arbitrary and capricious. *Regents*, 591 U.S. at 30; see also *Thakur v. Trump*, 787 F. Supp. 3d 955,
11 983 (N.D. Cal. 2025) (failure to consider reliance interests before terminating grant funding was
12 likely arbitrary and capricious); *Centro Legal de la Raza v. Exec. Off. for Immigr. Rev.*, 524 F.
13 Supp. 3d 919, 971 (N.D. Cal. 2021) (same, for failure to consider reliance interests of noncitizens
14 before terminating pathway for immigration relief).

15 Third, Plaintiffs independently state a claim that the Re-Detention Policy is arbitrary and
16 capricious because Defendants failed to consider the liberty interest implicated in re-detention,
17 which is an “important aspect of the problem.” See *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v.*
18 *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (articulating standard). As courts have
19 recognized, an agency’s “constitutional and statutory obligations are ‘important aspects’ of the
20 problem before them.” *Nat’l Urb. League v. Ross*, 489 F. Supp. 3d 939, 982 (N.D. Cal. 2020),
21 *order clarified*, 491 F. Supp. 3d 572 (N.D. Cal. 2020) (citing *Oregon Nat. Resources Council v.*
22 *Thomas*, 92 F.3d 792, 798 (9th Cir. 1996)). This requirement means an agency must consider the
23 legal justification for all aspects of a policy change. *Regents*, 591 U.S. at 28-33 (finding DACA
24 rescission arbitrary and capricious because its legal justification failed to address all aspects of the
25 program). Applied to this case, the Supreme Court has long held that, regardless of the nature of
26 the original custody, persons granted conditional release accrue a liberty interest in their
27 continued freedom. See Am. Compl. ¶¶ 36-37 (citing cases). Lower courts have found that such
28 an interest is even more compelling in the immigration context. *Id.* ¶ 38. Plaintiffs’ allegations

1 that they accrued such a liberty interest, *id.* ¶¶ 36, 38, 139, and that Defendants failed to consider
 2 it in adopting the Re-Detention Policy, *id.* ¶¶ 117, thus state a claim for relief.

3 Ignoring the applicable APA legal doctrine, Defendants raise irrelevant arguments which
 4 this Court can easily reject. MTD at 18. Defendants argue that because immigration detention is
 5 constitutionally permissible, it cannot be arbitrary and capricious. MTD at 18. But these are
 6 distinct inquiries, and a policy can be subject to vacatur as arbitrary and capricious under the APA
 7 without violating any substantive provision of law. *See Regents*, 591 U.S. at 16 (holding policy
 8 violated the APA where parties otherwise did not dispute its lawfulness).

9 **E. Plaintiffs adequately allege violations of their constitutional rights.**

10 Contrary to Defendants’ arguments, § 1225(b)(2) does not foreclose the Plaintiffs’
 11 individual constitutional claims. As explained, § 1225(b)(2) does not apply here. *See Pablo*
 12 *Sequen*, 2025 WL 2935630, at *7-10. But even if § 1225(b)(2) did apply, Defendants’ arguments
 13 would fail because all statutes are “subject to important constitutional limitations.” *Zadvydas v.*
 14 *Davis*, 533 U.S. 678, 695 (2001); *see also Doe v Albarran*, No. 25-cv-08744-VC, 2025 WL
 15 3141224, at *2 (N.D. Cal. Nov. 10, 2025) (detention statute irrelevant to constitutional inquiry);
 16 *Munoz Materano v. Arteta*, No. 25 Civ. 6137 (ER), 2025 WL 2630826, at *17 (S.D.N.Y. Sept.
 17 12, 2025) (re-detention under § 1225(b) violated the Fourth Amendment); Order Granting
 18 Preliminary Injunction (“PI Order”) (ECF 33) at 4-5.

19 Plaintiffs have adequately alleged violations of the Fourth and Fifth Amendments. This
 20 Court has already found that Plaintiff Garro Pinchi is likely to succeed on her procedural due
 21 process claim because “the government’s decision to release an individual from custody creates
 22 ‘an implicit promise,’ upon which that individual may rely, that their liberty will be revoked only
 23 if [they] fail[] to live up to the ... conditions [of release].” PI Order at 4-5 (quoting *Morrissey v.*
 24 *Brewer*, 408 U.S. 471, 482 (1972)). The same analysis applies to Plaintiffs Galo Santos and
 25 Teletor Sente. Plaintiffs have similarly adequately claimed that their re-detention violates
 26 substantive due process and the Fourth Amendment.⁵

27 _____
 28 ⁵ Insofar as Defendants argue that Plaintiffs have not adequately stated a claim with regard to
 their classwide APA claim that the Re-Detention Policy is contrary to the Fourth Amendment,
 those arguments fail. Plaintiffs have adequately alleged both their individual constitutional claim

1 **1. Individual Plaintiffs adequately allege their re-detention violates due**
 2 **process.**

3 To start, Defendants do not challenge the sufficiency of Plaintiffs’ allegations under the
 4 due process clause. Instead, Defendants improperly jump to attacking the merits of Plaintiffs’
 5 claim and incorrectly argue that Plaintiffs cannot state a procedural due process claim because
 6 they have no protected liberty interest. MTD at 19. That position cannot be squared with decades
 7 of Supreme Court precedent finding a liberty interest following conditional release or the dozens
 8 of decisions applying that doctrine to the immigration context—including *in this case*.⁶ *See, e.g.*,
 9 PI Order at 5; *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole
 10 conditional supervision); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation
 11 context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context); *Chavez Rivera v.*
 12 *Albarran*, No. 3:25-cv-10474-BLF, 2025 WL 3496778, at *2 (N.D. Cal. Dec. 5, 2025)
 13 (noncitizen had liberty interest after initial release from detention pending proceedings); *J.A.M.C.*
 14 *v. Albarran*, No. 25-cv-09649-WHO, 2025 WL 3268816, at *4 (N. D. Cal. Nov. 24, 2025)
 15 (same); *Orozco Acosta v. Albarran*, No. 3:25-cv-09601, 2025 WL 3114454, at *2 (N.D. Cal. Nov.
 16 6, 2025) (same); *Pablo Sequen*, 2025 WL 2935630, at *5 (same); *Rojas v. Albarran*, No. 25-cv-
 17 08172-PCP, 2025 WL 2772695, at *2 (N.D. Cal. Sept. 25, 2025) (same).⁷

18 To comport with the Due Process Clause, “the nature and duration” of detention must
 19 “bear some reasonable relation to the purpose for which the individual is” detained. *Valencia*

20 _____
 (Claim Seven) and the classwide APA claim (Claim Four).

21 ⁶ Courts generally are precluded from reconsidering already-decided issues, including decisions
 22 based on issues of law in the interim relief context. *Ingle v. Cir. City.*, 408 F.3d 592, 594 (9th Cir.
 23 2005); *see also e.g., Lone Star Sec. & Video, Inc. v. City of Los Angeles*, 989 F. Supp. 2d 981,
 24 989 (C.D. Cal. 2013), *aff’d*, 827 F.3d 1192 (9th Cir. 2016). As there have been no intervening
 changes in the controlling law, newly discovered evidence, or clear error by the court,
 Defendants’ arguments as to Plaintiff Garro Pinchi’s procedural due process rights need not be re-
 considered at this stage. *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999).

25 ⁷ Defendants cite *Board of Regents v. Roth* for the proposition that Plaintiffs are not entitled to
 26 any process because procedural due process protections apply only to rights encompassed in the
 27 Constitution’s protection of liberty and property. MTD at 19. However, this holding does not help
 28 Defendants because Ms. Garro Pinchi *does* have a protected liberty interest, and this Court has
 already found as much. PI Order at 5. The other Plaintiffs similarly have protected liberty
 interests. *See id.* (“Thus, even when ICE has the initial discretion to detain or release a noncitizen
 pending removal proceedings, after that individual is released from custody she has a protected
 liberty interest in remaining out of custody.”)

1 *Zapata v. Kaiser*, 2025 WL 2741654, at *11 (N.D. Cal. Sept. 26, 2025) (quoting *Jackson v.*
 2 *Indiana*, 406 U.S. 715, 738 (1972)). Immigration detention, which is “civil, not criminal,” and
 3 “nonpunitive in purpose and effect,” must be justified by either (1) dangerousness or (2) flight
 4 risk. *Zadvydass*, 533 U.S. at 690; see *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017)
 5 (“[T]he government has no legitimate interest in detaining individuals who have been determined
 6 not to be a danger to the community and whose appearance at future immigration proceedings can
 7 be reasonably ensured by a lesser bond or alternative conditions.”). Plaintiffs have adequately
 8 alleged both procedural and substantive due process claims.

9 First, in light of their established liberty interests against re-detention, Plaintiffs Garro
 10 Pinchi, Galo Santos, and Teletor Sente have adequately alleged facts supporting their procedural
 11 due process claims. See Am. Compl. ¶¶ 67-68, 76-78, 79-81 (describing conditional release,
 12 compliance, and reliance of each Plaintiff). In considering what process is due, courts apply the
 13 three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976), which weighs the private interest at
 14 stake, the risk of erroneous deprivation without process, and the government’s interest. See also
 15 PI Order at 5. Defendants do not even mention *Mathews* in their motion, let alone contend that
 16 Plaintiffs’ allegations as to the *Mathews* factors are insufficient to state a procedural due process
 17 claim. See Am. Compl. ¶¶ 66-86. They thus all but concede that Plaintiffs’ procedural due
 18 process claim should move forward.

19 Second, Plaintiffs have adequately alleged violations of their substantive due process
 20 rights. When, as here, rationales of flight risk or danger are absent, immigration detention serves
 21 no legitimate government purpose and becomes impermissibly punitive, violating a person’s
 22 substantive due process rights. See *Jackson*, 406 U.S. at 738 (1972) (detention must have a
 23 “reasonable relation” to the government’s interests in preventing flight and danger).

24 Immigration authorities previously released each of the individual Plaintiffs from
 25 detention, which necessarily incorporates a determination that they did not pose a flight risk or a
 26 danger to the community. Am. Compl. ¶¶ 66, 78, 83. It is undisputed that nothing about those
 27 determinations or Plaintiffs’ individual circumstances has changed. Plaintiffs have no criminal
 28 history and no intervening criminal history or arrest since their initial release from immigration

1 custody. *Id.* ¶¶ 75, 77, 82. Thus, there is no credible argument that Plaintiffs are a danger to the
 2 community, and the government has not argued otherwise. As to flight risk, the question is
 3 whether custody is reasonably necessary to secure a person’s appearance at immigration court
 4 hearings and related check-ins. Plaintiffs have diligently complied with all supervision conditions,
 5 including attending required check-ins and immigration court hearings. *Id.* ¶¶ 75, 77, 82. In other
 6 words, Plaintiffs’ actions since their initial release from immigration custody only ***further***
 7 ***confirm*** the government’s prior finding that each of them poses no flight risk or danger. Because
 8 the government cannot show that Plaintiffs’ re-detention would advance the only accepted
 9 rationales for civil detention—flight risk or danger—Plaintiffs have demonstrated their re-
 10 detention would violate their substantive due process rights. *Zadyvdas*, 533 U.S. at 690.⁸

11 In arguing that there is no substantive due process right at stake here, Defendants rely on
 12 two cases, neither of which undermines Plaintiffs’ claims. First, *Demore* involved a facial
 13 challenge to § 1226(c). 538 U.S. at 514-16. Plaintiffs do not challenge any application of
 14 § 1226(c). *See* Am. Compl. ¶ 94. Moreover, whereas a facial challenge requires a plaintiff to
 15 show that a statute is “unconstitutional in every application,” an as-applied challenge, like
 16 Plaintiffs’ substantive due process claims here, require a plaintiff to show only that “the
 17 application of the statute to a specific factual circumstance” is unconstitutional. *Paz Hernandez v.*
 18 *Wofford*, No. 1:25-cv-00986-KES-CDB (HC), 2025 WL 2420390, at * 4 (E.D. Cal. Aug. 21,
 19 2025); *see also Valencia Zapata*, 2025 WL 2741654, at *12 (explaining that *Demore* does not
 20 disrupt the court’s holding that a Plaintiff in § 1226(a) proceedings has substantive due process
 21 rights related to their detention and, in fact, the Court in *Demore* “continued to treat a
 22 noncitizen’s risk of flight and danger to the community as the key touchstones for the validity of
 23 civil immigration detention.”). Thus, nothing in *Demore* forecloses Plaintiffs’ substantive due
 24 process arguments. Second, the government cites *Jennings v. Rodriguez* for the contention that
 25 there is statutory authorization for detention under § 1225(b). As explained, § 1225(b) does not

26 ⁸ Other courts in this district have held that similarly situated plaintiffs have demonstrated serious
 27 questions going to the merits of their substantive due process claims. *Valencia Zapata*, 2025 WL
 28 2741654, at *11-12; *Leiva Flores v. Albarran*, No. 25-cv-09302-AMO, 2025 WL 3228306, at *5
 (N.D. Cal. Nov. 19, 2025); *Bautista Pico v. Noem*, No. 25-cv-08002-JST, 2025 WL 3295382, at
 *3 (N.D. Cal. Nov. 26, 2025).

1 apply here. *See infra* IV(C). But even if § 1225(b) did apply, the application and enforcement of
 2 all statutes, even mandatory detention statutes, are “subject to important constitutional
 3 limitations,” including the Fifth Amendment. *Zadvydas*, 533 U.S. at 695.⁹ *Jennings*, which
 4 concerned statutory interpretation, not any constitutional claims, does not disturb that well-settled
 5 principle. *See* 583 U.S. at 312.¹⁰

6 **2. Plaintiffs adequately allege their detention would violate the Fourth**
 7 **Amendment.**

8 Defendants object to Plaintiffs bringing “a Fourth Amendment seizure claim.” MTD at 18.
 9 As a threshold matter, it is not clear whether they object to Plaintiffs’ Fourth Claim (a class-wide
 10 claim arguing that the Re-Detention Policy violates the APA because it is contrary to the Fourth
 11 Amendment), Plaintiffs’ Seventh Claim (a direct Fourth Amendment claim on behalf of the
 12 individual Plaintiffs), or both. Regardless, Plaintiffs have adequately alleged that the Fourth
 13 Amendment protects against re-arrests on the same probable cause without a material change in
 14 circumstances.

15 Plaintiffs allege that, under the Fourth Amendment, a person whom immigration
 16 authorities released from initial custody cannot be re-arrested without some new intervening
 17 cause. Am. Compl. ¶¶ 31-32. For a re-arrest to comply with the Fourth Amendment, the arrests
 18 must “be based on evidence that the circumstances relevant to th[e] original release decision have
 19 changed.” *Saravia v. Sessions*, 280 F.Supp.3d 1168, 1196 (N.D. Cal. 2017). That is because
 20 permitting re-arrests without new probable cause would authorize “harassment by continual
 21 rearrests.” *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971). Courts have regularly
 22 applied such Fourth Amendment principles from the criminal context to the civil immigration
 23 context. *See e.g., United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (applying Fourth
 24 Amendment principles from the criminal context to “limit” the scope of immigration agents’

25 ⁹ For the same reasons, the Court should reject Defendants’ identical statutory responses to
 26 Plaintiffs’ Fourth Amendment claims. *See* MTD at 20.

27 ¹⁰ Without explanation, the government seeks to read in a requirement that Plaintiffs must allege
 28 punitive motive or unconstitutional treatment for Plaintiffs to allege substantive due process
 violations. MTD at 20. But that supposed requirement is untethered to the law. As explained
 above, a substantive due process violation exists where detention does not bear a reasonable
 relation to flight risk or danger. *Zadvydas*, 533 U.S. at 690.

1 seizure authority); *Gonzalez*, 975 F.3d at 817 (explaining that Fourth Amendment limits on
2 seizures apply equally to the criminal and civil immigration context).

3 In their APA claim brought on behalf of the putative class and Plaintiffs, Plaintiffs have
4 alleged that the Re-Detention Policy authorizes re-arrest despite no change in circumstances,
5 contrary to constitutional right. Am. Compl. ¶¶ 49-50. Defendants do not at all address—nor
6 dispute—the legal authorities that establish the Fourth Amendment requires changed
7 circumstances to effect a new seizure. Likewise, in the Fourth Amendment claim brought on
8 behalf of the individual Plaintiffs only, the Plaintiffs have adequately alleged that they are subject
9 to re-detention despite no change in circumstances, and thus no probable cause exists separate
10 from the probable cause for their original detention. *Id.* ¶¶ 74-75, 77-78, 80-83. Plaintiffs Garro
11 Pinchi, Galo Santos, and Teletor Sente have fully complied with the conditions of their release
12 and have no criminal history. *Id.* ¶¶ 14-16. Therefore, a new seizure would be based on the same
13 probable cause as their initial detention, violating the Fourth Amendment. *Id.* ¶¶ 31-32. These
14 claims are adequately stated and Defendants have shown no basis on which to dismiss either.

15 **F. Plaintiffs’ habeas claims are proper.**

16 Defendants’ argument that habeas is an improper vehicle misapprehends the nature of
17 Plaintiffs’ claims. Plaintiffs press no classwide habeas claims in this action. Rather, each
18 individual Plaintiff brings individual habeas claims on their own behalf, as well as non-habeas
19 claims challenging Defendants’ broader policies on behalf of the putative class. *See* Am. Compl.
20 ¶¶ 112-145. Therefore, Defendants’ argument that Plaintiffs are improperly using habeas to seek
21 “programmatically relief” on behalf of “an entire class of aliens in the future,” MTD at 21, is wrong.

22 As this Court has determined, no authority “bar[s] plaintiffs from joining a habeas petition
23 challenging the fact of detention in the same action as a non-habeas claim challenging” the
24 legality of a general policy. *Pablo Sequen v. Kaiser*, No. 25-CV-06487-PCP, 2025 WL 3275602,
25 at *4 (N.D. Cal. Nov. 24, 2025). That is precisely how Plaintiffs have structured their claims here.

26 The division between Plaintiffs’ non-habeas claims on behalf of the class, and the
27 individual Plaintiffs’ habeas claims only on their own behalf, is clear from the face of the
28 Amended Complaint. *See supra* II.C. (“Claims for Relief”). Because success on the individual

1 Plaintiffs’ habeas claims would necessarily render unlawful their prior or imminent re-detention,
 2 there is no question their claims fall within the traditional “core” of habeas relief and properly
 3 invoke this Court’s habeas jurisdiction. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004).
 4 Defendants’ cited authorities are inapposite. MTD at 20-22. *Nettles v. Grounds*, 830 F.3d 922 (9th
 5 Cir. 2016) (en banc); *Preiser v. Rodriguez*, 411 U.S. 475 (1973), and *Wilkinson v. Dotson*, 544
 6 U.S. 74 (2005), all analyzed the availability of federal habeas relief for state prisoners, and thus
 7 dealt with federalism concerns and the existence of alternative statutory remedies that are
 8 inapplicable to federal prisoners like Plaintiffs and the putative class. *Pinson v. Carvajal*, 69 F.4th
 9 1059 (9th Cir. 2023), was a prison conditions case and thus fell outside the “core” of habeas;
 10 Plaintiffs press no conditions-of-confinement claims. *Rumsfeld*, 542 U.S. at 426, addressed the
 11 identity of the proper respondent in a habeas petition; here, Defendants do not dispute that
 12 Plaintiffs have identified the correct respondent for their individual habeas claims. Finally,
 13 *Garland v. Aleman Gonzalez* and its interpretation of 8 U.S.C. § 1252(f)(1) are irrelevant;
 14 because each individual Plaintiff’s habeas claim seeks an injunction solely on behalf of
 15 themselves—“an individual [noncitizen] against whom [removal] proceedings ... have been
 16 initiated,” 8 U.S.C. § 1252(f)(1)—there is no jurisdictional bar to granting relief on those claims.
 17 596 U.S. 543, 544 (2022).

18 **V. CONCLUSION**

19 For the foregoing reasons, Plaintiffs request the Court deny Defendants’ motion in full.

20
21 Dated: December 19, 2025

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Dated: December 19, 2025

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