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 SECOND MOTION TO ENFORCE THE COURT'S JUNE 2, 2026 ORDER

Defendants have failed to establish materially changed circumstances justifying the re-detention of O.O.P. and B.I. because their determinations regarding danger and flight risk in both cases violate this Court's orders and the Administrative Procedures Act (APA). Their arguments to the contrary demonstrate a misapprehension of their obligations under the APA, ignore this Court's prior decisions and reasoning, are legally incorrect, and ultimately fail. As such, this Court should grant Plaintiffs' motion and order the immediate release of O.O.P. As discussed below, B.I. withdraws his request for release in light of Defendants' newly-provided information that his voluntary departure period ends on November 4, 2026 and their promise to facilitate his departure before that expires. An amended proposed order is attached.

ARGUMENT

Defendants' Determinations Regarding O.O.P. Must Be Set Aside

Defendants double down on their flawed determination that O.O.P. is a danger, relying exclusively on his arrest by the Kenner Police Department and alleged conduct during that

encounter. ECF 486 at 13-14. But in doing so, Defendants make clear their determination was not "the product of reasoned decisionmaking." *Fox v. Clinton*, 684 F.3d 67, 75 (D.C. Cir. 2012). As the D.C. Circuit has held, "even though arbitrary and capricious review is fundamentally deferential," courts "do not . . . simply accept whatever conclusion an agency proffers merely because the conclusion reflects the agency's judgment." *Id.* (internal quotation omitted). Instead, ICE's process in reaching a determination "must be logical and rational," "adequately explained," and "supported by agency precedent." *Id.* (internal quotations omitted).

First, and oddly, Defendants repeat their error of misreading their own records to claim that O.O.P. was arrested for "Resisting an Officer & Arrest," when that charge plainly pertained to someone else. ECF 486 at 13; *cf.* ECF 483, Ex. B at 1-2, 6 (stating that "Suspect 2," A.B.C., was booked on resisting charge) (sealed filing). While Defendants later hedge on whether that charge is pertinent to assessing O.O.P.'s danger, they nowhere acknowledge their error in putting forth a justification that was simply contradicted by their own evidence. ECF 486 at 14.

Second, Defendants argue that Plaintiffs have provided "new materials not before the decisionmakers regarding O.O.P.'s arrest" by Kenner police that should be disregarded. ECF 486 at 14. Assuming that is a reference to O.O.P.'s first-hand account of his arrest,[1] there are two problems with that claim. This Court has already found that when ICE "fail[s] to seek out for itself and consider" relevant context by failing to gather information from the detained age out, its resulting decisionmaking is "deficient." *Ramirez v. ICE*, 2026 WL 1954459, at *7 n.6 (D.D.C. July 6, 2026). In O.O.P.'s case, as in the prior case, Defendants' complained-of "new material" consists of a declaration from a class member that provides necessary "factual context" for

[1] To the extent that Defendants refer to the 287(g) agreement between ICE and the Kenner Police Department, Defendants' own contract—one that provided the mechanism for ICE taking custody of O.O.P.—cannot constitute new information about which ICE can claim unfamiliarity.

understanding the "relevant circumstances" of the arrest, and thus should have been considered in the first instance. *Id.* at *6-7. Here again, Plaintiffs' evidence was proffered to establish the irrationality of Defendants' decisionmaking, as it establishes the existence of other relevant information that undermines the reliability of the only evidence that ICE chose to consider: unresolved allegations by a law enforcement agency that has financial incentives to turn people over to ICE. *See Ohio v. EPA*, 603 U.S. 279, 293 (2024) ("An agency cannot simply ignore an important aspect of the problem." (cleaned up)).

And ICE's own recent training materials on how to determine whether a young person poses a danger are consistent with the Court's prior rulings. *See* Ex. H, Excerpts of Defendants' Sept. 2025 *Garcia-Ramirez v. ICE* Age-Outs PowerPoint. The permanent injunction in this case requires ICE to provide adequate training to staff regarding their obligations under § 1232(c)(2)(B) using agreed-upon PowerPoint materials. ECF No. 368 at 4-5. ICE's training materials, provided to class counsel under the injunction, require officers to identify and collect *any available evidence* on statutory risks, and explicitly state that one source of information to consider is the age out. *See* Ex. H at 4, 6 (slides 43, 45). Here, despite its internal guidance and agency requirements, ICE clearly failed to obtain all the relevant evidence on whether O.O.P.'s police encounter was probative of danger, even where his account was readily available to ICE as he was in its custody.

Third, Defendants' only response to the suggestion that Kenner police pretextually arrested O.O.P. is to make much hay of O.O.P.'s failure to move to dismiss his criminal charges or file a complaint against the police. ECF 486 at 14-15. But O.O.P. is 18 years old, has no legal representative in his immigration or criminal cases, and does not speak English. *See* O.O.P. Decl. ¶¶ 1, 8-9, ECF 482-1. He was in Kenner criminal custody for less than a day before being

transferred to ICE. ECF 483, Ex. B at 1, 18 (stating that ICE officers from Enforcement and Removal Operations took custody of O.O.P. on the same day—August 9, 2026—that he was arrested by Kenner police). And his first criminal court date is November 4, 2026.[2] ECF 482-2; *see also* ECF 482-5 ¶ 13 (noting that O.O.P.'s charges were not filed with the court until October 15, 2026). Defendants' suggestion that it was proper for them to fail to consider any evidence beyond the police report merely because of the *absence* of a complaint or motion to dismiss "lacks any coherence." *Fox*, 684 F.3d at 75 (internal quotation omitted)

On flight risk, Defendants repeat that unresolved charges establish that O.O.P. violated local or state law. ECF 486 at 13. But here again, Defendants fail to acknowledge that even ICE's artificially restricted record contains only *allegations* that O.O.P. committed de minimis municipal code violations or traffic offense misdemeanors. A determination that O.O.P. in *fact* violated those laws is simply not supported by the record evidence. And, as discussed above, proper consideration of all the relevant evidence would have further undermined a determination that O.O.P. violated the conditions of his release: Defendants' "failure 'to consider evidence bearing on the issue before it constitutes arbitrary agency action.'" *Ramirez*, 2026 WL 1954459 at *7 n.7 (quoting *Butte Cnty., Cal. v. Hogen*, 613 F.3d 190, 194 (D.C. Cir. 2010)). This is particularly true where O.O.P. has proven himself *not* to be a flight risk by attending his scheduled ICE check-in and Immigration Court hearing, facts that Defendants do not dispute. *See* ECF 482 at 10-11.

In sum, ICE's determinations that O.O.P. presents a danger and flight risk are arbitrary and capricious, and as such, Defendants have not established materially changed circumstances

[2] It is unknown whether ICE will facilitate O.O.P.'s attendance at his criminal court date on November 4, 2026 if he remains in ICE custody at that time.

justifying his continued re-detention. O.O.P. is therefore a class member who, after over eleven weeks of unlawful detention, should be ordered released.[3]

Voluntary Departure

After Plaintiffs' counsel conveyed to B.I. that Defendants stated he had a departure deadline of November 4, B.I. asked to Defendants to facilitate his voluntary departure this week in order to avoid violating the deadline in exchange for B.I. withdrawing his request for release. *See* Decl. of Allena Martin ¶¶ 8, 10-11. Defendants' counsel subsequently communicated that ICE has scheduled B.I. for removal by or before the November 4 deadline. *Id.* ¶ 12. Given these representations, B.I. withdraws his request for release.

Although B.I. no longer seeks release, Plaintiffs address Defendants' erroneous and unsupported position on the legal consequences of receiving a grant of voluntary departure as this question is likely to impact other class members. ECF 486 at 6-7. Defendants provide no authority for their repeated insistence that a *grant* of pre-conclusion voluntary departure means that removal proceedings under 8 U.S.C. § 1229a have concluded. Indeed, the relevant statute states that for a noncitizen already in such proceedings, as B.I. unquestionably is, voluntary departure may be granted "*prior to the completion* of proceedings," and that a noncitizen may receive up to 120 days to voluntary depart. 8 U.S.C. § 1229c(a)(1), (2) (emphasis added); *cf.* § 1229c(b)(1). As Defendants themselves note, only if B.I. fails to depart by the deadline does he

[3] As Defendants note, ECF 486 at 4 n.2, this Court has already held that it has the authority to set aside unlawful age-out custody determinations and order the release of improperly detained age-outs. *Ramirez v. ICE*, 2026 WL 1557609, at *12 (D.D.C. June 2, 2026). Moreover, Defendants' assertion that only habeas review is available here and that "the APA does not properly apply to review of individual custody determinations" is entirely unsupported. ECF 486 at 4 n.2. Indeed, other courts have reviewed agencies' custody determinations under the APA, *see Gomez v. McHenry*, 2020 WL 6381959, at *4 (considering whether BIA's bond determination was arbitrary and capricious), and held that "APA and habeas review may coexist," *R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 185 (D.D.C. 2015).

automatically receive a final order of removal. ECF 486 at 2; *see* 8 C.F.R. § 1240.26(b)(3)(ii). A final order of removal is what marks the conclusion of removal proceedings and the beginning of the "removal period." 8 U.S.C. § 1231(a)(1).

This conclusion is confirmed by the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). There, the Court made clear that 8 U.S.C. § 1225(b)(2)(A) authorizes detention "until removal proceedings have concluded," *id.* at 299, and § 1226 authorizes detention "pending a decision on whether the [noncitizen] is to be removed from the United States," *id.* at 288 (quoting § 1226(a));[4] *accord Ramirez v. ICE*, 812 F. Supp. 3d 86, 108 (D.D.C. 2025). If, as Defendants contend without authority, removal proceedings conclude upon a *grant* of voluntary departure, instead of when the period for departing has expired, then Defendants have no statutory authority to detain any noncitizen granted voluntary departure who remains within their departure period. Defendants' continued detention of not only B.I., but of numerous noncitizens who have been granted voluntary departure and remain within their departure periods, *see* ECF 482 at 18-19, raises doubts as to whether even they believe in their new purported interpretation of the statutory scheme.

B.I.'s case also highlights the injustice caused by Defendants' efforts to accelerate the removal of noncitizens combined with Defendants' delays in producing re-arrest records and responding to Plaintiffs' challenges to those re-arrests. Plaintiffs maintain that B.I.'s re-detention violated § 1232(c)(2)(B), yet in the time between his arrest by ICE on August 14, 2026, ICE providing his name and producing his records on September 21, and Plaintiffs being able to speak with him in detention on October 6, B.I. had already been convinced to accept voluntary

[4] The other pre-final order detention statute, § 1225(b)(1), authorizes detention of noncitizens placed in expedited removal proceedings, which are not at issue here. *Id.* at 287.

departure at his first immigration court hearing because he was told the only alternative was to remain detained for years while his case played out. *See* ECF 482-3, B.I. Decl. ¶¶ 15-16, 19-20. If Defendants had complied with § 1232(c)(2)(B), B.I. would not have been re-arrested by ICE or would have been released shortly thereafter and would have been able to celebrate his twenty-first birthday with friends and family and continue to work, learn English, and pursue his asylum case. Instead, B.I. is preparing for his departure to Uzbekistan and has been denied the opportunity to vindicate his rights as a class member. And B.I. is just one example of many. For instance, out of the 11 class members re-arrested in August who did not have a preexisting removal order, five were already removed by the time Plaintiffs received Defendants' production on September 21, 2026. *Id.* ¶ 5. And out of the eight class members re-arrested in September who did not have a preexisting removal order, six had already been removed or accepted voluntary departure as of October 24, including four who were re-detained because of technical reporting violations likely in violation of § 1232(c)(2)(B) and the Court's June 2, 2026 Order. *Id.* ¶ 6.

CONCLUSION

For all the foregoing reasons, the Court should grant Plaintiffs' Second Motion to Enforce the Court's June 2, 2026 Order.

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Respectfully submitted,

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