

**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.

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Case No. 1:18-cv-00508-RC

Class Action

**REPLY IN SUPPORT OF MOTION TO MODIFY
THE COURT'S MONITORING AND ENFORCEMENT ORDER**

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I. INTRODUCTION

In their effort to avoid continued oversight, Defendants attempt to minimize their own misconduct and exaggerate the relief Plaintiffs seek. As detailed at length in Plaintiffs’ motion to modify, over the course of a year, ICE secretly implemented policies designed to vitiate the core protections required by the Court’s permanent injunction and 8 U.S.C. § 1232(c)(2)(B). Mot., ECF 471 at 9-11, 15-20. Yet according to Defendants, this “imperfect compliance” should be ignored because ICE previously demonstrated that it could, in fact, comply with the Court’s orders. Opp., ECF 475 at 6, 14-16. Plaintiffs request only a three-year extension of the Court’s already “limited” oversight mechanisms intended to ensure compliance with the Court’s permanent injunction. Mot., ECF 471 at 20-24; *Ramirez v. U.S. ICE*, 568 F. Supp. 3d 10, 19 (D.D.C. 2021). Yet Defendants accuse Plaintiffs of employing a “cudgel” and suggest that any extension must be restricted to ICE’s period of noncompliance, relying on principles for modifying a consent decree, which are irrelevant to this court-ordered permanent injunction. Opp., ECF 475 at 16-18. Finally, Defendants resort to repeating an argument this Court has already rightfully rejected—that 8 U.S.C. § 1252(f)(1) bars modification here, even though the provision is inapplicable to § 1232(c)(2)(B) and, regardless, Defendants have waived any argument that it applies to this case.

There can be no real doubt about what will happen if the Court’s oversight and enforcement mechanisms are permitted to sunset. ICE has demonstrated, even while those provisions are in effect, an unwillingness to abide by the Court’s permanent injunction. The agency continues to defend its misconduct even today. Where ICE has returned to compliance, it is only because of class counsel’s oversight and this Court’s intervention, enabled by the

mechanisms Plaintiffs seek to extend. ICE’s violations have been egregious. They warrant a modest time-limited extension of the Court’s already modest remedies.

II. ICE’S PATTERN OF EGREGIOUS NONCOMPLIANCE WARRANTS EXTENSION OF THE COURT’S OVERSIGHT ORDER

Since October 2025, this Court has been forced to intervene four times because of “Defendants’ continued noncompliance.” July 6 Mem. Op., ECF 469 at 1-2. Nevertheless, and remarkably, Defendants ask the Court to look past ICE’s conduct since July of last year and instead focus on the period when ICE did comply with the permanent injunction. According to ICE, “imperfect compliance does not equal substantial noncompliance.” Opp., ECF 475 at 14. But Defendants’ four years of compliance is merely evidence that ICE is aware of and able to follow its obligations under the injunction. For the past year, however, ICE has plainly not “substantially complied” with the Court’s order. *See* Mot., ECF 471 at 9-11, 15-20. Taken together, the October 2025 mandatory detention policy and the arbitrary re-detention policy—both implemented in secret—would have denied class members any meaningful protection under the Court’s injunction. ICE would have detained virtually all class members even if the risk-factor analysis required under § 1232(c)(2)(B) supported their release. *Id.* at 10. And for those few class members not detained, ICE could have re-detained them immediately upon release for no reason at all. *Id.* at 11. ICE’s continued noncompliance has required repeated court intervention. *Id.* at 18. Far beyond “imperfect,” ICE’s conduct has been egregious and deliberate.

Defendants defend the October 2025 policy as an effort “to align its interpretation of an immigrant detention statute (§ 1225(b)(2)(A)) with its obligations under § 1232(c)(2)(B).” Opp., ECF 475 at 15. But as this Court has already held, if Defendants had been interested in “aligning” the two statutes, they would have created a policy that “g[a]ve effect to each provision.” *Ramirez v. U.S. ICE*, 812 F. Supp. 3d 86, 104 (D.D.C. 2025) (outlining an age-out

review process that would have effectuated both provisions)¹. Moreover, if Defendants truly thought the policy complied with the Court’s injunction, they would have notified the Court and class counsel in advance—as they are obligated to do—before they radically re-imagined the age-out review process. *See id.* at 112 (“Defendants’ rapid implementation of the Policy—without advance notice and without any meaningful explanation for abruptly reversing course or canceling age-outs’ post-18 plans—suggests an effort to obscure or downplay the Policy’s existence.”). Notably, Defendants offer no justification for their re-detention policy—they simply ignore it.

Nothing excuses Defendants’ conduct over the past year. Their substantial noncompliance amounts to “a significant change in circumstances” that justifies a “temporal extension” of the oversight mechanisms here. *Labor/Cnty. Strategy Ctr. v. L.A. Cnty. Metro. Transp. Auth.*, 564 F.3d 1115, 1120-21 (9th Cir. 2009).

III. A THREE-YEAR EXTENSION OF THE COURT’S OVERSIGHT MECHANISMS IS SUITABLY TAILORED TO ADDRESS ICE’S PERSISTENT NONCOMPLIANCE AND IN THE PUBLIC INTEREST

Plaintiffs’ request for a three-year extension—a shorter period than initially set by the Court, despite ongoing violations akin to the noncompliance that formed the basis for the Court’s initial remedies order—is a narrowly tailored remedy that will protect class members from unlawful detention and the public’s interest in the rule of law. Defendants launch four arguments in response. None have merit.

¹ While Defendants are correct that two circuits have accepted Defendants’ new interpretation that § 1225(b)(2)(A) applies to unadmitted noncitizens apprehended in the interior (seven have rejected it), Opp. at 15, ECF 475, they cite no case—and Plaintiffs are aware of none—holding that this general detention provision controls placement decisions for age-outs despite the more recent and specific enactment of § 1232(c)(2)(B). *See Ramirez*, 812 F. Supp. 3d at 103–04.

First, Defendants argue that any extension must be limited to the period of ICE's noncompliance. Opp., ECF 475 at 16-17. But in support of this proposition Defendants cite only cases addressing modifications of consent decrees. Consent decrees, however, are fundamentally different from the Court-ordered injunction in this case and implicate different concerns when a court considers their modification. While "consent decrees bear some of the earmarks of judgments entered after litigation . . . because their terms are arrived at through mutual agreement of the parties, consent decrees also closely resemble contracts." *Loc. No. 93, Int'l Ass'n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 519 (1986). "More importantly, it is the agreement of the parties, rather than the force of the law upon which the complaint was originally based, that creates the obligations embodied in a consent decree." *Id.* at 522.

For this reason, when a court considers a motion to modify such a decree, "it must preserve the essence of the parties' bargain." *Pigford v. Veneman*, 292 F.3d 918, 927 (D.C. Cir. 2002); *Thompson v. U.S. Dep't Of Hous. & Urb. Dev.*, 404 F.3d 821, 833 (4th Cir. 2005). Where there is noncompliance regarding a consent decree, the court's goal is "to return *both* parties as nearly as possible to where they would have been absent" the violations. *Pigford*, 292 F.3d at 927; *see Kelly v. Wengler*, 822 F.3d 1085, 1097 (9th Cir. 2016) (finding temporal extension properly "sought to return Plaintiffs as nearly as possible to the position they would have occupied had [Defendants] not violated the agreement"); *Thompson*, 404 F.3d at 825 (upholding extending jurisdiction until the defendant "show[ed] that its obligations have been fulfilled approximately to the same extent as the parties and the Court originally and reasonably contemplated"); *Castañon Nava v. Dep't of Homeland Sec.*, 806 F. Supp. 3d 823, 835 (N.D. Ill. 2025), *aff'd in part sub nom. Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 175 F.4th 828 (7th

Cir. 2026) (modifying consent decree “to provide plaintiffs with the full three-year term of the Agreement for which they bargained”).

Here, in contrast, the Court’s permanent injunction does carry the force of the law. The Court entered final judgment in this case after finding ICE liable “for refusing to take actions it was required to take” under § 1232(c)(2)(B). *Ramirez*, 568 F. Supp. 3d at 19. The Court then ordered “limited injunctive relief.” *Id.* Under these circumstances, the Court must decide “whether the requested modification effectuates or thwarts the purpose behind the injunction.” *Hudson v. Am. Fed’n of Gov’t Emps.*, 281 F. Supp. 3d 11, 13–14 (D.D.C. 2017) (quoting *Sierra Club v. U.S. Army Corps of Engineers*, 732 F.2d 253, 257 (2d Cir. 1984)). The Court imposed the oversight mechanisms at issue here “to prevent Defendants’ further violations of, and help ensure their compliance with, Section 1232(c)(2)(B) going forward” in the face of ICE’s failure to meet its statutory obligations. Inj. Add., ECF 378 at 1; Perm. Inj. ECF 368 at 2-3; *see Ramirez*, 568 F. Supp. 3d at 24-26. Extending that “limited” relief by three years is a narrowly tailored response to ICE’s persistent noncompliance and will indisputably further the purpose behind the injunction. *Ramirez*, 568 F. Supp. 3d at 19; *see Mot.*, ECF 471 at 20-24.

Second, selectively quoting *Horne v. Flores*, 557 U.S. 433, 450 (2009), Defendants suggest that separation of powers concerns counsel against the “open-ended and perpetual extension of injunctive relief.” Opp., ECF 475 at 7. As an initial matter, Plaintiffs are not seeking an indefinite extension of remedies. Regardless, neither *Horne* nor respect for the independence of the Executive branch undermine Plaintiffs’ motion here, as illustrated by the full quote and surrounding paragraph:

It goes without saying that federal courts must vigilantly enforce federal law and must not hesitate in awarding necessary relief. But in recognition of the features of institutional reform decrees, we have held that courts must take a “flexible approach” to Rule 60(b)(5) motions addressing such decrees. [*Rufo v. Inmates of*

Suffolk County Jail, 502 U.S. 367, 381 (1992)]. A flexible approach allows courts to ensure that “responsibility for discharging the State’s obligations is returned promptly to the State and its officials” *when the circumstances warrant*. [*Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 442 (2004)]. In applying this flexible approach, courts must remain attentive to the fact that “federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate [federal law] or does not flow from such a violation.” *Milliken v. Bradley*, 433 U.S. 267, 282 (1977).

Horne, 557 U.S. at 450 (emphasis added).

The Court’s injunction here is plainly aimed solely at enforcing federal law and the present circumstances certainly do not warrant eliminating oversight next month. Moreover, unlike the consent decree at issue in *Horne*, nothing about the Court’s order interferes with “the ordinary democratic process,” *id.* at 447 n.3, nor does it implicate the federalism concerns that arise when a federal court oversees a state school system, *id.* at 448. Moreover, ICE has retained the “primary responsibility” for discharging its obligations under § 1232(c)(2)(B). *Ramirez*, 568 F. Supp. at 24. Mindful of not unduly interfering with the role of the Executive, the Court took a “restrained approach” when imposing injunctive relief and largely adopted Defendants’ own proposed remedies. *Id.* at 23-24, 35-36. A three-year extension of those same remedies does not threaten the separation of powers.

Third, Defendants assert that Plaintiffs rely on “punitive . . . considerations” to support their motion. Opp., ECF 475 at 18. But Plaintiffs do not seek to punish ICE for their treatment of non-class members. Rather, ICE’s treatment of similarly situated young people who are not protected by this Court’s orders is relevant when considering the necessity of extending those orders in order to protect class members. Mot., ECF 471 at 12-13. And the conditions in ICE custody are relevant to all class members unlawfully detained, including those specific members Plaintiffs identified in their motion. *Id.* at 23 (highlighting the experiences of Y.Z.P. and A.T.L.).

Finally, Defendants seek to assure the Court that “[a]fter September 21, 2026, Defendants will remain bound to comply” with the permanent injunction. Opp., ECF 475 at 17-18. This is cold comfort to class members. Defendants have shown that they have little regard for the permanent injunction in this case and, in general, the rule of law. *Cf. Fed. Educ. Ass’n v. Trump*, 795 F. Supp. 3d 74, 90–92 (D.D.C. 2025) (collecting cases showing the government “may have forfeited the right to [] a presumption of regularity”). Notably, Defendants do not dispute that an extension would be in the public interest. *See* Mot., ECF 471 at 22.

Plaintiffs’ narrow request to extend by three years the Court’s tailored oversight and enforcement mechanisms in the face of Defendants’ ongoing and substantial noncompliance satisfies all the requirements of Rule 60(b)(5), especially when considered against the harm to class members and the public if those mechanisms are eliminated.

IV. SECTION 1252(F)(1) DOES NOT BAR RELIEF

As this Court has already ruled, § 1252(f)(1) does not deprive this Court of the authority to enforce the permanent injunction, ECF 436 at 36-37; as such, it cannot preclude an extension of the Court’s order ensuring compliance with the injunction and § 1232(c)(2)(B). This outcome is dictated by the law-of-the-case doctrine, and Defendants have provided no reason to depart from this Court’s prior holdings here. *See Kimberlin v. Quinlan*, 199 F.3d 496, 500 (D.C. Cir. 1999).

That doctrine “rests on a simple premise: ‘the *same* issue presented a second time in the *same case* in the *same court* should lead to the *same result*.’” *Id.* (quoting *LaShawn A. v. Barry*, 87 F.3d 1389, 1393 (D.C. Cir. 1996)). In its December 2025 order granting Plaintiffs’ motion to enforce, this Court held that § 1252(f)(1) does not apply to injunctions concerning § 1232(c)(2)(B), “the basis for the relief Plaintiffs seek.” *Ramirez v. U.S. ICE*, 812 F. Supp. 3d

86, 110 (D.D.C. 2025); *see also Ramirez v. U.S. ICE*, 338 F. Supp. 3d 1, 49–50 (D.D.C. 2018) (considering and rejecting Defendants’ arguments that § 1252(f) deprives the court of jurisdiction to review and enforce compliance with § 1232(c)(2)(B)). That conclusion is equally valid here, where all Plaintiffs seek is an extension of specific monitoring and enforcement provisions entered by the Court to ensure compliance with the TVPRA.

Defendants suggest that the Court’s “recent Orders . . . implicate new issues regarding the Government’s detention authority not raised before,” but they fail to identify any such issues. Opp., ECF 475 at 11. In fact, no new issues exist as the enforcement orders only involve ensuring “Defendants’ compliance with Section 1232(c)(2)(B).” *Ramirez*, 812 F. Supp. 3d at 110. As to Defendants’ general position that the October 1 policy arose from the administration’s attempt to implement 8 U.S.C. § 1225(b)(2)(A), Opp., ECF 475 at 15, this Court has already found—twice over—that Defendants’ revised understanding of their general detention mandate “is not the subject of this litigation.” *Ramirez*, 812 F. Supp. 3d at 110. Instead, the Court has reiterated that “Defendants’ obligation to comply with Section 1232(c)(2)(B) ‘arises upon an age-out’s transfer to DHS custody and does not turn on the statutory authority under which a particular former unaccompanied minor is detained.’” *Id.* at 99 (quoting *Ramirez v. U.S. ICE*, 338 F. Supp. 3d at 46) (cleaned up). And as to the Court’s order enjoining Defendants’ practice of “re-arresting and detaining age-outs absent a material change in their circumstances,” this Court specifically found such actions “contravene[] the Permanent Injunction requiring Defendants to make age-out placement decisions consistent with Section 1232(c)(2)(B).” *Id.* at 109. These findings should control in the instant motion, in which Plaintiffs seek only a continuation of existing orders and no new relief.

Even if the Court’s prior rulings did not control, this Court was correct in rejecting Defendants’ arguments and should do so again here. As subsequent case law has further confirmed, “Section 1252(f)(1)’s injunction constraints do not apply” here. *See Refugee & Immigrant Ctr. For Educ. & Legal Servs. v. Mullin*, 174 F.4th 81, 117 (D.C. Cir. 2026) (“*RAICES*”) (finding § 1252(f)(1) inapplicable where lawsuit sought to enforce a provision not covered by the statute). At issue in this case is Defendants’ failure to comply with § 1232(c)(2)(B). As Defendants recognize, that provision is not covered by § 1252(f)(1)’s limitation on classwide injunctive relief because it is not a “provision[] of chapter 4 of title II” of the Immigration and Nationality Act (INA).² *See Opp.*, ECF 475 at 12 (noting that § 1232 is a “non-covered provision”). Section 1252(f)(1) thus does not strip this Court of the ability to enjoin the operation of that statute. *Ramirez*, 812 F. Supp. 3d at 110; *accord L.G.M.L. v. Noem*, 800 F. Supp. 3d 100, 123 n.6 (D.D.C. 2025); *Galvez v. Jaddou*, 52 F.4th 821, 829–31 (9th Cir. 2022). For that reason, *N.S. v. Dixon*, 141 F.4th 279 (D.C. Cir. 2025), Defendants’ primary authority, is inapposite. *See Opp.*, ECF 475 at 12. In *N.S.*, the injunction enjoined U.S. Marshals from effectuating *any* immigration arrests—including those made without a warrant (authorized by a non-covered provision), *and* those made with a warrant and because of specified criminal history (authorized by covered provisions). 141 F.4th at 289. Here, requiring that Defendants properly apply § 1232(c)(2)(B) to the specific population Congress described creates no “overbreadth” problem, removing it from the ambit of *N.S.* *See Escobar Molina v. U.S. Dep’t of Homeland Sec.*, 811 F. Supp. 3d 1, 56 (D.D.C. 2025) (distinguishing *N.S.*); *Castañon-Nava v.*

² *See* 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)).

U.S. Dep't of Homeland Sec., 175 F.4th 828, 839 (7th Cir. 2026) (same). Section 1232(c)(2)(B) is simply not a covered provision, and that vitiates Defendants' argument about the applicability of § 1252(f)(1) to the instant motion.

Defendants reprise their already-rejected argument that extension of the existing oversight order “would restrain the operation of the [] detention authority under 8 U.S.C. § 1225,” a covered provision that according to this administration, “mandates detention of all applicants for admission.” Opp., ECF 475 at 11-12. But as this Court recognized, even if the enforcement mechanisms have some impact on how Defendants operate § 1225(b), that is permissible under the Supreme Court's reading of § 1252(f)(1). *Ramirez*, 812 F. Supp. 3d at 110. The Supreme Court rejected the idea that the provision bars all orders that have some “downstream effects on the detention of unlawful immigrants,” *Escobar Molina*, 811 F. Supp. 3d at 56; indeed, it expressly held that “a 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,” *id.* (quoting *Garland v. Aleman Gonzalez*, 596 U.S. 543, 553 n.4) (2022) (finding § 1252(f)(1) did not prohibit injunction where government argued that enjoining warrantless arrest policy would interfere with covered provisions regarding warranted arrests and detention). And the D.C. Circuit recently affirmed that § 1252(f)(1) did not bar an injunction preventing removal of class members without compliance with the asylum statute, reasoning that the injunction “requires only that if the Executive removes foreign individuals, it does so consistent with [non-covered] provisions.” *RAICES*, 174 F.4th at 118. Here too, if the government keeps an unaccompanied child in its custody until they age out, then Defendants must render a placement decision that is consistent with the TVPRA. Plaintiffs seek only to

extend the period of time that this Court oversees Defendants' compliance with that specific statute.

Lastly, as this Court previously found, 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. *Ramirez*, 812 F. Supp. 3d at 110-11; *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 and resolving attorneys' fees). Defendants correctly do not dispute that, if the issue can be waived, they have done so here.

"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. *See* Defs.' Opp. Class Cert., May 3, 2018, ECF 31 at 28-30.³ Finding waiver here is particularly apt given that the Supreme Court's decision in *Aleman Gonzalez*, 596 U.S. 543, which Defendants cite, Opp., ECF 475 at 11, 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 at 5. 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

³ 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.

benefit through settlement. *See* ECF 404. *Cf. N.S.*, 141 F.4th at 288 (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 this Court has found 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.”).

Nevertheless, Defendants argue that § 1252(f)(1) is a “jurisdictional provision” that should be deemed unwaivable. *Opp.*, ECF 475 at 13. However, as Defendants also acknowledge, the Supreme Court has held that § 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); *see Opp.*, ECF 475 at 13. Defendants’ position fails because they cite no authority that supports their claim, and because their argument contradicts the Supreme Court’s reasoning in *Texas*. Notably, the cases Defendants rely on—all pre-dating *Texas* and none regarding § 1252(f)(1)—actually support Plaintiffs’ waiver argument. In *Steel Co. v. Citizens for a Better Environment*, the Supreme Court held that, where a statute creating a cause of action used the word “jurisdiction,” it “is unreasonable to read this as making all the elements of the cause of action [] jurisdictional, rather than as merely specifying the remedial *powers* of the court.” 523 U.S. 83, 90 (1998). So too here. In *Bolivarian Rep. of Venezuela v. Helmerich & Payne Int’l Drilling Co.*, the language rendering the statute “jurisdictional” was in fact, “explicit[ly]” about subject matter jurisdiction, unlike § 1252(f)(1). 581 U.S. 170, 177 (2017); *cf. Texas*, 597 U.S. at 798

(§ 1252(f)(1) does not “restrict[] a court’s power to adjudicate a case”) (citation omitted). In *Henderson v. Shinseki*, the Supreme Court “urged that a rule should not be referred to as jurisdictional unless it governs a court’s . . . subject-matter or personal jurisdiction,” and held that determining whether the “jurisdictional label” attaches requires examining Congress’s intent. 562 U.S. 428, 435-36 (2011). Here, the Supreme Court held that § 1252(f)(1) is not about subject matter jurisdiction and instead found that Congress “ma[de] clear the narrowness of [the provision’s] scope.” *Texas*, 597 U.S. at 798.

Because § 1252(f)(1)’s 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”). The Seventh Circuit recently so held, concluding that because “objections to similar rules limiting the reach of a federal court’s power are waivable,” including “defects in equitable jurisdiction,” “any objection based on § 1252(f)(1) is waivable.” *Castañon-Nava*, 175 F.4th at 837-38. Grasping at straws, Defendants argue in passing that § 1252(f)(1) cannot be waived “where a court [] issues new relief not previously sought that bears directly on a covered provision.” *Opp.*, ECF 475 at 13. Again, Defendants fail to identify which relief is meaningfully “new.” And again, all the relief this Court has ordered since initial entry of the permanent injunction and accompanying oversight mechanisms has been focused entirely on compliance with § 1232(c)(2)(B). *See supra* at 8. This Court should therefore reject Defendants’ arguments about waiver and find that Defendants have waived any claims under § 1252(f)(1).

V. CONCLUSION

In the face of Defendants' ongoing efforts avoid their obligations under the Court's permanent injunction and § 1232(c)(2)(B), Plaintiffs seek a modest three-year extension of the Court's modest monitoring and enforce order. All of Defendants' arguments to avoid continued oversight are meritless. The Court should grant Plaintiffs' motion to modify.

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