UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILMER GARCIA RAMIREZ, et al., Plaintiffs, v. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE), et al., Defendants.	Case No. 1:18-cv-00508-RC Class Action

REPLY MEMORANDUM IN SUPPORT OF MOTION TO ENFORCE THE COURT'S FINAL JUDGMENT AND PERMANENT INJUNCTION

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INTRODUCTION

Defendants resort to a hyperformalistic defense of their radical re-imagining of the age-out determination. They attempt to resuscitate an argument about the relevance of 8 U.S.C. § 1225(b) to determinations under 8 U.S.C. § 1232(c)(2)(B) that this Court has already rejected. *See* Mot. to Enforce & Memo. of Law, ECF 421-2 at 20-21. And they ask the Court to misread the relevant statutes and ignore the reality that their new scheme plainly renders the protections of the TVPRA and the judgment and injunction in this case meaningless. Yet their opposition to Plaintiffs' Motion to Enforce is notable for what it does not dispute. They do not contest that i) under the October 1, 2025 Guidance, ICE's determination under § 1232(c)(2)(B) alone can never result in release; and ii) class members denied parole under 8 U.S.C. § 1182(d)(5) are not eligible for alternatives to detention, despite § 1232(c)(2)(B)'s requirement that all age-outs "shall" be so eligible. Nor do Defendants deny that they have a general across-the-board policy not to grant parole, and they provide no evidence to rebut their employees' own statements evincing such a policy. ECF 421-2 at 9-10, 21-23; Defs. Resp. in Opp. to Pls. Mot. to Enforce, ECF 427 at 25-26.[1] They also fail to address, let alone contest, the government's own data establishing that virtually no one is currently being granted parole, such that making parole the only release mechanism for age-outs is a de facto mandatory detention policy. *See* ECF 421-2 at 9-10. The result is that for the vast majority of age-outs, the new policy means that ICE will find them eligible for release under § 1232(c)(2)(B) but then vitiate that determination by denying them parole under §1182(d)(5) and detaining them instead. That is not what this Court's injunction requires.

[1] For ease of reference, Plaintiffs cite the ECF-generated page numbers of documents referred to by their ECF docket number.

With respect to redetained class members, Defendants ask the Court to embrace an artificially narrow construction of § 1232(c)(2)(B) that is not supported by the statutory text and thwarts the purposes of the TVPRA. Again, Defendants do not dispute that ICE is implementing a policy to detain age-outs recently released on their own recognizance when they appear for their first scheduled ICE check-in, despite no relevant change in the teenager's circumstances. Under Defendants' reading, age-outs are stripped of all protection the moment that ICE conducts its initial analysis under the TVPRA, even if ICE itself renders that determination a nullity by redetaining them just weeks later and for no reason. Adopting Defendants' view would allow them to go through the box-checking motions of releasing class members only to promptly redetain them all. Such a self-defeating scheme for vulnerable youth cannot be what Congress, or this Court, intended.

Finally, 8 U.S.C. § 1252(f)(1) does not prevent this Court from granting Plaintiffs' Motion to Enforce, which is warranted by § 1232(c)(2)(B) and this Court's injunction.

ARGUMENT

I. DEFENDANTS' OCTOBER 1, 2025 POLICY VIOLATES THE TVPRA AND THE COURT'S PERMANENT INJUNCTION.

A. The October 1 Guidance Conflicts with the Decisionmaking Process Required by § 1232(c)(2)(B) and the Court.

ICE's October 1 Guidance essentially re-writes § 1232(c)(2)(B) to read: "[age-outs] shall be eligible to participate in alternative to detention programs [if they meet the statutory standard at 8 U.S.C. § 1182(d)(5)]." That is not the law. Defendants defend the guidance by engaging in overly formalistic arguments that rely heavily on checking the right boxes and ignore the substantive protections guaranteed by the TVPRA. But this Court has already rejected this approach to age-out determinations. Contrary to Defendants' claims, the injunction in this case requires them to do more than go through the motions of completing a form—ICE must actually

make and implement a determination regarding the appropriate placement for *all* age-outs based on the factors in the TVPRA. The October 1 Guidance plainly violates that injunction because it displaces the determination required by the statute and this Court's injunction.

Through § 1232(c)(2)(B), Congress "extend[ed] certain protections to newly adult immigrants who were formerly in the care and custody of [Health and Human Services]." *Ramirez v. U.S. ICE*, 471 F. Supp. 3d 88, 93 (D.D.C. 2020). For "each and every age-out," ICE must make a custody determination in which they "consider placement of each age-out in the least restrictive setting available" and "make each age-out 'eligible for participation' in certain programs regardless of the age-out's danger to self, danger to community, or risk of flight." *Id.* at 175 (quoting § 1232(c)(2)(B)). This determination is not a mere theoretical exercise. It is intended, as this Court recognized, to lead to a placement "output" of detention or release based on the statutory "input" of the age-out's level of flight risk and danger to self and community. *Id.* at 177. The statute neither requires nor allows ICE to add on a separate test for certain age-outs under § 1182(d)(5)(A) or any other standard.

Notably, elsewhere within the same section Congress expressly referenced other provisions of the INA, showing that it knows how to incorporate other relevant statutes when it so intends. *See, e.g.*, § 1232(c)(2)(A) (permitting placement of unaccompanied children trafficking victims in an Unaccompanied Refugee Minor program pursuant to INA § 412(d), 8 U.S.C. § 1522(d)); § 1232(c)(5) (requiring the agency to strive to ensure, consistent with INA § 292, 8 U.S.C. § 1362, that unaccompanied children have counsel); § 1232(a)(5)(D) (requiring placement of unaccompanied children not from contiguous countries in full removal proceedings pursuant to INA § 240, 8 U.S.C. § 1229a). Where Congress chose not to incorporate

§ 1182(d)(5), the Court should credit Congress' intentional silence. *See Jama v. ICE*, 543 U.S. 335, 341 (2005).

The October 1 policy overrides the TVPRA's decisionmaking process, replacing it with a separate and much narrower test for parole. Defendants do not dispute that § 1182(d)(5)(A) applies an entirely different standard than the one required by § 1232(c)(2)(B); they acknowledge that § 1182 has an "endpoint" that § 1232(c) does not. ECF 427 at 13, 25. And this administration recently emphasized that parole authority is to be "exercised on only a case-by-case basis . . . and *in all circumstances* only when an individual alien demonstrates urgent humanitarian reasons or a significant public benefit derived from their particular continued presence in the United States arising from such parole." Exec. Order No. 14,159, § 16(a), Protecting the American People Against Invasion, 90 Fed. Reg. 8443, 8446 (Jan. 20, 2025) (emphasis added); *see also* § 1182(d)(5)(A). Nothing in § 1232(c)(2)(B) allows DHS to condition release on the existence of "urgent humanitarian reasons" or whether a "significant public benefit" might result from release.

Defendants also freely admit that if the teenager receives a determination that release is appropriate under the process in § 1232(c)(2)(B) ("step one" under the October 1 Guidance), the only option is detention *unless* they separately "warrant" parole ("step two"). ECF 427 at 14-15, 20, 24 (affirming that under the Guidance, "the least restrictive setting available to a particular age-out who does not warrant parole is detention"). According to Defendants, it does not matter that consideration of the factors under TVPRA alone can never result in release because "the statute does not require an age-out to be released." *Id.* at 21. But that latter point is not in dispute. Both parties agree that detention of an age-out is permissible "if the [ ] § 1232(c)(2)(B) analysis indicates that the least restrictive setting available is detention." *Id.* at 21. The problem with the

Guidance is when the decision to detain *does not* result from "the [TVPRA] analysis"—that determination comes from the parole determination which, Defendants acknowledge, "happens separately" and after the TVPRA factors are considered. *Id.* at 22. And Defendants' previous compliance with the injunction shows that under the § 1232(c)(2)(B) standard, ICE determines release to be the appropriate placement for the vast majority of age-outs. ECF 421-2 at 7. But under the October 1 Guidance, all such class members can *only* be released if they satisfy the entirely distinct parole analysis at step two.

Defendants grossly mischaracterize this Court's prior rulings when they suggest that the Court held that the outcome of the § 1232(c)(2)(B) analysis is "legally irrelevant," ECF 427 at 21, such that, in effect, ICE can satisfy the injunction by merely completing the AORW and considering the relevant factors but give them no effect. *Id.* at 21 (citing *Ramirez v. U.S. ICE*, 568 F. Supp. 10, 30 (D.D.C. 2021)). The Court certainly did not hold that the detention of class members was "irrelevant," as is clear from the full quote that Defendants' selectively cite: "The harm that matters here is only the harm caused to class members—to those age-outs who, by definition, **are detained by Defendants** *without Section 1232(c)(2)(B) having been followed.*" *Ramirez*, 568 F. Supp. at 30 (bold emphasis added).

The Court rejected ICE's prior efforts to treat the TVPRA consideration as a mere box-checking exercise; instead, the Court considered the TVPRA to be a substantive requirement that would result in a "decision" regarding the appropriate placement for the teenager. *Id.* at 27 (rejecting as inadequate that, following the Court's preliminary injunction, "ICE responded only by developing a new 'AORW' documentation system, not by reexamining the substance of its actual decision-making processes"); *see also Ramirez*, 471 F. Supp. 3d at 177-78 (describing the placement decision as the "outcome" of the decisionmaking process). Thus, the Court relied on

statistical evidence, including detention data, to understand whether the TVPRA factors were, in fact, determining release outcomes. *See id.* at 171 (relying on expert evidence showing that "variations in the statutory risk factors presented by age-outs at different ICE field offices do not explain those offices' varying propensities to detain the age-outs they process"). The Court found the "most extreme" violations where "ICE field officers refuse[d] to release age-outs to organizational sponsors who have said they would be happy to take them in . . . or to eighteen-year-olds' own parents living in the United States . . . when nothing in the age-outs' records indicated they posed a flight risk or a danger to themselves or to the public." *Id.* at 93. Yet that is precisely the outcome dictated by the Guidance—teenagers will not be released to sponsors even if they are neither a danger nor a flight risk.

Defendants make no meaningful effort to reconcile the TVPRA's requirement that *all* class members "*shall be eligible* to participate in alternative to detention programs" with the Guidance. § 1232(c)(2)(B) (emphasis added). Under the October 1 policy, *only* "when parole is warranted" will Defendants make "detention alternatives available for age-outs." ECF 427 at 20. But as this Court has already recognized, the TVPRA contains no such limitation on which age-outs "shall be eligible" for ATDs. *See Ramirez*, 471 F. Supp. 3d at 175 (rejecting "sequential decisionmaking" in which ICE made age-outs eligible for ATDs only if they were neither a flight risk nor a danger); *see also Ramirez v. U.S. ICE*, 338 F. Supp. 3d 1, 28 (D.D.C. 2018) ("Nothing in the text or context supports Defendants' argument that only a subset of former unaccompanied minors who were transferred to DHS custody are entitled to consideration under 8 U.S.C. § 1232(c)(2)(B).").

While Defendants attempt to dismiss the weight of evidence showing that the October 1 Guidance is a no-release policy, they fail to acknowledge or address their own data showing that

ICE has effectively stopped granting parole. *See* ECF 421-2 at 9-10 (citing ICE, FY2025 ICE Statistics); ECF 417-2 ¶ 8;[2] *cf.* ECF 427 at 25-26. And they mischaracterize, but do not rebut, the testimony of the ICE officer in *Arostegui-Maldonado* regarding an agency-wide no-parole policy. ECF 427 at 26. It is clear from that decision that the ICE officer "lack[ed] familiarity" with the petitioner's specific case and instead was testifying regarding a *general* ICE policy not to grant parole.[3] *Arostegui-Maldonado v. Baltazar*, 2025 WL 2280357, at *11 (D. Colo. Aug. 8, 2025).[4] With respect to the individually impacted class members, Defendants (who have access to all the information regarding the decisions to detain these young people) offer no evidence to dispute the consistent and reliable evidence that FOJCs from multiple field offices implemented the Guidance as a mandatory detention policy. Nor do they refute that ICE released E.G.G.L. and I.L.F.R. because of the pending enforcement action. *See* ECF 427 at 26-27 & n.5. Notably, Defendants do not dispute that ICE detained M.E.R.V., A.G.A., C.H.V., R.R.A.C., and S.H.G. under the October 1 Guidance and released them on orders of recognizance following the TRO because they were neither flight risks nor dangers. Supp. Winger Decl. ¶ 25, ECF 417-1; Exhs. J-O, ECF 419 (sealed). Defendants offer no evidence that ICE actually considered releasing these teenagers on parole or that ICE denied them parole for reasons that would not be applicable to all age-outs.

[2] Defendants' new "advisal," in which Customs and Border Protection threatens unaccompanied children with prolonged detention if they pursue claims for relief, is consistent with all other evidence suggesting that the Guidance is a no-release policy. *See* ECF 426-1; 2d Supp. Winger Decl. ¶ 10**.**

[3] "Tr. 83:19–24 (Q: 'Are you aware of a policy of the Government that no paroles be granted?' / A: 'Yes, sir.' / Q: 'What's the policy?' / A: 'As of right now, we were told that we would not be granted [sic] paroles.')." 2025 WL 2280357 at *11.

[4] If this Court finds that the functional availability of parole as a real option for release from detention is determinative to the outcome of this motion, Plaintiffs request discovery on this issue.

Finally, Defendants intimate that had the Court permitted the October 1 Guidance to continue to operate, Defendants would have shown that, notwithstanding all evidence to the contrary, parole is currently a meaningful release mechanism and that the policy is consistent with the Court's injunction. *See* ECF 427 at 18, 26-27 (noting that the policy was only in effect for three days). If Defendants were truly so confident in the lawfulness of their new policy, it is hard to understand why ICE implemented it in secret, without first advising the Court or class counsel (with whom they are required to communicate and share "information reasonably related to ICE's compliance," ECF 368 at 6-7) of this indisputably significant change in the processing of age-outs. *See L.G.M.L. v. Noem*, 2025 WL 2671690, at *15 (D.D.C. Sept. 18, 2025) (noting that "Defendants' conduct" did not "inspire confidence" about the legal authority for their actions when they implemented a new policy regarding unaccompanied children in the middle of the night with little notice to counsel).

In sum, because the October 1 Guidance overrides the TVPRA standard, Plaintiffs do not "misconstrue" the new policy, ECF 427 at 24: Defendants merely restate the argument that this Court has already rejected—that class members who may be subject to § 1225(b) detention (according to Defendants, this is now all or virtually all class members) are not entitled to the protections of the TVPRA, *see Ramirez*, 338 F. Supp. 3d at 28.

B. The New Policy is Not Required by 8 U.S.C. § 1225(b).

Defendants argue that the October 1 Guidance is compelled by § 1225(b)(2) and *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which treats all those present without admission as subject to mandatory detention. ECF 427 at 22-24. This is wrong for two reasons. First, and most importantly, even if Defendants were correct regarding the scope of § 1225(b), this Court has already rejected the argument that some age-outs are not entitled to consideration under the TVPRA, and therefore ICE is required under the injunction to apply § 1232(c)(2)(B) to

all class members. Second, *Yajure Hurtado* is wrongly decided and does not bind this Court—§ 1225(b)(2) does not extend so far and cannot be applied to former unaccompanied children.

First, this Court has already held that § 1232(c)(2)(B) governs the custody determinations for all class members, regardless of how they entered the country. *Ramirez*, 338 F. Supp. 3d at 28. While Defendants have dramatically expanded the number of youth they believe fall within § 1225(b), they have long maintained that unaccompanied children who "arrive" in the United States by entering through ports of entry are subject to that provision. *See, e.g.*, ECF 36 at 13, 16 & n.5. And this Court has already held that "[n]othing in the text or context" of § 1232(c)(2)(B) allows Defendants to deny its protections to unaccompanied children they believe are subject to § 1225(b). *Ramirez*, 338 F. Supp. 3d at 28. As a result, while Defendants' expansive new interpretation of § 1225(b) is plainly wrong, the Court need not determine the contours of that statute to rule in Plaintiffs' favor and enforce its existing injunction.[5] Such an approach is consistent with the basic rule of statutory construction that the more specific provision protecting age-outs governs in the place of a more general provision that might otherwise apply. *See Morales v. Trans World Airlines, Inc.,* 504 U.S. 374, 384 (1992) ("[I]t is a commonplace of statutory construction that the specific governs the general.").

Second, ICE's new policy is not consistent with, let alone compelled by, § 1225(b). Defendants acknowledge that the October 1 Guidance marks a significant change in position regarding detention authority and the release mechanisms available for age-outs. ECF 427 at 22-23; *see* ECF 421-2 at 23-25. Such a reversal is acceptable, according to Defendants, because

[5] The fact that AORWs list "parole" among the release options, ECF 427 at 12-13, does not indicate that a separate test must be imposed in order to release age-outs purportedly subject to § 1225(b). To the contrary, nothing in the worksheet incorporates separate factors for release through that mechanism.

under the Supreme Court's decision in *Loper Bright*, "longstanding agency practice carries little, if any, weight." ECF 427 at 23 (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024)). Instead, Defendants and the Court must follow the agency's novel "binding" position in *Matter of Yajure Hurtado*. *Id.* at 23, 24 n.3. This is a remarkable distortion of *Loper Bright*, in which the Supreme Court both rejected judicial deference to agency decisions and recognized that the weight given to a new agency opinion often turns, *inter alia*, on "its consistency with earlier and later pronouncements." *Loper Bright*, 603 U.S. at 388 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)); *see id.* at 386 ("[T]he longstanding practice of the government . . . can inform a court's determination of what the law is.") (cleaned up). And as over 200 different district court judges across the country have recognized, *Yajure Hurtado* misconstrues the detention authority at § 1225(b)(2) and § 1226(a) and should be given no weight. *See Demirel v. Fed. Det. Ctr. Phila.*, 2025 WL 3218243, at *1 (E.D. Pa. Nov. 18, 2025) ("[T]here are 288 district court decisions addressing this issue. In all but six, the Government's interpretation of the INA . . . was rejected."). In fact, a district court has granted partial summary judgment to a certified nationwide class declaring *Yajure Hurtado* to be contrary to the statute. *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873, ECF 81 (C.D. Cal. Nov. 20, 2025) (opinion and order granting partial summary judgment); *Maldonado Bautista v. Santacruz*, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025) (order granting class certification).

Courts across the country have disagreed with the government's interpretation of § 1225(b), as repeated in the October 1 Guidance by incorporating the July 8, 2025 Lyons Memo, on several grounds, including that the plain text of § 1225(b) mandates detention only for individuals "seeking admission" at the border of the United States, not *all* "applicants for admission" as that term is defined in 8 U.S.C. § 1225(a)(1). *Martinez v. Hyde*, 792 F. Supp. 3d

211, 214 (D. Mass. 2025). Courts have applied the rule against surplusage to give meaning to the phrase "seeking admission" in § 1225(b)(2)(A), interpreting it to reach only those noncitizens actively seeking lawful entry into the United States. *Lepe v. Andrews*, 2025 WL 2716910, at *5 (E.D. Cal. Sept. 23, 2025).

Courts have also looked at 8 U.S.C. § 1226(c), including the amendments to that provision in the recently enacted Laken Riley Act, as further evidence of § 1225(b)(2)(A)'s meaning. *See* Pub. L. 119-1, § 2, 139 Stat. 3 (2025). Subsections 1226(c)(1)(A), (D), and (E) carve out certain categories of inadmissible noncitizens from the "default discretionary bond procedures" in 8 U.S.C. § 1226(a), instead making their detention mandatory. *Rodriguez v. Bostock*, 2025 WL 2782499, at *17 (W.D. Wash. Sept. 30, 2025). "A plain reading of this exception implies that . . . [§] 1226(a) appl[ies] to noncitizens who . . . are 'present in the United States without being admitted or paroled' . . . but *have not been* implicated in any crimes as set forth in section 1226(c)." *Id.* Congress added one of these carveouts, in § 1226(c)(1)(E), just this year; this recent amendment demonstrates what is evident from the plain text—that "Congress believed that the proper statutory scheme" for detention of inadmissible noncitizens not seeking admission "resided in § 1226." *Maldonado v. Olson*, 2025 WL 2374411, at *12 (D. Minn. Aug. 15, 2025).[6]

Notably, courts have also rejected applying § 1225(b) to people who were designated unaccompanied children because the TVPRA (not § 1225) governs the apprehension and custody of minors. A number of courts have thus found that the protections in § 1232(c)(2)(B) are inconsistent with mandatory detention even after a child turns 18. *See Martinez v. Hyde*, 2025

[6] Defendants ignore the import of this case law, which, although not binding on this Court, finds that decision to be incorrect and constitutes the weight of authority on the scope of § 1225(b)(2). *Cf.* ECF 427 at 22.

WL 3152847, at *7 & n.23 (D. Mass. Nov. 12, 2025); *Torres v. Wamsley*, 2025 WL 2855379, at *4–5 (W.D. Wash. Oct. 8, 2025); *R.D.T.M. v. Wofford*, 2025 WL 2686866, at *4 (E.D. Cal. Sept. 18, 2025); *Lopez v. Sessions*, 2018 WL 2932726, at *6, *13 (S.D.N.Y. June 12, 2018).

In sum, this Court has already considered how § 1225(b) and § 1232(c)(2)(B) interact and found that the TVPRA protects all age-outs. Defendants' vast expansion of § 1225(b) is not only plainly incorrect, it also cannot justify the October 1 Guidance and Defendants' violation of this Court's injunction.

II. AGE-OUTS REDETAINED WITHOUT CAUSE SHORTLY AFTER THEIR RELEASE FROM ORR ARE CLASS MEMBERS WHO ARE BEING HELD WITHOUT THE CONSIDERATION DUE UNDER THE TVPRA AND THIS COURT'S INJUNCTION.

Defendants argue that they can comply with § 1232(c)(2)(B) and this Court's injunction by determining that release is the least restrictive placement for an age-out, releasing that teenager, and then promptly redetaining them for no reason whatsoever mere weeks after the required determination. ECF 427 at 30. That defies common sense, the most basic precepts of statutory interpretation, and the fundamental rules about how agencies are supposed to operate. At no point do Defendants deny that ICE is in fact implementing a policy to redetain age-outs at their first ICE check-ins despite having mere weeks earlier determined they were not flight risks or dangers and thus merited release. Because ICE has deprived the redetained teenagers of the consideration due to them under the statute, they remain class members. Defendants' actions and their redetention policy violate the TVPRA and the final judgment and injunction in this case.

A. To Comply with the Protections of the TVPRA and the Injunction, ICE Cannot Nullify its Own Placement Considerations by Redetaining Age-Outs.

In addition to the seven teenagers identified by Plaintiffs in their Motion to Enforce, ECF 421-2 at 16-18, there are at least five others (that Plaintiffs are aware of) whom ICE has detained at their check-ins despite a lack of any changed circumstances. These include the four youth

detailed in Plaintiffs' November 13, 2025, notice to the court, ECF 426 at 2, and an additional young person from Defendants' list of age-outs released in October 2025.[7] Defendants' counsel has not provided any substantive explanation for their re-detention. *See generally* ECF 427. These 18-year-olds are class members. In arguing otherwise, Defendants misunderstand the scope of their obligations under § 1232(c)(2)(B) and this Court's injunction requiring them to comply with the APA.

First, to reiterate the relevant facts: for all twelve of these age-outs, ICE had determined that they did not pose a danger or risk of flight such that the least restrictive placement was release on recognizance to identified sponsors. *See* Supp. Winger Decl. ¶¶ 4-19; Exhs. C-I, P, ECF 419 (sealed); 2d. Supp. Winger Decl. ¶¶ 3-9; Exhs. Q-U. ICE redetained all these 18-year-olds weeks (or in one case, two months) after they aged out, including the five young people Plaintiffs have identified since their initial motion:

- ICE released **C.R.R**. to a sponsor on August 2, 2025, and arrested him at his second ICE check-in nine weeks later, on October 9, 2025. He has since taken voluntary departure in order to get out of adult detention. 2d. Supp. Winger Decl. ¶ 4; Exh. Q.
- ICE released **O.L.M**. to a sponsor on September 26, 2025, and arrested him at his first ICE check-in four weeks later, on October 28, 2025. 2d. Supp. Winger Decl. ¶ 5; Exh. R.
- ICE released **D.S.M**. to a sponsor on September 26, 2025, and arrested him at his first ICE check-in four weeks later, on October 29, 2025. 2d. Supp. Winger Decl. ¶ 6; Exh. S.
- ICE released **J.E.O**. to a sponsor on October 16, 2025, and arrested her at her first ICE check-in two weeks later, on October 30, 2025. 2d. Supp. Winger Decl. ¶ 7; Exh. T.

[7] Plaintiffs attach a revised proposed order to reflect their request that relief also flow to these additional class members. The order removes the request to release J.D.F.V. and J.N.B.S., because they appear to have been deported (they cannot be found in the ICE Detainee Locator), and C.G.P.C., because ICE released him on October 31. Additionally, on November 25, 2025, Plaintiffs' counsel learned of another age-out, K.D.B., whom ICE released to a sponsor on October 17, 2025, and who is now in ICE detention. 2d. Supp. Winger Decl. ¶ 9; Exh. V. Counsel have not yet been able to confirm the circumstances of her arrest but have raised her detention with Defendants' counsel. *Id.* Counsel will notify the Court if she, like the others, was detained at her first ICE check-in without any change in circumstances.

- ICE released **V.J.R**. to a sponsor on October 24, 2025, and arrested him at his first ICE check-in less than three weeks later, on November 12, 2025. 2d. Supp. Winger Decl. ¶ 8; Exh. U.

Defendants do not pretend that there have been any materially changed circumstances justifying reversal of their prior TVPRA determination of the least restrictive placement in these cases. *See* 2d Supp. Winger Decl. ¶ 9; *cf.* ECF 427 at 16-17 & n.1, 28-29.[8]

Second, Defendants' position that they have absolute authority under § 1232(c)(2)(B) and this Court's injunction to undo their statutorily-mandated agency action (to consider placement in the least restrictive setting after taking into account the required factors), and still remain in compliance with the statute, is unsupported by any legal authority. ECF 427 at 29-30, 25-26. The parties agree that under this Court's final judgment and injunction, ICE owes age-outs a mandatory duty. *See id.* at 28. The only dispute is about the meaning and continuing impact of that required agency action.

The 2013 amendment that added § 1232(c)(2)(B) to the TVPRA "indicates congressional intent to continue to protect vulnerable young people past the age of eighteen." *Lopez*, 2018 WL 2932726, at *8. But Defendants interpret the TVPRA to impose a statutory duty on ICE that exists in a vacuum, that imposes no constraints on agency conduct nor provides any benefit to age-outs beyond the single moment when ICE initially "considers" an unaccompanied child's placement. ECF 427 at 27, 29. Under Defendants' reading, ICE can conduct the analysis required by § 1232(c)(2)(B) and consequently release an age-out, and then the very next day, redetain the teenager such that the prior day's statutory determination is completely invalidated.

[8] Although Defendants state that Plaintiffs only allege seven examples of age-outs who were improperly redetained by ICE, ECF 427 at 30, elsewhere they acknowledge the additional four 18-year-olds that Plaintiffs raised to them and the Court, *id*. at 17 n.1.

To "follow [Defendants'] reading would open a loophole allowing easy evasion of the statutory provision's basic purposes. Such an interpretation is neither persuasive nor reasonable." *Cnty. of Maui v. Haw. Wildlife Fund*, 590 U.S. 165, 180 (2020); *see also Medica Ins. Co. v. Becerra*, 2025 WL 6314571, at *7 (D.D.C. Sept. 28, 2023) (statutory interpretation "depends on context," which also includes "common sense" and the "evident purpose of what a text seeks to achieve") (internal quotations omitted). There is no limiting principle to Defendants' narrowing construction—with no leaps required, one can imagine ICE releasing age-outs found not to be dangers or flight risks in the morning and arresting them in the afternoon for no reason whatsoever. The reality is not too distant from such a hypothetical, particularly given Defendants' novel reading of the detention statutes to require detention of practically all age-outs absent parole—which is only narrowly available and granted as an act of discretion. *See* ECF 421-2 at 17; 2d Supp. Winger Decl. ¶ 7 (describing redetentions of two age-outs at first ICE check-ins a mere *two weeks* after aging out). This "result not only would defy common sense, but also defeat" the statutory purpose of the TVPRA. *Quarles v. United States*, 587 U.S. 645, 653-54 (2019). This Court "should not lightly conclude that Congress enacted a self-defeating statute." *Id.*

Importantly, Defendants' distortion of § 1232(c)(2)(B) runs headlong into this Court's prior analysis. This Court previously concluded that Defendants failed to comply with § 1232(c)(2)(B), in violation of 5 U.S.C. §§ 706(1) and (2) because, *inter alia*, Defendants had failed to meaningfully consider the statutory factors and instead made decisions based on impermissible extra-statutory factors. *Ramirez*, 471 F. Supp. 3d at 186-87, 190-91. This Court emphasized that § 1232(c)(2)(B) requires "individualized assessment[s]" about the proper placement that "must bear some relation to the risk factors that have been taken into account." *Id.*

at 176-77. Defendants' novel interpretation entirely vitiates that requirement, as it permits ICE to enact a blanket policy of invalidating those individualized determinations by redetaining all age-outs despite their lack of risk factors and with no individualized reason at all.

Moreover, Defendants' policy to reverse their own reasoned release decisions is plainly arbitrary and irrational. An agency cannot take an action required by statute then intentionally nullify that action through its own conduct, and still claim compliance by having taken the initial, now abrogated action. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 485 (2001) (an agency "may not construe the statute in a way that completely nullifies textually applicable provisions meant to limit its discretion"). And contrary to Defendants' suggestion, Plaintiffs do argue that ICE's completion of AORWs and initial release of redetained age-outs was "only perfunctory." ECF 427 at 29. To the extent that ICE has discretion in how it complies with § 1232(c)(2)(B), *see, e.g., Ramirez*, 471 F. Supp. at 176, it exercises that discretion unreasonably by releasing age-outs only to redetain them absent cause, thereby rendering its initial consideration under § 1232(c)(2)(B) entirely meaningless. Defendants' scheme to subvert the TVPRA's requirements by redetaining class members without changed circumstances violates basic administrative law principles meant to guard against arbitrary and capricious agency action. *See, e.g.*, *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221-22 (2016) (unexplained change in agency policy is arbitrary and capricious); *MCI Telecommunications Corp. v. FCC*, 842 F.2d 1296, 1303-04 (D.C. Cir. 1988) (agency acted arbitrarily and capriciously when it "betrayed its statutory mandate" through "willful blindness"); *Duggan v. Bowen*, 691 F. Supp. 1487, 1513 (D.D.C. 1988) (policy was arbitrary and capricious where it produced "absurd results"). Simply put, ICE's actions are outside the "zone of reasonableness," *FCC v. Prometheus*

Radio Project, 592 U.S. 414, 423 (2021), and are thus violative of the TVPRA and this Court's injunction.

Defendants' citation to two inapposite district court cases does not save their strained interpretation. Both *Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200 (S.D.N.Y. 2020) and *Jose L.P. v. Whitaker*, 431 F. Supp. 3d 540 (D.N.J. 2019) involve unaccompanied children released by ORR to sponsors before turning 18 under § 1232(c)(2)(A), whom ICE redetained over a year later based on changed circumstances in their individual cases. *See Mendez Ramirez*, 612 F. Supp. 3d at 207 (ICE detained petitioner a year after his release after he received an *in absentia* removal order and pending criminal charges); *Jose L.P.*, 431 F. Supp. 3d at 542 (ICE detained petitioner over three years after his release, during which time he had failed to appear at court hearings and allegedly joined a gang). Such facts do not remotely resemble the circumstances at issue here. ICE's current age-out redetention policy involves intentional manipulation of the TVPRA-mandated process to nullify its own determination under § 1232(c)(2)(B). None of Defendants' cases[9] involve the clear agency sabotage present here, with ICE purporting to comply and then irrationally undoing the "outcome" of that compliance weeks later where there have been no changed circumstances. *Ramirez*, 471 F. Supp. 3d at 177 (finding that placement determination is the "outcome of the decisionmaking process"). And here, Defendants do not even attempt any substantive defense, let alone a showing of changed circumstances, of ICE's invalidation of its own statutorily-required determinations.

[9] This includes *Lopez*, 2018 WL 2932726, and *Torres*, 2025 WL 2855379, which Defendants take pains to distinguish, *see* ECF 427 at 32-34. In *Lopez*, ICE redetained the petitioner over 10 months after ORR released him after targeting him for investigation about gang affiliation. 2019 WL 2932726 at *3, 14. In *Torres*, ORR released the petitioner and ICE redetained him almost nine years later after the Drug Enforcement Agency encountered him during a criminal search. 2025 WL 2855379 at *1-2.

As such, this Court should find that Defendants' view that the statute allows them to undo their own required action is simply an unreasonable reading of the statute that is untethered to the statutory text and the injunction.

B. Age-Outs Whom ICE Redetains Mere Weeks or Months After Aging Out Absent Changed Circumstances are Class Members.

Defendants argue that Plaintiffs seek to alter the injunction in this case. ECF 427 at 27. Not so. Plaintiffs seek to give effect to the injunction, such that ICE cannot render it a dead letter by redetaining age-outs it has deemed should be released. As this Court held, "[c]lass members are those age-outs for whom ICE does not follow proper procedures, and they are harmed when they are detained." *Ramirez*, 568 F. Supp. 3d at 30. Whether the redetained age-outs discussed in the Motion to Enforce and above are class members protected by the injunction hinges on whether ICE provided them the required consideration under § 1232(c)(2)(B). And, as established above, where the agency arbitrarily undoes its own statutorily-mandated action, it has not so provided.[10] The redetained age-outs are thus former unaccompanied children who are currently detained without the consideration required by the TVPRA. *See Ramirez*, 471 F. Supp. 3d at 181 ("The statute does not place any time limits on ICE's duties under the statute . . . ICE is not relieved of its obligation to follow [the TVPRA] at the end of the day on the age-out's eighteenth birthday.").

[10] Defendants protest that several of the redetained youth "received their AORWs" and thus "received the consideration due to them," such that "they are not class members" ECF 427 at 29. But as ICE's past and present actions demonstrate, completing an AORW can be "a superficial box-checking exercise" if the agency does not meaningfully provide the required statutory consideration. *Ramirez*, 471 F. Supp. 3d at 185; *see also* ECF 421-2 at 22-23.

That distinguishes this case from *Borum v. Brentwood Vill., LLC*, 324 F.R.D. 1 (D.D.C. 2018), in which certain former class members no longer met the class definition because of external factors—not, as here, because of Defendants' own malfeasance. *See* ECF 427 at 28.

Defendants' complaint that Plaintiffs do not propose any "temporal limit" on the protections of class membership underscores their misunderstanding of § 1232(c)(2)(B) and the injunction.[11] ECF 427 at 30. By listing "danger to self, danger to the community, and risk of flight," the statute has an implicit limiting principle. Once ICE's determinations about those factors in an individual case have meaningfully changed, the analysis about the appropriate placement can also change. This focus on materially changed circumstances "prevent[s] arbitrary revocations and ensure[s] that detention decisions rested on individualized assessments of changed circumstances rather than categorical assumptions." *Ledesma Gonzalez v. Bostock*, 2025 WL 2841574, at *5 (W.D. Wash. Oct. 7, 2025). In other detention contexts, when "ICE has previously released a noncitizen after determining they are not a flight risk or danger to the community, 'the BIA has limited this [revocation] authority such that, in practice, the DHS re-arrests non-citizens only after a material change in circumstances." *Id.* (quoting *Vargas v. Jennings*, 2020 WL 5074312, at *2 (N.D. Cal. Aug. 23, 2020) (cleaned up). Such an approach also makes constitutional sense because the only permissible purposes of immigration detention are to mitigate risk of danger and prevent flight. *See Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001); *id.* at 689 (reading "implicit limitation" into immigration statute to avoid unconstitutional detention). Here also, requiring ICE to demonstrate materially changed circumstances before

[11] While under the terms of the statute, no temporal limit is required for this class, if it were, all of the redetained age-outs Plaintiffs have identified fall within it because almost all were detained at their first ICE check-in, scheduled while they were still in ORR custody, or soon thereafter (ICE detained one teenager at his second check-in and one shortly after her first).

altering its determination under § 1232(c)(2)(B) is in no way irrelevant or a "red herring," ECF 427 at 30. Instead, it directly relates to the individualized assessment required by the statute and injunction.

At base, Defendants argue for an understanding of the class definition that is vanishingly narrow. Hinging class membership on the single moment of being "release[d]," *id.* at 28, might be reasonable if Defendants were not themselves acting to subvert the determinations that led to those releases. But here, ICE's conducts vitiates the relief the injunction provides. Age-outs whom ICE redetains, without cause, shortly after having determined their release is warranted under § 1232(c)(2)(B) have not "received all [the] relief required" by this Court's "earlier order." *WildEarth Guardians v. Bernhardt*, 2019 WL 3253685, at *3 (D.D.C. July 19, 2019). Defendants' formalistic interpretation of this Court's judgment should thus be rejected and Plaintiff's motion to enforce granted. *See Int'l Ladies' Garment Workers' Union v. Donovan*, 733 F.2d 920, 922 (D.C. Cir. 1984) (enforcement authority "is particularly appropriate in a case such as this where an administrative agency plainly neglects the terms of a mandate").

III. SECTION § 1252(F)(1) DOES NOT COVER § 1232(C)(2)(B) OR LIMIT THIS COURT'S AUTHORITY TO ENFORCE ITS OWN INJUNCTION.

This Court has "the authority to enforce the terms of its mandate." *WildEarth Guardians*, 2019 WL 3253685, at *3 (quoting *Flaherty v. Pritzker*, 17 F. Supp. 3d 52, 55 (D.D.C. 2014) (cleaned up)). Through the instant motion, Plaintiffs seek only to enforce the existing injunction, which plainly applies to a class consisting of *all* former unaccompanied children denied the TVPRA's age-out protections, regardless of their manner of entry. *See Ramirez*, 338 F. Supp. 3d at 50; *see also id.* at 27-29 (rejecting Defendants' argument that because named plaintiff was subject to § 1225(b), she was not entitled to consideration under § 1232(c)(2)(B)). Yet in their opposition, Defendants argue that § 1252(f)(1) prohibits the Court from enforcing its own order

based on a reprise of their (incorrect) claim that unaccompanied children are subject to § 1225(b). ECF 427 at 36-37. That argument fails for two reasons. As an initial matter, what is at issue in this case is Defendants' failure to comply with § 1232(c)(2)(B), a provision that is not covered by § 1252(f)(1)'s limitation on classwide injunctive relief. Moreover, Defendants have waived any claim that this Court does not have the authority to enjoin the violation of § 1232(c)(2)(B) or enforce its injunction because they voluntarily dismissed their appeal of this Court's final judgment *See* U.S. Ct. App. Mandate, Sept. 13, 2022, ECF 404 (dismissing appeal); Settlement Agreement, Aug. 31, 2022, ECF 402-1 at 3, 5 (memorializing Defendants' intention to dismiss their appeal). There is consequently no bar to this Court granting Plaintiffs' motion.

First, Defendants appear to recognize that § 1232(c)(2)(B) is not a "provision[] of chapter 4 of title II" of the Immigration and Nationality Act (INA),[12] as they do not argue that § 1252(f)(1) strips this Court of the ability to enjoin the operation of that statute. *See* ECF 427 at 36-37. That is correct, as many courts have found. *See L.G.M.L.*, 2025 WL 2671690, at *11 n.6 (finding that § 1252(f)(1) "would not preclude class-wide injunctive relief affecting § 1232" because "the relevant provisions of the TVPRA," including § 1232, "*are not part of the INA*"); *Galvez v. Jaddou,* 52 F.4th 821, 829–31 (9th Cir. 2022) (holding that § 1252(f)(1) does not apply to § 1232(d)(2), which, like § 1232(c)(2)(B), is not a provision of the INA nor "amended by the IIRIRA of 1996" (cleaned up)). Thus, Defendants err in claiming that § 1252(f)(1) applies to Plaintiffs' motion to enforce. As described at length above, the instant motion revolves around the meaning and scope of § 1232(c)(2)(B), and whether Defendants are required under this

[12] Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, § 306(a)(2), 110 Stat. 3009-546, 3009-611 (adding INA § 242(f), as codified at 8 U.S.C. § 1252(f)(1)); Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, § 1261, 127 Stat. 54, 156 (amending § 235(c)(2) of the TVPRA, as codified at 8 U.S.C. § 1232(c)(2)(B)).

Court's injunction to give meaningful effect to the decisionmaking process laid out in that provision. *See supra* at 2–6. And as noted, the Court need only order compliance with § 1232(c)(2)(B) to grant Plaintiffs the relief they seek.

Furthermore, even if Plaintiffs' requested relief regarding Defendants' implementation of § 1232(c)(2)(B) has some impact on how they operate § 1225(b)(2), that is permissible under the Supreme Court's reading of § 1252(f)(1). A lower "court may enjoin the unlawful operation of a provision *that is not specified in § 1252(f)(1)* even if that injunction has some collateral effect on the operation of a covered provision" without running afoul of the holding of *Garland v. Aleman Gonzalez*, 596 U.S. 543, 544 n.4 (June 13, 2022); *accord Texas v. U.S. Dep't of Homeland Sec.*, 123 F.4th 186, 210 (5th Cir. 2024). Here, Defendants' October 1 Guidance instructs ICE on the "updated process for handling custody determinations" for unaccompanied children who age out of ORR custody. ECF 421-1 at 1. That process, as this Court found, is governed by § 1232(c)(2)(B). *See Ramirez*, 471 F. Supp. 3d at 175-82. And Defendants' new interpretation of the TVPRA, under which ICE can conduct the required analysis and release an age-out, and then shortly thereafter invalidate that determination by redetaining the teenager for no reason whatsoever, is also a perversion of their duties under § 1232(c)(2)(B). Even if enjoining these policies has some "downstream effects" on how Defendants wish to implement § 1225(b), "those effects are merely incidental to Plaintiffs' permissible challenges to [§ 1232(c)(2)(B)], and such 'collateral effect[s]' do not trigger § 1252(f)(1)." *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem*, 793 F. Supp. 3d 19, 107 (D.D.C. 2025) (quoting *Aleman Gonzalez*, 596 U.S. at

553 n.4) (finding § 1252(f)(1) did not prohibit injunction against presidential proclamation barring asylum), *stayed in part pending appeal*, No. 25-5243 (D.C. Cir. Aug. 1, 2025).[13]

Second, even if § 1252(f)(1) were arguably relevant, Defendants have waived the claim that this Court's injunction is proscribed by § 1252(f)(1). As the Supreme Court held, § 1252(f)(1) "does not deprive [this Court] of all subject matter jurisdiction over claims brought under" the covered provisions because it is only a limitation on a court's ability to "grant a particular form of relief." *Biden v. Texas*, 597 U.S. 785, 798 (2022). Because such a remedial limitation is non-jurisdictional, it is "not subject to the axiom that jurisdiction may not be waived." *Intercollegiate Broad. Syst. Inc. v. Copyright Royalty Bd.*, 571 F.3d 69, 75 (D.C. Cir. 2009); *see Santos-Zacaria v. Garland*, 598 U.S. 411, 423 (2023) (holding with respect to another provision in § 1252 that "[b]ecause § 1252(d)(1)'s exhaustion requirement is not jurisdictional, it is subject to waiver and forfeiture").

"Waiver is the intentional relinquishment or abandonment of a known right." *Wood v. Milyard*, 566 U.S. 463, 474 (2012) (cleaned up) (citation omitted). That is what Defendants did here by raising the same § 1252(f)(1) argument to the district court in 2018, and then voluntarily dismissing their appeal of the judgment in September 2022. *See* Defs.' Opp'n Class Cert., May 3,

[13] Even if § 1252(f)(1) set any limits on the remedy this Court can issue to enforce its injunction, by its own terms it does not limit the relief available for the "individual" detained teenagers Plaintiffs have identified, who each had removal proceedings "initiated" against them. § 1252(f)(1); *see Aleman Gonzalez*, 596 U.S. 543 at 550–51 ("[Section] 1252(f)(1) does not preclude a court from entering injunctive relief on behalf of a particular [noncitizen] (so long as 'proceedings' against the [noncitizen] have been 'initiated') . . . ."); *accord Refugee & Immigrant Ctr. for Educ. & Legal Servs.*, 793 F. Supp. 3d at 61 (holding that § 1252(f)(1) "has no bearing on the redressability of the individual plaintiffs' claims to the extent that immigration proceedings have been initiated against each of them").

2018, ECF 31 at 29-30;[14] Defs.' Unopp. Mot. Vol. Dismiss App., *Garcia Ramirez v. U.S. ICE*, No. 22-5002, Doc. 1962912 (D.C. Cir. Sept. 10, 2022). Finding waiver here is particularly apt given that the Supreme Court's decision in *Aleman Gonzalez*, which Defendants cite, ECF 427 at 37, was decided in June 2022, three months *before* they voluntarily dismissed their appeal in exchange for a settlement regarding attorneys' fees, *see* ECF 402-1. As such, if Defendants thought (incorrectly) the Supreme Court's decision supported their argument that this Court's injunction implicated § 1252(f)(1), they had ample opportunity to pursue their appeal. Instead, they chose to dismiss it in order to receive a benefit through settlement. *See* ECF 404. *Cf. N.S. v. Dixon*, 141 F.4th 279, 288 (D.C. Cir. 2025) (overlooking waiver or forfeiture of § 1252(f)(1) argument properly raised on direct appeal of a classwide injunction because appeal was taken after *Aleman Gonzalez*—an intervening change in law). This deliberate waiver dooms Defendants' position here: they point to nothing that would allow them now, after implementing policies that violate a long-standing injunction, to ex post facto relitigate the scope of that injunction to enable their unlawful actions. *See Maalouf v. Islamic Republic of Iran*, 923 F.3d 1095, 1112 (D.C. Cir. 2019) ("[I]t would be an abuse of discretion for a court to override a defendant's deliberate waiver of a defense.").

CONCLUSION

For all these reasons, the Court should grant Plaintiffs' Motion to Enforce the Final Judgment and Permanent Injunction, as fully set forth in the attached revised proposed order.

[14] In their opposition to class certification, Defendants argued that Plaintiffs' requested class-wide injunctive relief "would enjoin the operation of . . . § 1232(c)(2)(B), and other detention statutes, including 8 U.S.C. § 1225(b) & 1226(a) & (c)" and was thus proscribed by § 1252(f)(1). ECF 31 at 29. This Court disagreed with Defendants' position that it lacked "jurisdiction" to certify the proposed class and indicated that the relevant statute against which the injunction would run was § 1232(c)(2)(B), not any of the other detention statutes cited by Defendants. *Ramirez*, 338 F. Supp. 3d at 49.

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Respectfully submitted,

s/ Suchita Mathur

Suchita Mathur (DC Bar No. 90013156)
Emma Winger (DC Bar No. 90010721)
Rebecca Cassler (DC Bar No. 90017398)
Michelle Lapointe (DC Bar No. 90032063)
American Immigration Council
PMB2026
2001 L Street, NW, Suite 500
Washington, DC 20036
Tel: (202) 507-7645
smathur@immcouncil.org
ewinger@immcouncil.org
rcassler@immcouncil.org
mlapointe@immcouncil.org

Mark Fleming*
National Immigrant Justice Center
111 W. Jackson Blvd., Suite 800
Chicago, IL 60604
T: 312-660-1370
mfleming@immigrantjustice.org

Katherine Melloy Goettel*
University of Iowa College of Law
Clinical Law Programs
380 Boyd Law Building
Iowa City, IA 52242-1113
Tel: (319) 335-9023
kate-goettel@uiowa.edu

**Admitted Pro Hac Vice*