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

REDACTED

SECOND MOTION TO ENFORCE THE COURT'S JUNE 2, 2026 ORDER AND INCORPORATED MEMORANDUM OF LAW IN SUPPORT THEREOF

Once again, Plaintiffs seek narrow but urgent relief from this Court. Plaintiffs ask the Court to order the release of two class members, O.O.P. and B.I., whom Defendants have unlawfully detained for over two months. In both cases, ICE entirely failed to establish materially changed circumstances as to flight risk and danger. As the abusive and deadly conditions in ICE custody coerce thousands of people to abandon claims to relief and accept voluntary departure, ICE delayed over five weeks in producing information about both young people to Plaintiffs' counsel. Defendants now seek to benefit from that delay by arguing that this Court's orders no longer control because in the interim one class member was granted voluntary departure and the other has requested it. But ICE's initial determinations in August 2026 to re-detain both O.O.P. and B.I. are fatally flawed under this Court's prior orders and the Administrative Procedures Act.

Plaintiffs therefore urgently ask the Court to enforce its June 2, 2026 Order by ordering Defendants to release O.O.P. and B.I. Defendants oppose this motion. In support of this motion, Plaintiffs rely on the incorporated memorandum and accompanying declarations and exhibits. A proposed order is attached.

BACKGROUND

On September 15, 2026, this Court granted in part Plaintiffs' motion to modify and extended its jurisdiction to enforce and resolve disputes over the permanent injunction by two years, until September 2028. ECF 477.[1] Thus, this Court maintains jurisdiction to enforce its prior orders implementing the permanent injunction, including its June 2, 2026 Order clarifying the meaning of materially changed circumstances and requiring Defendants to "release all class members for whom Defendants have not established materially changed circumstances." ECF 455 at 1; *see also Ramirez v. ICE*, 2026 WL 1557609, at *6-7 (D.D.C. June 2, 2026).

On September 21, Defendants produced a spreadsheet listing the former age-outs whom ICE re-arrested in the month of August, *see* Second Supplemental Decl. of Suchita Mathur (2d Supp. Mathur Decl.) ¶ 5; Ex. G, and the records ICE relied on to determine whether the age-outs should be re-detained. On October 6 and 7, after reviewing ICE's records, *see* Exs. B & E, speaking with O.O.P., B.I., and B.I.'s immigration counsel of record, and obtaining and reviewing additional information involving both class members, Plaintiffs communicated to Defendants their position that ICE had not established materially changed circumstances for B.I.

[1] In correspondence to Plaintiffs' counsel on October 9, 2026, Defendants' counsel confirmed that Defendants agree that Sections I through VIII of the Final Judgment and Permanent Injunction (ECF 368) are extended by two years until September 21, 2028 by the Court's September 15, 2026 Order (ECF 477), such that the September 2026 Order supersedes the Addendum issued on November 10, 2021 (ECF 378).

and O.O.P., and asked that they be released. Plaintiffs' counsel requested Defendants' response by October 13, 2026. 2d Supp. Mathur Decl. ¶¶ 6-15.

O.O.P. is 18 years old. *See* Declaration of O.O.P., Ex. A (O.O.P. Decl.) ¶ 1. ICE re-arrested him on August 10, 2026, and alleged that he is a danger and flight risk. Defendants justified those determinations based on his arrest, purportedly on *five* charges, by police in Kenner, Louisiana, on August 9, 2026, and his alleged conduct prior to and during that law enforcement encounter;[2] they further argue this alleged conduct violates his conditions of release. *See* Ex. G at 2. ICE's supporting records consisted of O.O.P.'s EARM record, his I-213s, his Order of Release on Recognizance, and a report from the Kenner Police Department. Ex. B; 2d Supp. Mathur Decl. ¶ 11. The police report lists four charges against O.O.P. (improper lane usage, no driver's license, refusal or failure to obey lawful orders, and simple criminal damage to property valued at approximately $100, pertaining to a seat belt buckle) and one charge against another person (resisting an officer). Ex. B at 5-6. ICE's records did not include a disposition of the charges. On October 15, Plaintiffs' counsel received a letter from the clerk's office of the Mayor's Court for the City of Kenner, stating that there were four charges pending in O.O.P.'s case. Ex. C. O.O.P.'s EARM record established that he had an Immigration Court

[2] The Kenner Police Department has had an INA §287(g) agreement with ICE since the spring of 2025. *See* Andrés Fuentes, *Kenner Police reimbursed more than $500,000 for immigration enforcement work*, FOX8 (Aug. 14, 2026), https://www.fox8live.com/2026/08/14/kenner-police-reimbursed-more-than-500000-immigration-enforcement-work/; *see also* ICE, 287(g) Participating Agencies, available at https://www.ice.gov/identify-and-arrest/287g (last visited Oct. 16, 2026) (download spreadsheet entitled "View 287(g) Participating Agencies"). Per ICE, "[t]he 287(g) program gives local and state law enforcement officers the tools and authority, to arrest the worst of the worst including murderers, gang members, rapists, pedophiles, and terrorists from American communities." DHS, Press Releases, *DHS 287(g) Reaches More Than 1,000 Partnerships with State and Local Enforcement to Help Remove the Worst of the Worst Criminal Illegal Aliens* (Sept. 17, 2025), https://www.dhs.gov/news/2025/09/17/dhs-287g-reaches-more-1000-partnerships-state-and-local-enforcement-help-remove [hereinafter DHS Press Release].

hearing and an ICE check-in in December 2025, which he attended. Ex. B at 8.

In requesting that ICE release O.O.P. due to a lack of materially changed circumstances, Plaintiffs' counsel highlighted that one of the charges ICE relied on—resisting arrest—actually pertained to a different person, as ICE's own records established; that he had not been convicted of any of the criminal charges; that the Kenner Police Department was paid to work in close cooperation with ICE pursuant to an INA § 287(g) agreement, and that based on O.O.P's account of the arrest, it appeared that local police pretextually arrested him on a traffic violation but then immediately turned him over to ICE; that O.O.P. contested that he almost caused an accident and noted that he was targeted while his car was parked at a gas station; and that one of the arresting officers put his hand around O.O.P.'s neck and almost choked him. 2d Supp. Mathur Decl. ¶ 12; *see also* O.O.P. Decl. ¶¶ 4–7.

B.I. is from Uzbekistan and recently turned 21 in ICE detention. Declaration of B.I., Ex. D (B.I. Decl.) ¶ 1. Prior to his re-arrest by ICE, he had applied for asylum with U.S. Citizenship and Immigration Services (USCIS)—a subagency of the Department of Homeland Security (DHS)—and kept USCIS apprised of his address. B.I. Dec. ¶¶ 6-8; Ex. F. ICE re-arrested him on August 14, 2026, and alleged that he is a flight risk. Defendants initially justified that determination on two grounds: 1) ICE officers "attempted to make contact" with him on July 31, 2026, but that he "[redacted]," and 2) he failed to report to ICE in October 2024 and October 2025 and did not update his address with ICE in 2024. Ex. G at 1. ICE's supporting records consisted of B.I.'s EARM record and his I-213s. Ex. E.

In explaining why Defendants had not established materially changed circumstances as to flight risk, Plaintiffs' counsel pointed out that ICE's belief that B.I. fled from ICE officers on July 31, 2026, was a case of mistaken identity: on that day, B.I. had loaned his car to a friend,

who had a beard, as did the "subject" described in ICE's records as fleeing in the car. 2d Supp. Mathur Decl. ¶ 14; Ex. E at 2. B.I. did not have a beard, and stated he had never fled from officers, and indeed was fully cooperative with ICE officers when they stopped him on August 14. 2d Supp. Mathur Decl. ¶ 14; *see* B.I. Decl. ¶¶ 9-14. Plaintiffs' counsel also noted that while Defendants pointed to two missed check-ins and a failure to update his address with ICE, B.I. had attended one check-in, was unaware of additional check-ins—perhaps because of the language barrier—and had subsequently updated his address twice with USCIS, a different subcomponent of DHS. 2d Supp. Mathur Decl. ¶ 14; B.I. Decl. ¶¶ 4-8.

On the evening of October 15, Defendants' counsel relayed ICE's refusal to release both B.I. and O.O.P. and stated:

> Regarding Mr. I[redacted], ICE maintains that he is a flight risk and further explains that, on October 5, 2026, an Immigration Judge granted his request for pre-conclusion voluntary departure. Because voluntary departure marks the conclusion of removal proceedings, Mr. I[redacted] is no longer covered by the Court's orders. Therefore, given the flight risk determination and the grant of voluntary departure, ICE declines to release Mr. I[redacted].
>
> Regarding Mr. O[redacted] P[redacted], ICE maintains that he is a flight risk and danger to the community due to the conduct raised in ICE's reporting on his re-detention. ICE therefore declines to release Mr. [redacted].

2d Supp. Mathur Decl. ¶ 16. On the evening of Friday, October 16, Defendants provided a "supplemental response" that suggests they no longer rely on B.I.'s purported attempts to evade DHS officers on July 31, 2026, and states that O.O.P. "has requested voluntary departure." 2d Supp. Mathur Decl. ¶ 18. Defendants did not produce any supporting records, including any records establishing the period of time that B.I.'s grant of voluntary departure was valid. *Id.* ¶¶ 17, 19.

LEGAL STANDARD

"[F]ederal courts are not reduced to issuing injunctions . . . and hoping for compliance." *Hutto v. Finney*, 437 U.S. 678, 690 (1978). "The power of a federal court to protect and enforce its judgments is unquestioned." *Marshall v. Loc. Union No. 639*, 593 F.2d 1297, 1302 (D.C. Cir. 1979). As such, "a court has the authority to issue additional orders to enforce a prior injunction." *Damus v. Wolf*, No. CV 18-578 (JEB), 2020 WL 601629, at *2 (D.D.C. Feb. 7, 2020) (citing *Hutto*, 437 U.S. at 687). "This equitable authority is broad, 'particularly where the enjoined party has not fully complied with the court's earlier orders.'" *Id.* (quoting *Nat'l Law Ctr. on Homelessness & Poverty v. U.S. Veterans Admin.,* 98 F. Supp. 2d 25, 26–27 (D.D.C. 2000)) (citation modified). "In determining compliance with an order, the Court is guided not only by the text of that order but also by its related opinions." *Ramirez v. ICE*, 2026 WL 1954459, at *3 (D.D.C. July 6, 2026).

ARGUMENT

In June 2026, this Court ordered the release of "all class members for whom Defendants have not established materially changed circumstances," because re-arresting and detaining former age-outs absent such circumstances violates the permanent injunction in this case, and the statute. ECF 455 at 1; *Ramirez*, 2026 WL 1557609, at *7. As this Court clarified, changed circumstances are only "material" if they establish an age-out "now presents a danger to themselves, a danger to the community, or a risk of flight." ECF 455 at 1. Plaintiffs seek the release of two class members, O.O.P. and B.I., who have now been held in Defendants' custody for over two months despite not presenting a danger or a flight risk that would justify their re-detention.

Defendants' decisions to continue detaining both class members despite the absence of materially changed circumstances violate this Court's prior orders and the Administrative

Procedures Act (APA). Under the APA, ICE's actions are arbitrary and capricious if the agency "has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decisions that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Ramirez*, 2026 WL 1954459 at *3 (quoting *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). Defendants' determinations in O.O.P. and B.I.'s cases are unlawful under the reasoning of this Court's prior orders and are arbitrary and capricious and should thus be set aside.

A. Defendants' Determinations that O.O.P. is a Danger and Flight Risk Violate this Court's Orders and are Arbitrary and Capricious, and His Ongoing Detention is Therefore Unlawful.

i. Lack of danger

In reaching the determination that O.O.P. is a danger, Defendants relied entirely on an incident involving local law enforcement in Kenner, LA, on August 9, 2026. Ex. G. But Defendants misconstrued their own records, failed to consider the fact that none of the pending charges have resulted in a criminal conviction, and failed to consider O.O.P.'s conflicting account regarding the police encounter, which is particularly relevant given that the charges are merely pending and that the Kenner police have a financial incentive to transfer people to ICE's custody pursuant to a 287(g) agreement.

First, Defendants incorrectly stated that O.O.P. was charged with resisting arrest, *see* Ex. G at 2, when in fact that charge pertained to a different individual, as established by ICE's own records, Ex. B at 6. This equates to ICE "offer[ing] an explanation for its decision that runs counter to the evidence before the agency," *State Farm*, 463 U.S. at 43. ICE's misapprehension of its evidence renders its ultimate determination flawed, especially given that the resisting arrest

charge incorrectly imputed to O.O.P. is one of the more significant allegations purporting to justify his re-detention. *See* Ex. B at 6; *compare* La. Rev. Stat. §§ 32:79 (requiring drivers to stay within single lane), 32:52 (requiring driver's license to operate vehicle), Kenner, La. Ord. §§ 7-80 (limiting penalty for damage to property to a fine and community service), 7-151 (refusal or failure to obey orders) *with* Kenner, La. Ord. § 7-150 (resisting arrest).

Next, Defendants erred by failing to fully consider "the facts necessary to determine whether the conviction demonstrated that [O.O.P.] posed a danger to the community." *Ramirez*, 2026 WL 1954459 at *6. As many courts have held, "[c]riminal history, standing alone, does not necessarily establish that a noncitizen poses [] a danger." *Id.*; *see, e.g., Tzompa Garcia v. Baltazar*, 2026 WL 2240137, at *2 (D. Colo. Aug. 4, 2026) (citing *Singh v. Holder*, 638 F.3d 1196, 1206 (9th Cir. 2011)). That is particularly true where, as here, there is no criminal conviction. *See Lopez Crawford v. Blanche*, 2026 WL 2969844, at *2 (D. Nev. Oct. 2, 2026) (reiterating, in case where noncitizen had no criminal convictions and only a misdemeanor arrest for driving under the influence, criminal history alone "is not always sufficient" to justify denial of release based on danger); *see also Abdullaev v. Pike Cty. Corr. Fac.*, 2026 WL 2966193, at *2-3 (M.D. Pa. Oct. 2, 2026) (where noncitizen was originally charged with receipt of stolen property and convicted of disorderly conduct, finding "no facts in the record that would suggest—let alone establish—that [he] poses a danger"). Instead, as Plaintiffs pointed out to Defendants, and is corroborated by a recent letter from the Mayor's Court for the City of Kenner, there are merely four pending charges. Ex. C. But there is no indication that ICE considered the unsubstantiated nature of the pending charges or their "nature, severity, or whether [they] demonstrated any ongoing danger to the community." *Ramirez*, 2026 WL 1954459 at *6.

Indeed, the underlying circumstances of the arrest, even as described by the Kenner police—and there is ample evidence suggesting their account is inaccurate, *see infra*—do not establish that O.O.P. presents a danger. O.O.P. has had no other law enforcement contact. *See generally* Exs. A & B. The alleged improper lane change did not cause an accident; it merely allegedly forced another vehicle to '[redacted] Ex. B at 5. While O.O.P. may have lacked a driver's license, this Court has found that such allegations do not, by themselves, justify re-detention of class members. *See Ramirez*, 2026 WL 1557609 at *6; ECF 455 (ordering release of several class members for whom Defendants alleged arrests for speeding, driving without a license, and unspecified traffic violations). Even if O.O.P. became angry and kicked the interior of the police car such that the seat belt buckle was slightly damaged (which can be inferred from the approximate value of the damage being only $100), it is at least worth considering that his emotional response was not sufficiently grave to trigger a charge of resisting an officer or assault. Ex. B at 5-6. Furthermore, even under Louisiana law, the pending charges against O.O.P. are municipal code violations or traffic offense misdemeanors and therefore treated as relatively de minimis. *See* Kenner, La. Ord. § 7-3; La. Rev. Stat. § 32-57.

Defendants also entirely failed to consider O.O.P.'s account of the law enforcement encounter that ICE relies on to justify his re-detention. This Court has previously made clear that "context matters," including a class member's account of their own criminal history. *Ramirez*, 2026 WL 1954459 at *6-7 & n.6. Given the unresolved nature of the charges, his version of what happened was "evidence bearing on the issue before" the agency, and ICE's refusal to obtain his account (by, e.g., speaking to him while he is in its custody) confirms its flawed decision-making. *See id.* As Plaintiffs' counsel highlighted to Defendants' counsel, O.O.P. contests that he almost caused an accident because his car was parked when Kenner police approached him, and

explains that police engaged in violent tactics against him, including choking him. 2d Supp. Mathur Decl. ¶ 12. O.O.P. further describes in his declaration that the police officer refused to explain why he was being arrested, and that he did not break anything in the police car that he was aware of. O.O.P. Decl. The importance of considering O.O.P.'s account of the relevant events is underscored by the existence of a 287(g) agreement between ICE and the Kenner Police Department, which ICE also failed to consider. *See supra* at 3 & n.2; 2d Supp. Mathur Decl. ¶ 12. ICE's own statements in other contexts establish that these agreements provide local law enforcement financial incentives to detain and transfer people to ICE custody. *See* DHS Press Release (encouraging state and local law enforcement to sign 287(a) agreements by highlighting "unprecedented reimbursement opportunities" and detailing "monetary performance awards based on . . . overall assistance to further ICE's mission"). This context is relevant to understanding what actually happened during O.O.P.'s encounter with Kenner police, and ICE's failure to consider it, along with O.O.P.'s account of the incident, violated this Court's prior reasoning and was arbitrary and capricious.

ii. Lack of flight risk

Once again, in reaching the determination that O.O.P. is a flight risk, Defendants relied entirely on a Kenner police officer's allegations regarding the above-described incident. *See* Ex. G. ICE failed to consider other evidence before the agency tending to show that O.O.P. is not a flight risk, and whether an encounter with local law enforcement involving alleged traffic and municipal code violations is probative of a likelihood of risk of flight. ICE's determination thus violates the APA and this Court's prior orders.

First, O.O.P. has complied with his immigration obligations, including attending an Immigration Court date while at liberty and at least one ICE check-in. Indeed, ICE's records indicate that after O.O.P.'s release from ORR custody in November 2025, he had an Immigration

Court date and an ICE check-in in December that he attended without incident. Ex. B at 8. As this Court has held, "whether the noncitizen actually appears for immigration proceedings" is "the most probative indicator of flight risk." *Ramirez*, 2026 WL 1954459 at *3. As such, O.O.P.'s history of attendance of and participation in immigration court proceedings should have been considered in determining whether he was a flight risk.

ICE alleges, based on the same incident, that O.O.P. failed to comply with the conditions of his release by violating state or local law and thus constitutes a flight risk. Ex. G. This determination assumes that it is an established fact that O.O.P. violated laws during his August 2026 encounter with Kenner police. The record evidence, however, does not conclusively or even persuasively support finding such a fact. As detailed above, the four (not five, as ICE claims) charges that were lodged against O.O.P. are merely pending. Ex. C. And proper consideration of the underlying circumstances and context demonstrates a significant likelihood that any violations of state and local laws were de minimis. *See supra* at 9.

Lastly, this Court has already made clear that Defendants "must consider whether the alleged violation [of a noncitizen's release conditions] bears on the noncitizen's likelihood of appearing for future proceedings." *Ramirez*, 2026 WL 1954459 at *4. Here, particularly as to flight risk, there is no obvious or even plausible relationship between an 18-year-old's alleged violation of traffic laws and display of emotion during a violent arrest and that teenager's likelihood of attending his Immigration Court hearings. This is underscored by the fact that there is no BIA precedent indicating that a risk of flight is properly assumed where a noncitizen has a *single* alleged incident involving municipal code and traffic violations for charges like reckless driving, driving without a license, failure to obey orders and property damage. *Cf. Matter of Choc-Tut*, 29 I&N Dec. 48 (BIA 2025) (finding that noncitizen who was *repeatedly* arrested for traffic offenses *while*

intoxicated and *convicted of driving under the influence* constituted a *danger*); *see, e.g. Matter of M-S-V-*, 30 I&N 130 (BIA 2026) (tying flight risk to viability of sponsor); *Matter of Z-N-L-*, 29 I&N Dec. 511 (BIA 2026) (connecting flight risk to inconsistencies in noncitizen's place of residence). This remains the case even after this administration has "purged and rebuilt" the BIA for "ideological alignment," resulting in a body of precedential custody decisions that "narrow[] any possibility for discretionary release." Jason A. Cade, *Welcome to the Trump Administration's Board of Immigration Appeals. The Immigrant Always Loses*, 136 Yale Law Journal Forum 24, 28-29, 46-48 (2026), https://ssrn.com/abstract=6506380. Because ICE failed to consider relevant evidence bearing on O.O.P.'s risk of flight and instead relied on allegations untethered to likelihood of future appearance, its determination is invalid. This Court should therefore order O.O.P. immediately released.

B. Defendants' Determination that B.I. is a Flight Risk Violates this Court's Orders and is Arbitrary and Capricious, and His Ongoing Detention is Therefore Unlawful.

i. Lack of flight risk

Defendants re-arrested B.I. on August 14, 2026, through an allegedly targeted vehicle stop near his home in Philadelphia, Pennsylvania.[3] Ex. E. Defendants contend that B.I. is a flight risk because he allegedly missed two check-in appointments, failed to update his address with ICE, and fled from ICE officers on July 31, 2026. *See* Ex. G. But Defendants' own records, along with B.I.'s sworn declaration and records he provided, establish that B.I. was not attempting to abscond or evade his immigration obligations and that ICE's determination that B.I. was a flight risk was flawed. Defendants' decision to re-detain B.I. without materially changed circumstances violates this Court's orders and renders their action arbitrary and capricious.

[3] The unredacted portions of the records contain no explanation of why ICE was targeting B.I. *See* Ex. E.

As an initial matter, there is no indication in the records Defendants produced that ICE determined that B.I.'s circumstances had materially changed when they re-arrested and re-detained him, as required by this Court's orders. *See Ramirez*, 2026 WL 1557609 at *6-7. This failure alone dooms Defendants' argument that B.I. is a flight risk. The records that Defendants have produced for other re-arrests reflect that ICE conducted at least a basic analysis of whether they had evidence of a material change of circumstances to justify re-detention. *See, e.g.*, Ex. B at 8 (O.O.P.'s I-213 narrative and EARM records provide ICE's justification for re-detention and state that the Juvenile and Family Management Division reviewed and concurred with the determination). In contrast, although B.I.'s EARM record includes a note that B.I. is a "Garcia-Ramirez case," there is nothing in the EARM record or I-213 that indicates an analysis of changed circumstances was completed before ICE had to provide a justification to Plaintiffs' counsel when producing the August re-arrest records on September 21, 2026. *See* Ex. E. The absence of any evidence of the required determination contemporaneous with B.I.'s arrest indicates that the justifications provided by Defendants on September 21, 2026, in their August re-arrest report are *post-hoc* rationalizations. As such, "ICE's belated justification can be viewed only as an impermissible *post hoc* rationalization and is therefore not properly before the Court." *Ramirez*, 2026 WL 1954459 at *4 (quoting *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 20 (2020)) (cleaned up).

Regardless, the justifications that Defendants now offer do not reflect the consideration or reasoned decision-making required by prior orders or the APA. Defendants first contend that B.I. did not comply with his conditions of release by missing two ICE check-ins and failing to update his address. While Defendants' EARM records include notations suggesting that he missed check-ins in 2024 and 2025—after attending his first check-in on October 11, 2023—Defendants did not

produce a copy of B.I.'s conditions of release or any appointment notifications. *See* Ex. E. Moreover, the EARM records show that while ICE mailed B.I. an appointment notice in July 2024, the notice was never delivered.[4] Ex. E.

Even if B.I. did miss two checks-ins, that would not be dispositive for several reasons: First, the records and B.I.'s declaration establish that he attended a check-in in 2023. *See* B.I. Decl. ¶ 4; Ex. E. Second, B.I. asserts that he did not know that he had check-ins scheduled for 2024 and 2025, that the ICE agents did not inform him of his next check-in when he attended his first check-in, and that he would have attended the appointments if he knew about them. B.I. Decl. ¶¶ 4-5. B.I. also states that he never received any notice in the mail or over the phone informing him of a check-in appointment with ICE. *Id*. ¶ 5. ICE's own records support his account. There is no indication in any of the records that ICE provided information about his reporting requirements to B.I. in a language he understood upon his release or at his first check-in. *See generally* Ex. E. Notably, B.I. speaks Uzbek, Tajik, and Russian, but very little English. BI Decl. ¶ 1. And, as discussed, the only record of any appointment notice also establishes that B.I. never received it. Ex. E. Lastly, there is no indication in the records that ICE notified B.I. that his next check-in was scheduled for October 2025 after he missed the October 2024 check-in. *Id.*

As to the change of address allegation, there is no indication in the records that B.I. was required to update his address only with ICE or that he failed to do so. But even if that was the case, other evidence shows that B.I. made a good faith effort to keep his address up to date with DHS. B.I. explains in his declaration, and provides corroborating evidence, that he updated his address with USCIS (a DHS sub-agency) on two occasions, which he believed was sufficient to

[4] It is unclear why this mail was not delivered. The EARM records say the address was previously verified by USPS and B.I.'s brother told Plaintiffs' counsel that he and B.I. still received mail at that address on that date. 2d Supp. Mathur Decl. ¶ 8.

comply with his release conditions. *See* B.I. Decl. ¶ 7; Ex. F. It is credible and reasonable that B.I. did not understand that he was supposed to submit separate change of address notifications to each component of DHS, particularly given the language access issues discussed above.

Finally, and notably, Defendants appear to have abandoned their initial justification for the finding B.I. to be a flight risk. *See* Ex. G (alleging that on July 31, 2026, ICE officers "[redacted]" B.I. "[redacted]"); 2d Supp. Mathur Decl. ¶ 18 (not citing that allegation in ICE's "supplemental response"). Rightfully so. The single EARM comment from July 31, 2026 states: "[redacted]." Ex. E at 2. There are no further details about this alleged flight, and Defendants offer no other evidence to support this unsworn allegation. Moreover, there is no mention of this alleged flight in his I-213 arrest record from August 14, 2026. *Id.* at 5-6.

B.I.'s sworn declaration states that he never evaded or attempted to flee from ICE. B.I. Decl. ¶ 14. In fact, he had no idea that ICE had been looking for him until they stopped and arrested him on August 14, 2026. *Id.* ¶ 10. When ICE agents did actually make contact with B.I. and stopped his car on August 14, 2026, he was fully compliant and provided his identification as requested. *See* Ex. E at 5; B.I. Decl. ¶ 9. It is clear from B.I.'s statement and the EARM records that the person driving B.I.'s car in July was, in fact, B.I.'s bearded friend who had borrowed his car that day. Ex. E at 2; B.I. Decl. ¶ 11. Moreover, B.I. states that the ICE agents who arrested him in August acknowledged that he was not the person they sought because the man who fled in B.I.'s car in July had a beard and B.I. did not. *Id*. This is corroborated by the EARM comment that the person ICE saw driving the car on July 31st "[redacted]," and the fact that there is no allegation in B.I.'s I-213 that he had ever fled from ICE. Ex. E at 2, 5-6.

Even based on ICE's records alone, it is clear that ICE's determination that B.I. had evaded officers was flawed. Defendants did not properly consider the evidence before them to make an individualized determination of whether B.I.'s circumstances had materially changed to justify his re-detention. The Court previously explained that, "[i]n assessing flight risk, relevant considerations include not only an individual's appearance history, . . . but also factors such as a fixed address, length of residence, and employment history." *Ramirez*, 2026 WL 1954459 at *7 (citing *Miri v. Bondi*, 2026 WL 622302, at *8 (C.D. Cal. Mar. 5, 2026)). If ICE conducted any analysis at all before deciding to re-detain B.I., such analysis self-evidently did not properly consider the totality of the circumstances.

Even if B.I. missed two scheduled check-ins and did not submit a timely change of address to ICE, the evidence establishes he was endeavoring to comply with his reporting obligations and had no intent to abscond. As this Court previously noted, "[a]lthough a missed check-in may constitute a technical violation of a noncitizen's release conditions, courts have recognized that such violations do not, standing alone, establish that detention is necessary." *Ramirez*, 2026 WL 1954459 at *4 (citing *J.A.E.M. v. Wofford*, 812 F. Supp. 3d 1058, 1068 (E.D. Cal. 2025) (collecting cases)). And the same is true of a failure to update an address with ICE. Instead, "the government must consider whether the alleged violation bears on the noncitizen's likelihood of appearing for future proceedings." *Id.* (citing *Herman v. DHS*, 2026 WL 1723960, at *10 (C.D. Cal. June 12, 2026) ("[S]upervision conditions are not intended to be a contest to determine whether a person can comply. Rather, any violations must be evaluated by reference to the purpose of supervision, namely, ensuring that the person is likely to appear for hearings or removal.")).

ICE also failed to consider the positive equities that weigh against flight risk in B.I.'s case. Since his release from ORR custody in 2023, B.I. lived with his brother in the Philadelphia area,

was an active member of his local mosque, was working, and had enrolled in English classes. B.I. Decl. ¶ 21. He also has no criminal record. *See* Ex. E at 5. Defendants also failed to account for the fact that B.I. had a pending asylum application and was a member of the *J.O.P.* class, which entitled him to certain benefits and protections and diminished any incentive to abscond. 2d Supp. Mathur Decl. ¶ 8; *see Ramirez*, 2026 WL 1954459 at *8 (citing *Matter of Andrade*, 19 I. & N. Dec. 488, 490 (BIA 1987)).

In sum, Defendants' re-detention of B.I. is unlawful several times over. First, Defendants failed to undertake the required analysis of changed circumstances prior to re-arresting B.I. Second, the information that Defendants rely on to argue materially changed circumstances does not support a finding that B.I. is a flight risk. Third, Defendants failed to consider relevant factors including B.I.'s limited English proficiency, compliance history, community ties, and incentive to appear for future proceedings. Defendants' decision to re-arrest and detain B.I. was therefore arbitrary and capricious. *See Int'l Dark-Sky Ass'n, Inc. v. Fed. Commc'ns Comm'n*, 106 F.4th 1206, 1213 (D.C. Cir. 2024) (citing *State Farm*, 463 U.S. at 43).

ii. Voluntary departure

Defendants now argue that B.I. is no longer covered by the Court's orders because he has been granted voluntary departure. 2d Supp. Mathur Decl. ¶ 16. Defendants' position is both erroneous and unjust. Nothing in the class definition excludes otherwise eligible class members because they have been granted voluntary departure. *See Ramirez v. ICE*, 338 F. Supp. 3d 1, 50 (D.D.C. 2018). Individuals granted voluntary departure who are still within the departure period are not subject to mandatory detention "[d]uring the removal period" under 8 U.S.C. § 1231(a)(2)(A) because they do not have a final order of removal. *See* 8 U.S.C. § 1231(a)(1)(B). Indeed, voluntary departure is frequently granted to noncitizens who are at liberty and remain so

after the grant. *See Monsalvo v. Bondi*, 604 U.S. 712, 715 (2025). Moreover, at the time ICE wrongfully re-arrested B.I. on August 14, 2026, he was pursuing asylum affirmatively and was unquestionably covered by this Court's orders. B.I. Decl. ¶ 6. Over five weeks later, Defendants provided B.I.'s information and records to Plaintiffs' counsel in this matter, and then they delayed an additional eight days in responding to Plaintiffs' request for release. Ex. G; 2d Supp. Mathur Decl ¶¶ 14, 16. Allowing Defendants to weaponize these delays, whether or not they are a tactic to coerce individuals into self-deporting, *see infra*, to excuse their compliance with 8 U.S.C. § 1232(c)(2)(B) and this Court's orders is clearly inequitable. *See* B.I. Decl. ¶¶ 16-20 (it was only because of the coercive nature of ICE detention and inaccurate advice from his private immigration attorney that B.I. accepted voluntary departure).

C. Urgency of Release

It has been widely documented that the "cruel, inhumane, unacceptable" conditions in Defendants' custody are causing a significant increase in people, even those with viable paths to relief, feeling compelled to accept voluntary departure and removal orders.[5] Jamiles Lartey, *Bad Food. Poor Care. No Toilets. ICE Detention Misery Pushes Immigrants to 'Voluntarily' Depart,* The Marshall Project (May 30, 2026), https://www.themarshallproject.org/2026/05/30/ice-trump-

[5] These conditions have caused more than just coerced voluntary departure and removal: last month, two people died in ICE custody in Louisiana, where ICE is currently detaining O.O.P. Those tragedies were not aberrations. In fiscal year 2026, 37 people ranging in age from 19 to 85 died while ICE civilly detained them, making it the deadliest year on record. Ximena Bustillo, *Immigrant Deaths in ICE Custody Nearly Double as Oversight Wanes*, Bloomberg Law (Sept. 30, 2026), https://news.bloomberglaw.com/us-law-week/immigrant-deaths-in-ice-custody-nearly-double-as-oversight-wanes. Noncitizens "are dying by suicide at an increased rate under the Trump administration" and "lots of treatable infections [are] killing people" in ICE custody. Conor Greene, *As ICE Detention Expands, Deaths Reach as 22-Year High*, TIME (Aug. 10, 2026), https://time.com/article/2026/08/10/ice-detention-deaths-immigration/. As a former Department of Homeland Security official noted, "standards [are] getting lower and lower because the goal is . . . to increase the number of people in detention." Bustillo, *Immigrant Deaths.*

new-jersey-detention; Liz Veazey, *New Yorkers Arrested by ICE Are Choosing Departure Over Indefinite Detention*, New York Focus (Apr. 21, 2026), https://nysfocus.com/2026/04/21/ice-voluntary-departure-detention-increase. As highlighted by a federal district court, "[s]tatements from senior officials suggest that harsh conditions of confinement are a deliberate feature of the enforcement program intended to induce self-deportation . . . ." *Mercado v. Noem*, 800 F. Supp. 3d 526, 575 (S.D.N.Y. 2025). Other courts have documented instances of ICE officers directly pressuring noncitizens to abandon potential relief from removal and self-deport. *See, e.g., Martinez-Andino v. U.S. Dep't of Homeland Sec.*, 2026 WL 2140430, at *1, 10-11 (D.D. C. July 25, 2026); *Duarte Cantarero v. Warden*, 2026 WL 396851, at *1 (M.D. Fla. Feb. 12, 2026).

B.I. and O.O.P.'s cases underscore this reality: B.I. was granted voluntary departure even while he had an affirmative asylum application pending, and Defendants allege that O.O.P. has requested voluntary departure. 2d Supp. Mathur Decl. ¶¶ 8, 16, 18. B.I. describes at length how the abysmal conditions of detention are impacting his mental health, physical well-being, and decisions about whether to pursue his removal case. B.I. Decl. ¶¶ 16, 19-20 (detailing overcrowding, poor quality of food, lack of medical care, and his fear and stress about remaining in detention). The speed with which ICE coerces class members into accepting voluntary departure and removes them renders prompt resolution of the instant motion vital. Because Defendants' determinations regarding the materially changed circumstances in B.I. and O.O.P.'s cases are unlawful, their ongoing re-detention is unjustified and they should be immediately released.

CONCLUSION

For all the foregoing reasons, and as set forth in the attached proposed order, Plaintiffs ask the Court to grant the instant motion and enforce its prior order by requiring Defendants to

release O.O.P. and B.I. subject only to alternatives to detention required by their initial custody determination upon release from ORR custody.

Dated: October 19, 2026

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) 507-7537
smathur@immcouncil.org
ewinger@immcouncil.org
rcassler@immcouncil.org
mlapointe@immcouncil.org

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